

27C

WHEREAS, the Parties wish to enter into an interlocal agreement pursuant to Chapter 791 of the Texas Government Code, to provide for the shared costs for the Project.

### AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, obligations, and benefits herein set forth, the Parties contract and agree as follows:

Section 1. Scope of the Project. The Parties agree that the scope of the Project described by this Agreement, includes the tearing out of the existing four foot sidewalk, which totals approximately 12,930 square feet (7,880 square feet to the East of Vicksburg Boulevard and 5,050 square feet to the West of Vicksburg Boulevard) and construction and/or installation of the following: (i) an eight foot wide asphalt trail approximately 0.91 miles in length running east from Kitty Hollow Park along the top of the drainage ditch, crossing Lake Shore Harbour Boulevard, crossing Vicksburg Boulevard, and terminating at Truesdale Drive in the Vicksburg Subdivision; (ii) two pedestrian bridges; (iii) pedestrian safety signs at street crossings; (iv) access control bollards; (v) trail rule signs; and (vi) a manual gate at the trail entry to Kitty Hollow Park (the "Improvements").

Section 2. Project Costs and Allocations. The total estimated cost of design, construction, engineering and other related costs (the "Project Costs") is \$503,617.50, as detailed in Exhibit B. The Parties agree to allocate the Project Costs such that the Districts, the County and the City each pay for the total Project Costs as follows:

- a. FB47 agrees to pay \$85,847.70 of the total Project Costs.
- b. FB48 agrees to \$85,847.70 of the total Project Costs.
- c. The County agrees to share in the Project Costs in-kind for trail construction by providing 2,344 equipment hours at \$35.00 per hour and up to 5,470 hours of labor at \$15.00, for a total expenditure of **\$164,049.60**.
- d. The City agrees to pay **\$167,872.50** of the total Project Costs. The City's total contribution to the project shall be no greater than **\$167,872.50**.

Section 3. Competitive Bid and Award of the Project.

a. Within ninety (90) days of the submission to City of all appropriate plans, FB48 shall advertise for competitive bids for the construction of the Improvements, excluding the costs associated with the County's in-kind participation described in Section 2 above, (together or in separate contracts) in accordance with state law and FB48 policy for FB48 purchases. Upon receipt of bids for the Improvements, FB48 will

notify FB47, the City and the County (the "Notice of Intent to Award") of the amount of the recommended bid (with a 10% contingency) and each Party's apportionment of the Improvement Costs, as determined in accordance with Section 2. If any Party desires to object to the award of the contract as a result of an increase in the bid by more than 10%, they must provide written notice to each other Party within fifteen (15) days of the date the Notice of Intent to Award is sent by FB48. Otherwise, the Party will be deemed to have approved the award of the contract to the lowest responsible bidder, in the FB48's judgment, which would be most advantageous to the Parties and would result in the best and most economical completion of the Improvements.

b. If any Party objects to the award of the contract, the objecting Party will still be responsible for their share of the Project Costs shown in Section 2 of this Agreement, but will not be required to pay any amount over their share of the Project Cost. Any non-objecting Party or Parties may agree to cover the amount over the objecting Party's share of the Project Costs.

c. If there are no objections to the award of the contract, FB47 and the City will deposit their share of the Project Costs, shown in Exhibit B, with FB48 within thirty (30) days of the date the Notice of Intent to Award is sent to each Party.

d. Upon receipt of all funds from the Parties, FB48 will award the construction contract to the qualified bidder (the "Construction Contract"), which may be subject to change orders that increase, decrease, or otherwise alter the Project Costs under such Construction Contract. If FB48 constructs the Improvements in multiple contracts, the provisions of this Agreement shall apply to each such construction contract.

e. The Construction Contract for the Improvements shall be advertised and awarded in FB48's name and FB48 shall be the owner of the construction work for the Improvements for all purposes.

f. In the event FB48 ultimately does not award the Construction Contract, FB48 will return any payments made hereunder.

