

**ROAD CONSTRUCTION  
AND REIMBURSEMENT AGREEMENT**

**THIS ROAD CONSTRUCTION AND REIMBURSEMENT AGREEMENT** (this "Agreement"), is effective as of the 26 day of June, 2012, by and between **FORT BEND COUNTY, TEXAS**, a political subdivision of the State of Texas, acting by and through the County Commissioners Court (the "County"), and **SIENNA/JOHNSON NORTH, L.P.**, a Texas limited partnership ("Developer") (collectively, the "Parties").

**RECITALS**

The County has constructed and operates the Fort Bend Parkway Toll Road (the "Parkway") from Beltway 8 to State Highway 6.

The County is constructing an extension of the Parkway from State Highway 6 to Sienna Parkway, and the connection of the Parkway to Sienna Ranch Road is a vital component of the long-term traffic plan for the County.

The Fort Bend County Toll Road Authority (the "Authority") is evaluating the extension of the Parkway from Sienna Parkway to Sienna Ranch Road, called Fort Bend Parkway Toll Road Segment B-2 ("Segment B-2") and has entered into an agreement with Costello, Inc. for preliminary engineering services for Segment B-2.

The Developer desires to advance all of the funds for the preliminary engineering services for Segment B-2.

The County is agreeable to reimburse the funds so advanced by the Developer for Segment B-2, if and when, and only if and when the County issues bonds for Segment B-2.

**AGREEMENT**

For and in consideration of the mutual promises, covenants, obligations, and benefits of this Agreement, the County, and the Developer contract and agree as follows:

## ARTICLE 1

### GENERAL TERMS

**1.01 Definitions.** For purposes of this Agreement the words “shall” and “will” are mandatory, and the word “may” is permissive.

*Preliminary Engineering Services Costs* means the costs of design, engineering, environmental and material testing services arising in connection with the Segment B-2.

*Developer Advances* means any funds advanced by the Developer for the Preliminary Engineering Services Costs pursuant to this Agreement.

*Toll Road Bonds* means any bond, note or other obligation issued or incurred in one or more series which are secured by the revenues of the Fort Bend County Toll Road System.

**1.02 Singular and Plural; Gender.** Words used herein in the singular, where the context so permits, also include the plural and vice versa. The definitions of words in the singular herein also apply to such words when used in the plural where the context so permits and vice versa. Likewise, any masculine references shall include the feminine, and vice versa.

## ARTICLE 2

### REPRESENTATIONS

**2.01 Representations of the Developer.** The Developer hereby represents that:

(A) The Developer is duly authorized, created and existing under the laws of the State of Texas, is qualified to do business in the State of Texas and is duly qualified to do business wherever necessary to carry on the operations contemplated by this Agreement.

(B) The Developer has the power, authority and legal right to enter into and perform its obligations set forth in this Agreement, and the execution, delivery and performance hereof, (i) have been duly authorized, (ii) will not, to the best of its knowledge, violate any judgment, order, law or regulation applicable to the Developer or any provisions of the Developer’s limited partnership agreement, and (iii) does not constitute a default under or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the Developer under any agreement or instrument to which the Developer is a party or by which the Developer or its assets may be bound or affected.

(C) The Developer has sufficient capital to perform its obligations under this Agreement.

(D) This Agreement has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of the Developer, enforceable in accordance with its terms.

### ARTICLE 3

#### **PROJECT FINANCING AND FUNDING**

**3.01 Developer Advances.** The Developer agrees to provide sufficient funds as such become due for all Preliminary Engineering Services Costs for Segment B-2 in accordance with the terms and conditions set forth in the professional services contract between the Authority and Costello, Inc. dated June 20, 2012, provided, however, the Developer's obligation hereunder shall not exceed \$75,000.

**3.02 County Obligations.** Upon execution of this Agreement, the County will immediately begin preliminary engineering for Segment B-2, estimated to take 180 calendar days. The County will have the Developer apprised of the status of the design and will periodically provide design drawings to the Developer for review and comment.

**3.03 Repayment of Developer Advances.**

(A) In consideration of the advances made by Developer, the County shall reimburse the Developer for the Preliminary Engineering Services Costs on the earliest date that funds are available from any Toll Road Bonds issued for the purpose of constructing Segment B-2. The County shall not be obligated to reimburse the Developer from any other funds that may be lawfully available for such purpose. The County makes no representation or warranty when or if it will issue Toll Road Bonds for the purpose of constructing Segment B-2.

(B) The County will not reimburse the Developer for interest on the Preliminary Engineering Services Costs.

## ARTICLE 4

### DEFAULT

**4.01 Personal Liability of Public Officials, Legal Relations.** To the extent permitted by State law, no director, officer, employee or agent of the County shall be personally responsible for any liability arising under or growing out of the Agreement.

