

**AMENDED AND RESTATED
INTERLOCAL AGREEMENT FOR THE
DESIGN AND CONSTRUCTION OF EROSION CONTROL FACILITIES**

This AMENDED AND RESTATED INTERLOCAL AGREEMENT FOR THE DESIGN AND CONSTRUCTION OF EROSION CONTROL FACILITIES (this "Amended and Restated Agreement") is entered into on July __, 2017, to be effective as of June 1, 2017 (the "Effective Date"), by and between the FORT BEND GRAND PARKWAY TOLL ROAD AUTHORITY (the "Authority"), a local government corporation organized and operating under the laws of the State of Texas, and FORT BEND COUNTY LEVEE IMPROVEMENT DISTRICT NO. 7 (the "District"), a political subdivision of the State of Texas created under the provisions of Article XVI, Section 59, of the Texas Constitution, and operating pursuant to Chapters 49 and 57 of the Texas Water Code, as amended, and Chapter 7808 of the Texas Special District Local Laws Code.

RECITALS

A. The Authority owns and operates the Grand Parkway Bridge that crosses the Brazos River in Fort Bend County, Texas.

B. The Authority operates and maintains the Grand Parkway Bridge in a 300-foot right of way (the "Grand Parkway Right-of-Way") near the master-planned community known as New Territory.

C. Pursuant to Sections 57.091 and 57.092 of the Texas Water Code, as amended, the District is authorized to purchase, acquire, build, construct, complete, carry out, maintain, protect, and in case of necessity, add to and rebuild all works and improvements necessary or proper to construct and maintain levees and other improvements on, along, and contiguous to rivers, creeks and streams, to reclaim lands from overflow from these streams, to control and

distribute the waters of rivers and streams by straightening and otherwise improving them, and to provide for the property drainage and other improvements of the reclaimed land.

D. The District has constructed certain levee and drainage improvements to provide protection to the land and improvements of residential and commercial property owners in New Territory located within the jurisdictional boundaries of the District from flooding from the Brazos River.

E. There has recently been erosion on the northern bank of the Brazos River near New Territory, which erosion threatens (i) a portion of the District's levee improvements, and (ii) the structural integrity of the Grand Parkway Bridge by exposing the abutment (the "Abutment") constructed into the northern bank of the Brazos River in the Grand Parkway Right-of-Way.

F. The Authority engaged the engineering firm of Freese and Nichols, Inc. ("FNI") to study the causes of such erosion and develop potential erosion control and/or mitigation solutions to protect the Grand Parkway Bridge.

G. The District also engaged FNI to study the causes of such erosion and develop potential erosion control and/or mitigation solutions to protect the District's levee improvements.

H. FNI has delivered separate but related Preliminary Engineering Reports to both the Authority and the District, respectively, proposing certain erosion control solutions to protect the District's levee improvements and the Grand Parkway Bridge, respectively.

I. One of the solutions proposed by FNI is that the Authority and the District jointly design and construct a subterranean erosion control wall that begins at a certain location to be determined on land owned by the New Territory Residential Community Association, Inc. (the "NTRCA") located to the east and west of the Grand Parkway Right-of-Way, which will protect the District's levee improvements on the east and west sides of the Grand Parkway Bridge

(the "District Erosion Control Facilities"), that will then connect in the middle inside the Grand Parkway Right-of-Way and encircle the Abutment, which will protect the Grand Parkway Bridge (the "Authority Erosion Control Facilities") (together, the Authority Erosion Control Facilities and the District Erosion Control Facilities are referred to herein as the "Erosion Control Facilities", as depicted on **Exhibit A** attached hereto and incorporated herein by this reference).

J. The Authority believes that the construction of the Erosion Control Facilities will provide substantial benefits to the citizens of Fort Bend County and the surrounding areas by mitigating the effects of erosion of the northern bank of the Brazos River and protecting the Grand Parkway Bridge which is used by thousands of drivers every day.

K. The District believes that the construction of the Erosion Control Facilities will provide substantial benefits to the residential and commercial property owners in New Territory by mitigating the effects of erosion of the northern bank of the Brazos River and protecting the District's levee improvements.

L. In order to design and construct the Erosion Control Facilities, the Authority and the District entered into that certain Interlocal Agreement for the Design and Construction of Erosion Control Facilities dated effective as of June 1, 2017 (the "Original Agreement").

M. The Authority and the District entered into the Original Agreement based on an estimate of approximately \$6,000,000 as the total amount of Engineering Fees and Construction Costs for the Erosion Control Facilities.

N. Pursuant to the Original Agreement, the District and the Authority were to split the total amount of Engineering Fees and Construction Costs equally.

O. Pursuant to the Original Agreement, after the Erosion Control Facilities were constructed, the District would maintain and repair the Erosion Control Facilities on behalf of

both parties with the costs of such maintenance and repair being shared between the two parties, as follows: as to the Authority, the percentage calculated by dividing the total linear feet of the Authority Erosion Control Facilities by the total linear feet of the Erosion Control Facilities based on the final design of the Erosion Control Facilities, and as to the District, the percentage calculated by dividing the total linear feet of the District Erosion Control Facilities by the total linear feet of the Erosion Control Facilities based on the final design of the Erosion Control Facilities.

P. As noted in the recitals to the Original Agreement, the District has approximately \$4,000,000 in unspent bond proceeds that it is holding in its construction fund for the repair and rehabilitation of the District's External Drainage Channel (the "Drainage Channel Bond Proceeds").

