

**DEVELOPMENT AGREEMENT  
(CROSSING AT KATY-FULSHEAR)**

THE STATE OF TEXAS       §  
                                     §  
COUNTY OF FORT BEND     §

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into by and between Fort Bend County, Texas, a body politic acting herein by and through its Commissioners' Court (the "County") and Fort Bend County Improvement District No. 24 (the "District") has been legally created and operates pursuant to the general laws of the State of Texas applicable to conservation and reclamation districts; and

WHEREAS, FM1093 / Westpark Extension Project (the "Frontage Road") is a public road maintained by TxDOT that currently intersects near a location owned by the District; and

WHEREAS, the County agrees to (i) construct three (3) right turn / deceleration lanes along the Frontage Road in two phases (Phase I will consist of one turn lane and Phase II will consist of the two remaining turn lanes) and (ii) construct a 6' x 3' proposed box culvert under a portion of the Frontage Road as part of Phase I at a lower elevation to accommodate detention for property owned by the District (the "Project"); and

WHEREAS, the District agrees that the County may close at least one driveway at a time during construction of the Frontage Road;

WHEREAS, the County agrees that the District will not advance the money for Phase II until the County has received all necessary environmental approvals; and

WHEREAS, the District proposes to develop property adjacent to the Frontage Road (the "Property"); and

WHEREAS, the County and the District agree that Property will substantially benefit from the construction of the Project; and

WHEREAS, the County has agreed to construct the Project and the District agrees to:  
(a) dedicate right of way necessary to complete the Project, the Frontage Road and the widening of FM1463; (b) construct certain roads within the Property that connect to the Project; and  
(c) advance funds to the County as a contribution to the Project; and

WHEREAS, the County has investigated and determined that it would be advantageous and beneficial to the County and its citizens to participate in the construction of the Project, as provided herein; and

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, the County and the District agree as follows:

1.     Description of Project. The Project consists of the construction of three (3) right turn / deceleration lanes along the Frontage Road and to construct the 6' x 3' proposed concrete

box culvert under a portion of the Frontage Road at a lower elevation than required for County purposes, as described on Exhibit A attached hereto and incorporated herein for all purposes.

2. The District's Responsibilities. The District hereby agrees to perform the following:

(a) Dedicate the right of way for the Frontage Road and along FM1463 based on a mutually agreeable road configuration;

(b) Construct driveways to the limit of the Frontage Road ROW line;

(c) Advance funds to the County for Phase I, as shown on Exhibit B attached hereto and incorporated herein for all purposes, upon execution of the Agreement by the District, which include:

(i) the full cost of the design of the three right turn lanes;

(ii) the cost associated with construction of the eastern-most right turn lane; and

(d) (iii) the cost associated with design and construction of the proposed 6' x 3' box culvert at a lower elevation to accommodate detention for property owned by the District.

(e) (d) Advance funds to the County for Phase II, being the cost associated with construction of the two remaining right turn lanes, as shown on Exhibit B, upon notification to the District that the County has obtained environmental approvals for the Frontage Road extension to west of FM1463.

3. County's Responsibilities. The County hereby agrees to perform the following:

(a) Construct the Phase I right turn / deceleration lane along the Frontage Road by January 2017; construct the 6' x 3' proposed box culvert under a portion of the Frontage Road by July 2016; and initiate Frontage Road construction related to Phase II of the Project by March 2017; or as soon as practical based on the bidding and construction schedule of the Frontage Road project; and

(b) Coordinate with utilities for relocation of existing facilities within dedicated portions of the ROW for the Frontage Road project.

4. Disclaimer/Waiver of Damages/Liability.

(a) The District acknowledges and agrees that County is not providing any guarantee, representation and/or warranty, and the County hereby disclaims any guarantee, representation and/or warranty, of any work performed by the County, or their agents, employees, representatives, contractors, subcontractors and/or designees, in connection with the construction of the Project, in whole or in part.

(b) The District acknowledges and agrees that the County shall in no way be liable for any damages, if any, which may be sustained by the District and/or the

Property, resulting, in whole or in part, directly or indirectly, from the County's failure to complete the construction of the Project by any certain date and/or as set forth in this Agreement.

(c) The District hereby releases the County, its officers, agents, representatives and employees, from and against, and waives any and all rights to, any and all claims and/or demands for damages (personal or property), injury (including death), or otherwise, it/they may have with regard to the construction and/or completion of the Project and/or any other act and/or omission relating, directly or indirectly, to the Project, in whole or in part, as provided in this Agreement, except to the extent any such claims arise due to, or damages are caused by, solely and directly, the negligence or willful misconduct of the County or its authorized officers, agents, representatives or employees.

