

STATE OF TEXAS

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COUNTY OF FORT BEND

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AGREEMENT FOR THE FINANCING AND CONSTRUCTION OF A MEDIAN OPENING

(McCrary Road – Project No. 17313x)

This Agreement for the Financing and Construction of a Median Opening ("Agreement") is made by and between Fort Bend County, Texas ("County"), a political subdivision of the state of Texas, and Dorothy A. Fogle, an individual and trustee of the FOGLE GST EXEMPT BY-PASS TRUST ("FOGLE GST"). County and FOGLE GST 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 McCrary Road (hereinafter, the "County Right-of-Way") located in Richmond, Fort Bend County, Texas; and

WHEREAS, County is currently making certain roadway improvements and reconstructing the County Right-of-Way under Mobility Bond Project No. 17313x; and

WHEREAS, as part of the reconstruction of the County Right-of-Way, FOGLE GST desires for County to design and construct a median opening in said right-of-way that would allow for the safe flow of traffic; and

WHEREAS, it is to the mutual benefit of the County and FOGLE GST to construct a median opening in the County Right-of-Way to allow for the safe flow of traffic and such a project will serve 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 the median opening.

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

1. **Purpose of the Agreement.** The purpose of this Agreement is outline the funding and the project management obligations for the design and construction of a median opening on McCrary Road at or near Parcel No. R174982 located 3227 McCrary Road.
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. **Definitions.**

- (a) "County Engineer" means the Fort Bend County Engineer.
- (b) "Effective Date" means the date this Agreement is executed by the last signing party hereto.
- (c) "Project" means the improvements construction of the median opening as provided in Section 4 below.
- (d) "Property" means the property having Central Appraisal District Reference No. R174982 located at 3227 McCrary Road.

4. **Project/ Scope of Work.**

- (a) The Parties acknowledge and agree that this Scope of Work represents the general requirements for the Project to facilitate the completion of the design and construction of a median opening on a portion of McCrary Road as provided in the project layout attached hereto as "Exhibit A" and incorporated by reference herein.
- (b) The Project shall be facilitated, managed, funded, and administered by County. County shall take all reasonable actions to ensure that the Project is constructed in a good and workmanlike manner with all reasonable diligence.

5. **Design and Specifications.** County shall select the design engineer and design all aspects of the Project in accordance with County standards and regulations. The plans and specifications shall be reviewed and approved by the Fort Bend County Engineer. FOGLE GST, upon reasonable notice to County, shall have the right and opportunity to review all documents pertaining to the design of the Project, including any maps, records, photographs, reports, and drawing affecting the construction of the Project. FOGLE GST may provide any comments or feedback regarding the design of the Project to the County Engineer no later than thirty (30) calendar days after its review. FOGLE GST acknowledges and agrees that the comments and feedback provided to County shall not be binding upon County, and the County Engineer, in his sole discretion, shall have the final determination regarding any comments or feedback received from FOGLE GST for the design of the Project.

6. **Competitive Bid and Award.** Upon completion of final plans and specifications, County will advertise for competitive bids for construction of the Project (together or in separate contracts) in accordance with requirements applicable to County. County will enter into a contract with the qualified bidder ("Construction Contract"). If County constructs the

Project in multiple contracts, the provisions of this Agreement shall apply to each Construction Contract.

