

STATE OF TEXAS           §  
  §  
COUNTY OF FORT BEND   §

JOINT PARTICIPATION AGREEMENT FOR DESIGN AND CONSTRUCTION OF A CERTAIN PORTION OF AN ACCESS ROAD IN FORT BEND COUNTY ASSISTANCE DISTRICT NO. 2

This Agreement, made and entered into by and between Fort Bend County Assistance District No. 2 ("CAD 2"), Fort Bend County ("County"), and Fort Bend County Municipal Utility District MUD No. 194 ("MUD 194"), all body corporates and politics under the laws of the State of Texas, collectively, the "Parties".

**WHEREAS**, CAD 2 has been created to fund, among other things, the construction of certain roads within its boundaries; and

**WHEREAS**, CAD 2 levies a one percent (1%) sales tax and has determined that the expenditure of sales tax funds for the Project (defined herein) serves a public purpose; and

**WHEREAS**, CAD 2 entered into a Joint Participation Agreement with Fort Bend Grand Parkway Toll Road Authority ("FBGPTRA") for the design and construction of improvements to the intersection of West Bellfort and the Grand Parkway, which is considered the second-highest priority of projects to be financed by CAD 2 (the "Second Priority Project"); and

**WHEREAS**, the Parties have agreed that the construction of an access road along the eastern side of the Grand Parkway, north of West Bellfort, for a distance of approximately 5,000 feet, is a higher priority project to be financed by CAD 2 (the "Project"), being more particularly described in Exhibit "A" attached hereto.

**WHEREAS**, CAD 2 will finance the Project from its sales tax revenues; however, at the moment there is a shortfall in such revenues; and

**WHEREAS**, the Parties desire to provide short term funding for the CAD 2, to be reimbursed as soon as sufficient sales tax revenues exist, subject to Section 3. I. of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements, and benefits to the parties hereto, CAD 2, the County, and MUD 194 agree as follows:

**AGREEMENT**

**1. Period of the Agreement**

This Agreement becomes effective on the date signed by all parties and shall remain in effect until the County and MUD 194 have been reimbursed in full.

## **2. Scope of Work**

Access road along the eastern side of the Grand Parkway, north of West Bellfort, for a distance of approximately 5,000 feet, which is located within the boundaries of CAD 2.

## **3. Responsibilities**

- A. CAD 2 has levied a 1% sales tax from businesses within its boundaries and shall receive such revenue from the State Comptroller. As CAD 2 funds are available, and subject to Subsection I. below, CAD 2 shall reimburse the Parties for payments made by the Parties due to the shortfall, as described herein.
- B. The County shall use its available funds to pre-finance costs, but only to fund up to \$2 million of the estimated \$3.39 million, including 10% contingencies, to complete the Project. The engineering costs are included in the \$3.39 million.
- C. MUD 194 shall pre-finance the remaining shortfall and the costs for engineering design, estimated at approximately \$1.39 million, until CAD 2 funding is available for reimbursement.
- D. MUD 194 shall prepare, or cause to be prepared, the drawings and specifications for the Project meeting County standards and approval of the County and; prior to receipt of bids for the Project, MUD 194 shall have caused the needed right-of-way to be dedicated to the County.
- E. MUD 194 shall provide notice to CAD 2 and the County when it bids the Project and upon receipts of bids, shall provide copies to all parties. All parties shall have the right to concur with MUD 194 in the award of the contracts to the lowest responsible bidders.
- F. After receipt of bids but prior to actual award of the contracts, CAD 2 shall give notice to MUD 194 of funds available for construction. The Parties know CAD 2 will have a shortfall. As soon as bids are received and the notice has been received from CAD 2 as to available funds, MUD 194 will award the contracts and proceed with construction. The Parties agree time is of the essence to complete the Project and that construction should be completed by October 1, 2012, but in no event later than October 31, 2012.
- G. MUD 194 shall keep accurate accounting of all funds it spends related to the costs and will provide such accounting to CAD 2 monthly. MUD 194 shall make monthly payments due to the engineer and construction contractor, using first any available CAD 2 funds, and then its own funds. Funding shall continue in this manner until the parties agree \$2 million is remaining to be paid. At that point, MUD 194 will continue to administer

the contracts, but will provide a monthly invoice to the County for the remaining shortfall funding. Payments shall be made by the County within 20 days of request by MUD 194 in order for MUD 194 to timely make payments to the engineer and construction contractor.

- H. At completion of construction of the access road, MUD 194 shall provide all warranties and bonds to the County. The County shall maintain and own the Project.
- I. CAD 2 shall have the right to retain, at its sole option, up to fifty (50)% of sales tax revenue received from the State Comptroller for its use.

#### **4. Reimbursement by CAD 2**

Reimbursement by CAD 2 shall be at the earliest dates possible, but payment shall only be made from sales tax revenues from CAD 2 and, subject to Section 3. I. above. CAD 2 shall reimburse the County first, for any amounts actually pre-financed, plus interest calculated at two (2)%, then second, to MUD 194 under the same terms. Interest shall continue to run until all Parties have been fully reimbursed for the Project.