Q. Pursuant to the Original Agreement, the District would apply to the Texas Commission on Environmental Quality (the "Commission") for authority to change the use of \$2,000,000 of the Drainage Channel Bond Proceeds toward the payment of the District's share of the total Engineering Fees and Construction Costs, and the Authority would fund the balance of the District's share of Engineering Fees and Construct Costs for one year following June 1, 2017, the Effective Date of the Original Agreement.

R. Pursuant to the Original Agreement, the District applied for and obtained the Commission's authorization to use \$264,000 of the Drainage Channel Bond Proceeds toward the District's share of design phase Engineering Fees, and the District has deposited said amount with the Authority; the amount of \$264,000 was based on the estimate of total design phase Engineering Fees in the Original Agreement of a total amount of \$480,000, plus a ten percent (10%) contingency.

S. Pursuant to the Original Agreement, the District obtained and recorded an easement (the "Easement") from the NTRCA which is required in order to connect the Erosion Control Facilities to the land of the NTRCA located to the west and east of the Grand Parkway Right-of-Way.

T. Pursuant to the Original Agreement, the Authority has commenced the design and construction of the Erosion Control Facilities using the Design-Build Method of project procurement under Subchapter H, Chapter 2269 of the Texas Government Code, and the Authority has selected NBG Contractors as the design-build firm (the "Design-Build Firm").

U. Subsequently, the Authority revised its estimate of the total amount of Engineering Fees and Construction Costs to approximately \$17,195,125 because of constructability issues given the continuing erosion of the northern bank of the Brazos River near the Abutment within the Grand Parkway Right-of-Way.

V. The Authority and the District desire to enter into this Amended and Restated Agreement to provide, among other things, that, (i) the District's Proportionate Share of Engineering Fees and Construction Costs shall be a maximum amount of \$3,500,000 (including the \$264,000 that the District previously deposited with the Authority), (ii) the Authority's Proportionate Share of Engineering Fees and Construction Costs shall be one hundred percent (100%) of the total amount of the Engineering Fees and Construction Costs less the \$3,500,000 for which the District is responsible for paying pursuant to and in accordance with the terms and conditions of this Amended and Restated Agreement, (iii) the District shall be responsible for maintaining and repairing, at the District's expense, the District Erosion Control Facilities, and (iv) the Authority shall be responsible for maintaining and repairing, at the Authority's expense, the Authority Erosion Control Facilities.

W. The Authority and the District have determined that: (i) the provisions of this Amended and Restated Agreement, the goods and services to be provided by the Authority to the District hereunder, and the goods and services to be provided by the District to the Authority hereunder, substantially advance the legitimate interests and public purposes of the Authority and the District, and (ii) that they each are independently authorized to enter into this Amended and Restated Agreement pursuant to the Constitution and laws of the State of Texas, particularly Section 49.213, Texas Water Code, as amended, with respect to the District, and Chapter 284 of the Texas Transportation Code, as amended, with respect to the Authority, and Chapter 791, Texas Government Code, as amended.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants, obligations and benefits herein contained, the Authority and the District agree as follows:

ARTICLE I DEFINITIONS AND INTERPRETATIONS

Section 1.1 Definitions. Unless the context clearly requires otherwise, and in addition to other terms defined elsewhere herein, the following terms and phrases used in this Amended and Restated Agreement shall have the meanings set out below:

1.1.1 "Abutment" has the meaning given to such term in Recital E of this Amended and Restated Agreement.

1.1.2 "Authority" has the meaning given to such term in the preamble of this Amended and Restated Agreement.

1.1.3 "Authority Erosion Control Facilities" has the meaning given to such term in Recital I of this Amended and Restated Agreement.

1.1.4 "Authority Indemnified Parties" means the Authority, its directors, agents, employees, officers, consultants, contractors, and legal representatives.

1.1.5 "Commission" has the meaning given to such term in Recital Q of this Amended and Restated Agreement.

1.1.6 "Construction Costs" means all costs and expenses directly related to the construction of the Erosion Control Facilities, including construction contract amounts, change orders and penalties, if any, costs of testing, and costs of stormwater quality protection, and a reasonable contingency on the foregoing.

1.1.7 "Design-Build Firm" has the meaning given to such term in Recital T of this Amended and Restated Agreement.

1.1.8 "District" has the meaning given to such term in the preamble of this Amended and Restated Agreement.

1.1.9 "District Engineer" means FNI, or its successor as appointed by the District.

1.1.10 "District Erosion Control Facilities" has the meaning given to such term in Recital I of this Amended and Restated Agreement.

1.1.11 "District Indemnified Parties" means the District, its directors, agents, employees, officers, consultants, contractors, and legal representatives.

1.1.12 "Drainage Channel Bond Proceeds" has the meaning given to such term in Recital P of this Amended and Restated Agreement.

1.1.13 "Easement" has the meaning given to such term in Recital S of this Amended and Restated Agreement.

1.1.14 "Encumbrances" has the meaning given to such term in Section 2.5 of this Amended and Restated Agreement.

1.1.15 "Effective Date" means June 1, 2017.

1.1.16 "Engineering Fees" means all costs directly related to the design and engineering of the Erosion Control Facilities, including, as applicable, fees for consultation, surveying and preparation of plans and specifications and construction, inspection and supervision fees, and charges incurred in obtaining necessary permits and approvals from local and state authorities and other necessary services, and a reasonable contingency on the foregoing.

1.1.17 "Erosion Control Facilities" has the meaning given to such term in Recital I of this Amended and Restated Agreement.

1.1.18 "FNI" has the meaning given to such term in Recital F of this Amended and Restated Agreement.

1.1.19 "Grand Parkway Right-of-Way" has the meaning given to such term in Recital B of this Amended and Restated Agreement.

1.1.20 "NTRCA" has the meaning given to such term in Recital I of this Amended and Restated Agreement.

