

THE STATE OF TEXAS           §  
    §  
 COUNTY OF FORT BEND       §

**AGREEMENT REGARDING THE IMPROVEMENTS AND ACCEPTANCE OF  
ROADS WITHIN THE SHILOH LAKES ESTATES SUBDIVISION**

THIS AGREEMENT (the "Agreement") is entered into by and between Fort Bend County, Texas (hereinafter referred to as "the County"), a body politic acting herein by and through its Commissioners' Court, and the Shiloh Lakes Estates Homeowners Association, Inc. authorized to conduct business in the State of Texas (hereinafter referred to as the "HOA.")

WHEREAS, HOA requested an inspection of the roads within the Shiloh Lakes Estates, Sections One and Two, both subdivisions in Fort Bend County, Texas according to the map or plat thereof, recorded under Slide Nos. 1421B and 1516A respectively of the Plat Records of Fort Bend County, Texas and all amendments to or replats of said maps or plats, if any (hereinafter referred to as the "Subdivision") for the purpose of acceptance into the County Road Maintenance System; and

WHEREAS, upon inspection of the roads within the Subdivision, the County determined that the cost associated with, improving the roads within the Subdivision to meet County standards for acceptance into the County Road Maintenance System (hereinafter referred to as the "Improvements") would be a total amount of \$142,000.00; and

WHEREAS, HOA and the County agree this cost is a responsibility of the HOA and represents the cost of materials for the Improvements only; and

WHEREAS, the HOA has agreed to pay this cost for Improvements and County as agreed to perform the construction of the Improvements; and

WHEREAS, County has investigated and determined that it would be advantageous and beneficial to County and its citizens to construct the Improvements as provided herein.

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, County and the HOA agree as follows:

1. Description of Improvements. The Improvements consist of overlaying each road within the entire Shiloh Lakes Estates Subdivision.
2. Construction of the Improvements. In exchange for payment for costs of materials, County agrees to construct the Improvements in accordance with County construction standards to bring the roads to an appropriate level of acceptance into the County Road Maintenance System. Construction will commence no later than July 15, 2014 and be

completed no later than thirty (30) days, or as soon thereafter as weather conditions permit.

3. HOA's Payment for Improvement Costs. HOA shall make payments to County for the cost of materials associated with constructing the Improvements and, County shall in its sole discretion, be entitled to use, at any time, all or a portion of the payments in connection with the Improvements. HOA shall make such payments in a total amount of \$142,000 based on the following payment schedule:

|   |          |
|---|----------|
| Payment 1 due at the start of Road Construction | \$42,000 |
| Payment 2 due August 30, 2014                   | \$45,000 |
| Payment 3 due August 30, 2015                   | \$45,000 |
| Payment 4 due August 30, 2016                   | \$10,000 |

4. Acceptance into County Road Maintenance System. Upon the initial payment by HOA, County shall accept all roads within the Subdivision into the County Road Maintenance System. Further, County will provide continued maintenance, as with all other roads within said System, including maintenance for adjacent roadside ditches. Maintenance of the detention pond and all outfall structures will not be included in such acceptance and, shall remain the responsibility of the HOA.

5. Disclaimer/Waiver of Damages/Liability. (a) HOA acknowledges and agrees that County is not providing any guarantee, representation and/or warranty, and County hereby disclaims any guarantee, representation and/or warranty, of any work performed by County, or their agents, employees, representatives, contractors, subcontractors and/or designees, in connection with the construction of the Improvements, in whole or in part.

(b) HOA acknowledges and agrees that County shall in no way be liable for any damages, if any, which may be sustained by the HOA, resulting, in whole or in part, directly or indirectly, from County's failure to complete the construction of the Improvements by any certain date and/or as set forth in this Agreement.

(c) HOA hereby releases County, its officers, agents, representatives and employees, from and against, and waives any and all rights to, any and all claims and/or demands for damages (personal or property), injury (including death), or otherwise, it/they may have with regard to the construction and/or completion of the Improvements and/or any other act and/or omission relating, directly or indirectly, to the Improvements, in whole or in part, as provided in this Agreement, except to the extent any such claims arise due to, or damages are caused by, solely and directly, the negligence or willful misconduct of County or its authorized officers, agents, representatives or employees.

