

THE STATE OF TEXAS           §  
  §  
COUNTY OF FORT BEND       §

INTERLOCAL PROJECT AGREEMENT  
FOR TRANSPORTATION FACILITIES BY AND BETWEEN  
FORT BEND COUNTY, TEXAS AND  
SIENNA PLANTATION MUNICIPAL UTILITY DISTRICT NO. 5

This INTERLOCAL PROJECT AGREEMENT FOR TRANSPORTATION FACILITIES (the "Agreement") is entered into by and between Fort Bend County, a body corporate and politic under the laws of the State of Texas, acting by and through its Commissioners Court (the "County") and Sienna Plantation Municipal Utility District No. 5 (the "District"), a political subdivision of the State of Texas (the County and District collectively referred to as the "Parties");

**RECITALS**

WHEREAS, the District is one of several conservation and reclamation districts that have been created and organized to provide water, sewage, drainage, detention, park, and other facilities and services to an area within Fort Bend County, in the extraterritorial jurisdiction of the City of Missouri City (the "City"), in the area immediately south of and adjacent to the existing Sienna Plantation development, informally known as Sienna South (the "Development");

WHEREAS, pursuant to Chapter 8321, Texas Special District Local Laws Code, the District is also essential to accomplish the purposes of Section 52, Article III, Texas Constitution, that relate to the construction, acquisition, improvement, operation, or maintenance of macadamized, graveled, or paved roads, or improvements, including storm drainage, in aid of those roads;

WHEREAS, pursuant to Section 791.028 of the Texas Government Code, the Parties are authorized to contract with each other to pay jointly all or part of the costs of acquisition, design, construction, improvement, or beautification of a state or local highway, turnpike, or road project, including the cost of an easement or interest in land required for or beneficial to the project;

WHEREAS, the Parties have determined that it is necessary and prudent to have improved access through and across the Development directly from FM 521 to the existing Sienna Parkway, for fire and emergency services and evacuation purposes, herein referred to as "Emergency Access";

WHEREAS, it is to the mutual benefit of the Parties that certain public transportation improvements more fully described below (the "Project") be designed and constructed to provide Emergency Access to the Development; and

WHEREAS, the Parties desire to enter into this Agreement to provide the terms and conditions for an agreement to jointly develop, finance and construct the Project;

WHEREAS, the District and County have entered into a Primary Interlocal Agreement;  
and

WHEREAS, the Commissioners Court of the County finds that the Project contemplated in this Agreement serves a County purpose; and

WHEREAS, the governing bodies of the County and the District have authorized this Agreement;

## AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, obligations, and benefits of this Agreement, the District and the County contract and agree as follows:

### I. INCORPORATION OF RECITALS

The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are incorporated into this Agreement.

### II. DESIGN AND CONSTRUCTION OF THE PROJECT

- A. General Description. The Parties agree the following public transportation and related drainage improvements shall be the Project that is the subject of this Agreement, all as described on **Exhibit "A"**, which is incorporated herein for all purposes. The Project will include the following:
1. The rehabilitation of the existing gravel road and construction of certain segments from its current terminus at Waters Lake Boulevard to FM 521, along with the construction of four box culverts, as depicted on **Exhibit "B"**.
  2. The Project also includes clearing, fill of low areas and installation fences and gates to limit access.
- B. Design, Environmental Permits, and Easement.
1. The District has prepared or will prepare the plans and specifications for the construction of the Project and will design such Project in accordance with good engineering standards and in accordance with all applicable rules, regulations, and requirements of all governmental entities having jurisdiction over the Project, including the County.
  2. The District has obtained or will be responsible for obtaining all environmental permits in connection with the construction of the Project.
  3. The District will be responsible for obtaining an easement from the landowner for the construction, operation and maintenance of the Project. The easement will be granted to both the District and the County for public purposes, including for Emergency Access, as more particularly described in the easement form attached hereto as **Exhibit "C"**. The easement will terminate when the permanent roadway is dedicated by plat as a public right of way.

