

# **INFRASTRUCTURE AGREEMENT**

**Between**

## **BRAZOS COUNTY and CITY OF COLLEGE STATION**

This Agreement is entered into between Brazos County, Texas, a political subdivision of the state of Texas ("County") and the City of College Station, Texas, a Texas home-rule municipality and political subdivision of the state of Texas ("City").

Whereas, the County and the City are authorized to enter into this Agreement pursuant to the Interlocal Cooperation Act codified in Chapter 791 Texas Government Code and other applicable law; and

Whereas, the County is authorized under Chapter 381 Texas Local Government Code to create certain economic development programs for public purposes, including the promotion of local economic development and the stimulation of business and commercial activity within the County including portions located within the City, and including providing mechanisms for funding for much-needed public infrastructure; and

Whereas, the City is authorized under Chapter 380 Texas Local Government Code to create certain economic development programs for public purposes, including the promotion of local economic development and the stimulation of business and commercial activity within the County including portions located within the City, and including providing mechanisms for funding for much-needed public infrastructure; and

Whereas, as authorized under Article III, Section 52-a of the Texas Constitution and related statutory authority both parties desire to adopt a program as set forth herein and recognize that doing so will promote economic development activity, job creation, increased tax revenues, increased opportunity for expediting construction of city/county projects, creation of new businesses, infrastructure commitments and streamlined implementation; and

Whereas, the City intends to finance, fund and develop certain identified public improvements in accordance with the terms and conditions of this Agreement; and

Whereas, the County intends to assist in the funding and/or reimbursement for the development of certain identified public improvements in accordance with the terms and conditions of this Agreement; and

Whereas, the County and the City have identified a geographic area located within the City within which to implement the program created herein; now therefore

For and in consideration of the promises and the mutual agreements set forth herein, the County and the City hereby agree as follows:

## **Article I General Terms**

Incorporation of Recitals. The recitals to this Agreement are hereby incorporated for all purposes.

Definitions and Terms. In addition to the terms identified in the recitals, the following additional definitions and terms shall apply:

“Base Year Taxable Value” means the Taxable Value as of January 1, 2017 for ad valorem and personal property taxes levied and collected by the parties for the Development Area.

“County Contribution(s)” means the County’s annual payments based upon the increase in Taxable Value from the Base Year Taxable Value within the Development Area pursuant to this Agreement.

“Dartmouth & Harvey Mitchell Parkway Development Area” “D-HMPD Area” or “Development Area” means the portion of the City that lies in and near the intersection of Dartmouth and Harvey Mitchell Parkway roadways and as further set out in Exhibit “A” attached hereto and made a part hereof.

“Effective Date” means the date this Agreement is duly approved by both parties.

“Force Majeure” means any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, adverse weather, government or de facto governmental action (unless caused by acts or omissions of such party), terroristic acts, fires, explosions or floods, strikes, slowdowns or work stoppages.

“O&M Tax Revenue” means an amount of money equal to all of the incremental increase in the collections of only a party’s operation and maintenance tax rate component for valorem taxes and personal property taxes levied as of January 1 of each year following the Base Year Taxable Value until an agreed upon length of time as set forth in this Agreement and which is

attributable to the Development Area and which amount exceeds its Base Year Taxable Value, and includes related penalty and interest, related installment collections and rollback taxes collected relating to such levy. Any currently existing or future tax abatements, and any currently existing or future agreements pursuant to chapters 380 and 381 Texas Local Government Code requiring payments based upon Taxable Value entered into by one or both parties for property located in the Development Area shall not be considered Tax Revenue for purposes of this Agreement unless mutually agreed upon otherwise in writing by the parties hereto.

“Public Improvement(s)” means the land acquisition, design and construction relating to one or more of the public improvements within the Development Area comprising a part of this Agreement and as listed in Exhibit “B” hereof.

