

STATE OF TEXAS           §  
                                      §  
 COUNTY OF FORTBEND   §

JOINT PARTICIPATION AGREEMENT FOR DESIGN AND  
CONSTRUCTION OF MASON ROAD EXTENSION  
MOBILITY PROJECT NO. 735

This Agreement, made and entered into by and between Fort Bend County, a body corporate and politic under the laws of the State of Texas, by and through its Commissioners Court, hereinafter called "County," and Fort Bend County Municipal Utility District No. 194, hereinafter referred to as "District," a body corporate and politics under the laws of the State of Texas.

**WHEREAS**, County and District have agreed to participate in the development and construction of the extension of Mason Road from Oyster Creek north to connection with the existing concrete boulevard roadway (hereinafter referred to as "the Project") by providing funding and administration for the design and construction of the Project and reimbursement of all costs; and

**WHEREAS**, County has determined in good faith that the expenditure of funds services a public purpose, in that it aides the flow of traffic for the residents and business-owners in the area of the Project; and

**WHEREAS**, County will fund and administer construction of the Project and District will reimburse County for the District's prorata share of all costs associated with the Project, and provide other items as required; and

**WHEREAS**, the attached Exhibit A map shows the segments of the Project that each party is responsible for: the County is responsible for segments A, F, G, and I and the District is responsible for segments B, C, D, E and H, and the percentages of each segment are shown on the attached Exhibit B;

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

**AGREEMENT**

**1.     Period of the Agreement**

This Agreement becomes effective on the date signed by County and shall remain in effect until the Project is completed and District has reimbursed County for the District's prorata share of all costs associated with the Project, or unless terminated as provided below.

## **2. Scope of Work**

The Scope of the Project shall be limited to the scope authorized by County and is shown on the map attached Exhibit "A", incorporated by reference as if set forth herein verbatim. The scope of the Project is for County to administer and construct the extension of Mason Road, to include reinforced concrete paving and storm sewer. The scope includes the design and construction of the Project and any other work necessary to complete the Project.

## **3. County's Responsibilities**

- A. County shall prepare, or cause to be prepared, the drawings and specifications for the Project utilizing professional services contracted by the County with the District's Engineer.
- B. County shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders, which may become necessary subsequent to the award of the construction contract.
- C. County shall use its approved contract letting and award procedures to let and award the construction contract. District's Engineer shall be allowed to review construction bids prior to County's selection.
- D. Prior to their execution, District's Engineer shall be given the opportunity to review contract change orders that will result in an increase in cost to District.
- E. County shall provide District's Engineer one (1) set of reproducible "As Built" or "Record Drawings" of the construction plans upon completion of the Project.

## **4. District's Responsibilities**

- A. Within sixty (60) days of execution of this Agreement, District will pay to the County \$514,000.00 for its initial share of the Project.
- B. Upon completion of the Project, the County shall issue to District a "Notification of Completion," acknowledging that the Project has been completed.
- C. In addition to the initial payment of \$514,000.00, the District shall pay the County for its percentage share of all Project costs for work performed in accordance with Exhibit "B", plus interest calculated at two percent (2%), which is the same effective rate paid by the County for the Project funds, upon the earlier of the following event:

- (1) Incrementally, based on the percentage of road frontage of each phase of development as described in Exhibit "B" attached hereto; or
  - (2) Three (3) years from the date of issuance of the "Notification of Completion.
- D. District shall dedicate to the County the additional property needed for the Project and provide detention capacity for the Project at no cost to the County. The County shall accept such conveyance within thirty (30) days of the date the District provides the County an executed deed.
- E. County will assume responsibility for the maintenance of the completed Project, except for the storm sewer.

**5. Environmental Assessment and Mitigation**

- A. County is responsible for the identification and assessment of any environmental problems associated with the Project governed by this Agreement.
- B. District is responsible for the cost of any environmental problems, mitigation and remediation of the property described above in Section 4.D., to the extent permitted by law, if such mitigation and remediation is required by law. District shall provide an acceptable Phase 1 Environmental Assessment covering the property described above in Section 4.D. at the time of dedication.

**6. Termination of this Agreement**

- A. County or District may terminate this Agreement, without cause, until the letting of construction for the Project, by written notice to the other party. In the event of termination by District, District shall reimburse County all costs incurred by County until termination. In the event of termination by County, County shall reimburse District of funds on hand, in excess of costs incurred on behalf of District at termination. District shall reimburse County all costs within thirty (30) days of termination of this Agreement.
- B. After the letting of construction for the Project, this Agreement is not subject to termination.

