

ENGINEERING SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between the Fort Bend Grand Parkway Toll Road Authority, a transportation corporation organized and operating under the laws of the State of Texas, hereinafter called the "FBGPTRA" and Raba-Kistner Infrastructure, Inc., hereinafter called "Engineer."

WITNESSETH

WHEREAS, the FBGPTRA desires to enter into an agreement for the performance of professional engineering services by Engineer during the Project, and which are within the "Scope of Services" as defined in section 2 below;

WHEREAS, the FBGPTRA proposes to construct Toll Road grade separation structures from US 59 to north of the Fort Bend Westpark Tollway (FM 1093) in Fort Bend County, Texas, called the Fort Bend Grand Parkway Toll Road, Segment D (the "Project");

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

AGREEMENT

1. **General**

The Engineer shall render professional engineering services, which include the provision of advice, judgment and opinions, to FBGPTRA related to the Project as defined in the Scope of Services in Attachment A (the "Services"). Any professional engineering services, which include the rendition of advice, judgment and opinions, and which relate to the Project, but fall outside what is required by the Scope of Services shall hereinafter be referred to as Additional Services and are further described in Attachment A-1

The standard of care for all Services and Additional Services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of Engineer's profession practicing under similar conditions at the same time and in the same locality.

2. **Compensation and Payment**

- a. The Maximum Compensation under this contract is \$200,000. The amount paid under this Agreement may not exceed the Maximum Compensation without an approved change order.

Compensation for the performance of Services described in Attachment A is based on billing rates, as shown in Attachment B, not to exceed \$200,000. Progress payments for work detailed in Attachment A will be made when the Engineer has attained a level of completion equal to or greater than agreed upon milestones of completion in the reasonable opinion of FBGPTRA.

Compensation for Additional Services described in Attachment A-1 will be paid per the rates described in Attachment B-1 only for work authorized in writing prior to being performed and only for such work as was actually performed. The Engineer shall furnish satisfactory documentation of such work (e.g. timesheets, billing rates, classifications, invoices, etc.) as may be required by FBGPTRA.

- b. All performance of the Scope of Services and any Additional Services including changes in the contractual scope of work and revision of work satisfactorily performed, will be performed only when approved in advance and authorized by the FBGPTRA, and Additional Services will be reimbursed based on the billing rates in effect at that time, to the extent that such labor costs, and subcontracts are reasonable and necessary for the performance of such services. Out-of-pocket expense costs may be reimbursed only when approved in advance and authorized by the FBGPTRA. Billing rates will be inclusive of all direct labor, fringe benefits, general overhead, and profit.
- c. Where subcontractors are employed by the Engineer to perform Additional Services, the Engineer will be reimbursed for subcontractors' actual salaries and hourly rates, including overtime rates. Reimbursement to the Subcontractor for non-salary costs incurred by subcontractor will be on the same basis as if the cost was incurred by the Engineer. Notwithstanding the above, for subcontractors employed for the convenience of the FBGPTRA to perform Services or Additional Services, the Engineer will be paid a subcontract administrative fee equal to ten percent (10%) of all subcontractor invoiced amounts.
- d. It is understood and agreed that monthly payments will be made to the Engineer by the FBGPTRA based on the following procedures: On or about the fifteenth day of each month during the performance of Services hereunder and on or about the fifteenth day of the month following completion of all Services hereunder, the Engineer shall submit to the FBGPTRA two (2) copies of invoices showing the amounts due for Services performed during the previous month, set forth separately for work under this Agreement and for Additional Services (accompanied by supporting certified time and expense records of such charges in a form acceptable to the FBGPTRA.) It is specifically understood that any requests for travel reimbursements shall comply with those procedures for travel reimbursement to Fort Bend County employees established by the Fort Bend County Auditor. The FBGPTRA shall review such invoices and approve them within thirty (30) calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor. The County shall pay each such invoice as approved by the FBGPTRA within thirty (30) calendar days after the FBGPTRA's approval of same.

3. Time of Performance

It is understood and agreed that the time for performance of the Services under this Agreement shall begin with receipt of the Notice to Proceed and end 720 calendar days from that date.

4. The FBGPTRA's Option to Terminate

- a. The FBGPTRA has the right to terminate this Agreement at its sole option at any time, with or without cause, by providing thirty (30) days written notice of such intentions to terminate and by stating in said notice the "Termination Date" which shall be less than thirty (30) days later than the actual receipt of such written notice by the Engineer. Upon such termination, the FBGPTRA shall compensate the Engineer in accordance with section 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to the FBGPTRA. The Engineer's final invoice for said services will be presented to and paid by the FBGPTRA in the same manner set forth in paragraph 3(b), above.
- b. Termination of this Agreement and payment as described in paragraph (a) of this section shall extinguish all rights, duties, obligations, and liabilities of the FBGPTRA and the Engineer under this Agreement and this Agreement shall be of no further force and effect, provided, however, such termination shall not act to release the Engineer from liability for any previous default either under this Agreement or under any standard of conduct set by common law or statute, nor shall it release FBGPTRA from any of the payment obligations set forth in paragraph (a) of this section. The obligations in section 6 shall survive the termination of this Agreement.
- c. If the FBGPTRA terminates this Agreement as provided in this paragraph, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to the Engineer.
- d. The FBGPTRA's rights and options to terminate this Agreement, as provided in any provision of this Agreement shall be in addition to, and not in lieu of, any and all rights, actions and privileges otherwise available under law or equity to the FBGPTRA by virtue of this Agreement or otherwise. Failure of the FBGPTRA to exercise any of its said rights, actions, options or privileges to terminate this Agreement as provided in any provision of this Agreement shall not be deemed a waiver of any rights, actions or privileges otherwise available under the law or equity with respect to any continuing or subsequent breaches of this Agreement or of any other standard of conduct set by common law or statute.
- e. Copies of all completed and partially completed Instruments of Service (as defined in section 6 of this Agreement) prepared under this Agreement shall be delivered to the FBGPTRA upon Engineer's receipt of termination payment when and if this Agreement is terminated.

