

**COST SHARING AGREEMENT  
BY AND AMONG  
THE CITY OF OAK POINT, TEXAS;  
DENTON INDEPENDENT SCHOOL DISTRICT; AND  
DENTON COUNTY MUNICIPAL UTILITY DISTRICT NO. 5**

**THE STATE OF TEXAS**

**COUNTY OF DENTON**

**THIS COST SHARING AGREEMENT** (the “*Agreement*”) is entered into as of \_\_\_\_\_, 2021, by and among the **CITY OF OAK POINT, TEXAS** (the “*City*”), a Texas general-law municipality **DENTON INDEPENDENT SCHOOL DISTRICT** (“*DISD*”), a political subdivision of the State of Texas, and **DENTON COUNTY MUNICIPAL UTILITY DISTRICT NO. 5** (the “*District*”), a conservation and reclamation district, a body politic and corporate and political subdivision of the State of Texas, created under Article XVI, Section 59 of the Texas Constitution and Chapters 49 and 54, Texas Water Code, as amended.

**RECITALS:**

**WHEREAS**, the City owns, operates and maintains Mar Top Road (the “*Road*”), which serves properties within the City, DISD and the District; and

**WHEREAS**, the City desires to expand and re-design the Road into a two-lane asphalt road with center turn lanes, at designated intersections, and add a six-foot wide sidewalk in the right-of-way on the north side of Martop Road the distance between Naylor Road and FM 720 and a five-foot wide sidewalk on the south side of Martop Road the distance between Naylor Road and FM 720, aligned with the DISD sidewalk on Rodriguez Middle School frontage (the “*Project*”); and

**WHEREAS**, the City, DISD and the District desire to share the cost of the Project; and

**WHEREAS**, the Parties hereto have determined that it is in their mutual best interests to proceed with the Project, and wish to enter into this Agreement to provide for the allocation of costs associated therewith, as estimated on **Exhibit A** attached hereto;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the City, DISD and the District agree as follows:

## ARTICLE I

### Definitions

“**Project Costs**” shall mean the actual costs directly related to the project, including but not limited to:

- a. construction contract amounts, including approved change orders;
- b. engineering fees charged by the Engineer (hereinafter defined) attributable to the design and construction of the Project; and
- c. all soil tests, topographic studies and other tests, studies or services necessary to design and construct the Project.

The cost estimate for the design and construction of the Project is attached as Exhibit A, and are made a part hereof.

“**Engineer**” shall mean BGE, Inc., 777 Main Street, Suite 1900, Fort Worth, Texas 76102.

“**Governmental Requirements**” shall mean all applicable federal, state and municipal laws, ordinances, rules and regulations, and all requirements of any and all governmental entities with jurisdiction over or relating to the performance of the Project.

## ARTICLE II

### Construction of the Project

Section 2.01. Design. The Engineer is preparing the plans and specifications for the construction of the Project. The Engineer will secure approvals from all regulatory bodies having jurisdiction over the Project, all in accordance with all Governmental Requirements, and will advertise for bids on behalf of the City. Upon completion, the Parties will review and approve the plans for the Project.

Section 2.02. Bid Award and Contracts. The City shall advertise for bids for the Project. The City will send written notice to DISD and the District of its recommendation of award for the Project within seven (7) business days of the bid opening. The City Council (the “Council”) of the City shall award the Contract to the responsible bidder that, in the Council’s judgment, will be most advantageous, and result in the best and most economical completion of the Project.

Section 2.03. Expansion of Martop Road. The Project will include improving the approximately 4,500 linear feet of existing roadway and sidewalks between FM 720 and Naylor Road, providing for the following:

- a. Pulverizing, road bonding, and overlaying the existing surface;
- b. Paving sections of the existing median;
- c. Pavement striping;
- d. Miscellaneous items related to construction of the roadway;
- e. Construction of a six foot (6') wide sidewalk on the north side of Martop Road, and a five foot ( 5') sidewalk on the south side of Martop Road; and
- f. Engineering design.