**6. PARTIES' ACKNOWLEDGEMENT OF COUNTY'S COMPLIANCE WITH FEDERAL AND STATE CONSTITUTIONS, STATUTES AND CASE LAW AND FEDERAL, STATE AND LOCAL ORDINANCES, RULES AND REGULATIONS/HOA'S WAIVER AND RELEASE OF CLAIMS FOR OBLIGATIONS IMPOSED BY THIS AGREEMENT.**

**(a) HOA ACKNOWLEDGES AND AGREES THAT THE PAYMENT MADE BY HOA TO COUNTY, IN WHOLE OR IN PART, DOES NOT CONSTITUTE A:**

- (I) TAKING UNDER THE TEXAS OR UNITED STATES CONSTITUTION;**
- (II) VIOLATION OF THE TEXAS TRANSPORTATION CODE, AS IT EXISTS OR MAY BE AMENDED**
- (III) NUISANCE; AND/OR**
- (IV) CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST COUNTY FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION.**

**(b) HOA RELEASES COUNTY FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED ON EXCESSIVE OR ILLEGAL EXACTIONS ARISING OUT OF OR RELATED TO THIS AGREEMENT.**

**(c) HOA WAIVES ANY CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST COUNTY FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION ARISING OUT OF OR RELATED TO THIS AGREEMENT.**

**(d) THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

7. Limitations of Agreement. The parties hereto acknowledge this Agreement is limited to the Improvements only. Further, this Agreement does not waive or limit any of the obligations of HOA to County under any other order whether now existing or in the future arising.

8. Default. In the event HOA fails to comply with any of the provisions of 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 file this instrument in the Real Property Records of Fort Bend County as a lien and/or encumbrance against HOA and/or the HOA's property; and/or
- (b) to immediately, without further notice to HOA, cease any and all construction of Improvements; and/or

- (c) to seek specific enforcement of this Agreement.

In the event of County's default under this Agreement, HOA will be entitled to seek specific performance and/or any other remedy available to them at law or in equity. Additionally, HOA may (at its option) terminate this Agreement if construction has not commenced by July 15, 2014.

9. Miscellaneous.

- (a) Notice. Any notice required to be sent under this Agreement must be in writing and may be served by depositing same in the United States Mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:

If to County, to:

Fort Bend County  
ATTN: Marc Grant  
County Road & Bridge Commissioner  
301 Jackson Street  
Richmond, Texas 77469

If to HOA, to:

Shiloh Lakes Estates Homeowners Association  
Ronnie L. Smith, President  
11803 Sendera Lane  
Richmond, Texas 77407

- (b) Assignment. This Agreement is not assignable by HOA without the prior written consent of County, which consent shall not be unreasonably withheld.
- (c) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, as allowed.
- (d) Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto.
- (e) Venue. 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) Consideration. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

(g) Counterparts. 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.

(h) Authority to Execute. The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

(i) Savings/Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(j) Representations. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

(k) Miscellaneous Drafting Provisions. 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.

(l) Sovereign Immunity. The parties agree that County has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

(m) 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.

(n) Attorneys' Fees. In any legal proceeding 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.


(o) 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 HOA and/or its authorized representatives.

(p) Indemnification. The parties agree that the Indemnity provisions set forth in Paragraph 6 herein are conspicuous, and the parties have read and understood the same.

(q) 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.

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:



Robert E. Hebert, County Judge

*Approved by Commissioners Court on 8/27/2013*

10-3-2013

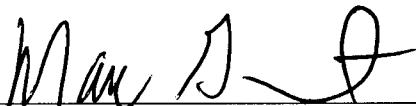
Date

Attest:



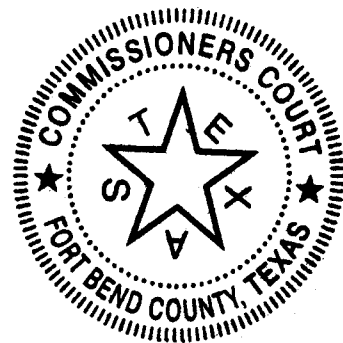
Dianne Wilson, County Clerk

Approved: COUNTY PROJECT MANAGER

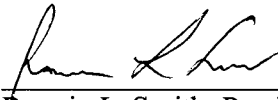


Marc Grant

Fort Bend County Road & Bridge Commissioner



SHILOH LAKES ESTATES HOME OWNERS ASSOCIATION

By:   
\_\_\_\_\_  
Ronnie L. Smith, President

9/13/2013  
Date