1.1.21 "Person" means any individual, public or private corporation, district, authority, political subdivision, or other agency or entity of the State of Texas or the United States of America; any incorporated city, town, or village, whether operating under general law or under its home-rule charter; and any partnership, joint venture, limited liability company, association, firm, trust, estate, or any other entity whatsoever.

1.1.22 "Proportionate Share of Engineering Fees and Construction Costs" or "Proportionate Shares of Engineering Fees and Construction Costs" means, as to the District, an amount not to exceed \$3,500,000 (including the \$264,000 that the District previously deposited with the Authority) of the total Engineering Fees and Construction Costs, and, as to the Authority, one hundred percent (100%) of the total amount of the Engineering Fees and Construction Costs less the \$3,500,000 for which the District is responsible for paying pursuant to and in accordance with the terms and conditions of this Amended and Restated Agreement.

1.1.23 "Regulatory Requirements" means the requirements and provisions of any state or federal law, and any permits, rules, orders, or regulations issued or adopted from time to time by any state, federal, local, or other regulatory authority having jurisdiction concerning the design, construction, operation and maintenance of the Erosion Control Facilities.

Section 1.2. Titles and Headings. The titles and headings of the articles and sections of this Amended and Restated Agreement have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Amended and Restated Agreement or any provision hereof or in ascertaining intent, if any question of intent should arise. Unless the context otherwise requires, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa and words of the singular number shall be construed to include correlative words of the plural number and vice versa.

Section 1.3. Interpretations. This Amended and Restated Agreement and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of this Amended and Restated Agreement. The parties agree that this

Amended and Restated Agreement shall not be construed in favor of or against a party on the basis that the party did or did not author this Amended and Restated Agreement. Nothing in this Amended and Restated Agreement shall be construed to violate any state or federal statutory provision, any provision of the state or federal constitutions, and any Regulatory Requirements, and all acts done pursuant to this Amended and Restated Agreement shall be performed in such manner as to conform thereto whether expressly so provided or not.

ARTICLE II

DESIGN, CONSTRUCTION, OWNERSHIP,

AND MAINTENANCE OF EROSION CONTROL FACILITIES

Section 2.1 Conditions to Construction of Erosion Control Facilities; Regulatory Permits. It is expressly agreed and understood that any obligation on the part of the Authority to design and construct the Erosion Control Facilities shall, in addition to any conditions specified elsewhere in this Amended and Restated Agreement, be subject to the Authority's ability to obtain or cause to be obtained all approvals, permits, permit amendments, and licenses required to construct, operate and maintain the Erosion Control Facilities. The Authority agrees to make application for and diligently pursue any permits or amendments to existing permits, and take such other lawful actions as may be necessary to obtain such permits or amendments, necessary for the construction of the Erosion Control Facilities. The District agrees to cooperate with the Authority in any way reasonably necessary in applying for, pursuing, and obtaining such permits or amendments.

Section 2.2 Design. The Authority and the District acknowledge that the Authority has authorized the Design-Build Firm to commence the design of the Erosion Control Facilities, which design must meet all Regulatory Requirements. The Authority shall cause the Design-

Build Firm to use its best efforts to prepare such plans and specifications and obtain approval of same within six (6) months from the Effective Date. The Authority shall cause the Design-Build Firm to provide a copy of the preliminary plans and specifications for the Erosion Control Facilities to the District Engineer for review and approval, which approval shall not be unreasonably withheld, conditioned, or delayed. Further, the Authority shall cause the Design-Build Firm to provide a copy of the final plans and specifications for the Erosion Control Facilities to the District Engineer for review and approval, which approval shall not be unreasonably withheld, conditioned, or delayed.

Section 2.3 Construction. Upon the District Engineer's approval of the final plans and specifications for the Erosion Control Facilities, the Authority shall cause the Design-Build Firm to commence the construction of the Erosion Control Facilities, and the Authority shall provide a copy of the construction contract documents to the District. The Authority shall be responsible for having the construction performed in a good and workmanlike manner and in accordance with the approved plans and specifications. The Authority shall administer the contract or contracts in accordance with all Regulatory Requirements. The Authority shall approve all pay estimates and other invoices related to the construction of the Erosion Control Facilities prior to their payment, copies of which will be provided to the District.

Section 2.4 Inspection and Reports. The Authority shall make periodic observations of the construction of the Erosion Control Facilities during construction. The results of these observations shall be provided to the District. The District and the District Engineer shall have access to the construction site at all reasonable times and shall be provided with copies of all plans, specifications, contracts and change orders, if any, relating to the construction of the

Erosion Control Facilities. The Authority shall make monthly reports to the District on the progress of construction.

Section 2.5 Conveyance of District Erosion Control Facilities to the District; Ownership of Authority Erosion Control Facilities. Upon the completion of the construction of the Erosion Control Facilities, the Authority shall convey to the District all of the Authority's right, title, and interest in and to the District Erosion Control Facilities free and clear of all liens, claims, encumbrances, options, charges, assessments, restrictions, limitations and reservations (except for such restrictions, limitations and reservations which restrict the District Erosion Control Facilities for flood protection purposes), including liens for ad valorem taxes for the current year and payments due to construction contractors, laborers and materialmen (the foregoing collectively herein called "Encumbrances"); provided, however, the District may consent to any conveyance and sale with such Encumbrances which would not unreasonably interfere with the use by the District of the District Erosion Control Facilities. The Authority shall provide proof of title and proof that no Encumbrances exist as may be reasonably required by the District. The Authority shall be required to represent and warrant in the conveyance and bill of sale that (a) it has the full legal right and authority to make the conveyance and sale, (b) it has good and marketable title to the District Erosion Control Facilities, (c) it is not subject to any bylaw, agreement, mortgage, lien, lease, instrument, order, judgment, decree or other restriction of any kind or character which would prevent the execution of the conveyance and bill of sale, (d) it is not engaged in or threatened with any legal action or proceeding, nor is it under any investigation, which would prevent the execution of the conveyance and bill of sale, and (e) the person executing the conveyance and bill of sale on behalf of the Authority has full authority to

do so without further action of the Authority. The conveyance shall be substantially in the form attached hereto as **Exhibit B** and incorporated herein by this reference.