**5. PARTIES' ACKNOWLEDGEMENT OF COUNTY'S COMPLIANCE WITH FEDERAL AND STATE CONSTITUTIONS, STATUTES AND CASE LAW AND FEDERAL, STATE AND LOCAL ORDINANCES, RULES AND REGULATIONS/NEWLAND'S WAIVER AND RELEASE OF CLAIMS FOR OBLIGATIONS IMPOSED BY THIS AGREEMENT.**

(a) **THE DISTRICT ACKNOWLEDGES AND AGREES THAT THE CONTRIBUTION MADE BY THE DISTRICT TO COUNTY, IN WHOLE OR IN PART, DOES NOT CONSTITUTE A:**

(i) **TAKING UNDER THE TEXAS OR UNITED STATES CONSTITUTION;**

(ii) **VIOLATION OF THE TEXAS TRANSPORTATION CODE, AS IT EXISTS OR MAY BE AMENDED;**

(iii) **NUISANCE; AND/OR**

(iv) **CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST COUNTY FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION.**

(b) **THE DISTRICT RELEASES COUNTY FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED ON EXCESSIVE OR ILLEGAL EXACTIONS ARISING OUT OF OR RELATED TO THIS AGREEMENT.**

(c) **THE DISTRICT WAIVES ANY CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST COUNTY FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION ARISING OUT OF OR RELATED TO THIS AGREEMENT.**

(d) **THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

6. Limitations of Agreement. The parties hereto acknowledge this Agreement is limited to the Project only. Further, this Agreement does not waive or limit any of the obligations of the District to the County under any other order whether now existing or in the future arising.

7. Default. In the event the District fails to comply with any of the provisions of this Agreement within thirty (30) business days after the District's receipt of written notice thereof from the County, the County shall have the following remedies in addition to the County's other rights and remedies, at law or in equity:

(a) to file this instrument in the Real Property Records of Fort Bend County as a lien and/or encumbrance against the District and/or the Property; and/or

(b) to refuse to accept any portion of any public improvements on the Property and/or associated with the development of the Property; and/or

(c) to refuse to finally accept the Property and/or any portion thereof; and/or

(d) to seek specific enforcement of this Agreement.

In the event of the County's default under this Agreement, the District will be entitled to seek specific performance and/or any other remedy available to them at law or in equity.

8. Miscellaneous.

(a) Notice. Any notice required to be sent under this Agreement must be in writing and may be served by depositing same in the United States Mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:

If to County, to:                      Fort Bend County  
   Attention: County Judge  
   401 Jackson Street  
   Richmond, Texas 77469

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

If to the District, to: Fort Bend County Improvement District  
No. 24  
c/o Hawes Hill Calderon  
9610 Long Point Road, Suite 150  
Houston, Texas 77055  
Attention: David Hawes

(b) Assignment. This Agreement is not assignable by the District without the prior written consent of the County, which consent shall not be unreasonably withheld.

(c) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, as allowed.

(d) Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto.

(e) Venue. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Fort Bend County, Texas.

(f) Consideration. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

(g) Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original if properly executed.

(h) Authority to Execute. The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

(i) Savings/Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(j) Representations. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

(k) Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

(l) Sovereign Immunity. The parties agree that the County has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

(m) No Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.

(n) Attorneys' Fees. In any legal proceeding brought to enforce the terms of this Agreement, the prevailing party may recover its reasonable and necessary attorneys' fees from the non-prevailing party as permitted by Section 271.159 of the Texas Local Government Code, as it exists or may be amended.

(o) Incorporation of Recitals. The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of the County and the District and/or its authorized representatives.

(p) The District's Warranties/Representations. All warranties, representations and covenants made by the District in this Agreement or in any certificate or other instrument delivered by the District to the County under this Agreement shall be considered to have been relied upon by the County and will survive the satisfaction of any fees and/or payments made under this Agreement, regardless of any investigation made by the County or on the County's behalf.

(q) Indemnification. The parties agree that the Indemnity provisions set forth in Paragraphs 4 and 5 herein are conspicuous, and the parties have read and understood the same.

(r) Waiver. Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the date executed by the County.

FORT BEND COUNTY

Date: \_\_\_\_\_

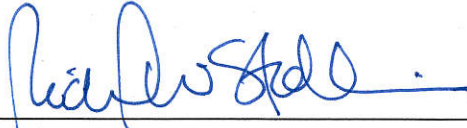
By: \_\_\_\_\_  
Robert E. Hebert, County Judge

ATTEST:

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

APPROVED:

