

MODIFICATION OF INTERLOCAL AGREEMENT

This Modification of Interlocal Agreement (the “Modification”) is entered into between **BRAZORIA COUNTY, TEXAS**, a political subdivision of the State of Texas (the “County”) and **BRAZORIA COUNTY TOLL ROAD AUTHORITY**, a local government corporation (the “Authority”).

RECITALS

The County and the Authority executed an Interlocal Agreement on August 28, 2018, attached hereto as Exhibit “A” (the “Agreement”).

The County and the Authority now both desire to enter into this Modification to revise certain terms of the Agreement.

The Authority warrants that its Board approved this Modification by Resolution No. R2023-44 dated November 16, 2023.

The County warrants that its Commissioners Court approved this Modification by Court Order No. _____ dated _____, 2023.

AGREEMENT

In consideration of the above facts, the mutual promises set forth below, and other good and valuable consideration, the sufficiency and receipt of which is acknowledged, the County and the Authority hereby mutually agree to modify the Interlocal Agreement as follows:

A. ARTICLE I. EMPLOYEES is hereby replaced in its entirety as follows:

“ARTICLE I. EMPLOYEES AND SERVICES

- 1.1** The Authority hereby contracts with the County for employees to assist in the daily operation, management, and administration of the Project. In addition, the County may provide, at the request of the Authority, the services of certain professional employees, such as engineers, attorneys, CPAs, and other employees with the expertise needed to administer the Project.
- 1.2** The employment and duties of employees provided to the Authority for the daily operation, management, and administration of the Project shall be at the exclusive direction and discretion of the County Engineer. The County Engineer shall coordinate with the Authority Board on hiring each employee. Professional employees providing services to the Authority shall do so in a manner consistent with the ethics and standards of the license or certificate held by such employee.
- 1.3** The Authority will defend County and County employees serving the Authority in the event that any claim for liability is made against the County or the County employees in connection with any act by the County employee on behalf of the Authority, excluding a

claim made against the County for failure to perform the County's duties under this Agreement and claims against an employee for misappropriation of funds or other acts of malfeasance. The Parties agree that defending the County or County employees includes but is not limited to all costs of court and of litigation, and/or paying any resulting judgment rendered against the County or County employees.

1.4 The Authority shall reimburse County for the entire costs associated with each employee provided to Authority, including but not limited to, salaries and benefits. The Authority shall also reimburse County for any additional costs related to performing professional services for the Authority. County will provide Authority a monthly invoice setting forth all expenses for employees and other services for the prior month. After review and approval, the Authority will reimburse the County monthly based on the approved invoice.”

B. No Further Modifications. Except as amended by this Modification, the terms and conditions of the Agreement remain unchanged and in full force and effect.

C. Entire Agreement. This Modification contains the entire agreement of the parties as it relates to the above terms. All understandings, discussions, and agreements previously made between the parties related to this Modification, written or oral, are superseded by this Modification, and neither party relies on any warranty, statement, or representation not contained in this Modification.

IN WITNESS WHEREOF, the parties hereto have caused this Modification to be duly executed as of the date written below.

COUNTY:

BRAZORIA COUNTY, TEXAS

BY:

L.M. “Matt” Sebesta, Jr.
Brazoria County Judge

DATE:

AUTHORITY:

BRAZORIA COUNTY TOLL ROAD
AUTHORITY

BY:

Gary Idoux
Chairman

DATE:

EXHIBIT A

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT (this "Agreement"), is made and entered into as of the 28 day of August, 2018, and between the following parties: **BRAZORIA COUNTY, TEXAS**, a political subdivision of the State of Texas (the "County") and **BRAZORIA COUNTY TOLL ROAD AUTHORITY** (the "Authority"), a local government corporation created pursuant to Subchapter D of the Texas Transportation Corporation Act, TEX. TRANSP. CODE ANN. §431 et seq.

RECITALS:

A. The County Commissioners Court by Order created the Authority as a duly constituted Local Government Corporation pursuant to Subchapter D, Chapter 431, Texas Transportation Code, to act on behalf of the County in the performance of its essential governmental functions to develop the Brazoria County Expressway.

B. The Interlocal Corporation Act, Texas Government Code § 791.001 *et seq.*, authorizes the Authority to enter into an interlocal agreement with the County subject to the conditions and limitations of this Agreement.

C. The Authority warrants that its Board approved this Agreement on 8-23-18, 2018.

D. The County warrants that its Commissioners Court approved this Agreement by Court Order No. 7.T.1 dated August 28, 2018.

E. The Authority is constructing a 4-lane managed toll road within the existing median of State Highway 288 (the "Brazoria County Expressway" or "Project") which subsequently may include any other portion, extension or enlargement of or improvement to the Brazoria County Expressway and any other projects that may be pooled with any of the foregoing for the benefit of the County.