Section 2.6 Maintenance of the Erosion Control Facilities.

2.6.1 Upon the completion of the construction of the Erosion Control Facilities, the District shall be responsible for the maintenance and repair of the District Erosion Control Facilities, at the expense of the District, and the District shall maintain the District Erosion Control Facilities in good condition. Notwithstanding the foregoing, in the event of disrepair, a break, rupture, or other defect occurs with respect to the District Erosion Control Facilities which could, in the reasonable determination of the Authority, endanger the integrity of the Authority Erosion Control Facilities or prejudice the Authority's ability to protect the Grand Parkway Bridge, the Authority may provide notice of same to the District and, if the District fails to immediately repair or proceed with the repairs of such disrepair, break, rupture, or other defect, the Authority may, at its option, repair same and charge the District the expenses of such repair, which expenses the District must pay to the Authority within forty-five (45) days of the District's receipt of an invoice therefor from the Authority.

2.6.2 Upon the completion of the construction of the Erosion Control Facilities, the Authority shall be responsible for the maintenance and repair of the Authority Erosion Control Facilities, at the expense of the Authority, and the Authority shall maintain the Authority Erosion Control Facilities in good condition. Notwithstanding the foregoing, in the event of disrepair, a break, rupture, or other defect occurs with respect to the Authority Erosion Control Facilities which could, in the reasonable determination of the District, endanger the integrity of the District Erosion Control Facilities or prejudice the District's ability to protect its levee system, the District may provide notice of same to the Authority and, if the Authority fails to

immediately repair or proceed with the repairs of such disrepair, break, rupture, or other defect, the District may, at its option, repair same and charge the Authority the expenses of such repair, which expenses the Authority must pay to the District within forty-five (45) days of the Authority's receipt of an invoice therefor from the District.

Section 2.7 Rights of Entry.

2.7.1 The District hereby grants to the Authority the right to go over and across and use such portions of the "Easement Tracts," as such term is defined in the Easement, as shall be reasonably necessary to carry out (i) the construction of the Erosion Control Facilities and, to the extent necessary pursuant to Section 2.7.1 of this Amended and Restated Agreement, (ii) the maintenance and/or repair of the District Erosion Control Facilities. Further, the Authority shall have a right of entry at reasonable times and upon reasonable notice in, over and across the lands, properties and facilities of the District for the purposes of making any inspections permitted by this Amended and Restated Agreement, constructing the Erosion Control Facilities, and performing any other functions or duties authorized by this Amended and Restated Agreement.

2.7.2 The District shall have a right of entry at reasonable times and upon reasonable notice in, over and across the lands, properties and facilities of the Authority, including the Grand Parkway Right-of-Way, for the purposes of making any inspections permitted by this Amended and Restated Agreement, maintaining the Authority Erosion Control Facilities to the extent necessary pursuant to Section 2.7.2 of this Amended and Restated Agreement, and performing any other functions or duties authorized by this Amended and Restated Agreement. Additionally, the parties acknowledge and agree that, as of the Effective Date, the Erosion Control Facilities have not yet been designed and constructed, and,

accordingly, the exact locations and layouts for such improvements have not yet been definitively determined. Accordingly, the parties agree to mutually cooperate in good faith with respect to the granting of easements or other rights-of-way necessary for the construction and subsequent maintenance of such improvements.

ARTICLE III

FUNDING OF ENGINEERING FEES AND CONSTRUCTION COSTS

Section 3.1 Funding of Engineering Fees and Construction Costs. As soon as reasonably practicable, the District shall submit an application to the Commission for authorization to change the use of \$3,236,000 (\$3,500,000 less the \$264,000 that the District previously deposited with the Authority) of the Drainage Channel Bond Proceeds to pay the District's Proportionate Share of Engineering Fees and Construction Costs. Within thirty (30) day following the Commission's approval of said application, the District shall, in the absence of other satisfactory arrangements between the Authority and the District, deposit said \$3,236,000 with the Authority, and said funds shall be used by the Authority for the sole purpose of funding the design and construction of the Erosion Control Facilities. As soon as reasonably practicable, the Authority shall, in the absence of other satisfactory arrangements between the Authority and the District, set aside a sum of money sufficient to pay for the Authority's Proportionate Share of Engineering Fees and Construction Costs, and said funds shall be used by the Authority for the sole purpose of funding the design and construction of the Erosion Control Facilities. Notwithstanding anything to the contrary in this Amended and Restated Agreement, the District's responsibility for the total amount of Engineering Fees and Construction Costs shall not exceed \$3,500,000 (including the \$264,000 that the District previously deposited with the Authority).

Section 3.2 Method of Payment for Engineering Fees and Construction Costs.

3.2.1 Pending their use for the appropriate purposes, any funds deposited by the District with the Authority and the funds set aside by the Authority, as set forth above, shall be invested as determined by the Authority, acting through Fort Bend County in compliance with applicable law, or shall be otherwise secured as required by applicable law.

