

STATE OF TEXAS §
COUNTY OF FORT BEND § KNOW ALL MEN BY THESE PRESENTS:
§

**PARTIAL FUNDING AGREEMENT
US 59/FM 762 ENHANCEMENT PROJECT**

This Agreement (“Agreement”) is made by and between Fort Bend County, Texas, (“County”) a body corporate and politic, acting by and through its Commissioners Court and Summer Lakes Homeowner’s Association, Inc. and/or its Assigns as defined herein (“HOA”), (Individually defined as “Party” and collectively “Parties”).

In consideration of the foregoing and further consideration of the mutual promises, covenants and conditions herein, the parties hereby agree as follows:

**I.
PURPOSE**

County entered into an Advance Funding Agreement for a Transportation Enhancement Project for the US 59/FM 762 Landscaping Project, hereinafter referred to as “the Project.” The purpose of this Project is for HOA to provide financial assistance for the installation of landscaping/irrigation improvements and hardscape improvements at the intersection of US 59 and FM 762 in Fort Bend County, Texas. Among other empowering governing documents, HOA is empowered to enter into such Agreement through the Recorded Declaration of Covenants, Conditions and Restrictions for Summer Lakes recorded in the official records of Fort Bend County, File No. 2001085296.

**II.
BASIC TERMS**

County and HOA hereby affirmatively find that County and the HOA will receive a benefit as the result of this Project, including the aesthetic enhancement of the primary approach to the Summer Lakes subdivision which should improve the value and marketability of the property.

County and HOA affirmatively find that the performance of this Agreement is in the common interest of both Parties, that undertaking this Agreement will benefit the public, including the members of the Summer Lakes Homeowners Association, Inc., and that the division of costs associated with the Project fairly and adequately compensate the performing Party for its services or functions performed under this Agreement.

**III.
TERM**

The term of this Agreement will be from the date of execution by the last party hereto until the Project is complete.

IV.
PROJECT DESCRIPTION AND LOCATION

The Project contemplated by this Agreement consists of environmental documentation, engineering plans, specifications, and estimates, storm water pollution prevention plan, land survey, permits, biodegradable erosion control logs, silt fencing, earthwork, grading, and drainage to landscape 44 acres at the cloverleaf intersection of US 59 and FM 762, including on/off ramps. Landscape/reforestation improvements shall include soil amendments, bed preparation, ground cover, shrubs, wildflower seeding, ornamental grasses (love grass, hydroseed bermuda, and dwarf pampass), fertilizers, mulching, and tree planting (red maple/ red oak/ nuttall oak, and montezuma cypress from 1- to 30-gallons). Additional landscape elements include landscape banding/edging, foliar spray for trees, extended fertilization of seeded areas (twice in the first year after planting), a rainwater collection/irrigation system with supplemental watering plan, solar collectors, solar pump for rain tank, rain sensors, soil moisture sensors, drip emitters, drip line, water main, gate valves and valve box. The Project will be designed and constructed in accordance with State standards, Project number designated by TxDOT as CSJ 0027-12-137.

V.
COUNTY'S RESPONSIBILITIES

County has contracted with TxDOT to provide a Local Participation Match in the amount of \$312,021.00, and provide maintenance for the Project upon completion for a period of not less than twenty (20) years as agreed to in the Advanced Funding Agreement dated 8/11/2011.

County has entered into an Interlocal Agreement with the West Fort Bend Management District ("District") for the District to provide the maintenance required by TxDOT for a period of twenty (20) years as agreed to in the Interlocal Agreement dated 6/28/2011.

County shall only use the funding for the installation of landscaping/irrigation improvements and hardscape improvements at the intersection of US 59 and FM 762 for the Project in Fort Bend County, Texas.

Upon completion of the Project, but no later than 90 days after the completion, County shall furnish HOA with complete documentation and a full accounting of the funds expended on the Project.

In the event the Project is not completed by County in accordance with Advance Funding Agreement with TxDOT, County shall refund HOA all funds provided by HOA to County under this Agreement.

Summer Lakes is located within the jurisdiction of the West Fort Bend Management District. The County shall provide updates on the progress of the Project to the West Fort Bend Management District and the HOA upon request.

VI.
HOA'S RESPONSIBILITIES

HOA agrees to provide to County the amount of THIRTY-FIVE THOUSAND DOLLARS (\$35,000.00) for the County to use toward the Project. HOA shall provide the funding to County in three (3) installments as follows:

- A. \$11,666.66 on or before March 1, 2012
- B. \$11,666.66 on or before March 1, 2013
- C. \$11,666.66 on or before March 1, 2014

HOA is not responsible or committed to any ongoing maintenance responsibility in regards to this Project, which County acknowledges by execution of this Agreement.

Notwithstanding anything contained herein to the contrary, HOA is not obligated to advance one or any of the aforementioned installments if County had not received funding and or commitments for funding by all parties involved for the entirety of the Project by March 1, 2012.

VII.
ASSIGNS

Summer Lakes Homeowner's Association shall have the right (in whole or in part) under this Agreement to assign HOA's responsibilities and/or obligations under this Agreement to any other entity, including, but not limited to the Summer Park Property Owners Association, Inc. or other Commercial Association that can be created through the Declaration of Covenants, Conditions and Restrictions for Summer Park Mixed Use Property recorded in the official records of Fort Bend County, File No. 2012002789 (hereinafter referred to as the "Assigns"). Notwithstanding the foregoing, the County's consent shall not be required for an assignment by the HOA of its obligations under this Agreement, so long as any Assigns accepts the assignment, in whole or in part, and assumes HOA's obligations hereunder, in whole or in part. Written notice will be provided in the event the obligations under the Agreement, in whole or in part, are assigned.

VIII.
MISCELLANEOUS

By entering into this Agreement, the parties do not intend to create any obligations, express or implied, other than those specifically set out in this Agreement.

Nothing in this Agreement shall create any rights or obligations in any party who is not a signatory to this Agreement.

It is expressly understood and agreed that this Agreement will have no force or effect until duly executed by all Parties.

Notices, correspondence, and all other communications shall be addressed as follows:

If to County:

Fort Bend County
301 Jackson, Suite 719
Richmond, Texas 77469
Attn: County Judge

If to HOA:

Summer Lakes Homeowner's Association, Inc.
and/or it's Assigns
800 Bering Drive, Suite 225
Houston, Texas 77057-2130
Attn: Sam Yager III

VIII.
EXECUTION

IN WITNESS WHEREOF, the parties have executed this Project Agreement on the dates indicated.

FORT BEND COUNTY:

Robert E. Hebert
Robert E. Hebert, Fort Bend County Judge

2-28-2012
Date

Attest:

Dianne Wilson
Dianne Wilson, Fort Bend County Clerk

SUMMER LAKES HOMEOWNER'S ASSOCIATION, INC.

By: *Sam Yager III*
Sam Yager III-President
Summer Lakes Homeowner's Association, Inc.

2-17-12
Date

