

ORDINANCE NO. 86-023

AN ORDINANCE AUTHORIZING THE MAYOR AND THE CITY CLERK OF THE CITY OF BELLAIRE, TEXAS, TO EXECUTE A MASS TRANSPORTATION IMPROVEMENTS JOINT PROJECT AGREEMENT WITH THE METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY, TEXAS, IN A FORM AS ATTACHED HERETO AND MARKED EXHIBIT "A".

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BELLAIRE, TEXAS:

1. That the Mayor and the City Clerk of the City of Bellaire, Texas, are each hereby authorized to execute, for and on behalf of the City of Bellaire, Texas, a Mass Transportation Improvements Joint Project Agreement with the Metropolitan Transit Authority of Harris County, Texas, in a form as attached hereto and marked Exhibit "A".

PASSED and APPROVED this, the 3rd day of
March, 1986.

Sam McHenry
Mayor, City of Bellaire, Texas

ATTEST:

Rovera Loftin
City Clerk

EXHIBIT A

STATE OF TEXAS §
COUNTY OF HARRIS §

MASS TRANSPORTATION IMPROVEMENTS
JOINT PROJECT AGREEMENT

This Mass Transportation Improvements Joint Project Agreement ("Agreement"), is made by and between the City of Bellaire, Texas ("City"), and the Metropolitan Transit Authority of Harris County, Texas ("METRO") on the dates of the respective signatures as hereinafter set out, effective as of March 22, 1986;

PREMISES

1. The City is a municipal corporation, home rule city and a political subdivision of the State of Texas, organized and existing under the Constitution and laws of the State of Texas, and is located in Harris County, Texas, within the boundaries of METRO.

2. METRO is a body corporate and politic and a political subdivision of the State of Texas, organized and existing under and pursuant to Article 1118x, Texas Revised Civil Statutes, and located principally within Harris County, Texas.

3. The City and METRO recognize that mass transportation and general mobility may be enhanced through joint planning efforts and construction of projects affecting streets, highways and major thoroughfares.

4. The City and METRO are of the opinion that the reconstruction of Bellaire Boulevard from its intersection with Bissonnet Street to its intersection with South Rice Avenue, including the

reconstruction of the Bellaire Boulevard-Bissonnet Street intersection, and the reconstruction of South Rice Avenue from its intersection with Linden Street to its intersection with Locust Street will substantially improve traffic flow and provide for development of a significant public transit patron facility.

5. The City and METRO are of the opinion that the above-described street improvement project ("Project") is appropriate for joint development by the City and METRO with METRO funding approximately two-thirds of the cost and the City approximately one-third of the cost.

6. As partial consideration for METRO's participation in the Project, METRO wishes to construct and operate a bus patron facility in the median of the reconstructed Bellaire Boulevard between its intersections with Bissonnet and South Rice Streets and the City is willing to make right-of-way for this facility available to METRO at no cost to METRO.

NOW, THEREFORE, for and in consideration of the premises, the mutual promises and agreements set forth in this Agreement, and other good and valuable consideration, the City and METRO hereby agree as follows:

ARTICLE 1

In this Agreement, the following terms shall have the meaning set out below:

1. "Engineering Design Cost" means the direct actual costs to METRO incurred to design the Project and to provide engineering

support during construction. The term includes only those costs arising from payments to contractors and consultants. The term does not include any personnel costs or administrative and overhead costs for services performed by METRO in support of the Project.

2. "Construction Cost" means the direct actual costs to METRO incurred by METRO during the construction of the Project, including the following items: (1) the cost of labor, material and equipment required for the completed Project as reflected by actual construction contracts, (2) the total actual cost of all labor, material and equipment purchased or furnished by METRO, (3) inspection and testing fees and costs, (4) other customary costs incurred solely because of, and in advancement of, construction, and (5) a reserve for contingencies in an amount not to exceed twelve percent (12%) of the sum of the foregoing items. The term does not include any personnel costs or administrative and overhead costs for services performed by METRO in support of the Project.

All other words and terms shall have their usual and customary meaning unless the context clearly indicates otherwise.