3.2.2 In each month in which the Authority intends to pay a pay estimate, invoice or change order, Engineering Fees, or Construction Costs, the Authority will provide to the District copies of the monthly pay estimates, invoices, or change orders, and the Design-Build Firm's recommendation for payment. The Authority shall pay all pay estimates, invoices, or change orders out of the funds deposited by the District with the Authority and the funds set aside by the Authority pursuant to Section 3.1 of this Amended and Restated Agreement. The District shall have full access to all of the Authority's and the Design-Build Firm's contracts, books, and records relating to the design and construction of the Erosion Control Facilities.

3.2.3 Within forty-five (45) days after the construction of the Erosion Control Facilities is certified complete by the Design-Build Firm, the Authority shall make a final accounting of all payments made, and the Authority shall provide a copy of said accounting to the District.

3.2.4 The Authority and the District each hereby covenant to make prompt payment of their respective Proportionate Shares of Engineering Fees and Construction Costs as provided herein, without diminution, set-off or counterclaim. At the District's request, the Authority shall provide the District with full back up in the Authority's possession for all costs and invoices that the District's money will be used against.

ARTICLE IV

ACCOUNTS, RECORDS AND INSURANCE

Section 4.1 Security of Funds. The funds to be deposited by the District with the Authority and the funds to be set aside by the Authority pursuant to Section 3.1 of this Amended and Restated Agreement shall be kept separate and apart from all other accounts and funds of the Authority and from each other. Subject to the other specific requirements of this Amended and Restated Agreement with respect to the deposit of funds, said funds shall be continuously secured in the manner required by the laws of the State of Texas applicable to the Authority as such laws now exist or may exist during the term of this Amended and Restated Agreement.

Section 4.2 Earnings From Investments. The interest accruing on and any profits realized from investing the funds to be deposited by the District with the Authority and the funds to be set aside by the Authority pursuant to Section 3.1.2 of this Amended and Restated Agreement, shall be credited to the account from which such investment was made and allocated to each party based upon its Proportionate Share contributed.

Section 4.3 Accounts, Records, and Accounting Records. The Authority covenants and agrees that it will maintain books of records and accounts in which full, true, and proper entries will be made of all dealings, transactions, business, and any other matters which in any way affect or pertain to the Erosion Control Facilities, the allocation and application of the Engineering Fees and Construction Costs to the Erosion Control Facilities in the applicable Proportionate Shares of Engineering Fees and Construction Costs, and payment of the Engineering Fees and Construction Costs. Such books and accounts will be available for inspection by the District at reasonable hours and under reasonable circumstances.

Section 4.4 Insurance.

4.4.1. The Authority covenants that it will at all times keep insured the Authority Erosion Control Facilities and against liability as is the usual and customary practice of political subdivisions of the State of Texas operating like properties in similar locations under the same circumstances, with a responsible insurance company or companies, and against risk, accidents, or casualties for which and to the extent insurance is usually carried by said political subdivisions. All such policies shall be open to inspection by the District at all reasonable times. Further, at all times during the term of this Amended and Restated Agreement, the Authority shall carry comprehensive general liability insurance against liability for bodily or personal injury or death of any person or damage to any property with a minimum amount of \$1,000,000 per occurrence and \$2,000,000 aggregate. The District shall be named as an additional insured in said general liability insurance policies.

4.4.2. The District covenants that it will at all times keep insured the District Erosion Control Facilities and against liability as is the usual and customary practice of political subdivisions of the State of Texas operating like properties in similar locations under the same circumstances, with a responsible insurance company or companies, and against risk, accidents, or casualties for which and to the extent insurance is usually carried by said political subdivisions. All such policies shall be open to inspection by the Authority at all reasonable times. Further, at all times during the term of this Amended and Restated Agreement, the District shall carry comprehensive general liability insurance against liability for bodily or personal injury or death of any person or damage to any property with a minimum amount of \$1,000,000 per occurrence and \$2,000,000 aggregate. The Authority shall be named as an additional insured in said general liability insurance policies.

Section 4.5 Insurance Proceeds. In the event of any loss or damage to the Authority Erosion Control Facilities, the Authority covenants that it will reconstruct or repair the destroyed or damaged portion of the Authority Erosion Control Facilities and will apply the proceeds of the insurance policies covering such loss or damage solely for that purpose. The Authority covenants that it will begin such work or reconstruction or repair promptly after such loss or damage shall occur and will continue to properly complete the same as expeditiously as possible and will pay, or cause to be paid, all costs and expenses in connection therewith out of the insurance proceeds to the extent insurance proceeds are available. In the event of any loss or damage to the District Erosion Control Facilities, the District covenants that it will reconstruct or repair the destroyed or damaged portion of the District Erosion Control Facilities and will apply the proceeds of the insurance policies covering such loss or damage solely for that purpose. The District covenants that it will begin such work or reconstruction or repair promptly after such loss or damage shall occur and will continue to properly complete the same as expeditiously as possible and will pay, or cause to be paid, all costs and expenses in connection therewith out of the insurance proceeds to the extent insurance proceeds are available.

