

THE STATE OF TEXAS

COUNTY OF FORT BEND

### **COST SHARING AGREEMENT**

This COST SHARING AGREEMENT is made and entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and IDS Engineering Group, Inc., (hereinafter "Engineer"), a company authorized to conduct business in the State of Texas.

#### **RECITALS**

WHEREAS, the parties executed and accepted that certain Engineering Services Agreement for professional engineering and surveying services related to the Fort Bend County Park & Ride, (hereinafter the "Facility"), on May 6, 2008, and as amended on June 1, 2010 and March 8, 2011; and

WHEREAS, pursuant to the Agreement Engineer prepared final plans for the Facility; and

WHEREAS, the Facility, as substantially completed in March 2012, contains defects that must be repaired and reconstructed (hereinafter the "Project"); and

WHEREAS, Engineer will prepare amended plans to be utilized by Millis Development and Construction, Inc., (hereinafter "Contractor"), to reconstruct a portion of the Project; and

WHEREAS, Engineer has agreed to contribute a percentage of the costs of the Project.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

#### **AGREEMENT**

##### **Section I. Contribution**

1.1 Engineer shall prepare amended plans as needed to reconstruct a portion of the Project at no cost to County.

1.2 Engineer shall contribute thirty (30) percent of the cost for reconstruction of the Project to County for payment of the Project, not to exceed \$11,808.09 .

##### **Section II. Payment**

2.1 County shall submit invoices to Engineer on a monthly basis for Engineer's percentage of the cost of services performed by Contractor related to the Project.

2.2 Engineer shall submit payment to County for each invoice received from County within fifteen (15) days of receipt of the invoice.

### **Section III. Modifications and Waivers**

3.1 The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.

3.2 No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.

3.3 The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

3.4 This Agreement serves as a compromise and is given to avoid the expense and uncertainty of further negotiations and potential litigation with regards to the Project, and this Agreement is not to be construed under any circumstances as an admission of fault or liability on the part of any party to this Agreement, which liability and fault are hereby specifically and expressly denied by each of the parties to this Agreement. The parties also mutually agree that this Agreement shall not be admissible into evidence in any cause of action between the parties to the Agreement, whether it be in a judicial or administrative proceeding, unless a party's compliance with this Agreement is disputed.

### **Section IV. Inspection of Books and Records**

County will permit Engineer, or any duly authorized agent of Engineer, to inspect and examine the books and records of County for the purpose of verifying the amount of work performed on the Project.

### **Section V. Notices**

5.1 Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

5.2 Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County:	Fort Bend County
	Public Transportation Department
	Attn: Paulette Shelton
	12550 Emily Court, Suite 400
	Sugar Land, Texas 77478

With a copy to: Fort Bend County  
Attn: County Judge  
301 Jackson Street, Suite 719  
Richmond, Texas 77469

Engineer: IDS Engineering Group, Inc.  
13333 Northwest Freeway, Suite 300  
Houston, Texas 77040

5.3 A Notice is effective only if the party giving or making the Notice has complied with subsections 5.1 and 5.2 and if the addressee has received the Notice. A Notice is deemed received as follows:

5.3.1 If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

5.3.2 If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

#### **Section VI. Assignment and Delegation**

6.1 Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.

6.2 Neither party may delegate any performance under this Agreement.

6.3 Any purported assignment of rights or delegation of performance in violation of this Section is void.

#### **Section VII. Applicable Law**

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.

**Section VIII. Successors and Assigns**

County and Engineer bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

**Section IX. Third Party Beneficiaries**

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

**Section X. Severability**

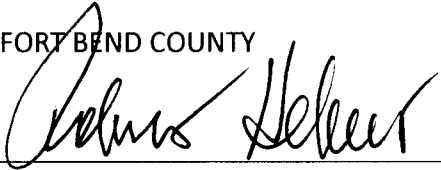
If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

**Section XI. Captions**

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the 28<sup>th</sup> day of May, 2013.

FORT BEND COUNTY

  
Robert E. Hebert, County Judge  
approved by commissioners court 5-28-13

IDS ENGINEERING GROUP, INC.

  
Authorized Agent- Signature

TIMOTHY E. BUSCHA  
Authorized Agent- Printed Name

ATTEST:

  
Dianne Wilson, County Clerk

Gr. Vile President  
Title

05-09-2013  
Date