ARTICLE 2

** METRO was used*

METRO will undertake and complete the engineering and construction of the Project, to wit: the reconstruction of Bellaire Boulevard from its intersection with Bissonnet Street to its intersection with South Rice Avenue, the construction of the intersection of Bellaire Boulevard and Bissonnet Street, and the reconstruction of South Rice Avenue from its intersection with Linden Street to its intersection with Locust Street, generally as illustrated and identified on Exhibit A attached hereto.

ARTICLE 3

The City will provide METRO at no cost to METRO such engineering analyses and design studies, including associated drawings and specifications, as have been performed for the City for the Project.

ARTICLE 4

METRO will pay for two-thirds (2/3) of the Engineering Design Cost and Construction Cost of the Project, provided, however, that METRO's total obligation under this Agreement shall not exceed One Million and No/100 Dollars (\$1,000,000.00), unless specifically increased by METRO as provided in Article 6 below.

ARTICLE 5

City will pay for one-third (1/3) of the Engineering Design Cost and Construction Cost of the Project, provided however, that the City's total obligation under this Agreement shall not exceed Five Hundred Thousand and No/100 (\$500,000.00), unless specifically increased by City as provided in Article 6 below.

ARTICLE 6

In the event that during the design or construction of the Project it appears that the Project costs will exceed the maximum funding obligations set out in Articles 4 and 5 above, the parties agree to reassess their participation in the Project and either increase their respective maximum funding obligations or terminate the Project as provided in Article 9 below.

Notwithstanding the provisions of Article 9, if the engineer's estimate of Construction Cost developed during the design phase of the Project indicates that the anticipated total project costs will exceed the maximum obligations of the parties set out herein, either party may terminate the Project without any further obligations to the other party except to pay for its proportionate share of costs incurred to the date of termination. Likewise, if the bids received for construction of the Project indicate that the anticipated total Project costs will exceed the maximum obligations of the parties set out herein, either party may terminate the Project without any further obligations to the other party except to pay for its proportionate share of costs incurred to the date of termination.

ARTICLE 7

The City's estimated share of the Engineering Design Cost shall be deposited by the City with METRO within fifteen (15) days after notice is received of selection of an architectural and engineering design firm for the Project and said deposit shall not be subject to a computation of imputed interest earnings.

The City's estimated share of the Construction Cost shall be deposited by the City with METRO within fifteen (15) days after notice is received of apparent low bidder and said deposit shall be subject to a computation of imputed interest earnings.

The interest earnings shall begin two (2) days after METRO receives such deposit and end on the first date of payment by METRO of an amount attributable to the City's share of the Project. (The "date of payment" means the date of the check used to make the payment.)

For the period of interest earnings, the amount of money subject to imputed interest is equal to the total amount theretofore deposited by the City, less any amounts previously paid out which are attributable to the City's share of the Project costs.

The imputed rate of interest is the average rate of interest earned by METRO on its funds during the same interval, as computed by METRO's Treasurer.

When: (i) the Project is completed, (ii) any claims are resolved, and (iii) all contract payments have been made, the exact share of the total cost attributable to the City shall be computed as specified in this Agreement. Costs of resolving claims shall be included as if they were costs of change orders and shall include attorneys fees and other costs of litigation incurred in resolving any claims. As of the same date as the computation of such exact share, there shall also be computed the amount previously deposited by the City plus imputed interest earnings, computed as set forth above for the specified intervals. The total of such deposits plus imputed interest earnings are hereinafter referred to as "City's Contribution".

Should City's Contribution be less than the exact share of the total cost attributable to City, City shall, within thirty (30) days after receipt of request therefor from METRO, pay the difference to METRO. Should City's Contribution exceed such share, METRO shall, within thirty (30) days after resolving all claims and making the last contract payments, pay the difference to City.

ARTICLE 8

Prior to inviting bids or otherwise commencing construction activities on the Project or any portion thereof, the City and METRO shall review the plans and specifications for the Project or portion thereof to be constructed and mutually agree and approve of such plans and specifications.

