

**INTERLOCAL COOPERATION AGREEMENT BETWEEN CITY OF
MONTGOMERY, TEXAS AND MONTGOMERY COUNTY, TEXAS**
(Buffalo Springs Dr. and Lone Star Parkway Intersection Improvements)

This Interlocal Cooperation Agreement ("Agreement") is made and entered into by and between **City of Montgomery, Texas**, a body corporate and politic under the laws of the State of Texas, hereinafter called "City" and **Montgomery County**, a body corporate and politic under the laws of the State of Texas, hereinafter called "County" in accordance with the Interlocal Cooperation Act, Tex. Gov't Code Ch. 791.001 *et seq.* City and County may also be referred to individually herein as a "Party", or collectively as the "Parties".

RECITALS:

WHEREAS, it is of the mutual benefit of the Parties to improve mobility within the City and in the unincorporated areas of the County outside of the City.

WHEREAS, the Parties desire to share the responsibilities and costs to improve and to reconfigure the intersection of Buffalo Springs Drive and Lone Star Parkway into a traffic circle (the "Project").

WHEREAS, the Project is located in within the municipal limits of the City, and in Montgomery County.

NOW THEREFORE, the Parties desire to proceed with the design and construction of the Project in accordance with this Agreement.

I. Responsibilities of the Parties

- A. County Responsibilities. Upon execution of this Agreement by the Parties, County shall:
- i) Provide engineering and related support services necessary to prepare plans, specifications, and estimates ("PS&E") for construction of the Project;
 - ii) Submit such PS&E to City for review and approval;
 - iii) Identify any utility and/or pipelines in conflict with construction of the Project;
 - iv) Coordinate and relocate any utilities and/or pipelines found to be in conflict with the construction of the Project;
 - v) Obtain all necessary approvals and/or permits from any jurisdictional agencies;
 - vi) Advertise for and receive bids for the construction of the Project in accordance with the PS&E in the manner similar to that of other like County projects.
 - vii) Upon receipt and tabulation of bids for the Project, County will determine the lowest responsible bidder for the construction of the Project. It is expressly agreed and understood that County reserves the right to reject all bids. If County, in its discretion, rejects all bids, then County may within thirty (30) days from the date of rejection of all bids either (a) re-advertise for bids pursuant to the same understanding with regard to rejection of bids, or (b) terminate this Agreement and return all funds, if any, received from City.

- ix) Upon approval of the PS&E by City, and receipt of funds from City pursuant to Section II below, County shall award the contract for construction of the Project to the lowest and best bidder in accordance with the usual and customary procedures of County. County's determination of the lowest and best bid for the Project shall be final and conclusive.
- x) Provide the County funding share being fifty percent (50%) of the total design and construction costs for the Project ("County Share"), subject to the provisions set forth in Section III below.
- xi) Provide and manage the day-to-day construction of the Project, including construction materials testing ("CMT"). During the construction of the Project, City shall have the right of access to the construction site and shall have the right to review all documents, maps, plats, records, photographs, reports or drawings affecting said construction, provided, however, City shall not interfere with the work in progress;
- xii) Upon substantial completion of the construction of the Project, and again at 100% completion, provide an opportunity for City representatives to participate in a walk through to develop a punch list; and
- xiii) Upon final acceptance of the Project by the Parties, provide a set of record drawings, which have been signed and sealed by the Project Engineer to City;

B. City Responsibilities. Upon execution of this Agreement by the Parties, City shall:

- i) Review the PS&E prepared by County for the Project and provide objections or approval to County within ten (10) days of receipt by City. City agrees that approval will not be unreasonably withheld, and County may proceed as if approved in the event City has not provided any objections or approval within the ten (10) days aforementioned; and
- ii) Provide the City funding share being fifty percent (50%) of the design and construction costs for the Project, not to exceed Two Hundred Fifty Thousand and no/100 Dollars (\$250,000.00), (hereinafter defined as "City's Share"), subject to the provisions set forth in Section III below, in accordance with Section II below.

