

STATE OF TEXAS

§

COUNTY OF FORT BEND

§

§

**AGREEMENT FOR CONSTRUCTION AND MAINTENANCE OF SIDEWALK**

This Agreement ("Agreement") is made by and between Fort Bend County, Texas ("County"), a political subdivision of the state of Texas, and the Marshall Oaks Property Owners Association ("POA"), a Texas non-profit corporation. County and POA may be referred to herein individually as a "Party" or collectively as the "Parties."

WHEREAS, County maintains and holds a public road right-of-way known as Greenbusch Road located in Commissioner Precinct 1 of Fort Bend County, Texas; and

WHEREAS, a portion of the County Right-of-Way is located within a walk zone near a public school; and

WHEREAS, POA desires for County to design and construct a sidewalk within the walk zone of the County Right-of-Way as part of the Greenbusch Road Improvements Project under the 2013 Mobility Bond Project Number 13312; and

WHEREAS, it is to the mutual benefit of the County and POA to construct a sidewalk within the walk zone in the County Right-of-Way to allow for the safe passage of pedestrians and serves a public purpose; and

WHEREAS, by execution of this Agreement, the Parties desire to clearly establish the terms and responsibilities for the construction, maintenance, and repair of said sidewalk.

NOW, THEREFORE, for and in consideration of the mutual covenants, agreements, and benefits, the Parties agree as follows:

**TERMS:**

1. **Purpose of the Agreement.** The purpose of this Agreement is to outline the funding and other obligations related to the design, construction, repair, and maintenance of the Sidewalk in the County Right-of-Way; said Sidewalk to begin at a point in the Southern line of the County Right-of-Way and the North Western corner of that certain 1.6374 acre Detention Easement conveyed to the Fort Bend County Municipal Utility District No. 185 by document recorded under Clerk's File No. 2015126136, thence North East along the Southern Line of the County Right-of-Way approximately 1,170 linear feet to the North Eastern corner of Marshall Oaks Section 2 (the "Sidewalk").
2. **Incorporation of Recitals.** The representations, covenants, and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into this Agreement.

**3. Responsibilities of County.**

- (a) County shall be responsible for all costs related to the construction and installation of the Sidewalk including costs for engineering, design, surveying, and geotechnical services.
- (b) All construction work performed by County under this Agreement shall be executed, performed, and completed in a good, substantial, and workmanlike manner in compliance with the requirements of all governmental entities with jurisdiction. POA shall have the right to participate in the final inspection of the Sidewalk.
- (c) Notwithstanding the foregoing, County does not agree and is not required, under this Agreement, to incur or reimburse any costs or expenses for any subsequent repair or maintenance of the Sidewalk.

**4. Responsibilities of POA.**

- (a) POA, for itself, and for its successors and assigns, covenants and agrees to repair and maintain, in perpetuity, the Sidewalk at the sole cost and expense of POA.
- (b) Prior to the commencement of any repair or maintenance of the Sidewalk within the County Right-of-Way, POA shall:
  - i. Submit for review and approval by County a summary of the proposed repairs or maintenance activity to be conducted on the Sidewalk within the County Right-of-Way. Such submission shall include design plans, diagrams, and specifications showing the manner of work or construction and the materials to be used therein.
  - ii. Obtain any and all permits required by federal, state, and local laws and regulations for any repair or maintenance activity to be conducted on the Sidewalk within the County Right-of-Way.
  - iii. Provide at least 5 business days written notice to County in order to allow a County inspector to be present during any repair or maintenance activity in the County Right-of-Way.
  - iv. Restore the surface area of the County Right-of-Way to an acceptable condition, as determined by County, after such maintenance or repair activity.