#### Section 4. Construction Contract.

a. After award of the Construction Contract, FB48 shall administer the Construction Contract for the benefit of the Parties. FB48, through its engineers or authorized representatives, shall provide on-site inspection of the construction of the Improvements in accordance with the Construction Contract.

b. After award of the Construction Contract, the County will be responsible for coordinating with the contractor to perform its responsibilities under this Agreement.

c. Change orders resulting in an increase to the Project Cost price submitted under the Construction Contract and recommended by FB48 shall be subject to administrative review and approval by the FB47, the City and the County, or their respective authorized agents, which review and approvals will not be unreasonably withheld, conditioned or delayed. If any Party desires to object to a proposed change order, such Party must provide written notice to each other Party within fifteen (15) days of the date the proposed change order is sent to the Party. Otherwise, the Party will be deemed to have approved the change order.

d. FB47, the City and the County, through their authorized representatives, may observe all construction for conformity with good engineering standards and in accordance with applicable rules, regulations and requirements of all governmental entities having jurisdiction over the Project, if any, and shall immediately request changes or corrections to work performed under the Construction Contract if any Party finds such changes or corrections to be necessary upon such inspection. Any change orders for work requested by FB47, the City or the County shall be subject to review and approval by FB48, which shall not be unreasonably withheld, conditioned or delayed if the work being performed is clearly shown to be out of compliance with the applicable standards.

e. The Parties agree that FB48 and the City do not warrant the quality of any engineering or construction work done by any third party in connection with, or materials provided for, the Improvements, nor for compliance of the same with the City or County standards and other governmental codes and regulations applicable thereto, nor shall FB48 be deemed to be responsible for any such compliance.

f. FB48 shall have the right to terminate the Construction Contract and to enforce its remedies thereunder, as determined by FB48 to be necessary after consultation with other Parties. In the event of any such termination, FB48 shall have the right to complete and/or cause the completion of the Improvements themselves and/or through such other contractor(s) as FB48 determines to be appropriate and as are approved by FB47, the City and the County; provided that all work done in connection with such completion shall be in compliance with good engineering standards and in accordance with applicable rules, regulations and requirements of all governmental entities having jurisdiction over the Project, if any.

Section 5. Ownership and Maintenance of Project. Upon completion of the Project, the Parties will own and maintain the Improvements to the Project, as shown on Exhibit C and as follows:

- a. The County will own and maintain the Improvements in Kitty Hollow Park, and the County will maintain and repair the asphalt along the entire Project as needed;

- b. The City will maintain the Improvements where the Improvements cross Lake Shore Harbour Boulevard and Vicksburg Boulevard ; and
- c. FB47 and FB48 will each own and maintain the Improvements outside of Kitty Hollow Park.

Section 6. Final Accounting, Cost Overrun Collection, Cost Refunds.

a. Within ninety (90) days of completion of the Project, FB48 will submit to FB47, the City, and the County a final accounting of each Party's allocated costs. FB47, the City, and the County may review FB48's records regarding this Project at any time by providing at least twenty-four (24) hours written notice to FB48.

b. If the final accounting shows that the amount spent on the Project exceeds the Project Costs, then FB47 shall pay to FB48 one-half (1/2) of the amount in excess of the estimated Project Costs within forty-five (45) days of the submission of the final accounting. Because the City's contribution is capped and the County's contribution is of in-kind services only, neither the City nor the County shall be responsible for any amount in excess of the Project Costs.

c. If the final accounting shows that the amounts owed by FB47 or the City for their applicable Project Costs are less than the amounts previously remitted to FB48, FB48 shall refund one-fourth (1/4) of any overage to FB47 and one-half (1/2) of any overage to the City within forty-five (45) days of the submission of the final accounting. Because the County is providing in-kind services only, the County shall not be entitled to any refund of the overages.

Section 7. Notices. All notices, requests, demands and other communications under this Agreement shall be given by electronic mail and either (i) overnight courier or (ii) hand delivery addressed as follows:

If to the FB47: Fort Bend County Municipal Utility District No. 47  
c/o Johnson Radcliffe Petrov & Bobbitt PLLC  
1001 McKinney, Suite 1000  
Houston, TX 77002-6424  
Attn: Jonathan D. Polley  
[jpolley@jrpblaw.com](mailto:jpolley@jrpblaw.com)  
Tel: (713) 237-1221  
Fax: (713) 237-1313

If to the FB48: Fort Bend County Municipal Utility District No. 48  
c/o Muller Law Group PLLC  
16555 Southwest Freeway, Suite 200  
Sugar Land, Texas 77479  
Attn: Richard L. Muller, Jr.  
[richard@mullerlawgroup.com](mailto:richard@mullerlawgroup.com)  
Tel: (281) 500-6050  
Fax: (281) 277-8207

