

STATE OF TEXAS §
 §
COUNTY OF FORTBEND §

JOINT PARTICIPATION AGREEMENT FOR DESIGN
CONSTRUCTION OF WEST BELLFORT ROAD EXTENSION
MOBILITY PROJECT NO. 13415

This Joint Participation Agreement (“Agreement”), made and entered into by and between Fort Bend County, a body corporate and politic under the laws of the State of Texas, acting by and through its Commissioners Court (“County”), and Fort Bend County Municipal Utility District No. 134B, a body corporate and politics under the laws of the State of Texas, acting by and through its Board of Directors (“District”).

WHEREAS, County and District have agreed to participate in the development and construction of the extension of West Bellfort Road from Binion Lane to Harlem Road as reflected on Exhibit “A” (“Project”) by providing funding and administration for the design and construction of the Project and reimbursement of construction costs; and

WHEREAS, County has determined in good faith that the expenditure of funds services a public purpose, in that it aides the flow of traffic for the residents and business-owners in the area of the Project; and

WHEREAS, County will initially utilize 2013 Mobility Project Funds to meet its financial obligations for the construction costs of the Project under this Agreement and the District will reimburse County for the District’s pro rata share of all construction costs associated with the Project, and provide other items as required; and

WHEREAS, the attached Exhibit A map shows the Tracts of the Project that each party is responsible for collecting or providing money on behalf of, with the County being responsible for Tracts A, C, D, E, F and G (hereinafter referred to as “County Tracts”) and the District being responsible for Tracts B, H, I, J, K, L, M, N and O, (hereinafter referred to as “District Tracts”) and the percentages of each Tract are shown on the attached Exhibit B.

NOW, THEREFORE, in consideration of the mutual covenants and agreements, and benefits to the parties hereto, County and District agree as follows:

AGREEMENT

1. Period of the Agreement

This Agreement becomes effective on the date signed by the County and shall remain in effect until the Project is completed and the District has reimbursed the County for the District’s pro rata share of all construction costs associated with the Project, unless terminated as provided below.

2. Scope of Work

The scope of the Project shall be limited to the scope authorized by the County and as shown on the map attached as Exhibit A, and incorporated herein for all purposes. The scope of the Project is for County to construct the extension of West Bellfort Road from Binion Lane to Harlem Road, as reflected on the attached Exhibit A to include reinforced concrete paving and storm sewer. The scope includes the design and construction of the Project and any other work necessary to complete the Project.

3. County's Rights and Responsibilities

- A. The County shall provide the funding for the construction costs of the Project for County Tracts of the Project, as shown on Exhibit B, attached hereto and incorporated herein for all purposes.
- B. The County shall provide the pre-funding for the construction costs of the Project for District Tracts, as shown on Exhibit B to be reimbursed by the District in accordance with Section 4. H. below.
- C. Prior to award of the construction contract for the Project, County will forward a payment to District to fund the Total Probable Construction Costs Including Engineering and Contingency, as shown on Exhibit B, less the total amount due for the Probable Cost Share for District Tracts developed, as determined by plats currently approved by Commissioners Court, at the time of awarding the construction contract, including but not limited to Tracts H, J, and O.
 - (1) District shall receive a credit towards the amount due from District for the District tracts for the approved costs for funding the engineering design, geotechnical, construction materials testing costs for the Project and other Project related activities, including construction management expended by District at the time of awarding the construction contract.
 - (2) Should District's expenditures under Section 3. C. (1) above exceed its amount due for its developed Tracts, County's payment shall be sufficient to award construction contract.
- D. During the work on the Project, County shall have the right to review all documents, maps, plats, records, photographs, reports and drawings affecting the construction and to inspect the work in progress, provided however, that in conducting such inspections, County shall not interfere with the work in progress. Any deficiencies noted by County shall be brought to the attention of District and the deficiencies shall be promptly addressed by District.

- E. County shall have the right to participate in the final inspection of the Project. At that time, any deficiencies noted by County shall be promptly addressed by District.
- F. County will assume responsibility for the maintenance of the Project road improvements, except for the storm sewer.
- G. The County shall be responsible for the acquisition of all land for use as right of way not owned or controlled by Aliana Development Company, FBCMUD 134B or FBCMUD 134C necessary for completion of the Project.

4. District's Rights and Responsibilities

- A. The District is responsible for funding the engineering design, geotechnical, construction materials testing costs for the Project and other Project related activities, including construction management, which expenditures shall be credited against the District's share of the construction costs of the Project. County shall have the right to approve expenditures identified in this paragraph prior to reimbursement of said costs by the County.
- B. The District is responsible for managing the design and overseeing the construction and completion of the entire Project, whether constructed in phases or under one contract and complying with the applicable state and federal laws.
- C. The District shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award the construction contract.
 - (1) Prior to advertising for bids for the Project, District shall provide all of the project plans, designs and any other documents related to the Project requested by the County, for final approval of the designs and costs by the County Engineer. Within thirty (30) days of the approval by the County of all appropriate plans, the District shall advertise for competitive bids for the construction of the Project, (together or in separate contracts) in accordance with state law and District policy for District contracts. Upon receipt of bids for the Project, District will notify the County (the "Notice of Intent to Award") of the amount of the recommended bid (with a five percent (5%) contingency). If the County desires to object to the award of the contract, it must provide written notice to District within fifteen (15) days of the date of County's receipt the Notice of Intent to Award.
 - (2) If the County objects to the recommended bid, District will not award the construction contract for the Project, and the District shall work with County to re-advertise bids.

