

RIGHT-OF-WAY MAINTENANCE AND USE AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

This Right-of-Way Maintenance and Use Agreement (this "Agreement") is made and entered into by Fort Bend County, Texas (the "County"), a political subdivision of the State of Texas, acting by and through its duly authorized officials, and Fort Bend County Municipal Utility District No. 58 (the "District"), a political subdivision of the State of Texas organized pursuant to the provisions of Article XVI, Section 59 of the Texas Constitution and operating pursuant to Chapters 49 and 54 of the Texas Water Code, acting by and through its duly authorized officers.

WITNESSETH:

WHEREAS, the County owns, operates and maintains a system of roads for public use and benefit, including the portion of Katy-Flewellen Road located in the District and shown on **Exhibit A** attached hereto (the "Right-of-Way"); and

WHEREAS, although the County has closed the Right-of-Way to vehicular traffic, there are certain public utilities that are currently installed within the Right of Way which should not be relocated; and

WHEREAS, the District desires to improve and maintain the Right-of-Way;

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 County and the District mutually agree as follows:

AGREEMENT

Article 1. The Project. The District, at its sole cost and expense, has removed the road surface and subgrade from the Right-of-Way, and may install landscaping, fencing, gates and any other improvements in the Right-of-Way that the District deems desirable or necessary (the "Project"). The District will own the Project.

The District will prepare or have prepared any plans, specifications, and estimates, all as necessary for the Project. The District will obtain all approvals required by any governmental authority possessing jurisdiction over the Project, including, without limitation, any approvals required by the County and the City of Houston prior to installing the Project.

The County will have no right to modify, remove, or make additions to all or any portion of the Project and agrees that it will not reopen the Right-of-Way to vehicular traffic without the prior written consent of the District. The District will have the right to modify, remove, or make additions to all or any portion of the Project at any point in time so long as the District complies with the provisions of this Article 1.

Article 2. Maintenance. Upon completion of the Project, the District, at its sole cost and expense, will assume responsibility for the maintenance of the Project and the Right-of-Way. In exchange for the right to utilize the Right-of-Way as described herein, the District will furnish all labor, materials, equipment and incidentals required to provide periodic mowing, litter control, and general maintenance within the Right-of-Way.

Article 3. Term of Agreement. This Agreement becomes effective when finally executed by the County. This Agreement will terminate upon mutual agreement and consent of both parties.

Article 4. Indemnification. THE DISTRICT SHALL PROTECT, DEFEND, HOLD HARMLESS AND INDEMNIFY THE COUNTY FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LOSSES, DAMAGES, FINES, COSTS, ACTIONS, JUDGMENTS, EXPENSES, LIABILITIES, AND CONSEQUENTIAL DAMAGES OF EVERY KIND AND NATURE WHATSOEVER WHICH IN ANY WAY IS CONNECTED WITH THE PERFORMANCE OF WORK, FAILURE TO PERFORM WORK, MAINTENANCE, REPAIR AND ENGINEERING ARISING FROM OR INCIDENT TO THE PROJECT, INCLUDING BUT NOT LIMITED TO ACTUAL OR ALLEGED BODILY INJURY, RESULTING FROM ANY ACT OR OMISSION, NEGLIGENT OR OTHERWISE, ON THE PART OF THE DISTRICT, ITS OFFICERS, EMPLOYEES, AGENTS OR CONTRACTORS.

