

**COUNTY ROAD 52 EXTENSION PHASE 2 PROJECT
INTERLOCAL COOPERATION AGREEMENT BETWEEN
THE CITY OF CORPUS CHRISTI &
NUECES COUNTY**

THE STATE OF TEXAS §

COUNTY OF NUECES §

THIS INTERLOCAL COOPERATION AGREEMENT ("Agreement") is made by and between the CITY OF CORPUS CHRISTI, TEXAS ("**City**"), a Texas municipal corporation and home-rule city, acting by and through its duly authorized City Manager or designee upon authority of its governing body, the Corpus Christi City Council and NUECES COUNTY, TEXAS ("**County**"), acting by and through its duly authorized County Judge or designee upon authority of its governing body, the NUECES COUNTY COMMISSIONERS COURT, pursuant to and in accordance with the provisions of Chapter 791, as amended, Texas Government Code.

WITNESSETH

WHEREAS, for the mutual benefit of the parties and the residents of the City and County, the City and County desire to fund and provide for the extension of CR52 from County Road 69 to FM 1889 ("Project"); and

WHEREAS, Texas Government Code Section 791.028 authorizes the City and County to enter into this Agreement; and

WHEREAS, in 2012, the City called an election to finance certain improvements and development projects to be financed by general obligation bonds the repayment of which are payable from and secured by the annual levy and collection within the legal limits permitted by law of the City's ad valorem tax ("Bond 2012"); and

WHEREAS, the Corpus Christi City Council ("Council") adopted Ordinance 029589 consisting of eight propositions to submit to voters ("the Bond 2012 Ordinance"), of which proposition eight ("Proposition 8"), relating to economic development projects, was successful; and

WHEREAS, Proposition 8 gives the City the ability to expend certain Bond 2012 proceeds for particular capital projects, including "designing, constructing, renovating, improving, and equipping City streets, sidewalks, and related facilities that are expected to promote and expand business activities in the City"; and

WHEREAS, Proposition 8 gives priority to, among other economic development projects, County Road 52 Extension, generally from County Road 69 to FM 1889 (*contingent upon receipt of leveraging funds*) ("CR 52 Extension Phase 2" or "Phase 2" or "the Project"); and

WHEREAS, the City may therefore provide financial contribution and assistance for Phase 2 for the economic development purposes stated under Proposition 8 of Bond 2012;

WHEREAS, the County will perform, or cause to be performed, the Project activities, including planning and alignment, design, land acquisition, construction and maintenance therefore; and

WHEREAS, the parties acknowledge and agree that the City may, at the County's request, assist the County in preparing documents and communications for the County and provide right-of-way service to the County, and that the County will be responsible for performing, or causing to be performed, the following Project-related activities with the assistance of the City upon request of the County: (a) negotiate with Nueces Electric Cooperative ("NEC") and all other owners of property within the planned Project limits; (b) determine what amounts to offer NEC and each of the other property owners as just compensation; (c) determine whether to acquire a right-of-way easement from NEC and each of the other property owners, or to determine whether it is in the best interest of the County to instead acquire a fee simple interest; (d) execute real estate agreements, sales contracts, easements, and property instruments; (e) acquire property interests in its own name; (f) accept the property interests in the name of the County; and (h) maintain the property interests and the CR 52 Extension Phase 2 Road ("Roadway"); and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, the City and the County do agree as follows:

AGREEMENT

SECTION 1. PURPOSE FOR PARTICIPATION.

For the mutual benefit of the parties and the residents of the City of Corpus Christi and Nueces County, Texas, City and County desire to outline the terms by which each party will contribute to the Project.

SECTION 2. OBLIGATIONS OF CITY AND COUNTY.

For and in consideration of the covenants and agreements of the parties set forth herein, City and County agree to contribute to the Project costs necessary to facilitate the construction of improvements to renovate, extend and expand CR 52 from County Road 69 to FM 1889 (heretofore defined as the "Project," also referred to herein as the "Work"). The Project limits are shown in the attached Exhibit "A."