ARTICLE V

REPRESENTATIONS AND WARRANTIES

Section 5.1 The Authority. The Authority represents and warrants to the District that as of the Effective Date that:

5.1.1 It is a local government corporation organized and operating under the laws of the State of Texas;

5.1.2 It has the full power, authority and legal right to execute and deliver this Amended and Restated Agreement and to perform and observe the terms and provisions hereof;

5.1.3 The form, execution, delivery and performance by the Authority of this Amended and Restated Agreement have been duly authorized by all necessary action and does not violate or contravene any law or any order of any court or governmental agency or any agreement or other instrument to which the Authority is a party or by which it or any of its properties may be bound; and

5.1.4 This Amended and Restated Agreement is a legal, valid and binding obligation of the Authority enforceable against the Authority in accordance with its terms except that enforceability of the Authority's obligations hereunder may be limited by doctrines of immunity, bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights in general and is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

Section 5.2 The District. The District represents and warrants to the Authority that as of the date hereof that:

5.2.1 It is a levee improvement district duly organized, validly existing and operating under the laws of the State of Texas;

5.2.2 It has the full power, authority and legal right to execute and deliver this Amended and Restated Agreement and to perform and observe the terms and provisions hereof;

5.2.3 The form, execution, delivery and performance by the District of this Amended and Restated Agreement have been duly authorized by all necessary action and does not violate or contravene any law or any order of any court or governmental agency or any agreement or other instrument to which the District is a party or by which it or any of its properties may be bound;

5.2.4 This Amended and Restated Agreement is a legal, valid and binding obligation of the District enforceable against the District in accordance with its terms except that enforceability of the District's obligations hereunder may be limited by doctrines of immunity, bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights in general and is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

ARTICLE VI

INDEMNITIES AND RELEASES

Section 6.1 Indemnities.

6.1.1. TO THE EXTENT PERMITTED BY LAW, THE DISTRICT SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE AUTHORITY INDEMNIFIED PARTIES AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION AND/OR ADVERSARY OR ADMINISTRATIVE PROCEEDINGS OF ANY KIND OR NATURE FOR ANY AND ALL LIABILITIES, DAMAGES, PENALTIES, EXPENSES (INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND ALL OTHER DEFENSE COSTS AND INTEREST), FINES, AND LOSSES ARISING FROM, RELATED TO, OR RESULTING FROM, THE FAILURE OF THE EROSION CONTROL FACILITIES TO PROTECT THE DISTRICT'S LEVEE IMPROVEMENTS FROM EROSION OF THE NORTHERN BANK OF THE BRAZOS RIVER.

6.1.2. TO THE EXTENT PERMITTED BY LAW, THE AUTHORITY SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE DISTRICT INDEMNIFIED PARTIES AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION AND/OR ADVERSARY OR ADMINISTRATIVE PROCEEDINGS OF ANY KIND OR NATURE FOR

ANY AND ALL LIABILITIES, DAMAGES, PENALTIES, EXPENSES (INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND ALL OTHER DEFENSE COSTS AND INTEREST), FINES, AND LOSSES ARISING FROM, RELATED TO, OR RESULTING FROM, THE FAILURE OF THE EROSION CONTROL FACILITIES TO PROTECT THE GRAND PARKWAY BRIDGE FROM EROSION OF THE NORTHERN BANK OF THE BRAZOS RIVER.

Section 6.2 Releases.

6.2.1. EXCEPT WITH RESPECT TO THE AUTHORITY'S INDEMNITY OBLIGATION TO THE DISTRICT PURSUANT TO SECTION 6.1.2 OF THIS AMENDED AND RESTATED AGREEMENT, THE DISTRICT HEREBY RELEASES THE AUTHORITY INDEMNIFIED PARTIES FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR RESULTANT FROM THIS AMENDED AND RESTATED AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF THE AUTHORITY, ITS AGENTS, OFFICERS, DIRECTORS, REPRESENTATIVES, EMPLOYEES, CONSULTANTS, AND/OR CONTRACTORS. THE FOREGOING RELEASE PROVISION DOES NOT APPLY TO ANY INJURY, DEATH, DAMAGE OR LOSS CAUSED BY THE SOLE, CONTRIBUTORY, OR CONCURRENT NEGLIGENCE OF ANY OF THE AUTHORITY RELEASED PARTIES.

6.2.2. EXCEPT WITH RESPECT TO THE DISTRICT'S INDEMNITY OBLIGATION TO THE AUTHORITY PURSUANT TO SECTION 6.1.1 OF THIS AMENDED AND RESTATED AGREEMENT, THE AUTHORITY HEREBY RELEASES THE DISTRICT INDEMNIFIED PARTIES FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH

OR RESULTANT FROM THIS AMENDED AND RESTATED AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF THE DISTRICT, ITS AGENTS, OFFICERS, DIRECTORS, REPRESENTATIVES, EMPLOYEES, CONSULTANTS, AND/OR CONTRACTORS. THE FOREGOING RELEASE PROVISION DOES NOT APPLY TO ANY INJURY, DEATH, DAMAGE OR LOSS CAUSED BY THE SOLE, CONTRIBUTORY, OR CONCURRENT NEGLIGENCE OF ANY OF THE DISTRICT RELEASED PARTIES.

ARTICLE VII

MISCELLANEOUS

Section 7.1 Term. Unless terminated by mutual agreement of the parties hereto or as otherwise provided herein, this Amended and Restated Agreement shall continue in force and effect for a period of forty (40) years from the Effective Date and shall automatically be extended for additional terms of five (5) years unless terminated by either party upon two (2) years prior written notice before the end of the then applicable term.

Section 7.2 Liability for Indebtedness. It is expressly understood and agreed that, except as otherwise provided in this Amended and Restated Agreement, nothing in this Amended and Restated Agreement has the effect of causing either party to assume, guarantee, or become in any way liable for any bond, warrant, note or other indebtedness or obligation of the other party.

Section 7.3 Approvals by Parties. Whenever this Amended and Restated Agreement requires or permits approvals or consents to be hereafter given by either the Authority or the District, each of the Authority and the District agree that such approval or consent shall not be unreasonably withheld, conditioned or delayed. Such approval or consent may be evidenced by an order or orders, a resolution or resolutions, or other appropriate action adopted by the Board

of Directors of the Authority or the District, as applicable, in a meeting held in compliance with applicable law, or by an appropriate certificate or other writing executed by a Person, firm, or entity authorized to determine and give approval or consent on behalf of either the Authority or the District. Such approval or consent shall be effective without regard to whether given before or after the time required herein.