F. County and Authority entered into a Joint Project Agreement in June 2017 wherein the County agreed to provide the Authority engineering, purchasing, financial and accounting services related to the Project.

G. Pursuant to the Joint Project Agreement, the Authority is responsible for operation and maintenance of the Brazoria County Expressway and, based upon the completion date projected for the Project, is in need of hiring employees to assist in the operation, management, and administration of the Brazoria County Expressway.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration and the mutual benefits, covenants and agreements set forth below, the Authority and the County agree as follows:

ARTICLE I EMPLOYEES

1.1 The Authority hereby contracts with the County for employees to assist in the operation, management, and administration of the Project.

1.2 For this provision, Authority shall reimburse County for the entire costs associated with each employee provided to Authority, including but not limited to, salaries and all benefits. The employment and duties of employees provided to the Authority shall be at the exclusive direction and discretion of the County Engineer. The County Engineer shall coordinate with the Authority Board on hiring each employee. Authority will defend County and County employees serving the Authority in the event that any claim for liability is made against the County or the County employees in connection with any act by the County employee on behalf of the Authority, excluding a claim made against the County for failure to perform the County's duties under this agreement and claims against an employee for misappropriation of funds or other acts of malfeasance. The Parties agree that defending the County or County employees includes but is not limited to all costs associated with the defense and/or settlement, paying all attorney's fees, paying all costs of court and of litigation, and/or paying any resulting judgment rendered against the County or County employees.

1.3 County will provide Authority an annual accounting October of each year setting forth all expenses for employees for the prior fiscal year. The Authority will pay the County the reimbursement amount from time to time when and if sufficient funds are available. Once funds are available, the Authority will calculate the availability of and make such payments annually until the Reimbursement Obligation has been paid in full.

ARTICLE II. GENERAL

2.1 This Agreement is entered solely by and between, and may be enforced only by and among the Parties. Except as set forth herein, this Agreement shall not be deemed to create any rights in, or obligations to, any third parties.

2.2 Nothing in this Agreement shall be construed as creating any personal liability on the part of any employee, officer, or agent of any Party to this Agreement.

2.3 This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

2.4 This Agreement may be modified or amended only upon the mutual written agreement of the Parties.

2.5 In the event that any clause or provision of this Agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions of this Agreement.

2.6 This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue shall be in Brazoria County, Texas.

2.7 It is acknowledged by all parties hereto that this Agreement is solely a corporate obligation of the Parties which under no circumstances can result in liability to the officers, directors, and/or members of the Parties.

2.8 This Agreement shall remain in full force and effect from the date of execution and delivery hereof through September 30, 2019 and is automatically renewable each October 1st unless otherwise terminated.

2.9 This Agreement may be terminated with sixty (60) days written notice from either party to the other. The Authority shall be liable for any amounts owing the County accruing prior to the termination order.

2.10 Neither Party may transfer or assign this Agreement or transfer or assign any of or all of its rights or delegate any or all of its duties.

2.11 Any notice, communication or request (collectively, "*notice*") herein provided or permitted to be given, made or accepted by any party to the other must be in writing and may be given by depositing the same in the United States Mail, postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to an Authorized Representative of such party. Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective, from and after the expiration of three (3) days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses and numbers of the parties shall be shown below; provided, however, that the parties shall have the right to change their addresses and each shall have the right to specify as its address any other address in Texas upon ten (10) days' written notice to the other parties.

IF TO THE COUNTY:

Brazoria County, Texas
111 E. Locust
Angleton, Texas 77515
Attention: County Judge

IF TO AUTHORITY:

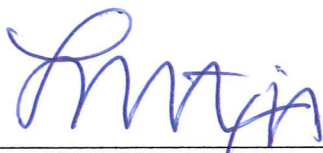
Brazoria County Toll Road Authority
111 E. Locust
Angleton, Texas 77515
Attention: Chairman

2.12 This Agreement constitutes the entire agreement between the parties and all prior written or oral agreements are merged herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

COUNTY:

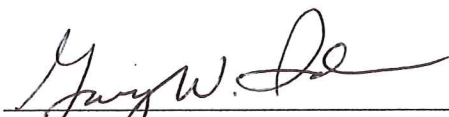
BRAZORIA COUNTY, TEXAS

BY: 

L.M. "Matt" Sebesta, Jr.
Brazoria County Judge

AUTHORITY:

BRAZORIA COUNTY TOLL ROAD
AUTHORITY

BY: 

Gary Idoux
Chairman

DATE: 8.28.18

DATE: 8/23/18