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| **CSJ #** | |
| **District #** | |
| **Code Chart 64 #** | |
| **Project Name** | |

**STATE OF TEXAS §**

**COUNTY OF TRAVIS §**

# AGREEMENT
# For A
# LOCAL ON-SYSTEM IMPROVEMENT PROJECT

**THIS AGREEMENT** (Agreement) is made by and between the State of Texas, acting by and through the Texas Department of Transportation called the "State", and the **CITY of FULSHEAR**, acting by and through its duly authorized officials, called the "Local Government." The State and Local Government shall be collectively referred to as "the parties" hereinafter.

## WITNESSETH

**WHEREAS,** the Texas Transportation Code, Section 201.103 establishes that the State shall design, construct and operate a system of highways in cooperation with local governments and Section 222.052 authorizes the Texas Transportation Commission to accept contributions from political subdivisions for development and construction of public roads and the state highway system within the political subdivision; and

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**WHEREAS**, the Texas Transportation Commission passed Minute Order Number [redacted] authorizing the State to accept Local Government funded projects performed on the state highway system. The project covered by this Agreement includes only work within the state right of way as described in the Agreement, Article 2, Scope of Work (Project); and,

**WHEREAS**, the Governing Body of the Local Government has approved entering into this Agreement by resolution, ordinance, or commissioners court order dated **September 17, 2024**, which is attached to and made a part of this Agreement as Attachment A, Resolution, Ordinance, or Commissioners Court Order (Attachment A) for the improvement covered by this Agreement. A map showing the Project location appears in Attachment B, Project Location Map (Attachment B), which is attached to and made a part of this Agreement**.**

**NOW, THEREFORE,** in consideration of the premises and of the mutual covenants and agreements of the parties, to be by them respectively kept and performed as set forth in this Agreement, it is agreed as follows:

## AGREEMENT

**1. Period of the Agreement**

This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until the completed Project is accepted by the State or unless terminated as provided below.

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|---|---|
| **CSJ #** | |
| **District #** | |
| **Code Chart 64 #** | |
| **Project Name** | |

**2. Scope of Work**

The project consists of the design and construction of a storm sewer system (drainageway) to provide for storm water flows to move from the eastside of FM 359 at Lifestyle Boulevard through the storm water drainage system in Del Webb (MUD 175), in the City of Fulshear, Fort Bend County, Texas. All design and construction work will be provided by the Local Government, its consultant, or its contractor. There will be no exchange of right of way or utilities.

**3. Local Project Sources and Uses of Funds**

A. The total estimated cost of the Project is shown in Attachment C, Local On-System Improvement Project Budget (Attachment C), which is attached to and made a part of this Agreement. The estimated funds from the Local Government are shown in Attachment C. The State will pay for no Project costs performed by or managed by Local Government under this Agreement.

B. Attachment C shows how necessary resources for completing the Project will be provided by major cost categories. These categories may include but are not limited to: (1) costs of real property (right of way); (2) costs of utility work; (3) costs of environmental assessment and remediation; (4) cost of preliminary engineering and design; (5) cost of construction and construction management; and (6) any other Project costs.

C. The Local Government shall be solely responsible for all of its costs associated with the Project provided for in this Agreement. The Local Government shall be responsible for cost overruns for the Project in excess of the estimated amount to be paid by the Local Government on Attachment C. The Local Government shall also be responsible for direct and indirect costs incurred by the State related to performance of this project if so indicated on Attachment C. If the State determines that the on-system improvements are of significant operational benefit to the State, the State may waive its direct or indirect costs. The State's waiver of its direct or indirect costs shall be indicated on Attachment C by showing the State as responsible for these costs. When the Local Government is responsible for the State's direct or indirect costs, the amount indicated on Attachment C is a fixed fee and not subject to adjustment except through the execution of an amendment to this Agreement.

D. Prior to the performance of any engineering review work by the State, the Local Government shall pay to the State the amount of direct and indirect State costs specified in Attachment C.

E. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation" or may use the State's Automated Clearing House (ACH) system for electronic transfer of funds in accordance with instructions provided by TxDOT's Financial Management Division. The funds shall be deposited and managed by the State and are not refundable.