Section 2.04. Project Costs.

a. The DISD has previously resolved that certain portions of its real estate situated on the frontage of FM 720 are no longer suitable for an educational purpose and will not develop as such, and are therefore subject to the zoning of City. Furthermore, City has expressed its interest in a certain portion of this real estate to be used for a commercial development, and has expressed its willingness to accept a donation of said real estate solely for the purpose of selling at a reasonable fair market value for commercial development, and to use funds received from such sale for the construction costs of Martop Road. Therefore, pursuant to Texas Local Government Code, section 272.001(1) DISD does by this agreement commit to donate no less than three and one-half (3.50) acres of real estate as described in Exhibit “\_\_\_,” which is attached hereto and incorporated herein by reference, to the City. Pursuant to said statute, ownership of this real estate shall revert to the DISD if City does to use the land or proceeds from the sale of this land in carrying out the improvements to Martop Road. City represents and commits that its receipt of this real estate shall be solely for the use of a commercial development, specifically excluding private schools, charter schools, or any other educational facility which is not an accredited state public school pursuant Texas Education Code, Chapter 39, Subchapter C.

b. Allocation of Project Costs. The Parties to this Agreement hereby agree to pay for the Project Costs as follows:

- i. **The City - \$400,000, in addition to the sales proceeds realized from the sale of real estate donated to the City by DISD**
- ii. **DISD - \$350,000**
- iii. **The District - \$376,000**

c. Project Account. Unless otherwise indicated hereinbelow, upon thirty (30) days written notice from the City of the Contract award, the Parties agree to provide to the City each such Party's share of the Project Costs as defined above. The City shall place such Project Costs in a separate, interest bearing account. Upon completion of the Project, the City shall provide to DISD and the District a final accounting of the Project. In the event that the

Project is completed in an amount that is less than the total Allocation identified in Section 2.04(b) in this Agreement, the City shall refund to each Party its pro-rata share of the excess Project Costs. In the event that the Project is completed in an amount that is greater than the Project Costs presented in the Agreement, the City and DISD shall negotiate and resolve how such amount shall be paid, for City and DISD agree that neither is legally liable to the other. The amount specified Section 2.04(b) above for the District represents the District's maximum contribution to the Project Costs. In no event shall the District be responsible for any costs in excess of such amount recited in Section 2.04(b) above.

- d. Pay Estimates. The Engineer shall cause the contractor to submit copies of its monthly pay estimates (each a "**Pay Estimate**") to the City, DISD and the District. If the Engineer approves the Project as having been performed in accordance with the construction contract and applicable Pay Estimate, he shall submit a recommendation for payment, including a detailed accounting to be paid by the City. The City, the District and/or DISD may state any objections to payment of the Pay Estimate ("**Objections**") to the Engineer within five (5) business days of receipt of a Pay Estimate, and the Engineer shall, with reasonable diligence, investigate the Objections and provide a written report of his findings to the City, the District and DISD, regardless of which entity objected. If after the Engineer has fully investigated the Objections, if any, and concluded that the Pay Estimate which is the subject of any Objections is accurate and correct as originally presented, the City shall pay the Pay Estimate. If, however, the Engineer finds after full investigation of the Objections, if any, that the Objections are justified, the Engineer shall present the issue to the contractor for resolution pursuant to the terms of the construction contract.
- e. Change Orders. If the contractor submits any change orders (each a "**Change Order**"), the Engineer shall cause the contractor to submit copies of such Change Order to the City, the District and DISD, or their respective designees. If the Engineer approves the Change Order, he shall submit a recommendation for payment (if the Change Order results in an increase in Project Costs), or shall submit an accounting of the decrease in Project Costs (if the Change Order results in a decrease in Project Costs). The City, the District and/or DISD may state any objections to payment of the Change Order ("**Change Order Objections**") to the Engineer within five (5) business days of receipt of a Change Order, and the Engineer shall, with reasonable diligence, investigate the Change Order Objections and provide a written report of his findings to the City, the District and DISD, regardless of which entity objected. If after the Engineer has fully investigated the Change Order Objections, if any, and concluded that the Change Order which is the subject of any Change Order Objections, is accurate and correct as originally presented, the City shall pay the Change Order. If, however, the Engineer finds after full investigation of the Change Order Objections,

if any, that the Change Order Objections are justified, the Engineer shall present the issue to the Contractor for resolution pursuant to the terms of the construction contract.