ARTICLE 9

If going forward with the Project or any portion thereof is determined by one party to be unfeasible, that party shall notify the other party in writing of its intention to terminate the Project or portion thereof along with the reasons therefor. The City's City Manager and METRO's General Manager, respectively, shall submit their recommendations for termination of the Project or portion thereof to the City's City Council and METRO's Board of Directors. If both governing bodies concur, the Project shall terminate in accordance with the recommendations. If only one party concurs in terminating the Project or portion thereof, the other party may proceed with the Project or portion thereof at that party's sole cost and expense without further review or approval by the other party; provided, however, that the party proceeding with the Project or portion thereof shall not be considered to have waived its remedies existing at law or in equity, if any, for the failure of the other party to proceed with the Project or portion thereof as agreed herein.

ARTICLE 10

In addition to contributing its portion of the costs of the Project, the City agrees to make available to METRO at no cost to METRO right-of-way in the median of Bellaire Boulevard between its intersections with Fifth Street and South Rice Avenue for construction and operation of a bus patron facility designated as the METRO Transit Center. Such right of way shall be made available for as long as METRO determines to operate the Transit Center as part of its mass transportation system. When design of the Project is completed and the extent of the METRO Transit Center identified, a metes and bounds description of the right of way being made available shall be attached to this Agreement as Exhibit B and incorporated herein by reference. Construction, maintenance and operation of the METRO Transit Center shall be at the sole cost and expense of METRO. The City shall have the right to approve the plans and specifications for the METRO Transit Center prior to construction thereof, which approval shall not be unreasonably withheld. METRO may make repairs and modifications to the Transit Center within the general plan and scheme of the original design without prior approval of the City. Upon METRO's discontinuance of use of the METRO Transit Center, METRO shall, at its sole cost and expense, remove the improvements constructed on the median right-of-way.

ARTICLE 11

This Agreement shall bind, and shall be for the sole and exclusive benefit of the respective parties and their legal successors.

ARTICLE 12

Neither party shall assign, sublet, or transfer its interest in this Agreement without the prior written consent of the other party.

ARTICLE 13

All notices to either party by the other required under this Agreement shall be delivered personally or sent by certified or registered U. S. Mail, postage prepaid, addressed to such party at the following respective addresses:

METRO: METROPOLITAN TRANSIT AUTHORITY
OF HARRIS COUNTY, TEXAS
500 Jefferson, 13th Floor
P. O. Box 61429
Houston, Texas 77208-1429

Attention: General Manager

CITY: CITY OF BELLAIRE
7008 South Rice Avenue
Bellaire, Texas 77401

Attention: City Manager

and shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party hereto may change the above address by sending written notice of such change to the other in the manner provided for above.

ARTICLE 14

The City and METRO understand that expeditious completion of the Project is of considerable benefit to the parties individually and collectively and the parties agree to cooperate to accomplish completion of the Project at the earliest practicable date.

ARTICLE 15

Execution of any amendment to this Agreement shall be subject to the written approval of the City and METRO.

ARTICLE 16

If any provision of this Agreement or the application thereof to any person or circumstance, is rendered or declared illegal for any reason and shall be invalid or unenforceable, the remainder of the Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by applicable law.

IN WITNESS WHEREOF, the City and METRO have executed this Agreement in duplicate on the dates shown hereinbelow.

CITY OF BELLAIRE

METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY, TEXAS

By: [Signature]
Mayor

By: [Signature]
General Manager

Date: 3-14-86

Date: 3/22/86

Executed for and on behalf of the City Council of the City of Bellaire, pursuant to Ordinance No. 86-233, passed on the 3rd day of March, 1986, and on file in the office of the City Clerk of the City of Bellaire.

Executed for and on behalf of the Metropolitan Transit Authority of Harris County, Texas, pursuant to Resolution No. 86-27 of the Board of Directors, passed on the 27th day of February, 1986, and on file in the Office of the Assistant Secretary of METRO.

ATTEST:

[Signature]
City Clerk

ATTEST:

[Signature]
Assistant Secretary

APPROVED AS TO FORM: (

APPROVED AS TO FORM:

By: [Signature]
Firmin Hickey
City Attorney

By: [Signature]
Dennis C. Gardner
Staff Counsel

0 50 100 FEET

MAPLEWOOD

BELLAIRE BLVD

PEARNS

MARTIN

BISSONNET

FOURTH

SPRUCE

AVE.

RICE

METRO TRANSIT CENTER

LOUSE RICHMOND LINE AND CHAS. LEWIS
AND N. 112 STREET

Exhibit A