**7. Dispute Resolution**

- A. In the event of a dispute related to the breach of this Agreement that cannot be settled through negotiation, County and District agree to submit the dispute to mediation.

- B. In the event County or District desire to mediate any dispute, that party shall notify the other party 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.
- C. All expenses associated with mediation shall be shared 50 percent (50%) by each party.
- 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 Project, may be enacted through a mutually agreed upon, written amendment between County and District.

#### **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. Neither party 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:

**County:** Fort Bend County Engineering Department  
P.O. Box 1449  
1124 Blume Road  
Rosenberg, Texas 77471  
Attn: County Engineer

**District:** 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. Either party may change the above

address by sending written notice of the change to the other party. Either 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. Responsibilities of the Parties**

The parties agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

**13. Ownership of Documents**

Upon completion or termination of this Agreement, all documents prepared by County shall remain the property of County. All data prepared under this Agreement shall be made available to District without restriction or limitation on their further use.

**14. 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.

**15. Sole Agreement**

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

**16. Inspection of Books and Records**

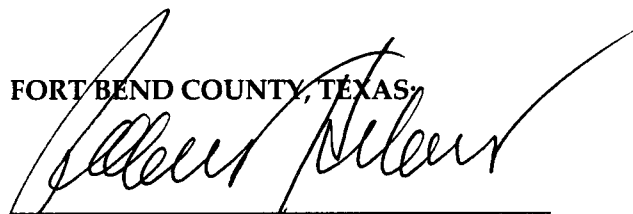
The parties to this Agreement shall maintain all books, documents, papers, accounting records and other documentation relating to costs incurred under this Agreement and shall make such materials available to County and District, or their duly authorized representatives for review and inspection at its 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, County and District 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.

**17. Signatory Warranty**

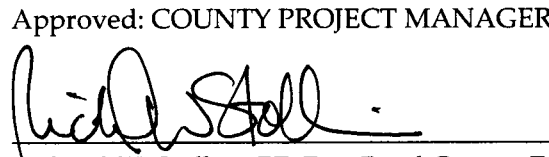
The signatories to this Agreement warrant that each has the authority to enter into this Agreement on behalf of the party represented.

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

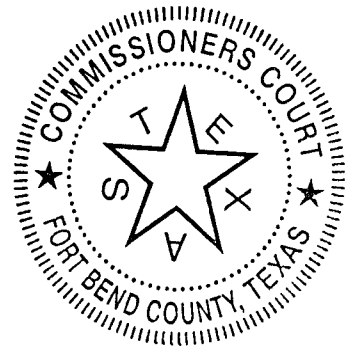
**FORT BEND COUNTY, TEXAS**  
  
\_\_\_\_\_  
Robert E. Hebert, Fort Bend County Judge

11-6-2012  
Date

Attest:  
  
\_\_\_\_\_  
Dianne Wilson, County Clerk

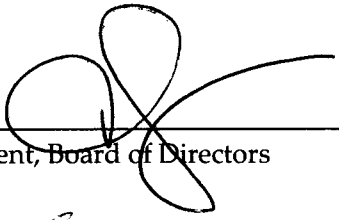
Approved: COUNTY PROJECT MANAGER  
  
\_\_\_\_\_  
Richard W. Stolleis, PE, Fort Bend County Engineer

11/6/12  
Date




DISTRICT:

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 194

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

November 2, 2012  
Date

Attest:   
\_\_\_\_\_  
Secretary, Board of Directors  
Vice President

(SEAL)



Auditor's Certificate

480,000.00 RAL

I hereby certify that funds are available in the amount of \$ ~~2,400,000.00~~ to accomplish and pay the obligation of Fort Bend County under the foregoing contract.



Robert Ed Sturdivant, County Auditor

APPENDIX

The appendix attached to this Agreement consists of:

- |             |   |
|-------------|---|
| Exhibit "A" | Project Location Map                            |
| Exhibit "B" | Estimated Project Costs and Estimated Proration |

# EXHIBIT A



Exhibit B

Project Prorations for Mason Road Project ( Through Long Meadow Farms )

Frontage Segment	Length	% Total Frontage
A	690'	8.7%
B	717'	9.0%
C	806'	10.2%
D	1084'	13.6%
E	712'	9.0%
F	304'	3.8%
G	262'	3.3%
H	3061'	38.5%
I	301'	3.9%
Total	7937'	100.0%