“Public Improvements Costs” except as explicitly excepted below, means all costs of acquisition, design, development, construction and financing of the Public Improvements paid by or on behalf of the City, including (i) the acquisition cost of any land that is part of the Public Improvements; (ii) all costs of design, engineering, materials, labor, construction, testing and inspection and other services arising in connection with the design and construction of the Public Improvements; (iii) all payments arising under any contracts entered into for the design or construction of the Public Improvements; (iv) all costs incurred in connection with obtaining governmental approvals, certificates and permits required in connection with the construction of the Public Improvements, including the legal, engineering, environmental, and other consultant fees and expenses related to the design and construction of the Public Improvements. Public Improvements Costs as used in this Agreement explicitly excludes:

- a. Fountains, artwork and other softscape elements designed primarily for aesthetics and not related to the cost for transportation, drainage, water and wastewater infrastructure; and
- b. City and County expenses including but not limited to internal staff costs, internal permitting fees, interest and overhead costs.

“Tax Revenue” means an amount of money equal to all of the incremental increase in the collections of a party’s ad valorem taxes and personal property taxes levied as of January 1 of each year following the Base Year Taxable Value until an agreed upon length of time as set forth in this Agreement and which is attributable to the Development Area and which amount exceeds its Base Year Taxable Value, and includes related penalty and interest, related installment collections and rollback taxes collected relating to such levy. Any currently existing or future tax abatements, and any currently existing or future agreements pursuant to chapters 380 and 381 Texas Local Government Code requiring payments based upon Taxable Value entered into by one or both parties for property located in the Development Area shall not be considered Tax Revenue for purposes of this Agreement unless mutually agreed upon otherwise in writing by the parties hereto.

“Taxable Value” means the taxable value of real and personal property as certified by the Brazos Central Appraisal District as of January 1<sup>st</sup> of a given year.

## **Article II The Public Improvements**

2.1 Public Improvements. The City shall be responsible for the land acquisition, design and construction of the Public Improvements within the Development Area as set forth in this Agreement. The Public Improvements identified for the Dartmouth & Harvey Mitchell Parkway Development Area subject to the terms and conditions of this Agreement are as set forth in Exhibit “B” attached hereto and made a part hereof.

2.2 Timing and Phasing. The City is solely responsible for the timing and phasing of the Public Improvements. It is expressly understood by the parties this may result in some but not all of the construction of Public Improvements or phases thereof.

2.3 Standards and Approvals. The parties agree that the plans and specifications for the Public Improvements shall be subject to the review and approval of governmental entities as may be required in accordance with applicable law.

2.4 Public Procurement Requirements. The City shall be responsible for and agrees to abide by all public procurement requirements for the Public Improvements, and shall require performance bonds and payment bonds in accordance with applicable law.

2.5 Notifications and Inspections. County, its agents and employees shall have right of access to the Public Improvements sites during construction to inspect same at reasonable times and with reasonable notice to the City.

## **Article III County Contributions**

3.1 County Contribution, Generally. The County is willing and shall make County Contributions towards the Public Improvements for the Development Area as set forth herein.

3.2 D-HMPD Area. The amount of County Contribution eligible to be requested by the City for the Public Improvements relating to the D-HMPD Area shall be equal to 100% of County’s O&M Tax Revenue annually levied and collected based on Taxable Value beginning as of January 1

following the Base Year Taxable Value up through and including for taxes levied and collected for Taxable Value as of January 1, 2032 relating to such Development Area; but in no event shall the total County Contribution exceed one half of the total costs thereof or \$2,500,000, whichever is less.

**3.3 City Request for County Contribution.** County Contributions shall occur on a reimbursement basis only. County will remit its County Contribution to City upon City written request no later than sixty (60) days after receipt by the County Auditor and as set forth herein. Beginning with the first year for which a County Contribution may be made, City may submit a written request for the County Contribution for the Development Area during the period commencing July 1 and ending on December 31 of the following calendar year from when the tax is typically levied to which the contribution relates. For example, for County taxes levied and collected based on the Taxable Value as of January 1, 2017 the City may make a written request for the County Contribution beginning July 1, 2018 through December 31, 2018. Such written request shall include proof that the City actually incurred or made payment towards the Public Improvements Costs to which such request for reimbursement relates. In turn the County shall remit payment up to the amount of its total County Contributions as of such date which have not already been disbursed for one half of the actual costs incurred by the City for the Public Improvements Costs and that have been requested up to the maximum amount of County Contribution for the Development Area as set forth in this Agreement.