II. Terms of Payment

Upon the acceptance of the bid or award by County, County will invoice City for the City's Share, and City shall remit payment of the City's Share to County on or before forty-five (45) days of City's receipt of such invoice. Within 30 days of the completion of the Project, County shall submit to the City for approval a final accounting of the project costs including the final City's Share and City shall remit payment of the City's Share to County on or before forty-five (45) days of City's receipt of such final accounting and invoice. The final City's Share for the Project shall be based on all project costs incurred to date for the Project, but shall not exceed Two Hundred Fifty Thousand and no/100 Dollars (\$250,000.00).

III. Limitations of Appropriation

County and City acknowledge and agree that before County and City may pledge any amount of funds for any reason, funds must be appropriated and certified as available by each Party's respective financial auditor from current fiscal funds.

IV. Term and Termination

This Agreement is effective as of the date it has been approved and executed by all Parties ("Effective Date") and shall remain in full force and effect until the completion of the Project or County's receipt of payment from City of all funds due and owing under the terms of this Agreement, whichever occurs later, unless earlier terminated in accordance with the terms of this Agreement.

City may terminate this Agreement at any time prior to the awarding of the contract for construction of the Project, or as otherwise allowed under this Agreement, by thirty (30) days' written notice to the County, and City shall have no further obligation hereunder and be entitled to receive any unexpended funds paid to County by City including any interest earned on said funds paid to County by City pursuant to this Agreement

County may terminate this Agreement at any time prior to the awarding of the contract for construction of the Project, or as otherwise allowed under this Agreement, by thirty (30) days' written notice to City. In the event of termination by County, County will have no further obligation pursuant to this Agreement, other than to return any unexpended funds paid to County by City. .

V. Notice

All notices required under this Agreement ("Notice") shall be in writing and shall be duly served when it shall have been personally delivered to the address below, or deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to the Parties at the following addresses:

MONTGOMERY COUNTY:

Montgomery County, Texas
Attn: Commissioner Robert Walker
510 Hwy 75 North
Willis, Texas 77378
Email: Commissioner.Walker@mctx.org

With a copy to:

B.D. Griffin, County Attorney
501 N. Thompson, Suite 300
Conroe, Texas 77301
Email: bd.griffin@mctx.org

CITY OF MONTGOMERY:

City of Montgomery, Texas
Attn: Gary Palmer
101 Old Plantersville Rd.
Montgomery, Texas 77316
Email: gpalmer@ci.montgomery.tx.us

With a copy to:

Johnson Petrov LLP, City Attorney
Attn: Alan P. Petrov, Managing Partner
2929 Allen Parkway, Suite 3150
Houston, Texas 77019

Each Party shall have the right to change its respective address to any other address in the State of Texas by giving at least fifteen (15) days written notice of such change to the other Parties.

Other communications, except for Notices required under this Agreement, may be sent by electronic means or in the same manner as Notices described herein.

VI. Assignment

County and City bind themselves and their successors, executors, administrators, and assigns to the other Party of this Agreement and to the successors, executors, administrators, and assigns of such other Party, in respect to all covenants of this Agreement. Neither County nor City shall assign, sublet, or transfer its interest in this Agreement without the prior written consent of the other Party, which will not be unreasonably withheld.

VII. Counterparts and Electronic Signature

Pursuant to the requirements of the Uniform Electronic Transactions Act in Chapter 322 of the Texas Business and Commerce Code and the Federal Electronic Signatures in Global and National Commerce Act (beginning at 15 U.S.C. Section 7001), the Parties have agreed that the transactions under this Agreement may be conducted by electronic means. Pursuant to these statutes, this Agreement may not be denied legal effect or enforceability solely because it is in electronic form or because it contains an electronic signature. This Agreement may be executed in duplicate counterparts and with electronic or facsimile signatures with the same effect as if the signatures were on the same document. Each multiple original of this document shall be deemed an original, but all multiple copies together shall constitute one and the same instrument.

VIII. Independent Parties.

It is expressly understood and agreed by the Parties that nothing contained in this Agreement shall be construed to constitute or create a joint venture, partnership, association or other affiliation or like relationship between the Parties, it being specifically agreed that their relationship is and shall remain that of independent parties to a contractual relationship as set forth in this Agreement.

