

28C
CAD 2 #3

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

JOINT PARTICIPATION AGREEMENT FOR DESIGN AND CONSTRUCTION OF
A CERTAIN PORTION OF AN ACCESS ROAD IN
FORT BEND COUNTY ASSISTANCE DISTRICT NO. 2

This Agreement, made and entered into by and between Fort Bend County ("County"), Fort Bend County Assistance District No. 2 ("CAD 2"), both body corporates and politics under the laws of the State of Texas, and 99 Grand Mission, LLC ("Developer"), a Texas limited liability company, collectively, the "Parties".

WHEREAS, the Parties have agreed that the construction of an access road along the northern side of the Grand Parkway, west of Harlem Road, for a distance of approximately 2,600 feet (the "Project"), being more particularly described in Exhibit "A" attached hereto, would provide greater mobility within the area; and

WHEREAS, Developer would not be required to construct the Project as a requirement for platting and developing its 132 acre tract of real property adjacent to the Project ("Developer's Property"); and

WHEREAS, CAD 2 levies a one percent (1)% sales tax from businesses within its boundaries and receives such revenue from the State Comptroller.

WHEREAS, CAD 2 has determined that the expenditure of sales tax funds for the Project serves a public purpose and will fund the Project from its sales tax revenues through reimbursement; and

WHEREAS, Developer would like to proceed with development of the Developer's Property for commercial use and construct the Project in conjunction with said development;

NOW, THEREFORE, in consideration of the mutual covenants and agreements, and benefits to the parties hereto, CAD 2, the County, and MUD 194 agree as follows:

AGREEMENT

1. Period of the Agreement

This Agreement becomes effective on the date signed by all parties and shall remain in effect until the Developer has been reimbursed in full.

2. Scope of Work

Access road along the northern side of the Grand Parkway, west of Harlem Road, for a distance of approximately 2,600 feet, which is located within the boundaries of CAD 2. The access road will have a minimum of two (2) driveway connections. Any additional driveway connections along the access road shall be subject to a Traffic Impact Analysis prior to County approval.

3. Developer's Responsibilities

- A. Developer shall begin construction of the Project within three (3) years of execution of this Agreement.
- B. Developer shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of the Project in accordance with County requirements. 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. Developer shall provide notice to County when it bids the Project and upon receipt of bids, shall provide copies to County. County shall have the right to concur with Developer in the award of the contracts to the lowest responsible bidders. Developer shall use geotechnical and construction inspection firms approved by the County.
- D. After receipt of bids and concurrence by CAD 2, Developer will award the contracts and proceed with construction. During construction, all daily construction reports and lab reports must be submitted to the County in a timely manner and made available to County upon request. All change orders, supplemental agreements, amendments or additional work orders must be approved by the County in advance of acceptance and, such shall be deemed approved if not expressly rejected by the County within five (5) days of receipt by the County.
- E. Developer shall prepare, or cause to be prepared, the drawings and specifications for the Project meeting County Standards and approval of the County.
- F. Developer shall obtain approval of all construction by the County and, shall obtain approval of the Fort Bend Grand Parkway Toll Road Authority ("FBGPTRA") for all work done within its right of way, if any.

- G. Developer shall keep accurate accounting of all funds it spends related to the costs of the Project and will provide such accounting to CAD 2 monthly. Developer shall make monthly payments due to the engineer and construction contractor.
- H. Upon completion of the Project, Developer shall issue to County:
 - (i.) a "Notification of Completion," acknowledging that the Project has been completed and all other documents necessary for review and approval prior to inspection by the County under the General Acceptance of Improvements Procedures of the Fort Bend County Regulations of Subdivisions;
 - (ii.) all warranties and bonds covering the Project; and
 - (iii.) one (1) paper copy of "Record Drawings" of the construction plans.
- I. County will assume responsibility for the maintenance of the completed Project after expiration of a minimum one (1) year of maintenance by Developer and upon Developer successfully completing all requirements necessary for acceptance into the County Road Maintenance System under aforementioned Procedures for General Acceptance of Improvements.

4. Reimbursement by CAD 2

- A. Subject to Subsection 4. B. below, CAD 2 shall reimburse Developer in full for payments made to fund the costs to design and construct the Project.
- B. Reimbursement payments by CAD 2 shall be paid solely from an amount determined by the County to be up to fifty percent (50%) of the sales tax revenues generated and collected from businesses within Developer's Property. Reimbursement payments by CAD 2 shall not begin until such sales tax revenues have been generated and collected from businesses within Developer's Property. CAD 2's obligation to reimburse Developer shall be conditioned upon Developer's compliance with each of its responsibilities stated in Section 3. above.
- C. Developer shall be paid interest on its reimbursement equal to the most recent net effective interest rate on bonds sold by the County for road projects. Interest shall begin to accrue upon County's acceptance of Notification of Completion issued by Developer. Interest shall cease to accrue upon the expiration of three (3) years from the date of said acceptance.

- D. Notwithstanding Subsections 4. A. and 4. B. above, CAD 2 shall have the right to retain, at its sole option, up to fifty percent (50%) of sales tax revenue received from the State Comptroller for its use.

5. Environmental Assessment and Mitigation

Developer is responsible for the identification and assessment of any environmental problems associated with the Project governed by this Agreement, including mitigation and remediation, to the extent permitted by law, if such mitigation and remediation is required by law. Developer shall be entitled to reimbursement from CAD 2 sales tax revenues for said environmental costs, and Developer shall be paid in accordance with reimbursement provisions set forth in Section 4.

6. Termination of this Agreement

This Agreement is not subject to termination prior to reimbursement of the Project. Upon full reimbursement to the Developer for this Project, this Agreement shall be terminated. Notwithstanding the above, the County's ownership and maintenance obligations for the access road described herein, pursuant to Section 3. H. shall survive the termination of this Agreement.

7. Dispute Resolution

- A. In the event of a dispute related to the breach of this Agreement that cannot be settled through negotiation, the Parties agree to submit the dispute to mediation in Richmond, Texas.
- B. In the event any Party desires 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. The mediator shall be selected by mutual agreement between the Parties.
- C. All expenses associated with mediation shall be shared equally by each Party (1/3 each).
- 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 Projects, may be enacted through a mutually agreed upon, written amendment.

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:

CAD 2: Fort Bend County Engineering Department
P.O. Box 1449
Rosenberg, Texas 77471
Attn: County Engineer

COUNTY: Fort Bend County Engineering Department
P.O. Box 1449
Rosenberg, Texas 77471
Attn: County Engineer

Developer: 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. 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. 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.

13. Sole Agreement

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

14. 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 each other, 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, the Parties 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.

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.

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

[The remainder of this page intentionally left blank.]

FORT BEND COUNTY:

Grady Prestage

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

8/6/13
Date

Attest:

Dianne Wilson

Dianne Wilson, County Clerk



Approved:

Marcus D. Spencer

Marcus D. Spencer, Assistant County Attorney

8/6/2013
Date

FORT BEND COUNTY ASSISTANCE DISTRICT NO. 2:

Grady Prestage

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

8/6/13
Date

99 GRAND MISSION, LLC



C. Ewing King

Date

Auditor's Certificate

I hereby certify that funds are available in the amount of \$ 171,189.00 ^{as of 8/8/13} to accomplish and pay the obligation of Fort Bend County Assistance District No. 2 under the foregoing contract.



Robert Ed Sturdivant, County Auditor

APPENDIX

The appendix attached to this Agreement consists of:

Exhibit "A" Location of Project and descriptions