- (3) If there are no objections to the award of the construction contract, County will forward payment of 100% of its share of the Project Costs to District within forty-five (45) days of County's receipt of District's Notice of Intent to Award. Following receipt of such monies, the District shall award the construction contract to the qualified bidder, which may be subject to change orders that increase, decrease, or otherwise alter the costs of the Project. If the District constructs the Project in multiple contracts, the provisions of this Agreement shall apply to each such construction contract.
- D. After award of the construction contract, District shall administer the construction contract for the benefit of the parties. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders, which may become necessary subsequent to the award of the construction contract.
- (1) Change orders resulting in a total increase to the costs of the Project over five percent (5%) submitted under the construction contract and recommended by the District shall be subject to review and prior approval by the County Engineer, or his designated authorized agent, which review and approvals will not be unreasonably withheld, conditioned or delayed. Change orders will require approval of the Commissioners Court prior to approval by the County Engineer.
- (2) If the County desires to object to a proposed change order, the County Engineer must provide written notice to the District within fifteen (15) business days of the date of County's receipt of the proposed change order. Otherwise, the County will be deemed to have approved the change order. County shall not be responsible for any work performed under a change order without receiving the required approval of the County.
- E. The District shall submit reports to the County Engineer describing in sufficient detail the progress of the Project. These reports shall be submitted to County Engineer at increments agreed to between the parties as appropriate for the various phases of the Project. Reports received by the District from contractors detailing the progress of the Project shall suffice for the requirements of this section, so long as the District has reviewed such reports and confirmed accuracy of the contractor's report.
- F. Upon completion of the Project, but no later than ninety (90) days after, the District will issue to County:
- (1) a "Notification of Completion," acknowledging that the Project has been completed;

- (2) a full accounting of the funds expended on the Project, an electronic copy of the record drawings showing the Project as constructed; and
 - (3) a recommendation for final acceptance of the Project to the County.
- G. The District shall provide right of way maps to County for acquisition of parcels necessary to complete the Project.
- H. The District shall reimburse the County for its percentage share of the Total Probable Cost Share for District Tracts in accordance with Exhibit "B", plus interest calculated at two percent (2%) annual interest rate, compounded monthly on any amounts owed, which is the same effective rate paid by the County for the Project funds, upon the earlier of the following event:
- (1) Incrementally, as any part of the property within the limits of each District Tract, as shown on Exhibit A, which will have direct access or adjoins West Belfort Road, is submitted to County's Commissioners Court for plat approval, with such percentages described in Exhibit "B" attached hereto; or
 - (2) Three (3) years from the date of the initial acceptance of the Project or five (5) years from the date of the County's payment in accordance with Section 3. C. above, whichever is earlier.
- I. District understands and agrees that any property currently within the limits of County Tracts subsequently annexed to boundaries of District shall become a District Tract upon annexation. Upon such annexation, District shall become obligated to reimburse County for that Tract's Probable Cost Share, as described in Exhibit B, under the same terms of this Agreement applicable all other District Tracts.
- J. District shall use its best efforts through development agreements, service agreements, etc., to ensure owners of any property located within the limits of District Tracts receive actual notice of District's obligations under this Agreement and potential effect on plat approval. Further, District agrees to withhold installation of utilities to serve any property located within the boundaries of the Tracts subject to this Agreement until District obtains a commitment from such property owners, satisfactory to County, to assist District in meeting District's reimbursement obligations for the respective Tracts.

7. Termination of this Agreement

- A. County or District may terminate this Agreement, without cause, at any time prior to the letting of construction for the Project, by written notice to the other party. In the event of termination by District, District shall reimburse County all costs incurred by County until termination. In the event of termination by

County, County shall reimburse District from funds on hand, in excess of costs incurred on behalf of District at termination, within thirty (30) days termination of this Agreement. District shall reimburse County all costs within thirty (30) days of termination of this Agreement.

- B. After the letting of construction for the Project, this Agreement is not subject to termination.

8. Dispute Resolution

- A. In the event of a dispute related to the breach of this Agreement that cannot be settled through negotiation, County and District agree to submit the dispute to mediation.
- B. In the event County or District desire to mediate any dispute, that party shall notify the other party in writing of the dispute desired to be mediated. If the parties are unable to resolve their differences within 10 days of the receipt of such notice, such dispute shall be submitted for mediation.
- C. All expenses associated with mediation shall be shared 50 percent (50%) by each party.
- D. The requirement to seek mediation shall be a condition required before filing an action at law or in equity. Any such action shall be filed in a court of competent jurisdiction in Fort Bend County, Texas, and the laws of Texas shall apply.