Section 2.05. Insurance and Indemnification. In addition to all applicable insurance and indemnification requirements within the construction contract for the Project, it is an express condition to this Agreement and such construction contract that (i) each of the City, the District, DISD and the Engineer shall be named as an additional insured by the contractor; (ii) the contractor waive subrogation in favor of the City, the District, DISD and the Engineer; (iii) the contractor provide a Certificate of Insurance, as described in the construction contract, to each of the City, the District, DISD and the Engineer; and (iv) each of the City, the District, DISD and the Engineer, as well as their officers, consultants, employees, agents and representatives, be named as indemnified parties in each and every instance for which the construction contract provides for indemnification or other limitation of liability.

### ARTICLE III

#### General Provisions

Section 3.01. Title to and Use of Project. The Parties each agree that title to and ownership of the Project, constructed pursuant to this Agreement shall be vested in the City. Further, the City will be solely responsible for all future maintenance of Martop Road.

Section 3.02. Representations by the City, the District and DISD. Each of the City, the District and DISD represent and covenant that:

- a. This Agreement, the transactions contemplated herein, and the execution and delivery of this Agreement have been duly authorized by their respective entities, boards and/or councils;
- b. This Agreement, and the representations and covenants contained herein, and the consummation of the transaction contemplated herein, will not violate or constitute a breach of any contract or other agreement to which any entity is a party;
- c. The District's Board of Directors has approved the Project and has currently appropriated funds related to the payment for the Project, or otherwise provided for or acquired such funds;
- d. The City Council has approved the Project and has currently appropriated funds related to the payment for the Project, including contingencies related to Change Orders, if any; and

- e. The Board of Trustees of DISD has approved the Project and has currently appropriated funds related to the payment for the Project.

Section 3.03. Representations by the Parties.

- a. The City represents and covenants that it has the legal authority to enter into this Agreement by the Constitution and laws of the State of Texas;
- b. The District represents and covenants that it has the legal authority to enter into this Agreement by the Constitution and laws of the State of Texas; and
- c. DISD represents and covenants that it has the legal authority to enter into this Agreement by the Constitution and laws of the State of Texas.

Section 3.04. Survival of Representations. All representations and warranties of the City, the District and DISD shall survive completion of the Project.

Section 3.05. Remedies. In the event of default under this Agreement by the City, the District or DISD, which default is not cured within thirty (30) days after receipt of written notice by such defaulting party, the non-defaulting party(ies) shall have the option to: (a) pursue all remedies provided by law; and (2) to proceed with the construction of the Project. Any non-defaulting party hereto may employ attorneys to pursue its legal rights hereunder, and the defaulting party shall be obligated to pay all damages, costs and expenses in connection therewith incurred by the non-defaulting parties, including reasonable attorneys' fees.

ARTICLE IV

Miscellaneous

Section 4.01. Addresses and Notices. Unless otherwise provided in this Agreement, any notice herein provided or permitted to be given, made, or accepted by any party must be in writing. Any notice shall be either (a) personally delivered to the address set forth below, in which case it shall be deemed delivered on the date of delivery to the addressee; or (b) sent by registered or certified mail/return receipt requested, in which case it shall be deemed delivered the date upon which it is deposited in the U.S. Mail; or (c) sent by a nationally recognized overnight courier, in which case it shall be deemed delivered one (1) business day after deposit with such courier for next day delivery. For the purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be shown below. The parties shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as to its address any other address by at least fifteen (15) days' written notice to the other parties.