F. The Local Government will begin construction on the Project within 12 months after execution of the Agreement.

G. The Local Government will complete construction and receive the State's acceptance of the project within 36 months after the date the State authorizes in writing for the Local Government to commence construction of the Project.

H. If the Local Government chooses not to or fails to complete the work once construction on the Project commences, the State may terminate this Agreement in accordance with

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| **CSJ #** | |
| **District #** | |
| **Code Chart 64 #** | |
| **Project Name** | |

paragraph 4.C. below. The State may address unfinished construction work as it determines necessary to protect the interests of the State, which includes returning the Project area to its original condition or completing the work using State forces or contractors. The Local Government shall pay all costs incurred by the State under this provision.

**4. Termination of this Agreement**

This Agreement shall remain in effect until the Project is completed and accepted by the State, unless:

A. The Agreement is terminated in writing with the mutual consent of the parties.

B. The State terminates the Agreement in writing due to the Local Government's failure to comply with paragraphs 3.F or 3.G; or

C. The Agreement is terminated by one party because of a breach, in which case any cost incurred because of the breach shall be paid by the breaching party.

**5. Amendments**

Amendments to this Agreement due to changes in the character of the work, terms of the Agreement, or responsibilities of the parties relating to the Project may be enacted through a mutually agreed upon, written amendment. Amendments may not include the addition of State or Federal funds. If any funds other than Local Government funds are proposed, this Agreement must be terminated and a new agreement with appropriate terms and clauses executed in its place.

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**6. Remedies**

This Agreement shall not be considered as specifying the exclusive remedy for any Agreement default, but all remedies existing at law and in equity may be availed of by either party to this Agreement and shall be cumulative.

**7. Architectural and Engineering Services**

The Local Government has responsibility for the performance of architectural and engineering services. The engineering plans shall be developed in accordance with the applicable *State's Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges* and the special specifications and special provisions related to it. The Project design shall, at a minimum conform to applicable State manuals.

The State shall review the plans, specifications, and estimates provided by the Local Government upon completion or at any time deemed necessary by the State. Should the State determine that the complete plans, specifications, and estimates for the Project are not acceptable, the Local Government shall correct the design documents to the State's satisfaction. Should additional specifications or data be required by the State, the Local Government shall redesign the plans and specifications to the State's satisfaction. The costs for additional work on the plans, specifications, and estimates shall be borne by the Local Government.

**8. Environmental Assessment and Mitigation**

Development of a transportation project must comply with applicable environmental laws. The Local Government is responsible for:

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|---|---|
| **CSJ #** | |
| **District #** | |
| **Code Chart 64 #** | |
| **Project Name** | |

A. The identification and assessment of any environmental problems associated with the development of the Project governed by this Agreement.
B. The cost of any environmental problem's mitigation and remediation.
C. Providing any public meetings or public hearings required for development of all required environmental documents and obtaining all required permits and approvals.
D. The preparation of documents required for the environmental clearance of the Project.

Before the advertisement for bids, the Local Government shall provide to the State written documentation from the appropriate regulatory agency or agencies that all environmental clearances and approvals have been obtained.

**9. Right of Way and Real Property**

The Local Government shall acquire all required right of way and necessary right of entry for performance of the Project in accordance with applicable requirements of the Texas Department of Transportation Right of Way Manual, State law, and Federal law governing the acquisition of real property including but not limited to Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C.A. Section 4601 et seq. Right of way acquired for improvements to the state highway system shall be acquired in the name of the State. Local Government shall provide right of entry to State personnel and its authorized representatives to areas off the state highway system throughout the duration of the Project for the State to perform inspection and oversight of the Project.

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**10. Utilities**

The Local Government shall be responsible for the adjustment, removal, or relocation of utility facilities for the Project in accordance with applicable State and Federal laws, regulations, rules, policies, and procedures, including any cost to the State of a delay resulting from the Local Government's failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. The Local Government will not be reimbursed for the cost of required utility work. The Local Government must obtain advance approval for any variance from established procedures.