**4.02 Notices.** Any notice sent under this Agreement (except as otherwise expressly required) shall be written and mailed, or sent by electronic or facsimile transmission confirmed by mailing written confirmation at substantially the same time as such electronic or facsimile transmission, or personally delivered to an officer of the receiving party at the following addresses:

To the County:

Fort Bend County  
c/o The Fort Bend County Toll Road Authority  
Allen Boone Humphries Robinson LLP  
3200 Buffalo Speedway, Suite 2600  
Houston, Texas 77027

To the Developer:

Sienna/Johnson North, L.P.  
5777 Sienna Parkway, Suite 100  
Missouri City, TX 77459  
Attn: Michael J. Smith, Vice President

Each party may change its address by written notice in accordance with this section. Any communication addressed and mailed in accordance with this section shall be deemed to be given when so mailed, any notice so sent by electronic or facsimile transmission shall be deemed to be given when receipt of such transmission is acknowledged, and any communication so delivered in person shall be deemed to be given when receipted for by, or actually received by, the County, or the Developer, as the case may be.

**4.03 Amendments and Waivers.** Any provision of this Agreement may be amended or waived if such amendment or waiver is in writing and is signed by the County, and the Developer. No course of dealing on the part of the Parties, nor any failure or delay by one or more of the Parties, with respect to exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, except as otherwise provided in this section.

**4.04 Invalidity.** In the event that any of the provisions contained in this Agreement shall be held unenforceable in any respect, such unenforceability shall not affect any other provision of this Agreement.

**4.05 Successors and Assigns.** All covenants and agreements contained by or on behalf of a party in this Agreement shall bind its successors and assigns and shall inure to the benefit of the other parties, their successors and assigns. The parties may assign their rights and obligations under this Agreement or any interest herein only with the prior written consent of the other parties, except as provided in this Agreement, and any assignment without such prior written consent, including an assignment by operation of law, is void and of no effect. If such assignment of the obligations by the Developer hereunder is effective, the Developer shall be deemed released from such obligations. If any assignment of the obligations by the Developer hereunder is deemed ineffective or invalid, the Developer shall remain liable hereunder. The Developer may assign its reimbursement rights to a lender as collateral without consent of the County and may further assign this Agreement to, (i) the City of Missouri City TIRZ No. 3 or (ii) any entity having common control as, or controlled by, the Developer; provided that no such assignment shall be valid unless written notice thereof is provided to the County of such collateral assignment.

**4.06 Exhibits; Titles of Articles, Sections and Subsections.** The exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail. All titles or headings are only for the convenience of the parties and shall not be construed to have any effect or meaning as to the agreement between the parties hereto. Any reference herein to a section or subsection shall be considered a reference to such section or subsection of this Agreement unless otherwise stated. Any reference herein to an exhibit shall be considered a reference to the applicable exhibit attached hereto unless otherwise stated.

**4.07 Construction.** This Agreement is a contract made under and shall be construed in accordance with and governed by the laws of the United States of America and the State of Texas.

**4.08 Entire Agreement.** This written Agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

**4.09 Term.** This Agreement shall be in force and effect from the date of execution hereof for a term expiring on the date that the Preliminary Engineering Services Costs have been repaid in full to Developer.

**4.10 Time of the Essence.** Time is of the essence with respect to the obligations of the Parties to this Agreement.

**4.11 Approval by the Parties.** Whenever this Agreement requires or permits approval or consent to be hereafter given by any of the parties, the parties agree that such approval or consent shall not be unreasonably conditioned, withheld or delayed.

**4.12 Counterparts.** This Agreement may be executed in multiple counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts together shall constitute but one and the same instrument.

**4.13 Waivers.** Any party may waive any provision of this Agreement by providing written evidence thereof in writing to the other two parties. Waiver of a particular provision shall not be deemed a waiver of future compliance with such provision.

**4.14 Further Assurances.** Each Party hereby agrees that it will take all actions and execute all documents necessary to fully carry out the purposes and intent of this Agreement.

**[EXECUTION PAGES FOLLOW]**

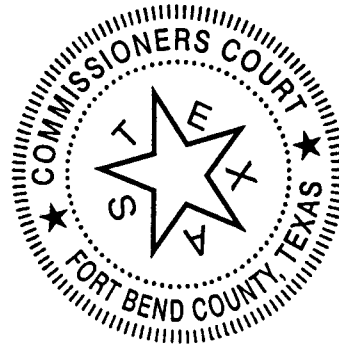
IN WITNESS WHEREOF, the Parties have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

FORT BEND COUNTY, TEXAS

By: Robert Hebert  
Robert Hebert  
County Judge

ATTEST:

By: Dianne Wilson  
Dianne Wilson  
County Clerk



APPROVED AS TO FORM:

Mary G. Reuter  
Mary G. Reuter, County Attorney

**SIENNA/JOHNSON NORTH, L.P.**

By: SIENNA/JOHNSON NORTH, GP, L.L.C.  
its general partner

By: Michael J. Smith  
**Michael J. Smith, Vice President**