7. **Construction of the Project.** After awarding the Construction Contract, County shall administer the Construction Contract for the benefit of the Parties. County shall provide on-site inspection of the construction of the Project in accordance with the terms of the Construction Contract(s). County shall have the right to terminate the Construction Contract(s) and to enforce its remedies thereunder, as determined by County to be necessary. In the event of any such termination, County shall have the right to complete and/or cause the completion of the Project itself and/or through such other contractor(s) as County determines to be appropriate.
8. **Completion of the Project; Maintenance/ Ownership of Project Improvements.** Completion of the Project shall occur upon the County's final inspection of the Project and certified as complete by the County Engineer. Upon Completion of the Project, County, at its sole cost and expense, shall be responsible for the perpetual maintenance and repair of any portion of the Project, and any related improvements thereof, within the County's right-of-way.
9. **Inspection and Deficiencies.** FOGLE GST may inspect the progress of the Project from time to time as it deems necessary in order to confirm the conformance of the Project with the Plans and the terms of this Agreement. FOGLE GST shall notify County in writing of any complaints regarding any deficiencies and the quality of workmanship by County for the Project. County shall address and correct such deficiencies within a reasonable time, if the County Engineer determines that such deficiencies are actionable under the terms of the County's Construction Contract(s). Notwithstanding the foregoing, all final decisions regarding the correction of any deficiencies shall be at the County's sole discretion.
10. **Time for Performance and Termination.**
 - (a) County shall initiate the construction of the Project no later than twelve (12) months after bid opening, or within such time as may be extended by written amendment of the Parties.
 - (b) County, in its sole discretion, may elect to forgo construction of the Project at any time prior to award of the Construction Contract(s) and County shall provide written notice to FOGLE GST of its decision to forgo such construction.

11. **FOGLE GST's Obligations.** As part of the consideration for County's construction of the median opening as provided under this Agreement, FOGLE GST acknowledges and agrees that in the event FOGLE GST's desires to sale or redevelop the Property, FOGLE GST shall notify County at least 30 days prior to any such sale or redevelopment. County shall assess such sale or redevelopment and the County Engineer, in his sole discretion, shall determine whether: (1) the existing driveway should be closed and realigned with the median opening at McCrary Meadows, and (2) any modifications to the median opening are warranted due to an increase of traffic flow from any such sale or redevelopment of the Property. Upon such determination by the County Engineer, FOGLE GST, shall pay County One Hundred Percent (100%) of the actual costs incurred by County to realign the existing driveway with the median opening and/or modify the median opening.
12. **Materiality.** WITHOUT DEROGATING THE MATERIALITY OF ANY OTHER TERM OR CONDITION OF THIS AGREEMENT, AND FOR GREATER CERTAINTY, FOGLE GST ACKNOWLEDGES AND AGREES THAT THE TERMS OF SECTION 11 ARE A MATERIAL PART OF THIS AGREEMENT AND BUT FOR FOGLE GST'S AGREEMENT TO BE BOUND BY SUCH TERMS, COUNTY WOULD NOT HAVE ENTERED INTO THIS AGREEMENT TO FINANCE AND CONSTRUCT THE MEDIAN OPENING AS PROVIDED IN THIS AGREEMENT.
13. **Force Majeure.** In the event either Party is rendered unable, wholly or in part, by Force Majeure to carry out any of its obligations under this Agreement, then, within a reasonable time after the occurrence of such event, but no later than ten (10) calendar days after, the Party whose obligations are so affected (the "Affected Party") thereby shall notify the other in writing stating the nature of the event and the anticipated duration. The Affected Party's obligations under this Agreement shall be suspended during the continuance of any delay or inability caused by the event, but for no longer period. The Affected Party shall further endeavor to remove or overcome such delay or inability as soon as is reasonably possible.

For purposes of this Agreement, Force Majeure includes, but is not limited to: acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States of America or the State of Texas or any civil or military authority other than a Party to this Agreement, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, severe storms, floods, washouts, drought, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, and any other incapacities of any Party, similar to those enumerated, which are not within the control of the Party claiming such inability, which such Party could not have avoided by the reasonable exercise of due diligence and care.