With a copy to:  
Jones & Carter, Inc.  
6335 Gulfport, Suite 200  
Suite 450, North Building  
Houston, Texas 77081  
Attn: Terry Reeves  
[treeves@jonescarter.com](mailto:treeves@jonescarter.com)  
Tel: (713) 777-5337  
Fax: (713) 777-5976

If to the City: City of Missouri City  
1522 Texas Parkway  
Missouri City, Texas 77489  
Attn: Edward Broussard  
Tel: (281) 403-8692  
Fax: (281) 403-8699  
[ebroussard@missouricitytx.gov](mailto:ebroussard@missouricitytx.gov)

If to the County: Fort Bend County, Precinct 2  
303 Texas Parkway, Suite 213  
Missouri City, Texas 77489  
Sugar Land, Texas 77478  
Attn: The Honorable Grady Prestage  
[Grady.Prestage@co.fort-bend.tx.us](mailto:Grady.Prestage@co.fort-bend.tx.us)  
Tel: (281) 403-8000  
Fax: (281) 403-8009

With a copy to:  
Fort Bend County Judge  
301 Jackson Street, Suite 719  
Richmond, Texas 77469  
Attn: The Honorable Robert Hebert  
[hebertb@co.fort-bend.tx.us](mailto:hebertb@co.fort-bend.tx.us)  
Tel: (281) 341-8608  
Fax: (281) 341-8609

Section 8. Term and Termination. The term of this Agreement will be from the date of execution by the last party hereto until midnight on December 30, 2014, or until the Project is completed, whichever is sooner. However, the maintenance obligations provided for in Section 5 of this Agreement, shall survive the term of this Agreement.

Section 9. Default and Remedies.

a. FB47 and the City agree that its failure to pay FB48 their share of the Project Costs, shown in Section 2 above, when due as provided in Section 3 above is an event of default (a "Payment Default") and FB48 shall be entitled to any and all of the remedies available in this Section or otherwise at law or equity.

b. A Party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if such Party fails to materially perform, observe or comply with any of its covenants, agreements or obligations hereunder or breaches or violates any of its representations contained in this Agreement.

c. Before any failure of any Party to perform its obligations under this Agreement, except a Payment Default, shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify the Party alleged to have failed to perform of the alleged failure, in writing, and shall demand performance. No breach of this Agreement, except a Payment Default, may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within 30 days of the receipt of such notice.

d. Upon a breach of this Agreement, the non-defaulting party, in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained, may be awarded damages for failure of performance, or both. Except as otherwise set forth herein, no action taken by a Party pursuant to the provisions of this Section or pursuant to the provisions of any other Section of this Agreement shall be deemed to constitute an election of remedies; and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any Party

at law or in equity. Each of the parties shall have the affirmative obligation to mitigate its damages in the event of a default by the other Party.

e. Notwithstanding anything in this Agreement which is or may appear to be to the contrary, if the performance of any covenant or obligation to be performed hereunder by any Party (except for a Payment Default) is delayed as a result of circumstances which are beyond the reasonable control of such party (which circumstances may include, without limitation, pending or threatened litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions [such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures, or tornadoes] labor action, strikes or similar acts) the time for such performance shall be extended by the amount of time of such delay ("Force Majeure").

f. In addition to any other right or remedy available to the Parties pursuant to this Agreement, in the event of a default or a breach by any Party under this Agreement which continues for thirty (30) days after written notice to the Party alleged to have defaulted or breached and the failure of the Party alleged to have defaulted or breached to cure or diligently proceed to cure such breach to the complaining Party's reasonable satisfaction, the complaining Party shall have the right (but not the obligation), in its sole discretion, to exercise its rights with regards to mandamus, specific performance or mandatory or permanent injunction to require the Party alleged to have defaulted or breached to perform.

Section 10. Entire Agreement; Modification. This Agreement constitutes the entire agreement between the Parties concerning the Improvements. There have been and are no agreements, covenants, representations, or warranties between the Parties other than those expressly stated or provided for herein. No modification hereof or subsequent agreement relative to the subject matter hereof shall be binding on any Party unless reduced to writing and signed by the Parties.

Section 11. Merger. This Agreement is the entire agreement among the Parties with respect to the subject matter hereof and, as to such matters, this Agreement sets forth all the promises and agreements among the Parties and supersedes all prior and contemporaneous agreements, understandings, inducements, or conditions, expressed or implied, oral or written.