5. **Indemnity.** POA HEREBY AGREES TO INDEMNIFY AND HOLD COUNTY HARMLESS FROM ANY AND ALL CLAIMS, SUITS, OR CAUSES OF ACTION, WHETHER FOR PERSONAL INJURY OR PROPERTY DAMAGE, ARISING OUT OF OR RELATED TO ANY ACTION OR FAILURE TO ACT BY POA, ITS OFFICERS, AGENTS, EMPLOYEES, SUCCESSORS, OR ASSIGNS WITH RESPECT TO THE REPAIR OR MAINTENANCE OF THE SIDEWALK WITHIN THE COUNTY RIGHT-OF-WAY. POA FURTHER AGREES TO PROCURE AND MAINTAIN LIABILITY INSURANCE WITH COVERAGE FOR PERSONAL INJURIES AND PROPERTY DAMAGE WITH LIMITS OF LIABILITY OF NOT LESS THAN ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) COVERING THE SIDEWALK AND TO FURNISH A CERTIFICATE OF INSURANCE FOR THE SAME SHOWING FORT BEND COUNTY, TEXAS AS AN ADDITIONAL INSURED.
6. **No Authorization of Additional Improvements.** This Agreement is only for the design, construction, repair, and maintenance of the Sidewalk in the County Right-of-Way. Any additional improvements that are not the subject of this Agreement, including landscaping or vegetation, shall not be installed or constructed in the County Right-of-Way without the prior written approval of County.
7. **Effective Date.** This Agreement shall become effective on the date signed by the last Party and shall remain in effect unless earlier terminated pursuant to Section 8 below.
8. **Termination.** County may terminate this Agreement at any time prior to the construction and installation of the Sidewalk by providing written notice to POA.
9. **Notice.** Any and all notices required or permitted under this Agreement shall be in writing and shall be mailed by certified mail, return receipt requested, or personally delivered to the following addresses:

**If to County:** Fort Bend County, Texas  
Attn: County Judge  
401 Jackson Street, 1<sup>st</sup> Floor  
Richmond, Texas 77469

**And**

Fort Bend County Commissioner, Precinct 1  
Attention: Commissioner  
22333 Grand Corner Drive  
Katy, Texas 77494

**If to POA:** Marshall Oaks Property Owners Association  
Attn: President  
2002 W Grand Pkwy N.  
Katy, Texas 77449

10. **Entire Agreement.** This Agreement constitutes the entire Agreement between the Parties and supersedes all previous agreements, written or oral, pertaining to the subject matter of this Agreement. Any amendment to this Agreement must be in writing and signed by each Party to come into full force and effect.
11. **Applicable Law.** This Agreement shall be construed in accordance with the laws of the State of Texas.
12. **Venue.** Exclusive venue of any claim or legal action arising out of or relating to the subject matter of this Agreement shall lie in a court of competent jurisdiction of Fort Bend County, Texas.
13. **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 hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
14. **Immunity.** Neither the execution of this Agreement nor any other conduct of either Party relating to this Agreement shall be considered a waiver or surrender by County of its governmental powers or Sovereign Immunity under the Texas Constitution or the laws of the state of Texas.
15. **No Partnership.** Nothing in this Agreement shall be deemed or construed as creating the relationship of principal and agent, partnership, or joint venture between the Parties, or a joint enterprise between the Parties and/or any other parties.
16. **No Waiver.** The failure of any Party to insist, in any one or more instances, upon performance of any terms, covenants, or conditions of this Agreement shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant, or condition, but the obligation with respect to such future performance shall continue in full force and effect.
17. **Assignment.** POA may not assign this Agreement to another party without the prior written consent of County, which consent shall not be unreasonably withheld.
18. **Successors and Assigns Bound.** County and POA each bind themselves and their successors and assigns to the other Party and to the successors and assigns of such other Party, with respect to all covenants of this Agreement.
19. **Execution.** This Agreement may be executed in multiple counterparts, each having equal force and effect of an original, and shall become binding and effective only after it has been authorized

20. **Certification.** By his or her signature below, each signatory individual certifies that he or she is the properly authorized person or officer of the applicable Party hereto and has the requisite authority necessary to execute this Agreement on behalf of such Party, and each Party hereby certifies to the other that it has obtained the appropriate approvals or authorizations from its governing body as required by law.

Signed and entered this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**FORT BEND COUNTY, TEXAS**

\_\_\_\_\_  
KP GEORGE,  
COUNTY JUDGE

**ATTEST:**

\_\_\_\_\_  
LAURA RICHARD,  
COUNTY CLERK

Signed and entered this 17 day of FEB, 2022. <sup>23</sup>

**MARSHALL OAKS PROPERTY OWNERS ASSOCIATION**

A Texas non-profit corporation

By: [Signature]

Name: SMARAN DAS

Title: President

**ACKNOWLEDGMENT**

STATE OF TEXAS §

COUNTY OF TAMU §

BEFORE ME, the undersigned notary, on this day personally appeared Smaran Das, President of Marshall Oaks Property Owners Association, a Texas non-profit corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 17 day of Feb., 2022. <sup>23</sup>

[Signature]

NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS



# EXHIBIT A

