

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

AGREEMENT FOR INSTALLATION OF DRIVEWAY
(CANE ISLAND PARKWAY MOBILITY BOND PROJECT NO. 17308)

THIS 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 Jeffrey M. Bain, Trustee under the Bain Family Living Trust, the owner of property located on Cane Island Parkway in Fort Bend County, Texas (hereinafter referred to as "Owner.")

WHEREAS, the County made certain improvements to Cane Island Parkway under the Fort Bend County 2017 Mobility Bond Program - Cane Island Parkway Project No. 17308 (the "Project");

WHEREAS, the Owner owns property located adjacent to Cane Island Parkway within the limits of the Project and desires to install three (3) driveways to provide access to the improved Cane Island Parkway;

WHEREAS, all driveways installed to provide access to the improved Cane Island Parkway must be designed in compliance with County standards and installed by the contractor currently making the improvements to Cane Island Parkway;

WHEREAS, the Project caused the need for the additional requirements and costs of installing driveways access to Cane Island Parkway within the limits of the Project; and

WHEREAS, County has investigated and determined that it would be advantageous and beneficial to the County and its citizens to assist facilitating the installation of driveways to access Cane Island Parkway within the limits of the Project compliant with the design standards and installation requirements of the County, as provided herein; and

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

1. Upon execution of the Agreement, the Owner will pay to the County the amount of forty thousand three hundred fifteen and 03/100 (\$40,315.03) for the installation of three (3) driveways on the Owner's property to access Cane Island Parkway in Fort Bend County, Texas, as reflected on the bid attached hereto as Exhibit A and incorporated herein for all purposes.

2. In exchange for Owner's payment of forty thousand three hundred fifteen and 03/100 (\$40,315.03), the County agrees to install the driveways as set forth by Exhibit

A. Notwithstanding the foregoing, the Owner shall be responsible for relocating any fence, gate, or other structures on the Owner's property, as necessary to accomplish the installation of the driveways. The Owner agrees to complete such relocations within sixty (60) calendar days of the execution of this Agreement.

3. Right of Entry. The Owner hereby grants the right of entry to, and shall permit access by, the County or its authorized representative, to the Owner's property to perform any activities required to execute the work necessary to complete the installation of the driveways as contemplated under this Agreement.

4. 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 driveway, 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's property, resulting, in whole or in part, directly or indirectly, from County's failure to complete the construction of the driveway 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 installation of the driveway and/or any other act and/or omission relating, directly or indirectly, to the installation of the driveway, 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.

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/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 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 installation of the driveway 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.

7. Default. In the event Owner fails to comply with any of the provisions of this Agreement within ten (10) business days after written notice thereof from County, County shall have any rights and remedies available to County at law or in equity. In the event of County's default under this Agreement, Owner 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 Engineering Department
Attention: County Engineer
301 Jackson
Richmond, Texas 77469

With a copy to:

Fort Bend County
Attention: County Judge
401 Jackson Street, 1st Floor
Richmond, Texas 77469

If to Owner, to:

Jeffrey Bain
27211 Hoyt Lane
Katy, Texas 77494

(b) Assignment. This Agreement is not assignable by Owner 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 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) Owner's Warranties/Representations. All warranties, representations and covenants made by Owner in this Agreement or in any certificate or other instrument delivered by Owner to County under this Agreement shall be considered to have been relied upon by County and will survive the satisfaction of any fees and/or payments made under this Agreement, regardless of any investigation made by County or on County's behalf.

(q) References to Owner. "Owner" as used herein shall mean Owner, its officers, directors, agents, representatives, employees, heirs, representatives, legatees, successors, assigns, grantees, contractors, subcontractors, invitees, licensees, trustees and/or any other third party for whom Owner is legally responsible.

(r) Waiver. The parties agree that the Waiver and Release provisions set forth in Paragraph 5 herein are conspicuous, and the parties have read and understood the same. 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:



J. Stacy Slawinski, P.E., County Engineer

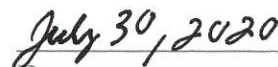
Approved as Legal Form:

Assistant County Attorney

OWNER:



Jeffrey Bain, Trustee



Date

EXHIBIT A

Bid Form Item #	Item Description	Quantity	Unit	Unit Cost	Subtotal
24	Hydrated Lime (Estimated at 6% by Dry Weight)	13	TON	\$ 191.58	\$ 2,490.54
26	Lime Treated Subgrade (8" Depth)	699	SY	\$ 1.85	\$ 1,293.15
27	8" Joint Reinforced Concrete Pavement	343	SY	\$ 46.00	\$ 15,778.00
35	Concrete Driveways	356	SY	\$ 56.31	\$ 20,046.36
45	Median Nose	6	SY	\$ 103.80	\$ 622.80
46	Coloring for Median Nose	6	SY	\$ 14.03	\$ 84.18
TOTAL					\$ 40,315.03