- C. Construction of the Project. The County shall be the owner on the construction contracts for the Project and, subject to the review and approval of the District, shall contract for necessary consulting services (other than environmental services), including but not limited to geotechnical services. After the developer for the District notifies the District and the County that it has obtained its financing for construction of water, sewer and drainage infrastructure for its first phase of development in Sienna Plantation Municipal Utility District No. 4, the County shall proceed to bid and award the construction of the Project or, provided the cost is no higher than the bid amount received from the lowest responsible bidder, the County may construct the Project with the County's Road and Bridge Department. Prior to the County beginning construction, the County will notify the District of either (i) the selected Contractor for the District's review and approval, or (ii) if the County has elected to perform the construction using the County's Road and Bridge Department. In addition, prior to the start of construction the District must have obtained all necessary environmental permits, approvals from the City, if necessary, and all necessary easements and rights of way. The Project shall be installed, construction contracts shall be awarded and payment and performance bonds obtained, if applicable, all in accordance with all the requirements of the County. In addition to any other construction contract provisions, any construction contract for the Project shall include the contractor's or the County's one (1) year warranty of work performed under the contract. The District shall have the right, but not the obligation, to provide full-time construction observation of any of the Project.
- D. Maintenance of the Project. The District will be responsible for maintaining all road and drainage facilities for the Project, including the box culverts identified on **Exhibit "B"** until such time as a permanent roadway is constructed and dedicated to the County.
- E. Insurance. The County agrees to require any contractor who constructs any phase of the Project to maintain insurance policies, with the minimum limits of insurance coverage, consistent with Fort Bend County's general requirements for construction activities of comparable value to the particular phase of the Project that may be under construction, and consistent with the District's and the developer for the District's minimum insurance requirements. All insurance policies carried by such contractors, except Worker's Compensation insurance, shall name the District, the owner of the real property on and adjacent to the proposed roadway ("Property Owner") as additional insureds (with respect to liability arising out of work performed by the contractors or subcontractors, as applicable) and shall contain a waiver of subrogation in favor of the District and the Property Owner.
- F. Emergency Personnel. The Parties agree that the purpose of the Project is to provide access over and across the Development for Emergency Access, particularly for those emergency personnel employed by the City. As part of the Project, the County will install fences and gates as necessary to limit access to and across the Development until such time as a permanent roadway is constructed and dedicated to the County. The Parties agree to work with any necessary personnel, including those City personnel that may require Emergency Access across the Project.

**III.**  
**FINANCING OF THE PROJECT**

- A. County Obligation. The County will pay the County Project Costs as defined herein to be reimbursed by the District as described in Section B below. County Project Costs include the actual costs incurred for construction of the Project as itemized on **Exhibit "A"** attached hereto (including engineering, staking, testing, fencing, rehabilitation, clearing, and construction of the gate structures, culverts, and gravel road), the total of which is estimated to be \$1,884,618. If the County issues bonds for the construction of the Project, all interest costs incurred by the County (calculated as described in Section B below) will also be included as a County Project Cost.
- B. District Obligation: Reimbursement to County. The District agrees to reimburse the County for the County Project Costs by the issuance of District road bonds as authorized by the Act and pursuant to this Section. The District agrees to include in its first bond issue or issues the County Project Costs, plus interest at the rate of interest of the District's bonds; however in the event the County must borrow to pay its County Project Costs, the District will reimburse the County its interest costs at the interest rate of the County's bonds. The District will comply with all regulatory requirements and will submit application to issue its road bonds at the earliest possible time when deemed economically feasible by the District's financial advisor, but in no event later than August 1, 2022. The County agrees to provide to the District any information or certifications required by regulatory authorities in order for the District to issue its road bonds and comply with its reimbursement obligation under this Agreement.
- C. Accounting. Upon completion of the Project, but no later than ninety (90) days after, the County will furnish the District with a full accounting of the funds expended on the Project and a set of record drawings showing the Project as constructed. The District's bookkeeper or auditor may review the County's records regarding this Project at any time by providing at least twenty-four (24) hours written notice to the County.