County is an independent contractor and neither it, nor its employees or agents shall be considered to be an employee, agent, partner, or representative of City for any purpose. City, nor its employees, officers, or agents shall be considered to be employees, agents, partners or representatives of County for any purposes. Neither Party has the authority to bind the other Party.

IX. No Third Party Beneficiaries.

County is not obligated or liable to any party other than City for the performance of this Agreement. Nothing in the Agreement is intended or shall be deemed or construed to create any additional rights or remedies upon any third party. Further, nothing contained in the Agreement shall be construed to or operate in any manner whatsoever to increase the rights of any third party, or the duties or responsibilities of County with respect to any third party.

X. Waiver of Breach.

A waiver by either Party of a breach or violation of any provision of the Agreement shall not be deemed or construed to be a waiver of any subsequent breach.

XI. No Personal Liability; No Waiver of Immunity.

- A. Nothing in the Agreement is construed as creating any personal liability on the part of any officer, director, employee, or agent of any public body that may be a Party to the Agreement, and the Parties expressly agree that the execution of the Agreement does not create any personal liability on the part of any officer, director, employee, or agent of the County.
- B. The Parties agree that no provision of this Agreement extends the Parties' liability beyond the liability provided in the Texas Constitution and the laws of the State of Texas.
- C. Neither the execution of this Agreement nor any other conduct of either Party relating to this Agreement shall be considered a waiver by County or City of any right, defense, or immunity on behalf of themselves, their employees or agents under the Texas Constitution or the laws of the State of Texas.

XII. Applicable Law and Venue.

This Agreement shall be governed by the laws of the State of Texas and the forum for any action under or related to the Agreement is exclusively in a state or federal court of competent jurisdiction in Texas. The exclusive venue for any action under or related to the Agreement is in a state or federal court of competent jurisdiction in Conroe, Montgomery County, Texas.

XIII. No Binding Arbitration; Right to Jury Trial.

Neither party agrees to binding arbitration, nor waives its right to a jury trial.

XIV. Contract Construction.

This Agreement shall not be construed against or in favor of any Party hereto based upon the fact that the Party did or did not author this Agreement. The headings in this Agreement are for convenience or reference only and shall not control or affect the meaning or construction of this Agreement. When terms are used in the singular or plural, the meaning shall apply to both. When either the male or female gender is used, the meaning shall apply to both.

XV. Recitals.

The recitals set forth in this Agreement are, by this reference, incorporated into and deemed a part of this Agreement.

XVI. Entire Agreement; Modifications.

This Agreement contains the entire agreement between the Parties relating to the rights herein granted and the obligations herein assumed. This Agreement supersedes and replaces any prior agreement between the Parties pertaining to the rights granted and the obligations assumed herein. This Agreement shall be subject to change or modification only by a subsequent written modification approved and signed by the governing bodies of each Party.

XVII. Severability.

The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person, entity, or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons, entities, or circumstances shall not be affected thereby.

XVIII. Survival of Terms.

Any provision of this Agreement that, by its plain meaning, is intended to survive the expiration or earlier termination of this Agreement shall survive such expiration or earlier termination. If an ambiguity exists as to survival, the provision shall be deemed to survive.

XIX. Multiple Counterparts/Execution.

This Agreement may be executed in several counterparts. Each counterpart is deemed an original and all counterparts together constitute one and the same instrument. In addition, each Party warrants that the undersigned is a duly authorized representative with the power to execute the Agreement.

EXECUTED BY THE PARTIES ON THE RESPECTIVE DATES SHOWN BELOW.

[Signatures are contained on one or more separate execution pages]

EXECUTED ON THE ___ DAY OF _____, 2023.

MONTGOMERY COUNTY, TEXAS

By: _____
Mark J. Keough, County Judge

Attest:

Mark Turnbull, County Clerk

APPROVED AS TO FORM:

B. D. Griffin, County Attorney

EXECUTED ON THE 14th DAY OF February, 2023.

CITY OF MONTGOMERY TEXAS

By: Byron Sanford
Byron Sanford, Mayor

Date: 14th February , 2023.

Attest:

Nici Browe
Nici Browe, City Secretary

APPROVED AS TO FORM:

Alan P. Petrov, City Attorney