The failure by City to timely submit to the County Auditor a written request for a County Contribution for the Development Area will not result in the forfeiture of the County Contribution attributable to that tax year. Rather, there shall be a carryover until a timely written request from City to County is made pursuant to the terms of this Agreement.

The County Contribution submitted to the City shall be accompanied with the information and calculations used in making County's determination as to the amount of such County Contribution for the Development Area. The City agrees to only use County Contributions for reimbursement of one half of the City's actual costs incurred for Public Improvements Costs as set forth in this Agreement.

**3.4 Last year of County Contributions.** After the time period has elapsed for the last time during which the City may request a County Contribution for the Development Area pursuant to the terms of this Agreement, the City shall no longer be entitled to same and such remaining County Contributions shall be forfeited for such Development Area.

## **Article IV City Obligations**

**4.1 Representation of the City.** The City hereby represents to the County that it is duly authorized to enter into this Agreement and that it will abide by the terms and obligations recited

herein. The City further represents that the individual signing on its behalf is duly authorized to do so.

4.2 Construction of Public Improvements. The City shall not be obligated to construct all Public Improvements. Furthermore, the parties expressly agree and understand only those Public Improvements or phase thereof for which funds have been expended by City shall be eligible for County Contribution.

4.3 Ownership, Operation and Maintenance of Public Improvements. The City shall be responsible for the ownership, operation and maintenance of the Public Improvements which comprise the subject matter of this Agreement.

## **Article V County Obligations**

5.1 Representation of the County. The County hereby represents to the City that it is duly authorized to enter into this Agreement and that it will abide by the terms and obligations recited herein. The County further represents that the individual signing on its behalf is duly authorized to do so.

5.2 County Contributions. The parties agree and understand that County is not responsible for the Public Improvements and Public Improvement Costs by entering into this Agreement other than its obligations with respect to County Contributions.

## **Article VI Records**

6.1 Accounts, Reporting and Maintenance of Records. Both parties shall allow the other reasonable access, during normal business hours, to review and audit records and books and all other relevant records related to the Agreement in possession of such other party upon five (5) business days' prior written notice.

## **Article VII Default and Remedy**

7.1 Obligations of the Parties to be Absolute. Neither party may suspend their obligations for any cause, including the failure of the other to perform except as may be expressly authorized.

7.2 General Events of Default. 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; but only if performance has not been cured within 30 days from the receipt of written notice, which 30 day period may be extended pursuant to the Force Majeure provisions in this Agreement and by written mutual agreement of the parties. Thereafter the party not in default of this provision shall be entitled to any and all remedies available in this Agreement or otherwise at law or equity.

### **Article VIII Events of Force Majeure**

8.1 It is expressly understood and agreed by the parties that if the performance by either of any obligation hereunder is delayed by reason of an event of Force Majeure, the party so obligated or permitted shall be excused from doing or performing the same for the time and to the extent necessary to allow the affected party to overcome the event of Force Majeure and resume performance thereof. The party claiming the delay of performance as a result of an event of Force Majeure shall deliver written notice of the commencement of such delay to the other party as soon as reasonably practicable after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of delay caused by a Force Majeure event, the claiming party shall not be entitled to extend the time for performance as provided herein.

### **Article IX Termination**

9.1 This Agreement shall terminate 90 days following the last date that City may make its last request for a County Contribution for the Development Area pursuant to the terms of this Agreement unless terminated earlier by mutual written agreement.

### **Article X Miscellaneous**

10.1 Time of the Essence. Time is of the essence of this Agreement. The parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

10.2 Entire Agreement. This Agreement, including any exhibits hereto, contains the entire agreement between the parties with respect to the transactions contemplated herein.

10.3 Exhibits, Titles of Articles, Sections and Subsections. The exhibits attached to this Agreement, if any, are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein. All titles or headings are only for the convenience of the parties and shall not be construed to have any effect or meaning as to the agreement between the parties hereto. Any reference herein to a section or subsection shall be considered a reference to such section or subsection of this Agreement unless otherwise stated. Any reference herein to an exhibit shall be considered a reference to the applicable exhibit attached hereto unless otherwise stated.

10.4 Amendments. Unless otherwise expressly provided for otherwise, this Agreement may only be amended, altered or terminated by written instrument signed by all parties.