**If to the City, to:**

City of Oak Point, Texas

Attn: Stephen Ashley, CPM, CEcD  
City Manager  
100 Naylor Road  
Oak Point, Texas 75068  
Phone: 972-294-2312, ext. 105  
Email: [sashley@oakpointtexas.com](mailto:sashley@oakpointtexas.com)

**If to the District, to:**

Denton County Municipal Utility District No. 5  
Sanford Kuhl Hagan Kugle Parker Kahn LLP  
Attn: Joshua J. Kahn  
1980 Post Oak Boulevard, Suite 1380  
Houston, Texas 77056  
Phone: 713-850-9000  
Email Address: [kahn@sklaw.us](mailto:kahn@sklaw.us)

**If to DISD, to:**

Denton County Independent School District  
J. Scott Niven, CPA,  
1307 North Locust Street  
Denton, Texas 76201  
Phone: 940-369-0010  
Email: [jniven@dentonisd.org](mailto:jniven@dentonisd.org)

Section 4.02. Modification. This Agreement shall be subject to change or modification only with the mutual written consent of the parties hereto.

Section 4.03. Term. Except as otherwise provided herein, this Agreement shall be in force and effect from the date hereof until the Project is constructed, accepted and the one-year maintenance period has ended.

Section 4.04. Assignability. This Agreement shall be assignable by a party hereto only with the prior written consent of the other parties.

Section 4.05. Construction and Interpretation. This Agreement shall be construed in accordance with and governed by the laws of the State of Texas. The titles assigned to the various Sections and Articles of this Agreement are for convenience of reference only and shall not be restrictive of the subject matter of any such Section or Article or otherwise affect the meaning, construction, or effect of any part hereof.

Section 4.06. Severability. If any provision or application of this Agreement shall be held illegal, invalid, or unenforceable by any court, the invalidity of such provision or

application shall not affect or impair any of the remaining provisions and applications hereof.

Section 4.07. Parties in Interest. This Agreement shall be for the sole and exclusive benefit of the parties hereto and shall never be construed for any benefit for any other party.

Section 4.08. Authorization.

- a. The City Council of the City authorized this Agreement at an open meeting, properly posted and held, as reflected in the meeting minutes thereto. The City further authorized the execution of this Agreement on its behalf.
- b. The Board of Directors of the District authorized this Agreement at an open meeting, properly posted and held, as reflected in the meeting minutes thereto. The District further authorized the president of the Board of Directors to execute this Agreement on its behalf.
- c. The Board of Trustees of DISD authorized this Agreement at an open meeting, properly posted and held, as reflected in the meeting minutes thereto. DISD further authorized the execution of this Agreement on its behalf.

Section 4.09. Future Relations. DISD acknowledges City's anticipated desire to purchase land on the frontage of FM 720 for the City, or a Component Unit of the City, and should such occur DISD will seek to accommodate City.

Section 4.10. Counterparts. This Agreement may be executed in counterparts, and all such executed counterparts shall constitute the same agreement. It shall be necessary to account for only one such counterpart from and executed by each party hereto in proving this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Cost Sharing Agreement as of the date and year first written herein.

**The City:**

**CITY OF OAK POINT, TEXAS,**  
A Texas general-law municipality

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Dena Meek, Mayor

**ATTEST:**



\_\_\_\_\_  
Joni Vaughn, City Secretary

**The District:**

**DENTON COUNTY MUNICIPAL  
UTILITY DISTRICT NO. 5**

By: \_\_\_\_\_  
President, Board of Directors

ATTEST:

\_\_\_\_\_  
Secretary, Board of Directors

**DISD:**

**DENTON INDEPENDENT SCHOOL  
DISTRICT,**

\_\_\_\_\_  
Douglas J. Chadwick,  
President of the Board of Trustees

ATTEST:

\_\_\_\_\_  
Charles Stafford,  
Secretary of the Board of Trustees

**EXHIBIT "A"**  
**PROJECT COSTS**

DRAFT

**Martop Road Improvements and Rehabilitation Alternative 1 - Full-Depth Asphalt Over Stabilized Subgrade, 30-year Design Life (Preferred)**