**11. Compliance with Texas Accessibility Standards and ADA**

Local Government shall ensure that the plans for and the construction of the Project are in compliance with standards issued or approved by the Texas Department of Licensing and Regulation (TDLR) as meeting or consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

**12. Construction Responsibilities**

A. The Local Government shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders that may become necessary subsequent to the award of the construction contract. Project plans and specifications for improvements on the state highway system must be approved by the State prior to advertising for construction. Upon selection of a contractor and prior to commencing construction within the state highway system right of way, the Local Government shall request and

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| **CSJ #** | |
| **District #** | |
| **Code Chart 64 #** | |
| **Project Name** | |

obtain written authorization to commence construction of the Project from the State. The Local Government will supervise and inspect all work performed hereunder and provide such engineering inspection and testing services as may be required to ensure that the construction is accomplished in accordance with the approved plans and specifications. All construction change orders impacting the proposed improvements, traffic control, environmental mitigation, or drainage on the state highway system require written pre-approval by the State prior to execution by the Local Government.

B. Upon completion of the Project, the Local Government will issue and sign a "Notification of Completion" acknowledging the Project's construction completion. A copy will be provided to the State prior to State's final acceptance of the improvements.

C. Prior to the State's acceptance of the improvements on the state highway system, Local Government shall furnish to the State written certification from a Texas Registered Professional Engineer that the Project was constructed in substantial compliance with the Project's plans, specifications, and quality assurance requirements.

**13. Project Maintenance**

After Local Government completion of the work and acceptance by the State, the State will be responsible for maintenance of the improvements within the state highway system right of way outside the boundaries of an incorporated city. This obligation may be fulfilled through other agreements signed by the State.

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**14. Notices**

All notices to either party shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

| Local Government | State |
|---|---|
| City Manager, Zach Goodlander<br>[redacted] | Director of Contract Services<br>Texas Department of Transportation<br>125 E. 11th Street<br>Austin, Texas 78701 |

All notices shall be deemed given on the date delivered in person or deposited in the mail, unless otherwise provided by this Agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

**15. Legal Construction**

If 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.

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|---|---|
| **CSJ #** | |
| **District #** | |
| **Code Chart 64 #** | |
| **Project Name** | |

**16. Responsibilities of the Parties**

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party, 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.

**17. Ownership of Documents**

Upon completion or termination of this Agreement, copies of all documents and data prepared under this Agreement by the Local Government for improvements within the state highway system right of way shall be provided to the State prior to State acceptance of the Project without restriction or limitation on their further use. The originals shall remain the property of the Local Government. At the request of the State, the Local Government shall submit any Project information required by the State in the format directed by the State.

**18. Compliance with Laws**

The parties shall comply with all federal, state, 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. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

**19. 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.

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**20. 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 and engineering inspection and testing services performed under this Agreement and shall make such materials available to the State and the Local Government or their duly authorized representatives for review and inspection at its office during the Agreement period and for seven (7) years from the date of completion of work defined under this Agreement or until any impending litigation or claims are resolved. Additionally, the State and the Local Government 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.

**21. Insurance**

Before beginning work on the state highway system, the Local Government and its contractor performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on state right of way. Self-insurance documentation acceptable to the State may be substituted for all or part of the coverage's required for the Local Government. This coverage shall be maintained until all work on the state right of way is complete. If coverage is not maintained, all work on state right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

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| **CSJ #** | |
| **District#** | |
| **Code Chart 64 #** | |
| **Project Name** | |

**22. Pertinent Non-Discrimination Authorities**

During the performance of this Agreement, the Local Government, for itself, its assignees, and successors in interest agree to comply with all applicable Federal and State nondiscrimination statutes and authorities.

**23. Signatory Warranty**

Each signatory warrants that the signatory has necessary authority to execute this Agreement on behalf of the entity represented.

