



## AGREEMENT

### **Section 1. Purpose**

The purpose of this Agreement is to outline the funding obligations related to the improvements to Lexington Boulevard and Cartwright Road.

### **Section 2. Definitions**

- A. **City** means the City of Missouri City, Texas.
- B. **County** means Fort Bend County, Texas.
- C. **Project** means the improvements of Lexington Boulevard from Laurel Green Road to 400 feet west of FM 1092 and improvements of Cartwright Road from 400 feet west of Brightwater Drive to 400 feet east of FM 1092.
- D. **Eligible Project Costs** means costs, as determined by County, for construction of roadway improvements, including engineering design and services related to the completion of Plans, Specifications and Estimates ("PS&E"), Project related drainage facilities, utility and pipeline conflicts, approved traffic control devices, and sidewalks up to five feet (5') wide. Eligible Project Costs shall exclude, unless otherwise stipulated herein, design and construction costs related to landscaping, irrigation, lighting, hike & bike trails, reconstruction of utilities, except utility conflicts created by the construction of Project elements, and design and construction costs of upgrades to eligible project components and similar facilities requested by the City to be included in the Project.

### **Section 3. Incorporation of Recitals**

The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are incorporated into this Agreement.

### **Section 4. County's Rights and Obligations**

A. The County is responsible for completing the design and overseeing the construction of the Project in compliance with the applicable state and federal laws related to the Project. This responsibility shall include the management of the relocation of utilities, including gas, overhead power and telecommunications, and entering into a contract for engineering design and construction phase services and inspections. The City acknowledges and accepts the fact that County is obligated to follow Chapter 262 of the Texas Local Government Code as it relates to the award of the contract.

B. The County shall competitively bid and construct the Project in accordance with specifications.

C. During the work on the Project, the County shall provide the City the opportunity to review all documents, maps, plats, records, photographs, reports and drawings affecting the construction and to inspect the work in progress. The County shall oversee the construction and completion of the Project. Any deficiencies brought to the attention of County by the City shall be addressed by the County. If the County Engineer determines that the deficiencies are

actionable under the terms of the construction contract, the County will work with the construction contractor to correct any City identified deficiencies. Notwithstanding the foregoing, all final decisions related to the construction contract performance shall be at the County's sole discretion.

D. The County shall submit reports to the City describing in sufficient detail the progress of the Project. These reports shall be submitted to the City's designee at increments agreed to between the Parties as appropriate for the various phases of the Project. Reports received by the County from contractor and/or consultants detailing the progress of the Project shall suffice for the requirements of this section.

E. The County may elect to forego construction of the Project at any time. The County shall provide written notice to the City of its decision to forego construction and refund all amounts provided by City, if any, upon sixty (60) days of said notice to the City.

F. Upon completion of construction of the Project, but no later than ninety (90) calendar days after final payments to all vendors, the County will furnish the City with a full accounting of the funds expended on the Project and an electronic copy of the record drawings showing the Project. The City may review the County's records regarding this Project to confirm the accuracy of the full accounting.

G. The County shall advance the funding for the Project to facilitate early completion and pay for Eligible Project Costs as specified in this Section and as reflected in Exhibit A attached hereto.

- (1) The County agrees to pay one hundred percent (100%) of the design-related Eligible Project Costs ("Design Costs") plus fifty percent (50%) of the construction-related Eligible Project Cost ("Construction Costs") up to a maximum amount of \$6,161,900.
- (2) The County agrees to advance an amount of funds for one hundred percent of the Design Costs.

H. The County is not obligated to expend any further funds above \$12,445,400 on the Project from the 2017 and 2020 General Obligation Bonds or any other sources of funding, including advance funding partially reimbursable by the City. However, the County's contribution to the Project, after reimbursement by the City, shall remain limited to one hundred percent (100%) of the design-related Eligible Project Costs plus fifty percent (50%) of the construction-related Eligible Project Cost up to a maximum amount of \$6,161,900.

**Section 5. City's Rights and Obligations**

A. The City shall reimburse the County for funds advanced in excess of one hundred percent (100%) of the design-related Eligible Project Costs plus fifty percent (50%) of the Construction Costs by the expiration of five (5) years after the date of substantial compliance of the Project.