9. Amendments

Amendments and changes to this Agreement due to changes in the character of the work or terms of the Agreement, or responsibilities of the parties relating to the Project, may be enacted through a mutually agreed upon, written amendment between County and District.

10. Remedies

Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

11. Notices

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

County: Fort Bend County
Attn: County Judge
401 Jackson Street, First Floor
Richmond, Texas 77469

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

District: Fort Bend County Municipal Utility District No. 134B
c/o Coats Rose, PC
9 Greenway Plaza, Suite 1100
Houston, Texas 77046

- B. All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

12. Legal Construction

In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

13. Responsibilities of the Parties

The parties agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

14. Ownership of Documents

Upon completion or termination of this Agreement, all documents prepared by County shall remain the property of County. All data prepared under this Agreement shall be made available to District without restriction or limitation on their further use.

15. Compliance with Laws

The parties shall comply with all federal, county, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement.

16. Sole Agreement

This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the Agreement's subject matter.

17. Inspection of Books and Records

The parties to this Agreement shall maintain all books, documents, papers, accounting records and other documentation relating to costs incurred under this Agreement and shall make such materials available to County and District, or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this contract or until any impending litigation, or claims are resolved. Additionally, County and District and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

18. Signatory Warranty

The signatories to this Agreement warrant that each has the authority to enter into this Agreement on behalf of the party represented.

IN TESTIMONY HEREOF, the parties hereto have caused these presents to be executed in duplicate counterparts.

DISTRICT:

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 134B



President, Board of Directors

Date

Attest:



Secretary, Board of Directors

(SEAL)



Joint Participation Agreement

West Bellfort Road Extension-Binion Lane to Harlem Road – No. 13415

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FORT BEND COUNTY, TEXAS:

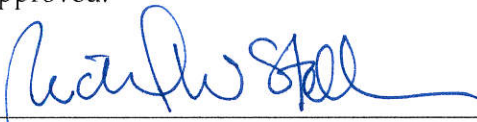
Robert E. Hebert, County Judge

Date

Attest:

Laura Richard, County Clerk

Approved:



Richard W. Stolleis, P.E., County Engineer

3/29/16

Date

Approved as to Legal Form:



Marcus D. Spencer, First Assistant County Attorney

3/21/2016

Date

Auditor's Certificate

I hereby certify that funds are available in the amount of \$ _____ to accomplish and pay the obligation of Fort Bend County under the foregoing contract.

Robert Ed Sturdivant, County Auditor

APPENDIX

The appendix attached to this Agreement consists of:

Exhibit "A" Project Location Map

Exhibit "B" Estimated Project Costs and Estimated Proration

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EXHIBIT A

EXHIBIT B

Project Proration of West Belfort Boulevard Phase 2 (Binion Lane to Harlem Road)

	Length (ft)	% Total Frontage	Probable Cost Share
Tract A	1,346	10.78%	\$686,365
Tract B (FBCMUD 134B)	1,338	10.71%	\$682,285
Tract C	1,350	10.81%	\$688,404
Tract D	412	3.30%	\$210,091
Tract E	932	7.46%	\$475,254
Tract F	276	2.21%	\$140,740
Tract G	735	5.89%	\$374,798
Tract H (FBCMUD 134C)	700	5.60%	\$356,950
Tract I (FBCMUD 134B)	460	3.68%	\$234,567
Tract J (FBCMUD 134B)	867	6.94%	\$442,109
Tract K (FBCMUD 134B)	898	7.19%	\$457,916
Tract L (FBCMUD 134B)	1,025	8.21%	\$522,677
Tract M (FBCMUD 134C)	681	5.45%	\$347,262
Tract N (FBCMUD 134C)	646	5.17%	\$329,414
Tract O (FBCMUD 134C)	823	6.59%	\$419,672
Total	12,489	100.00%	\$6,368,505

TOTAL PROBABLE CONSTRUCTION COST INCLUDING ENGINEERING AND CONTINGENCY*
\$6,368,505

*THIS IS ONLY AN ESTIMATE THE FINAL CONSTRUCTION & ENGINEERING COSTS WOULD BE USED FOR THE COST SHARE.

FBCMUD No. 134B FRONTAGE SEGMENTS: B, I, J, K, L **
\$2,339,555

** Segments I - L will be pre-financed by Aliana Development Company on behalf of FBCMUD 134B in accordance with the terms of the cost sharing agreement with Fort Bend County. Segment B is owned by Cheng Investments and thus will not be pre-financed by Aliana Development Company.

FBCMUD No. 134C FRONTAGE SEGMENTS: H, M, N, O ***
\$1,453,298

*** Segments H - O will be pre-financed by Aliana Development Company on behalf of FBCMUD 134C in accordance with the terms of the cost sharing agreement with Fort Bend County.

FORT BEND COUNTY FRONTAGE SEGMENTS: A, B, C, D, E, F, G
\$2,575,652