

STATE OF TEXAS §
§
COUNTIES OF DALLAS §
AND DENTON §

PUBLIC IMPROVEMENT DEFERRAL AGREEMENT

This **PUBLIC IMPROVEMENT DEFERRAL AGREEMENT** (“Agreement”) is made as of the Effective Date by and between the **City of Lewisville** (“Lewisville”), a Texas home rule municipality, and the **City of Farmers Branch** (“Farmers Branch”), a Texas home rule municipality. Lewisville and Farmers Branch collectively referred to herein as “the Parties” or separately as “Party.”

RECITALS

WHEREAS, Farmers Branch is the owner of the Property on which the Landfill is located and operated and has submitted an application to the TCEQ requesting an expansion of the Landfill; and

WHEREAS, the Landfill, as expanded, will occupy the Property and portions of the Adjacent Property; and

WHEREAS, Farmers Branch has submitted an application to Lewisville to change the zoning of the Property and the Adjacent Property to establish a Special Use District (“SUD”) in accordance with the Development Regulations; and

WHEREAS, as a condition for granting the SUD, Lewisville is requiring the Huffines Extension to be constructed, but finds it to be in the public interest to delay construction of the Huffines Extension to an unknown future date; and

WHEREAS, the Development Regulations usually require a developer to bear the cost of construction of public improvements relating to a development; and

WHEREAS, in order to secure the funding for the future construction of the Huffines Extension and in lieu of the immediate construction of the Huffines Extension, Lewisville is requiring as a condition for obtaining approval of the application for the SUD that Farmers Branch dedicate the right of way for the Huffines Extension and escrow the funds estimated to be necessary to pay for the construction of the Huffines Extension; and

WHEREAS, in light of the fact that Farmers Branch is another governmental entity who would be using public funds for the construction of the Huffines Extension or funding the escrow in lieu of construction, Farmers Branch has requested that it be allowed to retain such funds in its account until such time as the funds are needed to pay for the construction of the Huffines Extension; and

WHEREAS, Lewisville desires to consent to the request of Farmers Branch subject to the provisions of this Agreement;

NOW THEREFORE, in consideration of the premises and the mutual covenants contained herein and other valuable consideration the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

**Article I
Term**

The term of this Agreement shall commence on the Effective Date and shall continue until all Parties have fully satisfied all terms and conditions of this Agreement unless sooner terminated as provided herein.

**Article I
Definitions**

For the purposes of this Agreement, the following words and phrases shall have the meanings set forth herein unless the context clearly requires otherwise:

“Adjacent Property” means the real property located in Lewisville’s corporate limits and more particularly described in Exhibit “B,” hereto.

“Development Regulations” mean Chapter 6 and 17 of the Code of Ordinances of the City of Lewisville, as amended, and such other ordinances or regulations relating to the use and development of the Property and the Adjacent Property on the Effective Date.

“Effective Date” means the date this Agreement is signed by the authorized representatives of all of the 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), fires, explosions or floods, strikes, slowdowns or work stoppages.

“Huffines Extension” means approximately one thousand three hundred (1300) linear feet of a two-lane public street with curb and gutter constructed with the approximate alignment shown in Exhibit “C” attached hereto from the southern end of the Huffines Boulevard as it exists on the Effective Date to its intersection with the proposed Corporate Drive.

“Landfill” means Farmers Branch’s municipal solid waste landfill known as the “Camelot Landfill,” which is operated pursuant to TCEQ Permit No. MSW-1312A and located on the Property in Lewisville, Texas.

“Property” means that certain tract of land located within City’s incorporated limits and more particularly described in Exhibit “A”, attached hereto.

Article III Deferral Agreement

3.1 Construction Deferred: In consideration of this Agreement, Lewisville agrees that approval of a final replat for the Property and the Adjacent Property shall not be conditioned on construction of the Huffines Extension.

3.2 Dedication of Right-of-Way: Notwithstanding any provision of Chapter 245, Texas Local Government Code, as amended, to the contrary, Farmers Branch agrees that approval of a final plat of the Property shall not be required unless Farmers Branch has dedicated to Lewisville by plat or separate instrument sufficient right-of-way to allow for the future construction of the Huffines Extension. Dedication by plat may be accomplished in association the final replat of the Property and/or the Adjacent Property.

3.3 Construction by Lewisville: Except as otherwise provided herein, Lewisville shall be responsible for the design and construction of the Huffines Extension at a time and/or date as determined at its discretion, but in no case shall actual construction commence later than the fifteenth (15th) anniversary of the Effective Date.

3.4 Escrow of Funds.

(a) Not later than thirty (30) days after the Effective Date, Farmers Branch will appropriate and set aside current funds in the amount of \$700,000.00 into a special project account fund (“the Huffines Extension Fund”) to be shown on Farmers Branch’s books, which funds shall be used solely to pay for the construction of the Huffines Extension.

(b) Not later than five (5) business days after Lewisville provides written notice to Farmers Branch that the Lewisville City Council has awarded a contract to a contractor to construct the Huffines Extension, Farmers Branch will pay to Lewisville the funds in the Huffines Extension Fund, said amount to not exceed the lesser of (i) the actual amount of the construction contract awarded and (ii) \$700,000.00.