Section 7.4 Force Majeure. In the event either party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Amended and Restated Agreement, other than the payment of money unless due to a general and widespread economic collapse or moratorium on banking activities within the United States of America or the State of Texas, then the obligations of such party, to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. As soon as reasonably possible after the occurrence of the force majeure relied upon, the party whose contractual obligations are affected thereby shall give notice and full particulars of such force majeure to the other parties. Such cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure," as used herein, shall mean acts of God; strikes, lockouts, or other industrial disturbances; acts of the public enemy; orders of any kind of the government of the United States or the State of Texas or any civil or military authority other than a party to this Amended and Restated Agreement; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; washouts; droughts; arrests; civil disturbances; explosions; breakage or accidents to machinery, pipelines, or canals; and any other incapacities of either party, similar to those enumerated, which are not within the control of the party claiming such inability and which such party could not have

avoided by the exercise of due diligence and care. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing third party or parties when such settlement is unfavorable to the party having the difficulty in the judgment of such party.

Section 7.5 Waiver of Governmental Immunity; Interlocal Agreement. The Authority and the District acknowledge and agree that this Amended and Restated Agreement constitutes an agreement to provide goods and services to each other and is subject to the provisions of Subchapter I of Chapter 271, Texas Local Government Code, as amended, and any successor statute(s), as and if in effect. In accordance with Sections 271.152 and 271.153 thereof, to the extent limited, however, by the provisions thereof, the Authority and the District hereby waive any constitutional, statutory or common law right to sovereign or governmental immunity from suit and expressly consent to be sued to the extent necessary for the Authority and the District to enforce this Amended and Restated Agreement against each other; provided, however, that (i) the Authority waives such rights only as to the District and this Amended and Restated Agreement, and (ii) the District waives such rights only as to the Authority and this Amended and Restated Agreement. The Authority and the District acknowledge and agree that this Amended and Restated Agreement is enforceable against each other as an "interlocal contract" as defined by and pursuant to Chapter 791, Texas Government Code, as amended.

Section 7.6 Remedies Upon Default. In the event of breach or default by either party hereto of any term, covenant, condition or liability hereunder (and which breach or default continues for thirty (30) days after receipt of written notice from the non-breaching or non-

defaulting party), the non-breaching or non-defaulting party shall have the right to pursue all legal or equitable remedies, including, but not limited to, the right of specific performance by means of a writ of mandamus issued by a court of competent jurisdiction compelling and requiring the breaching party or defaulting party to observe and perform the terms, covenants, obligations, conditions or liabilities prescribed in this Amended and Restated Agreement.

Section 7.7 No Additional Waiver Implied. No waiver or waivers of any breach or default (or any breaches or defaults) by either party hereto of any term, covenant, condition, or liability hereunder, or of performance by any other party of any duty or obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind under any circumstances.

Section 7.8 Addresses and Notice. Unless otherwise provided in this Amended and Restated Agreement, any notice, communication, request, reply, or advice (herein severally and collectively, for convenience, called "notice") herein provided or permitted to be given, made, or accepted by either party to the other party must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party, or by hand delivery, addressed to the party to be notified. Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated in this Amended and Restated Agreement, from and after the date reflected on the return receipt. Notice given in any other manner shall be effective only if and when received by the party to be notified as evidenced by a written receipt. For the purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be:

If to the Authority: Board of Directors
Fort Bend Grand Parkway Toll Road Authority
c/o The Muller Law Group, PLLC
16555 Southwest Freeway, Suite 200
Sugar Land, Texas 77479

If to the District: Board of Directors
Fort Bend County Levee Improvement District No. 7
c/o Schwartz, Page & Harding, L.L.P.
1300 Post Oak Boulevard, Suite 1400
Houston, Texas 77056

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 its address any other address by at least fifteen (15) days written notice to the other party.

Section 7.9 Amendment; Modification. This Amended and Restated Agreement shall be subject to change, amendment or modification only with the mutual written consent of the Board of Directors of each of the parties hereto.

Section 7.10 Assignment. This Amended and Restated Agreement shall not be assigned by either party without the prior written consent of the other party.

Section 7.11 Parties in Interest. This Amended and Restated Agreement shall be for the sole and exclusive benefit of the parties hereto and shall not be construed to confer any benefit or right upon any other Person.

Section 7.12 Severability. The provisions of this Amended and Restated Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Amended and Restated Agreement or the application thereof to any Person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Amended and Restated Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Amended and Restated Agreement to any other Person or circumstances shall not be affected thereby.

Section 7.13 Merger. This Amended and Restated Agreement, together with the exhibits attached hereto and made a part hereof for all purposes, constitutes the entire agreement between the parties relative to the subject matter hereof.

Section 7.14 Termination of Original Agreement. The Authority and the District hereby agree that the Original Agreement is hereby amended and restated in its entirety and that this Amended and Restated Agreement is entered into in substitution for the Original Agreement, which Original Agreement is hereby terminated and of force and effect. Accordingly, this Amended and Restated Agreement shall be retroactively effective as of the Effective Date.

IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Agreement in multiple counterparts, each of which shall have the full force and effect of an original, but constituting only one instrument, as of the Effective Date.

[SIGNATURES COMMENCE ON THE FOLLOWING PAGE]

FORT BEND GRAND PARKWAY
TOLLROAD AUTHORITY

By 
Dr. James D. Condrey, DDS
Chairman, Board of Directors

THE STATE OF TEXAS §
 §
COUNTY OF Fort Bend §

This instrument was acknowledged before me on this 19th day of July, 2017, by Dr. James D. Condrey, DDS, Chairman of the Board of Directors of the Fort Bend Grand Parkway Toll Road Authority, a local government Texas corporation, on behalf of said corporation.