- a) Funding. City and County agree to contribute up to **\$2,000,000** each for costs associated with the Project ("Project Funds"), including but not limited to engineering services to design and prepare construction plans, easements, property and land acquisition, construction costs, drainage adjustments, utility relocation, storm water improvements, legal expenses, advertising, printing, and miscellaneous expenses.
 - i. If construction bids exceed the total amounts anticipated to be paid for construction by the parties under this Agreement, based upon the engineer's cost projection the County may, in its discretion, opt to reject all construction bids, re-scope and re-bid the Project.
 - ii. The City has incurred certain Project costs in the amount of \$272,630.79 (as shown in the attached Exhibit B). Therefore, the City will deduct an amount of \$272,630.79 from the maximum amount of \$2,000,000 that it will contribute under this Agreement, for a total remaining balance of \$1,727,369.21 subject to any deduction as set out in (c) herein ("City's Remaining Project Fund Balance" or "City's RPFB").

- iii. It is mutually agreed that the total Project costs under this Agreement will not exceed \$4,000,000. As this "Phase 2 portion" of County Road 52 lies solely within the jurisdiction of Nueces County, the parties acknowledge that the County may decide to increase its funding to fund further improvement to this Phase 2 portion of County Road 52, however any such increased funding of the County will not be considered part of this Agreement, and such increase will not require any commitment of matching funds by the City.
 - iv. The parties agree to be responsible and prudent with the Project Funds. Except as otherwise provided in this Agreement, before entering into any agreement for the Project, whether verbal or written, the parties agree to fully negotiate to the extent allowed under law all fees with potential service providers, and, where applicable, to make a good faith effort to either require a potential service provider to reduce its fees, or to require a re-scoping of the Work necessary to reduce costs, so that Project Funds are used responsibly to pay for fees, prices and expenses considered fair and reasonable fees or prices for those services when compared to fees and prices for the same or similar work in the engineering field or construction industry of Nueces County, Texas. No Project Funds may be expended for any Project costs or services, including services for engineering, construction, construction management, observation or inspection services, without complying with this section.
- b) Payments. The City will reimburse the County for half of the Project expenses incurred by the County up to an amount equal to the City's RPFB, upon receipt of paid invoices, itemized and accompanied by supporting documentation. Nothing in this Agreement may be construed to require or cause either the City or the County to pay an amount exceeding \$2,000,000.00 for the Project.
 - c) Property & Land Acquisition. The County agrees to acquire or have acquired any construction easements, rights-of-way, and utility easements that may be necessary for Project, and to conduct or have conducted proceedings, if any, to condemn by use of the power of eminent domain. The County agrees to acquire the necessary property rights in the name of the County. The City has assisted and will continue to assist the County with Property and Land Acquisition by providing certain land acquisition/right-of-way services. At County's direction the City is acquiring the necessary property rights in the City's name and will transfer the acquired property rights to the County. The County must agree to the specific land acquisition and amount of any expenditure for the land acquisition. Land acquisition expenditures incurred by the City will be deducted from the City's RPFB.
 - d) Design and Installation of Roadway. The road is to be a County Road and subject to the County's standards, therefore the County has decided and the City acknowledges that the Roadway will be built to the same standards and specifications as that portion of roadway or "the NEC driveway" built by NEC, found within Project limits.
 - e) Maintenance. As long as it remains a county road, County will maintain the roadway constructed under this Phase 2 and any other improvements. This paragraph will survive expiration of this Agreement.

- f) Payment Dates. The County will provide the City with the necessary invoices on a monthly basis in accordance with this Agreement. The City will provide reimbursement or payment pursuant to the terms of this Agreement for necessary Project costs within 30 days from the date of receipt of the County's invoice submittal.
- g) Contract Management and Administration. Testing. County will be responsible for all planning, design and construction activities, including all contract administration for the Project. County will provide construction observation, management and inspection services and provide, through an independent third party provider, the necessary geotechnical services, engineering materials inspection, testing and laboratory services. The cost of contract management and administration and testing as set out in this paragraph will be paid by Project Funds. The City will have neither first nor prior approval rights of decisions related to Contract Management and Administration, Testing.
- h) Change Orders. The County will negotiate, approve, and execute all Change Orders as part of contract management and administration. The City will have neither first nor prior approval rights of a Change Order.
- i) Project Plans, Specifications, and Cost Estimates. The County will procure and approve the Project Plans, Specifications, and Cost Estimates, as well as advertise and proceed to solicit bids for the construction of the Work. The City will have neither first nor prior approval rights of the Project Plans, Specifications, or Cost Estimates.

SECTION 3. TERM OF AGREEMENT.

The term of this Agreement shall be from the date signed and authorized by the parties until the County's final acceptance of the Work or City's last payment up to \$2,000,000, whichever occurs later. This Agreement may be extended upon written agreement of the parties.