(c) Upon receipt of the funds from the Huffines Extension Fund, Lewisville shall place the funds into a project account identified on Lewisville’s accounting books to be called the “Huffines Extension Fund”. Such funds shall be used by Lewisville solely to pay the construction costs related to the construction of the Huffines Extension. Upon request by Farmers Branch, Lewisville shall provide a complete accounting of the expenditures paid by funds from the Huffines Extension Fund.

(d) Income and interest from the investment and/or deposit of the funds in the Huffines Extension Fund while held in the accounts of Farmers Branch shall belong to Lewisville. Income and interest from the investment and/or deposit of the funds in the Huffines Extension Fund while held in the accounts of Lewisville shall be credited by Lewisville to Farmers Branch’s obligations pursuant to this Agreement.

(e) If any funds remain in the Huffines Extension Fund after Lewisville makes the final payment to the contractor engaged to construct the Huffines Extension, Lewisville agrees to refund such surplus funds to Farmers Branch not later than thirty (30) days after making such final payment without Farmers Branch being required to request such refund.

3.5 Termination of Escrow Obligation. Farmers Branch's obligation to retain the funds in the Huffines Extension Account or otherwise to pay for the construction of the Huffines Extension shall terminate upon occurrence of any of the following:

(a) Lewisville fails to award, sign a contract, and issue a notice to proceed for the construction of the Huffines Extension on or before the fifteenth (15th) anniversary of the Effective Date; or

(b) Lewisville obtains funds from a third-party, including, but limited to, Denton County, the North Texas Tollway Authority, or the Texas Department of Transportation, to construct the Huffines Extension; provided, however, if such third-party funds do not cover the entire cost of the construction of the Huffines Extension, Farmers Branch's obligation to fund the Huffines Extension Fund shall be reduced to an amount equal to the difference in the funds provided by the third-party and the actual costs of constructing the Huffines Extension; or

(c) Farmers Branch enters an agreement with a third-party to assume the obligations to construct and/or pay for the costs of constructing the Huffines Extension and said third-party either (i) proceeds to construct the Huffines Extension in accordance with plans and specifications approved by Lewisville or (ii) said third-party escrows the funds for construction of the Huffines Extension in accordance with the Development Regulations.

Article IV Miscellaneous

4.1 Notices. When notice is permitted or required by this Agreement, it shall be in writing and shall be deemed delivered when delivered in person or on the date when placed, postage prepaid in the United States mail, certified return receipt requested, and addressed to the Parties at the address set forth below. Either Party may designate from time to time another and different address for receipt of notice by giving notice of such change or address.

If intended for Farmers Branch, to:

City of Farmers Branch
Attn: City Manager
13000 William Dodson Parkway
Farmers Branch, Texas 75234

With Copies to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, LLP
500 N. Akard St., Suite 1800
Dallas, Texas 75201

In intended for Lewisville to:

City of Lewisville, Texas
Attn: City Manager
P. O. Box 299002
151 Church Street
Lewisville, TX 75029-9002

With Copies to:

4.2 Binding Effect. This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective successors and permitted assigns, including, but not limited to, any successors in title to Property and/or the Adjacent Property.

4.3 Assignment. Farmers Branch shall not assign or transfer its rights or obligations under this Agreement in whole or in part to any other person or entity without the prior written consent of Lewisville, which consent will not be unreasonably withheld.

4.4 Severability. In the event any section, subsection, paragraph, sentence, phrase or word herein is held invalid, illegal or unconstitutional, the balance of this Agreement shall be enforceable and shall be enforced as if the Parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.

4.5 Governing Law. The validity of this Agreement and any of its terms and provisions, as well as the rights and duties of the Parties, shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in a State Court of competent jurisdiction in Denton County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

4.6 Entire Agreement. This Agreement embodies the entire Agreement between the Parties and supersedes all prior Agreements, understandings, if any, relating to the Property and the matters addressed herein and may be amended or supplemented only by written instrument executed by the Party against whom enforcement is sought.

4.7 Recitals. The Recitals to this Agreement are incorporated herein as part of this Agreement.

4.8 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

4.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

4.10 Headings. The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereto.

(Signatures on Following Page)

SIGNED AND AGREED this _____ day of _____, 2016.

CITY OF FARMERS BRANCH, TEXAS

By: _____
Charles Cox, City Manager

ATTEST:

Amy Piukana, City Secretary

APPROVED AS TO FORM:

Peter G. Smith, City Attorney

SIGNED AND AGREED this _____ day of _____, 2016.

CITY OF LEWISVILLE, TEXAS

By: _____
Donna Barron, City Manager

ATTEST:

Julie Heinze, City Secretary

APPROVED AS TO FORM:

Lizbeth Plaster, City Attorney

Exhibit "A"
Description of the Property

Exhibit “B”
Description of Adjacent Property

**Exhibit “C”
Depiction of Proposed Huffines Extension Alignment**