14. **Notice.** Any and all notices required or permitted under this Agreement shall be in writing and shall be properly addressed and sent via personal delivery, US first class postage prepaid, registered or certified mail, return receipt requested, Federal Express, Express Mail, or other overnight delivery service as follows:

If to County: Fort Bend County Engineering Department
Attn: County Engineer
301 Jackson St., 4th Floor
Richmond, Texas 77469

And Fort Bend County, Texas
Attn: County Judge
401 Jackson St, 1st Floor
Richmond, Texas 77469

If to FOGLE GST: Fogle GST Exempt By-Pass Trust,
Attn: Dorothy A. Fogle, Trustee
3227 McCrary Road
Richmond, TX 77406

15. **Entire Agreement and Modification.** This Agreement constitutes the entire Agreement between the Parties and supersedes any and all previous agreements, written or oral, pertaining to the subject matter of this Agreement. This Agreement may only be amended or modified by written agreement executed by both Parties. **IT IS ACKNOWLEDGED BY FOGLE GST THAT NO OFFICER, AGENT EMPLOYEE, OR REPRESENTATIVE OF COUNTY HAS ANY AUTHORITY TO CHANGE THE TERMS OF THIS AGREEMENT OR ANY ATTACHED EXHIBITS HERETO UNLESS EXPRESSLY AUTHORIZED BY THE FORT BEND COUNTY COMMISSIONERS COURT.**
16. **No Waiver of Immunity.** Neither the execution of this Agreement nor any other conduct of County under this this Agreement shall be considered a waiver or surrender of its governmental powers or immunity under the Texas Constitution or the laws of the State of Texas.
17. **Benefit.** This Agreement shall be for the sole and exclusive benefit of County and FOGLE GST and shall not be construed to confer any benefit or right upon any other party.
18. **Applicable Law and Venue.** This Agreement shall be construed according to the laws of the state of Texas. Venue for any claim 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.

19. **Assignment.** Neither Party may assign its rights, duties, or obligations hereunder, without the prior written consent of the other, which consent shall not be unreasonably withheld.
20. **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.
21. **Captions.** The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of the Agreement.
22. **Electronic and Digital Signatures.** The Parties to this Agreement agree that any electronic and/or digital signatures of the Parties included in this Agreement are intended to authenticate this writing and shall have the same force and effect as the use of manual signatures.
23. **Multiple Counterparts.** This Agreement may be executed in multiple counterparts, each having equal force and effect of an original.
24. **Human Trafficking.** BY ACCEPTANCE OF THIS AGREEMENT, FOGLE GST ACKNOWLEDGES THAT FORT BEND COUNTY, TEXAS IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.
25. **State Law Requirements for Contracts.** Unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization, FOGLE GST hereby verifies that FOGLE GST and any parent company, wholly owned subsidiary, majority owned subsidiary, and affiliate is not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 806.051, 807.051, or 2252.153 of the Texas Government Code.
26. **Authorization.** This Agreement shall become binding and effective only after it has been authorized and approved by the governing bodies of each Party, as evidenced by the signature of the appropriate authority. Each Party further represents that, by execution of this Agreement, it has been duly authorized by its governing body or other appropriate authority from whom such Party is legally bound to obtain authorization.

{Execution Pages Follow}

SIGNED and AGREED to this _____ day of _____, 2024.

FORT BEND COUNTY, TEXAS

KP George,
County Judge

ATTEST:

Laura Richard, County Clerk

APPROVED:

J. Stacy Slawinski, County Engineer

AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$_____ are available to pay the obligation of Fort Bend County, Texas within the foregoing Agreement.

Robert Ed Sturdivant, County Auditor

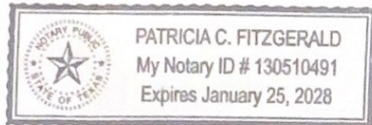
FOGLE GST EXEMPT BY-PASS TRUST

By Dorothy A. Fogle, Trustee
Dorothy A. Fogle, Trustee

Acknowledgment

STATE OF TEXAS §
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COUNTY OF Fort Bend §

This Instrument was acknowledged before me, the undersigned notary, on this 23 day
of January, ~~2024~~ 2025, by Dorothy A. Fogle, an individual and trustee of the Fogle GST Exempt By-
Pass Trust, on behalf of said trust.



Patricia C. Fitzgerald
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

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