Article 5. Express Negligence. TO THE EXTENT ALLOWED BY LAW, THE DISTRICT SHALL PROTECT, DEFEND, HOLD HARMLESS AND INDEMNIFY THE COUNTY FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LOSSES, DAMAGES, FINES, COSTS, ACTIONS, JUDGMENTS, EXPENSES, LIABILITIES, AND CONSEQUENTIAL DAMAGES OF EVERY KIND AND NATURE WHATSOEVER WHICH IN ANY WAY IS CONNECTED WITH THE PERFORMANCE OF WORK, MAINTENANCE, REPAIR AND ENGINEERING ARISING FROM OR INCIDENT TO THE PROJECT, INCLUDING BUT NOT LIMITED TO ACTUAL OR ALLEGED BODILY INJURY, RESULTING FROM ANY ACT OR OMISSION, NEGLIGENT OR OTHERWISE, ON THE PART OF THE COUNTY, ITS OFFICERS, EMPLOYEES, AGENTS OR CONTRACTORS. IN THE EVENT THE PROVISIONS OF THIS ARTICLE V ARE INVALID OR UNCONSTITUTIONAL, THIS PROVISION SHALL BE SEVERABLE AND THE REMAINDER OF THIS AGREEMENT SHALL BE ENFORCEABLE TO THE EXTENT ALLOWED BY LAW.

Article 6. Liability For Prior Work. NOTWITHSTANDING THE PROVISIONS OF ARTICLES 4 AND 5 OF THIS AGREEMENT, ABOVE, THE DISTRICT ASSUMES NO RESPONSIBILITY FOR, AND SHALL NOT INDEMNIFY THE COUNTY FOR, ANY AND ALL CLAIMS, DEMANDS, LOSSES, DAMAGES, FINES, COSTS, ACTIONS, JUDGMENTS, EXPENSES, LIABILITIES, AND CONSEQUENTIAL DAMAGES OF EVERY KIND AND NATURE WHATSOEVER WHICH ARE ANY WAY CONNECTED WITH THE PERFORMANCE OF WORK, FAILURE TO PERFORM WORK, MAINTENANCE, REPAIR AND ENGINEERING PRIOR TO THIS AGREEMENT OR CONDUCTED FOR PURPOSES UNRELATED TO THIS AGREEMENT.

Article 7. Amendments. Amendments to this Agreement may be enacted only through a mutually agreed upon, written amendment, duly executed by the County and the District.

Article 8. Successors and Assigns. The County and the District each binds itself, its successors, executors, assigns, and administrators to the other party to this Agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this Agreement. The District shall not assign or otherwise transfer its rights and obligations under this Agreement without the prior written consent of the County, which consent shall not be unreasonably withheld or delayed, in the event the rights and obligations are transferred to a governmental entity acceptable to County.

Article 9. Remedies. Violation or breach of contract terms by the District shall be grounds for termination of this Agreement, provided that the County has given the District written notice of such violation or breach and that the District, within 30 days after receiving such notice, has not resolved such violation or breach or, if such violation or breach cannot be resolved within such 30-day period, has not commenced efforts in good faith to resolve such violation or breach.

Nothing in this Agreement shall be construed as a limitation of the parties' remedies at law, including but not limited to breach of contract, injunctive relief, or other legal remedy. In the event legal action is instituted, venue shall be proper only in Fort Bend County, Texas.

Article 10. Notice. All notices to either party 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 addresses:

To the District: Fort Bend County Municipal Utility District No. 58
c/o Allen Boone Humphries Robinson LLP
Attn: Katie Sherborne
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027

To the County: Fort Bend County
Attn: County Judge
401 Jackson Street, 1st Floor
Richmond, Texas 77469

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

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

Article 11. Prior Agreements. It is understood that this agreement in no way modifies or supersedes the terms and provisions of any existing agreements between the parties hereto.

[SIGNATURE PAGES FOLLOW]

IN TESTIMONY WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate on the dates below stated.

FORT BEND COUNTY MUNICIPAL UTILITY
DISTRICT NO. 58



President, Board of Directors

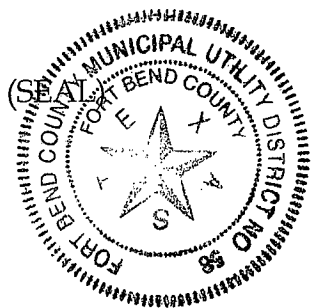
ATTEST:



Secretary, Board of Directors

Date: _____

6/14/16



FORT BEND COUNTY, TEXAS

By: _____
Robert E. Hebert, County Judge

Date: _____

ATTEST:

Laura Richard, County Clerk

Date: _____

(SEAL)

Exhibit A