**IV.**  
**LIABILITY**

The District and County are entitled to the immunities and defenses of the Texas Tort Claims Act.

**V.**  
**ASSIGNMENT**

No party hereto shall make, in whole or in part, any assignment of this Agreement or any obligation hereunder without the prior written consent of the other party.

**VI.**  
**THIRD PARTY BENEFICIARIES**

The parties do not intend that any specific third party obtain a right by virtue of the execution or performance of this Agreement.

**VI.**  
**DEFAULT**

The breach of any representation, warranty, condition or covenants to performance under this Agreement or the failure to comply with the terms of this Agreement by any Party hereto shall constitute a default.

If a default occurs, the non-defaulting party must notify, or cause notification to be sent to the defaulting party, which defaulting party shall have sixty (60) days to cure any defect complained of. If the defaulting party commences best efforts to cure the defect complained of, the other party may, but is not obligated to, extend the sixty (60) day cure period. If the default is a failure to timely deliver notice, documents, or information, the prompt delivery of the notice, documents, or information will be a cure of the default.

Should the party receiving the notice fail to correct the default within 60 days of receipt of the notice, the party giving notice of default may exercise all available remedies at law and in equity, including an action under the Uniform Declaratory Judgment Act, specific performance, mandamus, and injunctive relief.

**VII.**  
**NOTICES**

All notices and communications under this Agreement shall be mailed by certified mail, return receipt request, or delivered to the following addresses:

If to Fort Bend County:

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

If to the District:

Sienna Plantation Municipal Utility District No. 5  
c/o Allen Boone Humphries Robinson LLP  
3200 Southwest Freeway, Suite 2600  
Houston, Texas 77027  
Attn: Stephen M. Robinson

**VIII.**  
**TERM.**

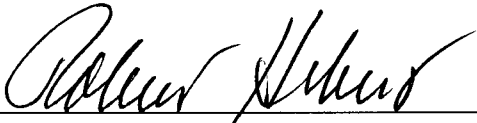
The term of this Agreement will be August 1, 2022 or until the County is reimbursed its County Project Costs in full, whichever is earlier.

**IX.**  
**ENTIRE AGREEMENT**

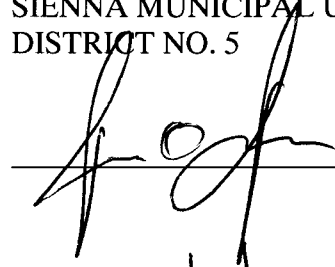
This Agreement contains the entire agreement between the parties relating to the rights granted and the obligations assumed. Any modifications concerning this instrument shall be of no force or effect, unless a subsequent modification in writing is signed by all parties hereto.

FORT BEND COUNTY, TEXAS

SIENNA MUNICIPAL UTILITY  
DISTRICT NO. 5



Robert Hebert, Fort Bend County Judge



Date: 9/14/2012

Date: 10-2-2012

ATTEST:



Dianne Wilson, Fort Bend County Clerk

ATTEST:

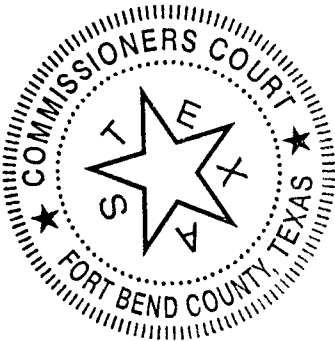
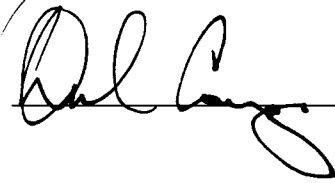