#### **5. Environmental Assessment and Mitigation**

MUD 194 is responsible for securing a nationwide permit from the USACE for the Project. All related costs shall be considered an additional cost of the Project. MUD 194 shall be entitled to reimbursement from CAD sales tax revenues, and MUD 194 shall be paid in accordance with reimbursement provisions set forth above in Section 4.

#### **6. Termination of this Agreement**

This Agreement is not subject to termination prior to completion of the financing and reimbursement of the Project. Upon full reimbursement to the County and MUD 194 for this Project, this Agreement shall be terminated. Notwithstanding the above, the County's ownership and maintenance obligations for the access road described herein, pursuant to Section 3. H. shall survive the termination of this Agreement.

#### **7. Dispute Resolution**

- A. In the event of a dispute related to the breach of this Agreement that cannot be settled through negotiation, the Parties agree to submit the dispute to mediation in Richmond, Texas.
- B. In the event any Party desires to mediate any dispute, that party shall notify the other Parties in writing of the dispute desired to be mediated. If the Parties are unable to resolve their differences within 10 days of the receipt of such notice, such dispute shall be submitted for mediation. The mediator shall be selected by mutual agreement between the Parties.

- C. All expenses associated with mediation shall be shared equally by each Party (1/3 each).
- D. The requirement to seek mediation shall be a condition required before filing an action at law or in equity. Any such action shall be filed in a court of competent jurisdiction in Fort Bend County, Texas, and the laws of Texas shall apply.

**8. Amendments**

Amendments and changes to this Agreement due to changes in the character of the work or terms of the Agreement, or responsibilities of the Parties relating to the Projects, may be enacted through a mutually agreed upon, written amendment.

**9. Remedies**

Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. None of the Parties may terminate its duties under this Agreement except in accordance with its provisions.

**10. Notices**

- A. All notices to either party by the other required under this Agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to such party at the following addresses:

**CAD 2:** Fort Bend County Assistance District No. 2

Fort Bend County Attorney  
309 S. 4th Street, Suite 728  
Richmond, TX 77469  
Attn: Roy L. Cordes, Jr.

**COUNTY:** Fort Bend County

Fort Bend County Attorney  
309 S. 4th Street, Suite 728  
Richmond, TX 77469  
Attn: Roy L. Cordes, Jr.

**MUD 194:** Fort Bend County Municipal Utility District No. 194

c/o Allen Boone Humphries Robinson LLP  
3200 Southwest Freeway, Suite 2600  
Houston, Texas 77027  
Attn: Lynne B. Humphries

- B. All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Any Party may change the above

address by sending written notice of the change to the other Parties. Any Party may request in writing that such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

**11. Legal Construction**

In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

**12. Compliance with Laws**

The Parties shall comply with all federal, county, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement.

**13. Sole Agreement**

This Agreement constitutes the sole and only agreement between the Parties regarding the Project and supersedes any prior understandings or written or oral agreements respecting the Agreement's subject matter.

**14. Inspection of Books and Records**

The Parties to this Agreement shall maintain all books, documents, papers, accounting records and other documentation relating to costs incurred under this Agreement and shall make such materials available to each other, or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this contract or until any impending litigation, or claims are resolved. Additionally, the Parties and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

**15. Authority to Execute Agreement**

The Governing Body of each Party has authorized its execution and the Agreement has been approved at a duly called and posted meeting.

IN TESTIMONY HEREOF, the parties hereto have caused these presents to be executed in duplicate counterparts.

[The remainder of this page intentionally left blank.]

FORT BEND COUNTY ASSISTANCE DISTRICT NO. 2:

*Robert E. Hebert*

Robert E. Hebert, Chairman, Board of Directors

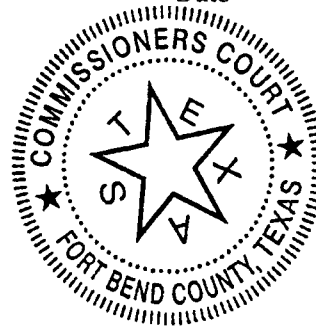
5-16-2012

Date

Attest:

*Dianne Wilson*

Dianne Wilson, County Clerk



Approved:

*Roy L. Cordes, Jr.*

Roy L. Cordes, Jr., Fort Bend County Attorney

5/10/2012

Date

FORT BEND COUNTY:

*Robert E. Hebert*

Robert E. Hebert, County Judge

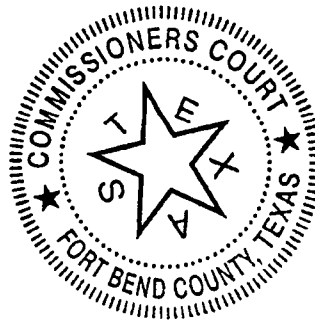
5-16-2012

Date

Attest:

*Dianne Wilson*

Dianne Wilson, County Clerk



Approved:

*Roy L. Cordes, Jr.*

Roy L. Cordes, Jr., Fort Bend County Attorney

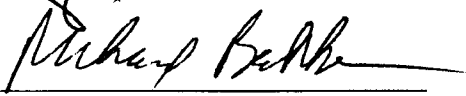
5/10/2012

Date

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 194:

  
\_\_\_\_\_  
President, Board of Directors

May 3, 2012  
Date

Attest:  
  
\_\_\_\_\_  
Secretary