Section 12. Parties in Interest. This Agreement shall be for the sole and exclusive benefit of the Districts, the City, and the County and shall not be construed to confer any benefit or right upon any other party, including particularly any resident of the Districts, the City, or the County.



Section 13. Severability. The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application thereof to any other person or circumstance shall ever be held by any court of competent jurisdiction to contravene or be invalid under the constitution or laws of the State of Texas for any reason, that contravention or invalidity shall not invalidate the entire Agreement. Instead, this Agreement shall be construed as if it did not contain the particular provision or provisions held to be invalid, the rights and obligations of the Parties shall be enforced accordingly, and this Agreement shall remain in full force and effect, as construed. The remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to the other parties or circumstances shall not be affected thereby.

Section 14. Successors and Assigns. This Agreement shall apply to and be binding upon the Parties hereto and their respective officers, directors, successors, and assigns. This Agreement and any of the rights obtained hereunder are not assignable by any Party hereto without the express written consent of the other Parties, which consent shall not be unreasonably withheld, conditioned or delayed.

Section 15. Authorization. Each Party represents that (i) execution and delivery of this Agreement by it has been duly authorized by its governing body or other persons from whom such Party is legally bound to obtain authorization; (ii) that the consummation of the contemplated transactions will not result in a breach or violation of, or a default under, any agreement by which it or any of its properties is bound, or by any statute, rule, regulation, order, or other law to which it is subject; and (iii) this Agreement is a binding and enforceable agreement on its part.

Section 16. Applicable Law. This Agreement shall be governed and construed in accordance with the laws of the State of Texas. Venue shall be in Fort Bend County.

Section 17. Effective Date. This Agreement will be effective as of the date of the execution by the last Party to execute this Agreement.

**Exhibit List:**

Exhibit A - Map of the Project

Exhibit B - Project Costs and Allocation

Exhibit C - Improvement Maintenance Map

IN WITNESS WHEREOF, the Parties have executed this Agreement in multiple counterparts, each of which shall be deemed to be an original.

FORT BEND COUNTY MUNICIPAL UTILITY  
DISTRICT NO. 47

By: Jerome Cozan  
President, Board of Directors  
Date: April 16, 2014

ATTEST:

[Signature]  
Secretary, Board of Directors



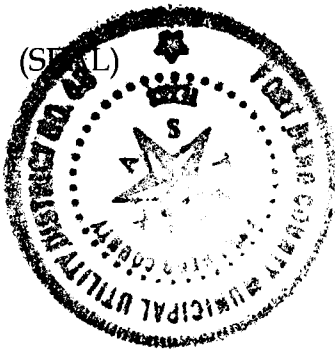
FORT BEND COUNTY MUNICIPAL UTILITY  
DISTRICT NO. 48

By: Victor J. Ben  
President, Board of Directors

Date: April 10, 2014

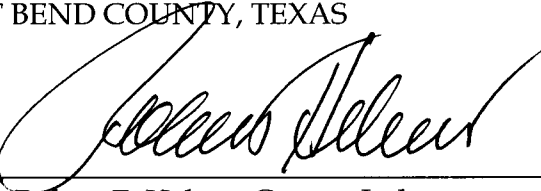
ATTEST:

Jane M. D.  
Secretary, Board of Directors



FORT BEND COUNTY, TEXAS

By: \_\_\_\_\_



Robert E. Hebert, County Judge

Date: \_\_\_\_\_

4-22-2014

ATTEST:

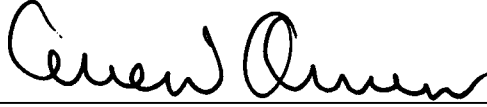


Dianne Wilson, County Clerk

(SEAL)



CITY OF MISSOURI CITY, TEXAS

By:   
Allen Owen, Mayor

Date: 7.21.2014

ATTEST:

  
Maria Gonzalez, City Secretary

(SEAL)



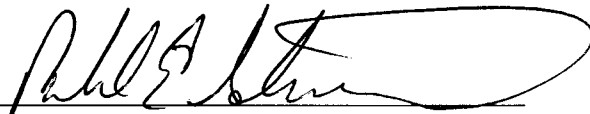
REVIEWED:



Marc Grant  
Fort Bend County Road Commissioner

AUDITOR'S CERTIFICATE

I hereby certify that funds are available from current revenues legally available in the amount of **\$164,049.60** to accomplish and pay the obligation of Fort Bends County under this Project Agreement.



