

STATE OF TEXAS §
 §
 COUNTY OF FORT BEND §

AGREEMENT REGARDING THE DESIGN AND CONSTRUCTION OF THE INTERSECTION
 OF F.M. 359 AND F.M. 1093, FULSHEAR TRACE, AND THE INTERIM ENTRY ROAD IN
 FORT BEND COUNTY

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 (the "County"), the City of Fulshear, a body corporate and politic under the laws of the State of Texas, by and through its City Council (the "City"), and Fulshear Municipal Utility District No. 1, a body corporate and politic under the laws of the State of Texas (the "District"), collectively the "Parties."

WHEREAS, the Parties wish to enter into this Agreement to clarify the rights, duties and obligations of the County, the City and the District with respect to the construction of certain improvements related to the construction of the intersection at F.M. 359 and F.M. 1093 (the "Intersection"), including the construction of the extension of Fulshear Trace and the construction of a road extending from the southern edge of F.M. 1093 at Syms Road into the District ("Interim Entry Road"), as shown on Exhibit A (collectively, the "Project");

WHEREAS, the County, the City and the District acknowledge that the County will fund and administer the development and construction of the Intersection, including the necessary "apron" for the future tie-in of Fulshear Trace to the Intersection;

WHEREAS, the County, the City and the District acknowledge that the District will proceed with the construction of Fulshear Trace within the District, thereby extending Fulshear Trace to the District's boundary, as shown on Exhibit A; the north end of Fulshear Trace will terminate at the District's boundary, as shown on Exhibit A, until such time that the Intersection and "apron" are constructed; and, upon completion of the Intersection and "apron," the District will fund and administer the construction of the extension of Fulshear Trace from the District's boundary, as shown on Exhibit A, to the Intersection;

WHEREAS, the County, the City and the District acknowledge that the District will proceed with the construction of the Interim Entry Road, as shown on Exhibit A, which will serve as the primary entrance into the District until such time as Fulshear Trace is extended to the Intersection, at which time the Interim Entry Road will serve as a secondary entrance into the District; and

WHEREAS, the Parties agree to assist each other and coordinate with the acquisition of right-of-way necessary to complete the Project.

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

AGREEMENT

1. Period of the Agreement

This Agreement becomes effective on the date finally signed by the Parties and shall remain in effect until the Intersection, including the “apron,” and the extension of Fulshear Trace to the Intersection have been completed.

2. Scope of Work

The Project consists of the construction of certain improvements related to the construction of the Intersection, including the construction of an “apron” – the limit of the curb returns for Fulshear Trace at the Intersection, the extension of Fulshear Trace to the District’s boundary, as shown on Exhibit A, and the construction of the Interim Entry Road. Upon the completion of the Intersection and the “apron,” the District will fund, administer and construct the extension of Fulshear Trace from the District’s boundary, as shown on Exhibit A, to the Intersection.

3. County Responsibilities

- A. The County shall prepare or cause to be prepared the drawings and specifications for the Intersection.
- B. The County shall fund and administer the development and construction of the Intersection.
- C. The County shall fund and cause an “apron” to be constructed to provide for the future tie-in of Fulshear Trace to the Intersection.
- D. The Parties acknowledge that the County may cause the Texas Department of Transportation (TxDOT) to assume any of its obligations.

4. City Responsibilities

To the extent not maintained by TxDOT, the City will assume responsibility for the maintenance of the Intersection, including, without limitation, the “apron” and Fulshear Trace.

5. District Responsibilities

- A. The District shall proceed with the construction of the extension of Fulshear Trace, with the north end of Fulshear Trace terminating at the District’s boundary, as shown on Exhibit A.
- B. The District shall proceed with the construction of the Interim Entry Road, which will serve as the primary entrance into the District until Fulshear Trace is extended to the Intersection.
- C. Upon the County’s completion of the Intersection, the District shall prepare the drawings and specifications for the extension of Fulshear Trace from the District’s

boundary, as shown on Exhibit A, to the Intersection, and shall proceed with construction of the extension of Fulshear Trace to the Intersection as soon as possible thereafter.

- D. Upon completion of the extension of Fulshear Trace to the Intersection, the District shall issue to the City and the County a "Notification of Completion." The connection of Fulshear Trace to the Intersection is subject to a roadway permit approved by the Parties and TxDOT.

6. Waiver

Waiver by any party of any breach of this Agreement, or the failure of any 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.

7. 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, City and District agree to submit the dispute to mediation.
- B. In the event County, City or District desire to mediate any dispute, that party shall notify the other parties 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 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 271.159 of the Texas Local Government Code, as it exists or may be amended.
- G. Any party may enforce this Agreement through specific performance.

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 Projects, may be enacted through a mutually agreed upon, written amendment between the County, the City, and the 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. None of the Parties 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
Roy L. Cordes, Jr.
Fort Bend County Attorney
309 S. 4th Street, Suite 728
Richmond, TX 77469

City: City of Fulshear
Grady Randle
City of Fulshear City Attorney
820 Gessner, Suite 1570
Houston, TX 77024

District: Fulshear Municipal Utility District No. 1
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. Any Party may change the above address by sending written notice of the change to the other Parties. Any 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 none of parties are agents, servants, or employees of the other parties 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. 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.

14. 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.

15. Authority to Execute Agreement

The Governing Body of each Party has authorized its execution and the Agreement has been approved at a duly called and posted meeting.

16. 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, City and the District.

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

[EXECUTION PAGES FOLLOW]

FORT BEND COUNTY:

Grady Prestage

Grady Prestage, Commissioner, Precinct 2
Presiding Officer of Commissioners Court, August 6, 2013

QUEST.

Grainne Wilson

County Clerk

Approved:

Marcus D. Spencer

~~Roy L. Cordes, Jr., Fort Bend County Attorney~~

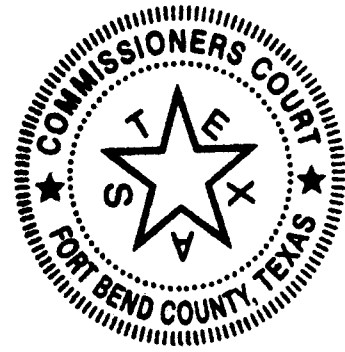
Marcus D. Spencer, Assistant County Attorney

8/6/13

Date

8/6/2013

Date



CITY OF FULSHEAR:

Mayor

Date

Attest:

Secretary

Approved:

Grady Randle, City of Fulshear City Attorney

Date

FULSHEAR MUNICIPAL UTILITY DISTRICT NO. 1

President, Board of Directors

Date

Attest:

Secretary, Board of Directors

(SEAL)

EXHIBIT A



Costello, Inc.
Engineering and Surveying



FULSHEAR INTERSECTION

JOB NO. BUSDEV

DATE: MARCH 2013

EXHIBIT: 1