SECTION 4. MISCELLANEOUS.

- a) Payments. Any payment made by either party hereto for any of the services provided pursuant to this Agreement shall be made out of current revenues available to the County and City as required by Chapter 791, Texas Government Code, or any other manner permitted by law, as permitted by and in accordance with Section 791.028, as amended, Texas Government Code.
- b) Severability. In the event any term, covenant or condition herein contained shall be held to be invalid by any court of competent jurisdiction, such invalidity shall not affect any other term, covenant or condition herein contained, provided that such invalidity does not materially prejudice either County or City in their respective rights and obligations contained in the valid terms, covenants or conditions hereof.
- c) Entire Agreement. This Agreement merges the prior negotiations and understandings of the parties hereto and embodies the entire agreement of the parties, and there are no other agreements, assurances, conditions, covenants (express or implied) or other terms with respect to the covenants, whether written or verbal, antecedent or contemporaneous, with the execution hereof.

- d) Written Amendment. This Agreement may be amended only by written instrument duly executed on behalf of each party. The authorized representatives may execute minor amendments without obtaining prior approval from their respective governing bodies if the minor amendment would change neither the amounts nor the responsibilities agreed to by either party under this original Agreement.
- e) Notices. All notices required or permitted must be in writing and will be deemed delivered when actually received or, if earlier, on the fifth business day (5th) following deposit in a United States Postal Service post office or receptacle with proper postage affixed, certified mail, return receipt requested, addressed to the respective other party at the address prescribed below, or at such other address as the receiving party may have prescribed by notice to the sending party. The initial addresses of the parties, which one party may change by giving written notice of its changed address to the other party, are as follows:

CITY

City of Corpus Christi
 Attn: Director, Engineering Services
 1201 Leopard St., 3rd floor
 Corpus Christi, Texas 78401

w/ copy to:

Gustavo Gonzalez, P.E.
 Assistant City Manager
 PO Box 1541 /1201 Leopard, 5th Floor
 Corpus Christi, Texas 78401

COUNTY

Nueces County
 Attn: County Engineer
 901 Leopard St.
 Corpus Christi, Texas 78401

w/ copy to:

Samuel L. Neal, Jr.
 County Judge
 901 Leopard Room 303
 Corpus Christi, Texas 78401

- f) Non-Waiver. Failure of any party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing hereunder upon default or failure of performance shall not be considered a waiver of the right to insist on, and to enforce by any appropriate remedy, strict compliance with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.
- g) Successors. This Agreement shall bind and benefit the parties and their legal successors. This Agreement does not create any personal liability on the part of any officer or agent of the City of Corpus Christi, or any officer, agent or employee of the City, or any County Commissioner, officer, agent or employee of the County.
- h) No Waiver of Immunity. No party waives or relinquishes any immunity or defense on behalf of itself, its officers, employees, agents and representatives as a result of its executing this Agreement and performance of its covenants.
- i) No Third Party Beneficiaries. No provision of this Agreement is intended or may be construed to confer upon or give to any person or entity other than the signatories to this Agreement any rights, remedies or other benefits under or by reason of this Agreement.

IN WITNESS HEREOF, the City and County have made and executed this Agreement in multiple copies, each of which is an original.

CITY OF CORPUS CHRISTI

NUECES COUNTY, TEXAS

Gustavo Gonzalez, P.E. Date
Assistant City Manager Public Works & Utilities

Samuel L. Neal, Jr. 6/24/15

Samuel L. Neal, Jr. Date
County Judge

ATTEST:

Rebecca Huerta Date
City Secretary

Kara Sands 6/24/15

Kara Sands Date
County Clerk

Approved as to form 6-26-15

Janez Kellogg

Assistant City Attorney
For City Attorney





County Road 52 - Phase 2

Exhibit A

Exhibit B to Interlocal with City and County for CR 52, Phase 2

COUNTY ROAD 52, PHASE 2
Revised Expenses as of June 8, 2015

	Expenses to Date (Includes Encumbrances)
ACTUALS TO DATE:	
* Engineering Services.....	259,349.86
Land Acquisition Services.....	12,857.35
Advertising and Printing.....	423.58
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TOTAL:	272,630.79
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* Engineering Services Charges:	
Naismith A/E Agreement (executed March 26, 2013)	241,692.50
Kleinfelder Central Inc. (executed May 15, 2013)	9,000.00
Engineering Services reimbursements	8,657.36
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	259,349.86
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