Ed Sturdivant, Fort Bend County Auditor







**Fort Bend County M.U.D. No. 48**  
**Trailway Cost Estimate**

11/19/2013

	QTY	UNIT	UNIT COST	EXTENSION
<b><u>West of Vicksburg</u></b>				
Demo Existing 4' Walk West of Vicksburg	5,050	SF	\$ 1.60	\$ 8,080.00
New 8' Asphalt Regional Park Walk (to be Provided by Fort Bend Co.)	22,480	SF	\$ 3.90	\$ 87,672.00
Pedestrian Safety signs at Street Crossings (Flashing Lights)	3	EA	\$ 8,000.00	\$ 24,000.00
Pedestrian Bridge over Bayou	1	LS	\$ 125,000.00	\$ 125,000.00
Pedestrian Bridge over Concrete Drainage Ditch	1	LS	\$ 12,500.00	\$ 12,500.00
General Grading and Turf Repair	1	LS	\$ 12,000.00	\$ 12,000.00
Trail Rules Sign	4	EA	\$ 3,500.00	\$ 14,000.00
Fort Bend County Parks Rules Sign	1	EA	\$ 3,500.00	\$ 3,500.00
Manual 'Gate' at Trail Entry to Fort Bend County Park	1	EA	\$ 1,200.00	\$ 1,200.00
Crosswalk Signs at Trail	6	EA	\$ 125.00	\$ 750.00
Crosswalk Striping	3	EA	\$ 1,200.00	\$ 3,600.00
Curb Ramps	7	EA	\$ 1,500.00	\$ 10,500.00
Access Control Bollards	6	EA	\$ 650.00	\$ 3,900.00
Electrical Service	1	LS	\$ 5,000.00	\$ 5,000.00
	SUBTOTAL			\$311,702.00
	10% CONTINGENCY			\$31,170.20
	<b>TOTAL</b>			<b>\$342,872.20</b>

**East of Vicksburg**

Demo Existing 4' Walk East of Vicksburg	7,880	SF	\$ 1.60	\$ 12,608.00
New 8' Asphalt Regional Park Walk (to be Provided by Fort Bend Co.)	15,760	SF	\$ 3.90	\$ 61,464.00
General Grading and Turf Repair	1	LS	\$ 8,000.00	\$ 8,000.00
Trail Rules Sign	1	EA	\$ 3,500.00	\$ 3,500.00
Pedestrian Safety Signs at Street Crossing	1	EA	\$ 8,000.00	\$ 8,000.00
Crosswalk Signs at Trail	2	EA	\$ 125.00	\$ 250.00
Crosswalk Striping	1	EA	\$ 1,200.00	\$ 1,200.00
Curb Ramps	2	EA	\$ 1,500.00	\$ 3,000.00
Access Control Bollards	2	EA	\$ 650.00	\$ 1,300.00
Electrical Service	1	LS	\$ 5,000.00	\$ 5,000.00
	SUBTOTAL			\$104,322.00
	10% CONTINGENCY			\$10,432.20
	<b>TOTAL</b>			<b>\$114,754.20</b>

Total East and West of Vicksburg  
Landscape Architect's Fee

\$457,626.40  
\$45,991.10

GRAND TOTAL COST OF SHARED ITEMS

\$503,617.50

**COST SHARING SUMMARY**

Fort Bend County to provide in-kind trail construction

Missouri City to donate 1/3 of total

Fort Bend MUD 47 & 48 net share

\$164,049.60  
\$167,872.50  
\$171,695.40

**TOTAL**

**\$503,617.50**

**Fort Bend M.U.D. 48 LANDSCAPE (Not included in Cost Sharing Calculation)**

**TOTAL**

Landscape Architect's Fee

\$39,589.00  
\$5,458.90

GRAND TOTAL NON-SHARED FB M.U.D. 48 COST

\$45,047.90

**Fort Bend M.U.D. 47 LANDSCAPE (Not included in Cost Sharing Calculation)**

**TOTAL**

Landscape Architect's Fee

\$28,374.50  
\$4,500.00

GRAND TOTAL NON-SHARED FB M.U.D. 47 COST

\$32,874.50