EXHIBIT A

Sienna South Emergency Access Road Cost Estimates

01/26/12

MSR

*Construct Portions of Sienna Parkway to cross Oyster Creek*

No.	Pavement Items	Unit	Unit Price	Quantity	Total
1	New 20' wide 5" Crushed Stone w/ 6" lime stabilized subgrade access road (435 LF)	SY	\$40.00	957	\$38,666.67
2	New 20' wide 5" Crushed Stone w/ 6" lime stabilized subgrade access road (3450 LF)	SY	\$40.00	7,589	\$307,555.56
3	Right clearing of for roadway construction (NW Blvd Connector)	AC	\$5,000.00	0.30	\$1,487.93
4	Right clearing of for roadway construction (SP Section)	AC	\$5,000.00	2.38	\$11,914.60
5	Geotechnical Testing for Roadway Analysis	LS	\$12,000.00	1.00	\$12,000.00
6	Crossing # 1 - 10' x 8' RCB for future Sienna Parkway Crossing	LF	\$425.00	574	\$243,950.00
7	Crossing # 2 - 6' x 6' RCB for future Sienna Parkway Crossing	LF	\$225.00	350	\$78,750.00
8	Crossing # 3 - 8' x 5' RCB for future Sienna Parkway Crossing	LF	\$245.00	174	\$42,690.00
9	Crossing # 4 - 12' x 6' RCB for future Sienna Parkway Crossing	LF	\$415.00	1,275	\$529,125.00
10	Rehabilitation of existing gravel road	LF	\$12.00	8,500	\$102,000.00
11	Rehabilitation of existing gravel road under future pavement	LF	\$12.00	4,100	\$49,200.00
12	Wetland Clearing of Right-Of-Way for culvert construction	AC	\$10,000.00	0.40	\$4,000.00
13	Fill of low areas as needed for positive drainage	CY	\$6.00	1,525.00	\$9,150.00
14	Re-routing of cattle fencing as needed	LF	\$3.50	5,000	\$17,500.00
15	Gate Structures to limit access	EA	\$2,000.00	2	\$4,000.00
16	10% Contingency	%	-	10%	\$145,193.98
				<b>SUBTOTAL</b>	<b>\$1,587,134</b>
	Engineering & Bidding (15%)				\$238,070
	Testing (3%)				\$47,914
	<b>TOTAL PROJECT COSTS</b>				<b>\$1,884,618</b>

Notes:

Costs do not include the costs for bonds or permits with Missouri City. Assumes the County does not need City permits or bonds



EXHIBIT C

**TEMPORARY ACCESS EASEMENT**

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

THAT **UST-Pru Sienna, L.P.** , a Delaware limited partnership ("Grantor"), for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) cash to Grantor in hand paid by **SIENNA PLANTATION MUNICIPAL UTILITY DISTRICT NO.5**, a political subdivision of the State of Texas ("Grantee"), the receipt and sufficiency of which is hereby acknowledged, has GRANTED, SOLD, AND CONVEYED and by these presents does GRANT, SELL AND CONVEY unto Grantee, its successors and assigns, a temporary easement and right-of-way (the "Easement") for limited vehicular and pedestrian ingress, egress, and regress over, across, along, and upon that certain tract of land located in Fort Bend County, Texas, more particularly described in **Exhibit A**, attached hereto and made a part hereof for all purposes (the "Easement Tract"). The Easement shall automatically terminate at such time as the then current owner of the Easement Tract records a plat in the Plat Records of Fort Bend County, Texas, dedicating the Easement Tract as a public right-of-way.

Grantee may construct, install, maintain, repair, relocate, replace, remove, and operate a roadway (the "Roadway") for fire and emergency services access and evacuation purposes, within the Easement Tract and shall have access across, along, under, over and upon the Easement Tract to engage in such activities as may be necessary, requisite, convenient, or appropriate in connection therewith. Grantee's rights shall include, without limitation, the right to clear and remove trees, growth, shrubbery, and other improvements from within the Easement Tract and the right to bring and operate such equipment thereupon as may be necessary or appropriate to effectuate the purpose for which the Easement is granted. The Grantee will, at all times after using the Roadway, restore the Roadway as nearly as possible to its condition prior to such use; provided, however, that in connection with such use, the Grantee, or its successors or assigns, shall not be required to replace trees, overhanging limbs, undergrowth, brush, shrubbery, improvements, and other natural and non-natural obstructions that interfere with such Grantee maintaining or operating the Roadway.