- (1) The City agrees to reimburse the County for any Interest Expense, as determined by the County Auditor, incurred by the County due to the advance funding of the Project by the County.

(2) Interest Expense means interest, if any, on the County's payments in excess of one hundred percent (100%) of the Design Costs plus fifty percent (50%) of the Construction Costs up to a maximum amount of \$6,283,500, at a rate equal to the County's actual borrowing costs.

B. During the work on the Project, the City shall have the right to review all documents, maps, plats, records, photographs, reports and drawings affecting the construction and to inspect the work in progress. Any deficiencies shall be provided in writing to the County Engineer. The City agrees that the County is the contracted party and the City shall not provide any direction to the consultant or the contractor, except with concurrence of the County Engineer.

**Section 6. Liability**

The City and County are entitled to the immunities and defenses of the Texas Tort Claims Act. Nothing in the Agreement shall be construed to waive either party's sovereign immunity.

**Section 7. Maintenance**

The City agrees that the improvements constructed under this Agreement, except those specifically identified as being County facilities, are the City's public infrastructure and shall be operated and maintained by the City.

**Section 8. Limit of Appropriation**

A. Prior to the execution of this Agreement, the City has been advised by the County, and the City clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the County shall have available the total maximum amount of \$12,445,400 with a total County contribution of not to exceed \$6,161,900 after reimbursement by the City, specifically allocated to fully discharge any and all liabilities that may be incurred by the County for the Project.

B. The City does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum funding that the City may become entitled to hereunder and the total maximum amount that the County will reimburse the City hereunder will not under any condition, circumstance or interpretation hereof exceed One hundred percent (100%) of the design-related Eligible Project Costs plus fifty percent (50%) of the construction-related Eligible Project Cost, or \$6,161,900, WHICHEVER AMOUNT IS LESS.

C. Each party paying for the performance of its obligations under this Agreement shall make those payments from current revenues available to that party.

**Section 9. Insurance Requirements**

County agrees that it will require Contractor's insurance policies name City as well as County as additional insureds on all policies except for Workers' Compensation and Professional Liability. Any such insurance policies shall include at least the following minimum coverage:

A. Worker's Compensation in the amount required by law. The policy shall include the All States Endorsement.

B. Comprehensive General Liability Insurance including contractual liability insurance, \$1,000,000 per occurrence, \$2,000,000 aggregate (defense costs excluded from face amount of policy).

C. Comprehensive Automobile Liability Insurance, including owned, non-owned and hired vehicles used for the Project, with bodily injury and property damage with a combined limit of not less than \$1,000,000 each occurrence.

**Section 10. Assignment**

No party hereto shall make, in whole or in part, any assignment of this Agreement or any obligation hereunder without the prior written consent of the other party.

**Section 11. No Third Party Beneficiaries**

The Parties do not intend that any specific third party obtain a right by virtue of the execution or performance of this Agreement.

**Section 12. Notices**

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, or delivered to the following addresses:

County: Fort Bend County  
Attention: County Judge  
401 Jackson Street, 1<sup>st</sup> Floor  
Richmond, Texas 77469

With a copy to: Fort Bend County Engineering Department  
Attention: County Engineer  
301 Jackson Street  
Richmond, Texas 77469

City: City of Missouri City, Texas  
Attention: Mayor  
1522 Texas Parkway  
Missouri City, Texas 77489

**Section 13. Entire Agreement**

This Agreement contains the entire agreement between the Parties relating to the rights granted and the obligations assumed. Any modifications concerning this instrument shall be of no force or effect, unless a subsequent modification in writing is signed by all Parties hereto. If a court finds or rules that any part of this Agreement is invalid or unlawful, the remainder of the Agreement continues to be binding on the Parties.

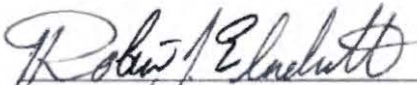
**Section 14. Execution**

This Agreement has been executed by the City and the County upon and by the authority of their respective governing bodies. This Agreement shall become effective on the date executed by the final party, and remain in effect until (i.) September 30, 2023, (ii.) the Project is complete, or (iii.) the Agreement is terminated otherwise as provided herein; and the obligations under Sections 4 and 5 of this Agreement are fulfilled, whichever is soonest.