10.5 Successors and Assigns. No party may assign its rights or obligations hereunder without the written consent of the other party. This Agreement will be binding upon, inure to the benefit of, and be enforceable by the parties and their respective successors and assigns.

10.6 Applicable Law and Venue. This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas. Venue for any legal proceedings shall lie in state courts located in Brazos County, Texas. Venue for any matters in federal court will be in the United States District Court for the Southern District of Texas, Houston, Division.

10.7 Notices. Notices under this Agreement are sufficient if given by nationally recognized overnight courier service, certified mail, return receipt requested, facsimile with electronic confirmation, or personal delivery to the other party at the address below. If no address is listed for a party, notice to such party will be effective if given to the last known address. Notice is effective: (a) when delivered personally, (b) three business days after sending by certified mail, (c) on the business day after sending by a nationally recognized overnight courier service, or (d) on the business day thereof if sending by facsimile with electronic confirmation to the sender on such business day. Each party may update its contact information by notice to the other. Routine business and technical correspondence may be in electronic form. The contact information for each party is as follows:

**County:**

Brazos County  
Attn: County Commissioners  
200 S. Texas Ave., Suite 332  
Bryan, Texas 77803  
Telephone: (979) 361-4102  
Facsimile: (979) 361-4503



With a copy to:

Brazos County Attorney  
300 E. 26<sup>th</sup> St., Suite 1300  
Bryan, Texas 77803

**City:**

City of College Station  
Attn: Mayor  
1101 Texas Avenue  
P.O. Box 9960  
College Station, Texas 77842  
Telephone: (979) 764-3500  
Facsimile: (979) 764-6377

With a copy to:

College Station City Attorney  
1101 Texas Avenue  
P.O. Box 9960  
College Station, Texas 77842

10.8 Severability. In the event any provision of this Agreement is illegal, invalid, or unenforceable under the applicable present or future laws, then, and in that event, it is the intention of the parties that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision held to be illegal, invalid or unenforceable.

10.9 No Waiver. Failure of any party, at any time, to enforce a provision of this Agreement shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, or any part hereof, nor the right of either party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused, unless the waiver shall be in writing and signed by the party claimed to have waived.

Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

10.10 Third Parties. The parties intend that this Agreement shall not benefit nor create any right or cause of action in or on behalf of any third-party beneficiary, nor any individual or entity other than the parties hereto and their respective assignees in accordance with this Agreement.

10.11 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

10.12 Interpretation. This Agreement has been jointly negotiated by the parties and shall not be construed against a party because that party may have primarily assumed responsibility for the drafting of this Agreement.

IN TESTIMONY OF WHICH this instrument has been executed in multiple counterparts, each of equal dignity and effect, on behalf of the County and the City effective as set forth above.

Exhibits:

- “A” Map of the Dartmouth & Harvey Mitchell Parkway Development Area
- “B” Public Improvements and Estimated Public Improvements Costs for the Dartmouth-Harvey Mitchell Parkway Development Area

**COUNTY:**

**CITY:**

**Brazos County Commissioners Court**

**City of College Station**

\_\_\_\_\_  
Duane Peters, County Judge

\_\_\_\_\_  
Karl Mooney, Mayor

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

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

Attest:

Attest:

\_\_\_\_\_  
Karen McQueen, County Clerk

\_\_\_\_\_  
\_\_\_\_\_, City Secretary

# EXHIBIT "A" DARTMOUTH-HARVEY MITCHELL PARKWAY DEVELOPMENT AREA



**EXHIBIT “B”  
PUBLIC IMPROVEMENTS FOR THE  
DARTMOUTH-HARVEY MITCHELL PARKWAY DEVELOPMENT AREA**

<b>Public Improvements</b>	<b>Description</b>	<b>Estimated Costs</b>
Street Extension-Dartmouth	Three lane concrete pavement section extending from the Harvey Mitchell intersection to continue and terminate at Texas Avenue. This extension includes required drainage, sidewalks, street lights, water main and sewer main extensions.	\$3,400,000
Traffic Signal	Traffic signal at the intersection of Dartmouth and Harvey Mitchell Parkway.	\$400,000
Traffic Signal	Traffic signal at the intersection of Dartmouth and Texas Avenue.	\$400,000
	ESTIMATED TOTAL	\$4,200,000