Notary Public in and for
the State of Texas

EFFECTIVE DATE

THIS AMENDED AND RESTATED AGREEMENT IS EFFECTIVE ON THE DATE IT IS APPROVED BY THE FORT BEND COUNTY COMMISSIONERS COURT, AND IF NOT SO APPROVED SHALL BE NULL AND VOID.

DATE OF COMMISSIONERS COURT APPROVAL: _____

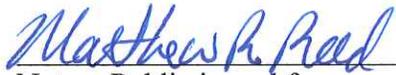
AGENDA ITEM NO.: _____

FORT BEND COUNTY LEVEE IMPROVEMENT
DISTRICT NO. 7

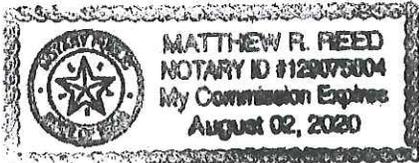
By: 
Epifanio Salazar, Jr.
Chairman, Board of Directors

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

This instrument was acknowledged before me on this 18th day of July, 2017, by Epifanio Salazar, Jr., Chairman of the Board of Directors of Fort Bend County Levee Improvement District No. 7, a political subdivision of the State of Texas, on behalf of said political subdivision.


Notary Public in and for
the State of T E X A S

(SEAL)



EXHIBITS

Exhibit A - Depiction of Erosion Control Facilities

Exhibit B - Form of Conveyance

EXHIBIT A

DEPICTION OF EROSION CONTROL FACILITIES

TO HAVE AND TO HOLD the above-described Facilities together with all and singular the rights and appurtenances thereunto in anywise belonging, including all necessary rights of ingress, egress, and regress, unto Grantee, its successors and assigns, forever; and Grantor does hereby bind itself, its successors and assigns to warrant and forever defend, all and singular, the above-described Facilities subject to the matters herein set forth, unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise.

Grantor binds and obligates itself, its successors and assigns, to execute and deliver at the request of Grantee any other or additional instruments of transfer, bills of sale, conveyances, or other instruments or documents which may be necessary or desirable to evidence more completely or to perfect the transfer to Grantee of the Facilities.

Grantor, in addition to the other representations and warranties herein, specifically makes the following agreements, representations and warranties:

1. As of the date hereof Grantor has complied with all terms, provisions and covenants of, and performed all required services under, the Agreement related to the payment in full of fees, costs, and expenses related to the construction of the Facilities.
2. Grantor caused construction and installation of the Facilities conveyed and sold hereunder, the purchase of goods, and the performance of other services under the Agreement to be accomplished in accordance with the "Regulatory Requirements" as defined in and pursuant to the Agreement in effect at the time the Contract was executed and during such construction.
3. Grantor has the full legal right and authority to make the sale, transfer, and assignment herein provided.
4. Grantor has good and marketable title to the Facilities conveyed and sold hereunder, is not a party to any written or oral contract which adversely affects this conveyance and sale, and is not subject to any bylaw, agreement, mortgage, lien, lease, instrument, order, judgment, decree, or other restriction of any kind or character which would prevent the execution of this conveyance and bill of sale.
5. Grantor is not engaged in or threatened with any legal action or proceeding, nor is it under any investigation, which would prevent the execution of this conveyance and bill of sale.
6. The person executing this conveyance and bill of sale on behalf of Grantor has full authority to do so, and no further official action need be taken by Grantor to validate this conveyance and bill of sale.
7. There are no holders of liens against the Facilities.

The representations, warranties, covenants, and other agreements contained herein shall be deemed to be material and continuing, shall not be merged, and shall survive the closing of this transaction and the delivery of the Facilities, except as otherwise herein expressly provided.

The parties represent that neither has used any agent or broker to bring about this conveyance and sale and agree that no fee is due any agent or broker by reason hereof.

This conveyance and bill of sale may be executed in a number of counterparts, each of which shall, for all purposes, be deemed to be an original, and all such counterparts shall together constitute and be one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this conveyance and bill of sale to be executed and delivered by their duly authorized officers.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

EXECUTED this the _____ day of _____, 20__.

FORT BEND GRAND PARKWAY TOLL ROAD
AUTHORITY

By _____
Chairman, Board of Directors

"Grantor"

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on this _____ day of _____, 20__,
by _____, Chairman of the Board of Directors of the Fort Bend Grand
Parkway Toll Road Authority, a local government Texas corporation, on behalf of said
corporation.

(SEAL)

Notary Public in and for
the State of Texas

EFFECTIVE DATE

THIS CONVEYANCE IS EFFECTIVE ON THE DATE IT IS APPROVED BY THE FORT
BEND COUNTY COMMISSIONERS COURT, AND IF NOT SO APPROVED SHALL BE
NULL AND VOID.

DATE OF COMMISSIONERS COURT APPROVAL: _____

AGENDA ITEM NO.: _____

AGREED TO AND ACCEPTED THIS ____ day of _____, 20__.

FORT BEND COUNTY LEVEE
IMPROVEMENT NO. 7

By _____
Chairman, Board of Directors

"Grantee"

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

This instrument was acknowledged before me on this ____ day of _____, 20__, by _____, Chairman of the Board of Directors of Fort Bend County Levee Improvement District No. 7, on behalf of said district.

(SEAL)

Notary Public in and for
the State of Texas

EXHIBIT "1"

[Depiction of the District Erosion Control Facilities]

EXHIBIT "2"

[Description of Easements or Sites]