Item No.	Quantity	Unit of Measure	Bid Item	Unit Price	Cost
1	1	5% bid	Mobilization	\$ 90,000.00	\$ 90,000.00
2	1	LS	General Site Preparation	\$ 25,000.00	\$ 25,000.00
3	521	SY	Remove & Dispose Existing Concrete/Asphalt Driveway	\$ 20.00	\$ 10,420.00
4	17,230	SY	Remove & Dispose Existing Asphalt Pavement (5" - 10")	\$ 10.00	\$ 172,300.00
5	27	SY	Remove & Dispose Existing Concrete Pavement	\$ 30.00	\$ 810.00
6	98	SY	Remove & Replace Decorative Stone	\$ 5.00	\$ 490.00
7	2,351	CY	Unclassified Roadway/Channel Excavation	\$ 30.00	\$ 70,530.00
8	280	CY	Embankment / Fill	\$ 20.00	\$ 5,600.00
9	104	LF	6" Mountable Curb & Gutter	\$ 70.00	\$ 7,280.00
10	1,535	LF	6" Curb & Gutter	\$ 50.00	\$ 76,750.00
11	17,628	SY	Asphalt Pavement (HMAC, 3" TY C)	\$ 17.50	\$ 308,490.00
12	17,628	SY	Asphalt Pavement (HMAC, 5" TY A)	\$ 30.00	\$ 528,840.00
13	34	SY	Concrete Pavement	\$ 190.00	\$ 6,460.00
14	26	SY	Asphalt Driveway	\$ 60.00	\$ 1,560.00
15	32	SY	Gravel Driveway	\$ 20.00	\$ 640.00
16	535	SY	Reinforced Concrete Driveway (6")	\$ 90.00	\$ 48,150.00
17	19,787	SY	8" Lime Treatment	\$ 11.00	\$ 217,657.00
18	238	TN	Hydrated Lime (@ 24 LBS/SY)	\$ 200.00	\$ 47,600.00
19	25,200	SF	4" Conc Sidewalk	\$ 6.00	\$ 151,200.00
20	9	EA	ADA Ramp	\$ 2,400.00	\$ 21,600.00
21	72	LF	12" Reinforced Concrete Pipe (CL IV)	\$ 95.00	\$ 6,840.00
22	48	LF	18" Reinforced Concrete Pipe (CL IV)	\$ 110.00	\$ 5,280.00
23	40	LF	18" Corrugated Metal Pipe	\$ 95.00	\$ 3,800.00
24	8	EA	Culvert End Sections for 12" RCP	\$ 1,230.00	\$ 9,840.00
25	6	EA	Culvert End Sections for 18" RCP	\$ 1,365.00	\$ 8,190.00
26	2	EA	Culvert End Section Modification W/ Retaining Wall	\$ 3,000.00	\$ 6,000.00
27	7	EA	Lane Legend Arrow	\$ 260.00	\$ 1,820.00
28	123	LF	24" SLD Pvmt Marking HAE (W)	\$ 12.00	\$ 1,476.00
29	5,725	LF	4" SLD Pvmt Marking HAS (Y)	\$ 1.50	\$ 8,587.50
30	9,100	LF	4" SLD Pvmt Marking HAS (W)	\$ 1.50	\$ 13,650.00
31	8,920	SY	Hydromulch	\$ 2.00	\$ 17,840.00
32	2	EA	Remove and Relocate Traffic and/or Street Sign and Post Assembly	\$ 500.00	\$ 1,000.00
33	1	EA	Remove and Relocate Light Post	\$ 1,000.00	\$ 1,000.00
34	4	EA	Project Construction Sign	\$ 480.00	\$ 1,920.00
35	1	LS	Traffic Control	\$ 15,000.00	\$ 15,000.00
36	1	LS	Erosion Control	\$ 5,000.00	\$ 5,000.00
37	1	LS	SWPPP	\$ 3,000.00	\$ 3,000.00
				<b>Subtotal</b>	<b>\$ 1,901,620.50</b>
				<b>15% Contingency</b>	<b>\$ 285,244.00</b>
				<b>Total Project Cost</b>	<b>\$ 2,186,864.50</b>