

THE STATE OF TEXAS §
 §
 §
COUNTY OF FORT BEND §

**DEVELOPMENT AGREEMENT
(GRAND MISSION)**

THIS DEVELOPMENT AGREEMENT (the “Agreement”) is entered into by and between Fort Bend County, Texas (hereinafter referred to as the “County”), a body politic acting herein by and through its Commissioners’ Court, and 688 Development Inc., a Texas corporation and 688 Partners, L.P., a Texas limited partnership authorized to conduct business in the State of Texas (collectively hereinafter referred to as “Owner”).

WHEREAS, Beechnut Street and Mason Road are public roads on the County’s Major Thoroughfare Plan that adjoins land owned by Owner (the “Owner Property”), as shown on Exhibit “A” attached hereto and incorporated herein for all purposes; and

WHEREAS, County proposes to make certain improvements to Beechnut Street from 1300 feet west of Mason Road to 2640 feet east of Mason Road and Mason Road from Beechnut Street to 1840 feet south of Beechnut Street (hereinafter referred to as the “Project”); and

WHEREAS, Owner proposes to develop Owner Property adjacent to a portion of the improved Beechnut Street and Mason Road; and

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

WHEREAS, Owner has agreed to participate with County in the construction of the Project; and

WHEREAS, County has investigated and determined that it would be advantageous and beneficial to 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, County and Owner agree as follows:

1. Description of Project. The Project consists of the construction of certain improvements related to the expansion of Beechnut Street and Mason, including without limitation, the following:

- A. Beechnut Street – Four-lane, curb & gutter boulevard from 1300 feet west of Mason Road to 2640 feet east of Mason Road. Sidewalk will be constructed along both sides of the roadway. The design, construction, and construction management for Beechnut Street will be 63.12% County and 36.88% Owner.

- B. Mason Road – Four-lane, curb & gutter, boulevard from Beechnut Street to 1840 feet south of Beechnut Street. Sidewalk will be constructed along both sides of the roadway. The design, construction, construction management, and detention costs for Mason Road will be 100% Owner.
 - C. A roundabout as the intersection of Beechnut Street and Mason Road.
2. County’s Responsibilities
- A. Construction - County shall be responsible for bidding, construction, and construction management for the Project, excluding the construction of sidewalks by the Owner pursuant to Section 3.A, iii below.
 - B. Financial Obligation – County shall be responsible for 63.12% of Beechnut Street costs associated with the Project as outlined in Exhibit “B” attached hereto and incorporated herein.
 - C. The County will provide the Owner with information from the Project bid for initial contribution calculations. The County will provide a final accounting at the end of the Project construction after all costs have been determined. The County will return any unused contribution funds to the Owner if the project is under budget or request payment for additional funds if the costs are over the initial contribution amount.
3. Owner’s Responsibilities
- A. Roadway Construction
 - i. Owner will donate any necessary property for right of way for the Project. This includes right-of-way for a right turn lane to the private high school on the eastern edge of the Owner’s property.
 - ii. Detention requirements for the ultimate six-lane boulevard roadways adjacent to the Owner’s property will be provided by the Owner. Owner shall be responsible for transferring the maintenance obligation for the storm sewer constructed for the Project to Grand Mission MUD #2.
 - iii. Owner shall be responsible the construction of sidewalks as a part of the Project when the Owner’s grading of its adjacent Owner Property will occur after the County’s construction of the roadway.
 - iv. Owner shall be responsible for maintenance of the sidewalk constructed for the Project. Owner shall transfer the maintenance obligation through an agreement with a home/property owners’ association. In no event shall County be responsible for maintenance of any sidewalks installed under this Agreement.
 - B. Financial Obligation
 - i. Owner is responsible for 36.88% of all costs associated with design and construction of Beechnut Street included in the Project as outlined in Exhibit “B” attached hereto and incorporated herein. Owner’s portion of costs shall be first applied to storm sewer and drainage components of the project, up to 36.88% of the total cost.

- ii. Owner is responsible for 100% of all costs associated with design and construction of Mason Road included in the Project as outlined in Exhibit "B" attached hereto and incorporated herein.

4. Payment schedule

- A. The original tract of land that the Owner purchased south of Beechnut Street was approximately 130 acres. The general plan for this area contains approximately 550 single family residential lots.
- B. Upon receiving bids for the Project, Fort Bend County will determine the Owner's share of the Project. This total cost will then be divided by 550 to get a per lot cost. Based on the current estimates, it will be \$5413.45 per lot, of which, \$2,596.36 is for drainage and \$2,817.09 is for paving.
- C. Fort Bend County will determine the number of lots that have been platted at the time of Project bidding. A request for payment prior to approving the construction contract will be sent to the Owner based on the per lot cost determined in Section B above.
- D. After construction is complete, the County will provide an accounting of the Project and will determine if there are any changes to the per lot cost due to total construction cost or a change to the number of lots. If the per lot cost goes down, a refund will be provided to the Owner. If the per lot cost goes up, the Owner will provide an additional payment for the difference to the County.
- E. As the Owner submits future plats to the County for approval, payment based on the per lot cost plus interest (based on the interest for the Mobility Bonds which is estimated at 3.75% per year started at the substantial completion date of the Project) will be submitted to the County prior to the County approving the plat until 90% of the lots have been platted. When 90% of the lots are platted, the remaining amount will be due from the Owner to the County. The Owner may pay the balance early to eliminate future interest costs.