Grantor expressly reserves the right to the use and enjoyment of the surface of the Easement Tract for any and all purposes, except construction of houses, buildings and structures, provided that such use will not prevent Grantee from the exercise of all its rights under the Easement.

Grantor reserves all oil, gas, and other minerals in, on, or under the Easement Tract, but waives all right to use the surface of the Easement Tract for, and all rights of

ingress and egress for, the purpose of exploring, developing, mining, or drilling for the same; provided, however, that nothing herein shall prohibit or in any manner restrict the right of Grantor to extract oil, gas, or other minerals from and under the Easement Tract by directional drilling or other means that does not interfere with or disturb the surface of the Easement Tract or the use of the Easement Tract for the purposes set forth herein.

Grantor reserves the right, at any time and from time to time and at Grantor's expense, to relocate the Easement Tract provided such relocation does not interfere unreasonably with the use of the Roadway on the Easement Tract for fire and emergency services and evacuation purposes.

Grantee shall, to the extent permitted by law, indemnify and hold Grantor and any of Grantor's employees agents or representatives, harmless from any damage or liability resulting directly or indirectly from the Grantee's use of the Easement. Grantee shall further cause any third party user of the Easement, including without limitation any contractor providing construction or maintenance services on the Easement Tract, to indemnify and hold harmless Grantor and Grantor's employees, agents and representatives in accordance with the preceding sentence.

This conveyance is further made subject to any and all restrictions, covenants, easements, rights-of-way, encumbrances, and mineral or royalty reservations or interests affecting the Easement Tract and appearing of record in the Official Public Records of Fort Bend County, Texas, to the extent the same are in effect and validly enforceable against the Easement Tract (the "Permitted Encumbrances"); provided, however, to the extent that Grantor has the ability to enforce any of the Permitted Encumbrances, Grantor will not do so in a manner that would unreasonably prejudice or interfere with the exercise of the rights in the Easement and use of the Easement Tract for the purposes set forth herein.

Grantor represents and warrants that the execution and delivery of this instrument by the signatory hereto has been duly authorized by Grantor, and this instrument is valid and legally binding on Grantor.

TO HAVE AND TO HOLD the Easement, together with, all and singular, the rights and appurtenances thereto in any wise belonging, including all necessary rights to ingress, egress, and regress, unto Grantee, its successors and assigns, forever. Grantor does hereby bind itself and its successors and assigns to WARRANT AND FOREVER DEFEND, all and singular, the Easement and right-of-way and other rights described herein unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under Grantor, but not otherwise, subject only to the Permitted Encumbrances.

This instrument may be executed in multiple counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute one instrument.

*[Signature pages follow this page.]*

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_

UST-Pru Sienna, L.P.,  
a Delaware limited partnership

By: UST-Pru Sienna GP, LLC,  
a Delaware limited liability company  
its general partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE STATE OF TEXAS           §  
  §  
COUNTY OF \_\_\_\_\_       §

This instrument was acknowledged before me on \_\_\_\_\_, 2012, by  
\_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, a  
\_\_\_\_\_, \_\_\_\_\_, on behalf of said \_\_\_\_\_.

Notary Public, State of Texas  
My Commission Expires:

Printed/Typed Name



EXHIBIT C

**TEMPORARY ACCESS EASEMENT**

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

THAT **SIENNA PLANTATION MUNICIPAL UTILITY DISTRICT NO. 5**, a political subdivision of the State of Texas ("Grantor"), for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) cash to Grantor in hand paid by, the **CITY OF MISSOURI CITY, TEXAS**, a municipal corporation and political subdivision of the State of Texas, and **FORT BEND COUNTY, TEXAS**, a political subdivision of the State of Texas (each a "Grantee"), the receipt and sufficiency of which is hereby acknowledged, has GRANTED, SOLD, AND CONVEYED and by these presents does GRANT, SELL AND CONVEY unto Grantee, its successors and assigns, a temporary easement and right-of-way (the "Easement") for limited vehicular and pedestrian ingress, egress, and regress over, across, along, and upon that certain tract of land located in Fort Bend County, Texas, more particularly described in **Exhibit A**, attached hereto and made a part hereof for all purposes (the "Easement Tract"). The Easement shall automatically terminate at such time as the then current owner of the Easement Tract records a plat in the Plat Records of Fort Bend County, Texas, dedicating the Easement Tract as a public right-of-way.