COUNTY PROJECT MANAGER

By:  \_\_\_\_\_  
Richard W. Stolleis, P.E.,  
County Engineer

FORT BEND COUNTY IMPROVEMENT  
DISTRICT NO. 24

Date: \_\_\_\_\_

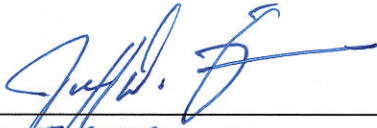
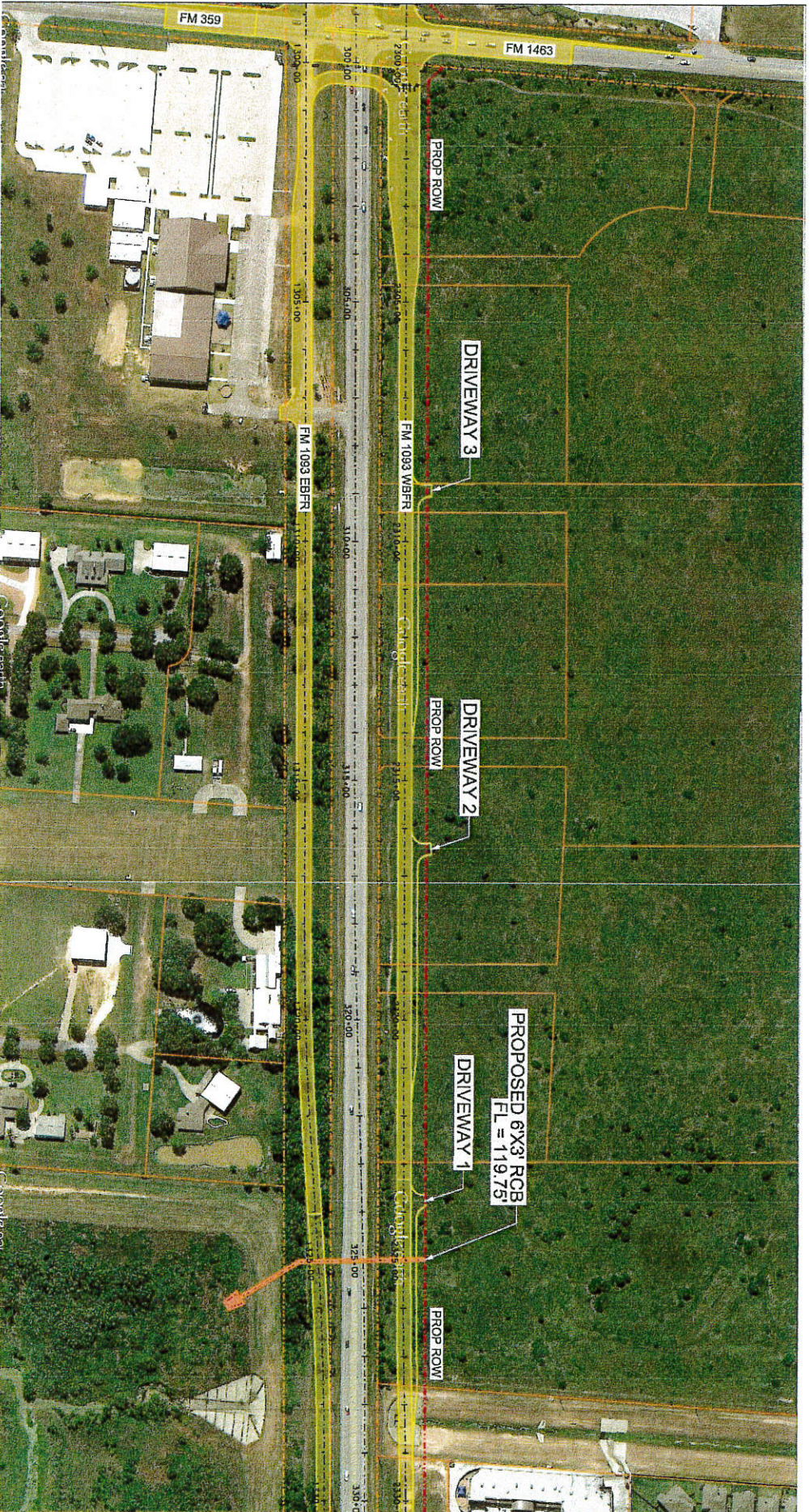
By:  \_\_\_\_\_  
Name: Jeff Trevino  
Title: Vice-Chair



EXHIBIT A





## EXHIBIT B

### Phase I

Additional Element	Construction Cost	Design Cost	Totals
Driveway #1 with Right Turn Lane (eastern-most)	\$65,000	\$7,500	\$72,500
6'x3' RCB Adjustment with larger junction box	\$6,500	\$4,500	\$11,000
Driveway #2 with Right Turn Lane	\$0	\$5,750	\$5,750
Driveway #3 with Right Turn Lane	\$0	\$5,750	\$5,750
Phase I Totals	\$71,500	\$23,500	\$95,000

### Phase II

Additional Element	Construction Cost	Design Cost (Included with Phase I)	Totals
Driveway #2 with Right Turn Lane	\$65,000	\$0	\$65,000
Driveway #3 with Right Turn Lane	\$65,000	\$0	\$65,000
Phase II Totals	\$130,000	\$0	\$130,000