5. Disclaimer/Waiver of Damages/Liability.

A. Owner acknowledges and agrees that County is not providing any guarantee, representation and/or warranty, and County hereby disclaims any guarantee, representation and/or warranty, of any work performed by 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. Owner acknowledges and agrees that County shall in no way be liable for any damages, if any, which may be sustained by the Owner and/or Owner Property, resulting, in whole or in part, directly or indirectly, from County's failure to complete the construction of the Project by any certain date and/or as set forth in this Agreement.

C. Owner hereby releases 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 County or its authorized officers, agents, representatives or employees.

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

A. OWNER ACKNOWLEDGES AND AGREES THAT THE CONTRIBUTION MADE BY OWNER 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. OWNER 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. OWNER WAIVES ANY CLAIM FOR DAMAGES AND/OR REIMBURSEMENT FOR WHICH OWNER IS SOLELY LIABLE 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.

7. 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 Owner to County under any other order whether now existing or in the future arising.

8. Default. In the event Owner fails to comply with any of the provisions of this Agreement within thirty (30) business days after Owner's receipt of written notice thereof from County, County shall have the following remedies in addition to 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 Owner and/or the Property; and/or

B. to refuse to accept any portion of any public improvements on the Owner Property and/or associated with the development of the Owner Property; and/or

C. to refuse to finally accept the Owner Property and/or any portion thereof; and/or

D. to seek specific enforcement of this Agreement.

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

9. 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 Engineering
Attention: Richard W. Stolleis, P.E., County Engineer
301 Jackson Street
Richmond, Texas 77469

With a copy to:

Fort Bend County
Attention: Robert E. Hebert, County Judge
401 Jackson Street
Richmond, Texas 77469

If to Owner, to:

688 Development, Inc.
Attention: Gary Tesch, President
7676 Woodway, Suite 104
Houston, TX 77063

B. Assignment. This Agreement is not assignable by Owner without the prior written consent of 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. Except and to the extents as provided herein, the parties agree that 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 County and the Owner and/or its authorized representatives.

P. Warranties/Representations. All warranties, representations and covenants made by either party in this Agreement or in any certificate or other instrument delivered by either party to the other under this Agreement shall be considered to have been relied upon by the other party and will survive the satisfaction of any fees and/or payments made under this Agreement, regardless of any investigation made by or on behalf of such party.

Q. Indemnification. The parties agree that the Indemnity provisions set forth in Paragraphs 5 and 6 herein are conspicuous and shall survive the termination of this agreement, 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 County.

FORT BEND COUNTY:

KP George, County Judge

Date

Attest:

Laura Richard, County Clerk

Approved:

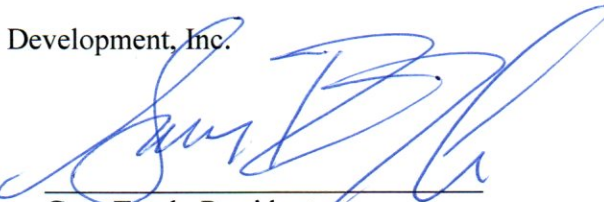


Richard W. Stolleis, P.E., County Engineer

OWNER:

688 Development, Inc.

By:

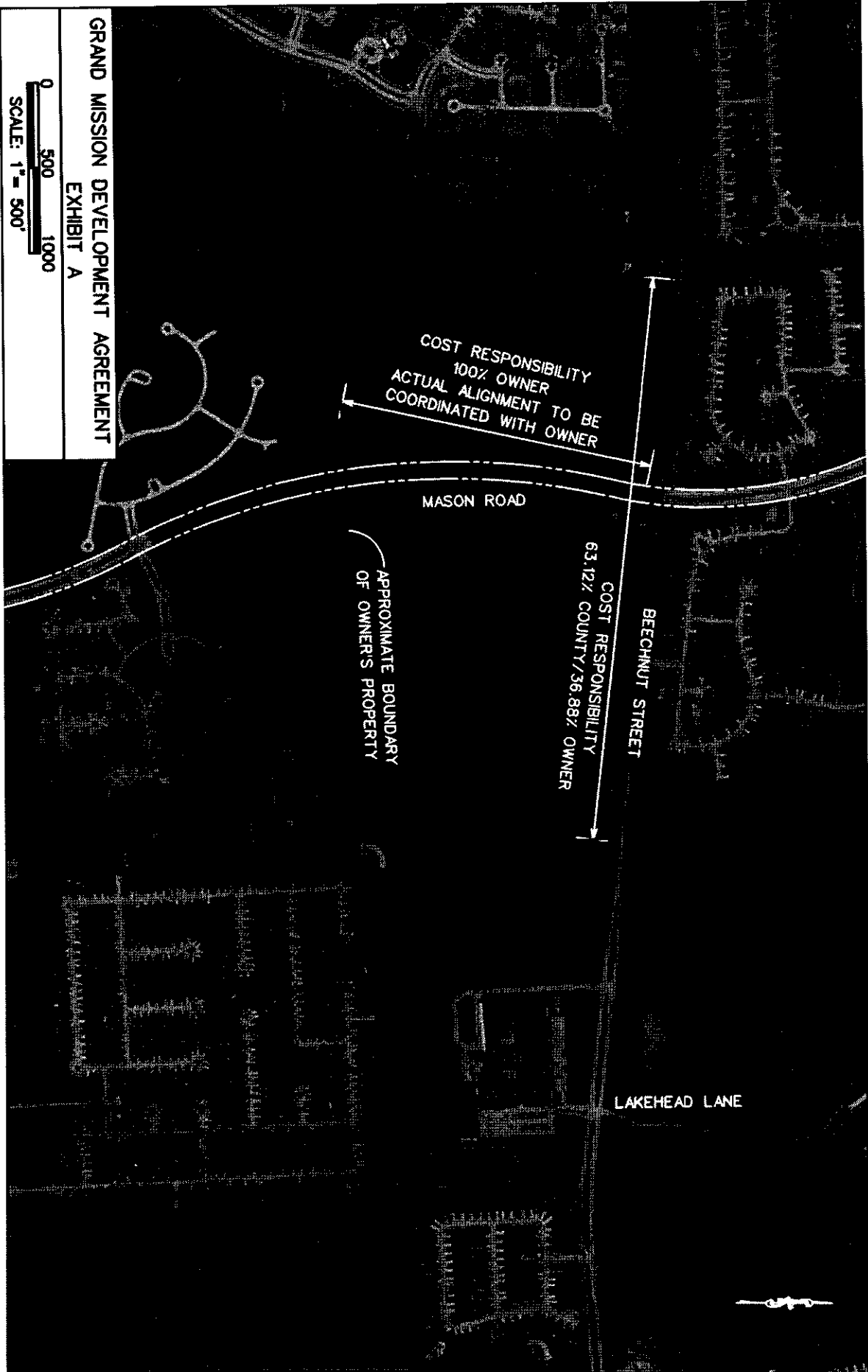


Gary Tesch, President

Date:

2-8-2019

EXHIBIT A



GRAND MISSION DEVELOPMENT AGREEMENT
EXHIBIT A

0 500 1000
SCALE: 1" = 500'

COST RESPONSIBILITY
100% OWNER
ACTUAL ALIGNMENT TO BE
COORDINATED WITH OWNER

MASON ROAD

APPROXIMATE BOUNDARY
OF OWNERS' PROPERTY

COST RESPONSIBILITY
63.12% COUNTY/36.88% OWNER

BEECHNUT STREET

LAKEHEAD LANE

EXHIBIT B

Grand Mission Development Agreement
Exhibit B

**BEECHNUT BLVD & MASON ROAD
THROUGH GRAND MISSION SUBDIVISION
1/29/2019**

Approximate Cost Shares Based on Proposal			
Project Description	Total Cost	Fort Bend County	688 Development
Beechnut Street - Drainage	\$ 1,165,000	\$ -	\$ 1,165,000
Beechnut Street - Paving	\$ 3,085,000	\$ 2,682,600	\$ 402,400
Beechnut Street Subtotal:	\$ 4,250,000	\$ 2,682,600	\$ 1,567,400
Entity Funding Responsibility:		63.12%	36.88%
Mason Road - Drainage	\$ 263,000	\$ -	\$ 263,000
Mason Road - Paving	\$ 1,147,000	\$ -	\$ 1,147,000
Mason Road Subtotal:	\$ 1,410,000	\$ -	\$ 1,410,000
Entity Funding Responsibility:		0.00%	100.00%
Detention/Drainage (work to be completed by and paid for by Owner)			
Detention & Storm Outfall - Mason & Beechnut	\$ 1,274,000	\$ -	\$ 1,274,000
Detention - Land Costs	\$ 120,000	\$ -	\$ 120,000
Detention Subtotal:	\$ 1,394,000	\$ -	\$ 1,394,000
Entity Funding Responsibility:		0.00%	100.00%
Project Total:	\$ 7,054,000	\$ 2,682,600	\$ 4,371,400
Entity Funding Responsibility:		38.03%	61.97%
Approximate Initial Cash Contributions by County and amount to be reimbursed by 688 Development			
	Total Cost		
Beechnut Street - Drainage	\$ 1,165,000		
Beechnut Street - Paving	\$ 3,085,000		
Mason Road - Drainage	\$ 263,000		
Mason Road - Paving	\$ 1,147,000		
Subtotal (Initial Cash Contribution by County):	\$ 5,660,000		
Subtract County Funding Responsibility:	\$ 2,682,600		
Total to be reimbursed by 688 Development:	\$ 2,977,400		
Number of lots south of Beechnut Street:	550		
Approximate cost per lot:	\$ 5,413.45		
Note: The \$5,413.45 cost per lot is split between drainage items (\$2,596.36) and paving items (\$2,817.09)			