**FORT BEND COUNTY, TEXAS**

**CITY OF MISSOURI CITY, TEXAS**

  
\_\_\_\_\_  
KP George, County Judge

  
\_\_\_\_\_  
Robin J. Elackatt, Mayor

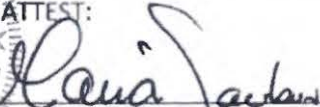
Date: 10.26.2021

Date: 10.5.2021

ATTEST:

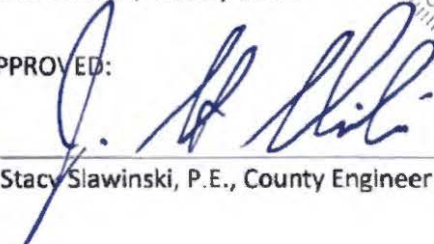
  
\_\_\_\_\_  
Laura Richard, County Clerk

ATTEST:

  
\_\_\_\_\_  
Maria Jackson, City Secretary



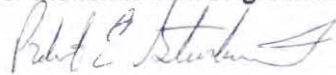
APPROVED:

  
\_\_\_\_\_  
J. Stacy Slawinski, P.E., County Engineer



**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available in the amount of \$ 6,161,900.00 to accomplish and pay the obligation of Fort Bend County under the terms of this Agreement.

  
\_\_\_\_\_  
Robert Ed Sturdivant, Fort Bend County Auditor

# EXHIBIT A

<b>Cartwright</b>	
Description of Cost	Total Amount
Engineering	\$ 669,300
ROW and Utilities	\$ 74,000
CPS	\$ 308,600
Construction	\$ 4,408,500
<b>Total Cost</b>	<b>\$ 5,460,400</b>

Cost Share [%]		Cost Share [Amount]	
FBC	MC	FBC	MC
100%	0%	\$ 669,300	\$ -
0%	100%	\$ -	\$ 74,000
0%	100%	\$ -	\$ 308,600
50%	50%	\$ 2,204,250	\$ 2,204,250
<b>Total Cost Share</b>		<b>\$ 2,873,550</b>	<b>\$ 2,586,850</b>

<b>Lexington</b>	
Description of Cost	Total Amount
Engineering	\$ 765,000
ROW and Utilities	\$ 820,000
CPS	\$ 353,300
Construction	\$ 5,046,700
<b>Total Cost</b>	<b>\$ 6,985,000</b>

Cost Share [%]		Cost Share [Amount]	
FBC	MC	FBC	MC
100%	0%	\$ 765,000	\$ -
0%	100%	\$ -	\$ 820,000
0%	100%	\$ -	\$ 353,300
50%	50%	\$ 2,523,350	\$ 2,523,350
<b>Total Cost Share</b>		<b>\$ 3,288,350</b>	<b>\$ 3,696,650</b>

**Summary**

	Total	Cartwright	Lexington
Total Cost	\$ 12,445,400	\$ 5,460,400	\$ 6,985,000
ROW and Utilities, CPS	\$ 1,555,900	\$ 382,600	\$ 1,173,300
Eng/Constr. Cost Only	\$ 10,889,500	\$ 5,077,800	\$ 5,811,700

County - Total Cost Share	\$ (6,161,900)	\$ (2,873,550)	\$ (3,288,350)
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2020 FBC Bond Funds	\$ 4,000,000	\$ 2,000,000	\$ 2,000,000
2017 FBC Bond Funds <sup>(1)</sup>	\$ 3,510,000	\$ 1,000,000	\$ 2,510,000
<b>Total County Bond Funds</b>	<b>\$ 7,510,000</b>	<b>\$ 3,000,000</b>	<b>\$ 4,510,000</b>

Missouri City - Total Cost Share	\$ (6,283,500)	\$ (2,586,850)	\$ (3,696,650)
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FBC Available Bond Funds <sup>(2)</sup>	\$ 1,348,100	\$ 126,450	\$ 1,221,650
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MC Needed Advanced Funds <sup>(3)</sup>	\$ (4,935,400)	\$ (2,460,400)	\$ (2,475,000)
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(1) \$3,510,000 from project 17411 Glenn Lakes Lane

(2) Advanced Funds to be reimbursed according to the agreement.

(3) This does not account for \$2 mm in available funds from Missouri City.

(4) All costs are based on FBC 2020 Planning Sheets