

THE STATE OF TEXAS           §  
   §  
   §  
 COUNTY OF FORT BEND       §

JOINT PARTICIPATION AGREEMENT FOR DESIGN AND  
CONSTRUCTION OF WEST BELLFORT ROAD EXTENSION  
MOBILITY PROJECT NO. 741 - PHASE C

This Agreement, is 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 99 GRAND MISSION, LLC (hereinafter referred to as "Owner".)

WHEREAS, in 2007 the citizens of the County voted to approve the issuance of general obligation bonds that allows the County to fund certain regional street and road improvements and associated drainage facilities that are funded in part by state or federal government; and

WHEREAS, the County and Owner agree that West Bellfort should be upgraded and expanded, including without limitation to four lanes (constructed as a boulevard section) along with associated road connections and improvements, median openings and left turn lane onto Harlem Road from West Bellfort (hereinafter referred to as the "Project") as shown on Exhibit A, attached hereto and incorporated herein for all purposes;

WHEREAS, the Owner is not prepared to develop its property within the area of the Project at this time, County desires to proceed with construction of the Project to enhance mobility within the area; and

WHEREAS, County and the Owner have agreed to participate in the development and construction of the Project, with the County constructing the Project on an advanced schedule, as determined by the County and, the Owner contributing 50% of all costs related to the design and construction of the Project (hereinafter referred to as "the Owner's Contribution"); and

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

1. Period of the Agreement

This Agreement becomes effective on the date this Agreement for the Project is signed by County and shall remain in effect until the work is completed and each party has paid its share of all costs associated with the Project.

2. Scope of Work

The Scope of the work shall be the design and construction of the Project as authorized by County, and as described in attached **Exhibits A and B**, incorporated by reference as if set forth herein verbatim.

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.
- 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 contract administration and monitoring 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. Owner's Engineer shall be allowed to review construction bids prior to County's selection.
- D. Owner's Engineer shall be provided copies of contract change orders that will result in an increase in cost to Owner prior to County approval to give Owner an opportunity to review and comment. However, approval of contract change orders shall remain at the sole discretion of the County and, Owner shall be required to pay its 50% share for changes related to the Project.
- E. County shall construct median openings and left turn lane onto Harlem Road from West Bellfort in accordance with Exhibit A. All median openings and the left turn lane will comply with approved County standards.

- F. County shall, upon request of Owner's Engineer, provide Owner's Engineer one (1) paper copy of "Record Drawings" of the construction plans upon completion of the Project.
- G. Upon completion of the Project, the County shall issue to Owner a "Notification of Completion," acknowledging that the Project has been completed.
- H. County will assume responsibility for the maintenance of the completed Project.

#### 4. Owner's Responsibilities

- A. Owner shall dedicate to the County any property necessary for the Project at no cost to the County, in addition to the any dedications previously made by Owner to the County for improvements to Harlem Road.
- B. After bids are received and within thirty (30) days of request by County, Owner shall pay to County its Owner Contribution.
- C. Owner agrees to construct future auxiliary turning lanes, not included in the Project that may be required by the County in accordance with an approved Traffic Impact Analysis for the future development of the Property.

#### 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. Owner is responsible for the cost of any environmental problems mitigation and remediation related to the Project, to the extent permitted by law, if such mitigation and remediation is required by law. Any costs associated with environmental problems mitigation and remediation related to the Project shall be considered an additional cost and not included in the estimated costs as described **Exhibit B.**

#### 6. 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 Owner without restriction or limitation on their further use related to the development of the adjoining property.

## 7. Default

In the event the Owner fails to make payment as required by this Agreement within ten (10) business days after written notice thereof from County, County shall have the following remedies in addition to County's other rights and remedies, at law or in equity:

(a) to refuse to accept the Project into its maintenance program; and/or

(b) to seek specific enforcement of this Agreement.

In the event of County's default under this Agreement, the Owner will be entitled to seek specific performance and/or any other remedy available to it at law or in equity.

## 8. Waiver

Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance.

## 9. Dispute Resolution and Venue

- A. In the event of a dispute related to the breach of this Agreement that cannot be settled through negotiation, County and Owner agree to submit the dispute to mediation.
- B. In the event County or Owner 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.
- E. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Fort Bend County, Texas.

F. In any legal proceeding following mediation brought to enforce the terms of this Agreement, the prevailing party may recover its reasonable and necessary attorneys' fees from the non-prevailing party as permitted by Section 271.153 of the Texas Local Government Code, as it exists or may be amended.

#### 10. 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 Owner.

#### 11. 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

**Owner:** 99 GRAND MISSION, LLC  
c/o Read King, Inc.  
5850 San Felipe, Suite 490  
Houston, Texas 77057  
Attn: C. Ewing King

- 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.

#### 12. 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. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

### 13. 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.

### 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. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original if properly executed.

### 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 Owner, 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 Owner 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.

18. Sovereign Immunity

The parties agree that neither party has waived its sovereign immunity by entering into and performing its obligations under this Agreement.

19. No Third Party Beneficiaries

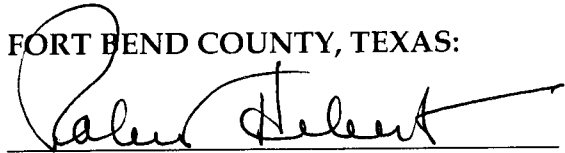
Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.

20. Incorporation of Recitals

The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of County and the Owner and/or its authorized representatives.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the date executed by County.

**FORT BEND COUNTY, TEXAS:**



Robert E. Hebert, Fort Bend County Judge

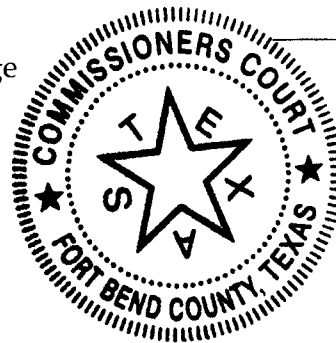
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Date

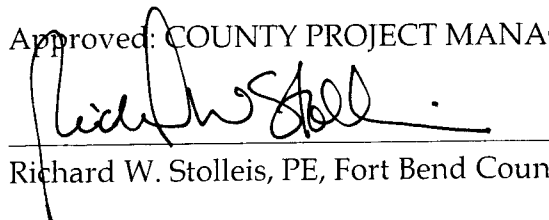
Attest:



Dianne Wilson, County Clerk



Approved: COUNTY PROJECT MANAGER




Richard W. Stolleis, PE, Fort Bend County Engineer

3/28/13

Date

**OWNER:**


99 GRAND MISSION, LLC

  
\_\_\_\_\_  
C. Ewing King

3/27/2013  
\_\_\_\_\_  
Date

**Auditor's Certificate**

I hereby certify that funds are available in the amount of \$ 1,344,920.00 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 description and Map

Exhibit "B"                      Estimated Project Costs





## **EXHIBIT 'B'**

### **Mobility Project #741 - Phase C**

1. Site Preparation and Earthwork	\$137,180.00
2. Drainage	\$61,900.00
3. Subgrade & Paving	\$1,015,480.00
4. Signing and Striping	\$9,910.00
5. Stormwater Pollution Prevention Plan	\$18,450.00
6. Extra Work Items	<u>\$99,000.00</u>

<b>Project Total</b>	<b>\$1,341,920.00</b>
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