Grantee may construct, install, maintain, repair, relocate, replace, remove, and operate a roadway (the "Roadway") for fire and emergency services access and evacuation purposes, within the Easement Tract and shall have access across, along, under, over and upon the Easement Tract to engage in such activities as may be necessary, requisite, convenient, or appropriate in connection therewith. Grantee's rights shall include, without limitation, the right to clear and remove trees, growth, shrubbery, and other improvements from within the Easement Tract and the right to bring and operate such equipment thereupon as may be necessary or appropriate to effectuate the purpose for which the Easement is granted. Each Grantee will, at all times after using the Roadway, restore the Roadway as nearly as possible to its condition prior to such use; provided, however, that in connection with such use, each Grantee, or its successors or assigns, shall not be required to replace trees, overhanging limbs, undergrowth, brush, shrubbery, improvements, and other natural and non-natural obstructions that interfere with such Grantee maintaining or operating the Roadway.

Grantor expressly reserves the right to the use and enjoyment of the surface of the Easement Tract for any and all purposes, except construction of houses, buildings and structures, provided that such use will not prevent Grantees from the exercise of all its rights under the Easement.

Grantor reserves all oil, gas, and other minerals in, on, or under the Easement Tract, but waives all right to use the surface of the Easement Tract for, and all rights of ingress and egress for, the purpose of exploring, developing, mining, or drilling for the same; provided, however, that nothing herein shall prohibit or in any manner restrict the right of Grantor to extract oil, gas, or other minerals from and under the Easement Tract by directional drilling or other means that does not interfere with or disturb the surface of the Easement Tract or the use of the Easement Tract for the purposes set forth herein.

Grantor reserves the right, at any time and from time to time and at Grantor's expense, to relocate the Easement Tract provided such relocation does not interfere unreasonably with the use of the Roadway on the Easement Tract for fire and emergency services and evacuation purposes.

Grantees shall, to the extent permitted by law, indemnify and hold Grantor and any of Grantor's employees agents or representatives, harmless from any damage or liability resulting directly or indirectly from the applicable Grantee's use of the Easement. Grantees shall further cause any third party user of the Easement, including without limitation any contractor providing construction or maintenance services on the Easement Tract, to indemnify and hold harmless Grantor and Grantor's employees, agents and representatives in accordance with the preceding sentence.

This conveyance is further made subject to any and all restrictions, covenants, easements, rights-of-way, encumbrances, and mineral or royalty reservations or interests affecting the Easement Tract and appearing of record in the Official Public Records of Fort Bend County, Texas, to the extent the same are in effect and validly enforceable against the Easement Tract (the "Permitted Encumbrances"); provided, however, to the extent that Grantor has the ability to enforce any of the Permitted Encumbrances, Grantor will not do so in a manner that would unreasonably prejudice or interfere with the exercise of the rights in the Easement and use of the Easement Tract for the purposes set forth herein.

Grantor represents and warrants that the execution and delivery of this instrument by the signatory hereto has been duly authorized by Grantor, and this instrument is valid and legally binding on Grantor.

TO HAVE AND TO HOLD the Easement, together with, all and singular, the rights and appurtenances thereto in any wise belonging, including all necessary rights to ingress, egress, and regress, unto Grantees, their successors and assigns, forever. Grantor does hereby bind itself and its successors and assigns to WARRANT AND FOREVER DEFEND, all and singular, the Easement and right-of-way and other rights described herein unto Grantees, their successors and assigns, against every person

whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under Grantor, but not otherwise, subject only to the Permitted Encumbrances.

This instrument may be executed in multiple counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute one instrument.

*[Signature pages follow this page.]*