Each party is signing this agreement on the date stated under that party's signature.

| | THE LOCAL GOVERNMENT |
|---|---|
| Signature | DocuSigned by: [redacted] Signature |
| Typed or Printed Name | [redacted] Typed or Printed Name |
| Director of Contract Services | Interim City Manager |
| Typed or Printed Title | Typed or Printed Title |
| Date | Date |

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| **CSJ #** | |
| **District #** | |
| **Code Chart 64 #** | |
| **Project Name** | |

# ATTACHMENT A
## RESOLUTION 2024-639

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RESOLUTION NO. 2024-639

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FULSHEAR, TEXAS, APPROVING AN AGREEMENT FOR A LOCAL ON-SYSTEM IMPROVEMENT PROJECT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION AND AUTHORIZING THE CITY MANAGER OR DESIGNEE TO COMPLETE AND EXECUTE ANY AND ALL NECESSARY DOCUMENTS AND INSTRUMENTS PERTAINING THERETO.

* * * * * * * * * * * * *

**WHEREAS,** that certain Development Agreement between the City of Fulshear, Texas, L.A. Waters, and Mason Equest Investments, LLC, of even date herewith, provides for certain drainage improvements to be installed under Farm to Market Road 359 (the "Project"); and

**WHEREAS,** an Agreement for a Local On-System Improvement Project ("LOSA") with the Texas Department of Transportation (TxDOT) is necessary for the implementation of the Project; and

**WHEREAS,** the City Council desires to approve a LOSA with TxDOT for the Project and to authorize the City Manager or his designee to complete and execute any and all necessary documents and instruments pertaining thereto;

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NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FULSHEAR, TEXAS:

**Section 1**. The City Council hereby approves an Agreement for a Local On-System Improvement Project with the State of Texas, acting by and through the Texas Department of Transportation, being for drainage improvements to be installed under Farm to Market Road 359.

**Section 2**. The City Manager or his designee is hereby authorized to complete and execute any and all necessary documents and instruments pertaining to the Agreement for a Local On-System Improvement Project approved herein.

PASSED, APPROVED, and ADOPTED on the 17th day of September 2024.

_____
Don McCoy, Mayor

**ATTEST:**

_____
Mariela Rodriguez, City Secretary

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| **CSJ #** | |
| **District #** | |
| **Code Chart 64 #** | |
| **Project Name** | |

# ATTACHMENT B
## PROJECT LOCATION MAP

{Insert Map}

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OLD 300
EST FULSHEAR 1824
FM359 Storm Sewer Site
City Limits
Sanitary Sewer Line Extension Existing
Waterline Extension Existing
Storm Sewer Proposed
N
0 0.03 0.05 0.1 Miles
FM 359 Rd S
Commercial Tract 2
Triangular Tract
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Lifestyle Blvd
FM 359 Rd S
Commercial
Tract 2
Crutcher Rnch
Maxar, Microsoft, Esri Community Maps Contributors, City of Houston, HPB, Texas Parks & Wildlife, © OpenStreetMap, Microsoft, CONANP, Esri, TomTom, Garmin, Foursquare, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA, USFWS

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| **CSJ#** | |
| **District#** | |
| **Code Chart 64#** | |
| **Project Name** | |

# ATTACHMENT C
## LOCAL ON-SYSTEM IMPROVEMENT PROJECT BUDGET
## (Locally Funded and Performed Project)

The Local Government is responsible for 100% of the costs allocated to it as described below, including overruns.

| Description | Estimated Costs | Subtotals |
|---|---|---|
| **PROJECT PHASES:** Work performed by the Local Government or its Consultant or Contractor | | |
| Environmental | $ | |
| Right of Way | $ | |
| Engineering | $ | |
| Utility Work | $ | |
| Construction | $ | |
| Subtotal for Project Phases | | $370,930 |
| **DIRECT STATE COSTS:** | **Paid By: 181 Local Government D State** | |
| Environmental | $ | |
| Right of Way | $ | |
| Engineering | $ | |
| Utility **Work** | $ | |
| Construction | $13,010.04 | |
| Subtotal for Direct State Costs | | $14,837.2 |
| **INDIRECT STATE COSTS:** | **Paid By: ☐ Local Government 181 State** | |
| Subtotal for Indirect State Costs | | $ |
| **TOTAL ESTIMATED COST OF PROJECT** | | $ |

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| **$0** | Fixed price amount of payment by the Local Government to the State for the State's direct and indirect costs as stated in Article 3, C and D of the Agreement. |