5. Inspection of the Engineer's Books and Records

Upon advanced written notice, the Engineer will permit the FBGPTRA, or any duly authorized agent of the FBGPTRA, to inspect and examine the books and records of the Engineer within normal business hours for the purpose of verifying the amount of work

performed on the Project. FBGPTRA's right to inspect survives the termination of this Agreement for a period of four (4) years.

6. Instruments of Service and their Reuse

All instruments of service, including original drawings, estimates, specifications, field notes, and data created, produced, developed or prepared by Engineer or its approved outside advisory or support consultants (collectively, the "Instruments of Service") shall be the property of the FBGPTRA subject to all of the following terms and conditions; provided, however, FBGPTRA shall not own and shall have no right to receive any Instruments of Service not deemed "final" by the Engineer until termination of this Agreement. Upon Termination or completion of the Services, Engineer will deliver the Instruments of Service to FBGPTRA provided that the Engineer has received full compensation due pursuant to the terms of this Agreement. Engineer may retain a set of reproducible record copies of the Instruments of Service. It is mutually agreed that FBGPTRA will use the Instruments of Service solely in connection with the Project and for no other purposes, except with the express written consent of the Engineer, which consent will not be unreasonably withheld. Any use of the Documents for purposes not in connection with the Project will be at District's sole risk and without liability or legal exposure to Engineer.

FBGPTRA shall also be the owner of all intellectual property rights of the Services rendered hereunder, including all rights of copyright therein. It is the intention of Engineer and FBGPTRA that the Services provided are a "work for hire" as the term is used in the federal Copyright Act. Moreover, Engineer hereby agrees to assign, and by these presents, does assign to FBGPTRA all of Engineer worldwide right, title and interest in and to such Instruments of Service and all rights of copyright therein.

Engineer agrees that all trademarks, trade names, service marks, logos, or copyrighted materials of FBGPTRA that Engineer is permitted to use in connection with the Services will not be used without FBGPTRA's consent and shall remain in the sole and exclusive properties of FBGPTRA and this Agreement does not confer upon Engineer any right or interest therein or in the use thereof.

Notwithstanding any other provision in this Agreement, Engineer shall retain all intellectual property rights and ownership rights in its ELVIS Reporting System, including but not limited to any patentable concept or procedure, copyrightable report, drawing, or other document developed by Engineer using the ELVIS Reporting System in providing the Services and Additional Services.

7. **Safety.** The Engineer shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures or for the safety precautions and programs in connection with the Project construction, for the acts or omissions of the contractor, construction subcontractors, any of their agents or the construction subcontractors' employees, or any other person performing any of the work or for the failure of such persons to carry out the work in accordance with the contract

documents; provided however, the Engineer shall not be relieved from its obligation to notify the FBGPTRA or any other applicable authority of any unsafe condition resulting from an act, omission or failure on the part of the construction if Engineer becomes aware of such an unsafe condition in the normal course of providing its Services or as otherwise required by the Engineer's professional duties as prescribed by the Rules of Professional Practice promulgated by the Texas Board of Professional Engineers.

8. Personnel, Equipment, and Material

- a. The Engineer represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that the Engineer shall furnish and maintain, at its own expense, adequate and sufficient personnel and equipment, in the opinion of the FBGPTRA, to perform the Scope of Services when and as required and without delays. It is understood that the FBGPTRA will approve assignment and release of all key Engineer personnel and that the Engineer shall submit written notification of all key Engineer personnel changes for the FBGPTRA's approval prior to the implementation of such changes. For the purpose of this agreement, key Engineer personnel are defined as: Construction Inspector(s). Services described in this Agreement shall be performed under the direction of an engineer licensed to practice professional engineering in the State of Texas.
- b. All employees of the Engineer shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of the Engineer who, in the opinion of the FBGPTRA, is incompetent or by his conduct becomes detrimental to the Project shall, upon request of the FBGPTRA, immediately be removed from association with the Project.
- c. Except as otherwise specified, the Engineer shall furnish all equipment, transportation, supplies, and materials required for its operation under this Agreement.

9. Items to be furnished to Engineer by the FBGPTRA

The following items will be supplied to the Engineer:

- a. Copies of preliminary studies by others.
- b. Assistance in coordination with all utility companies.
- c. Assistance in coordination with all public and governmental entities.

10. Subletting

The Engineer shall not sublet, assign, or transfer any part of its rights or obligations in this Agreement without the prior written approval of the FBGPTRA. Responsibility to the FBGPTRA for sublet work shall remain with the Engineer.

11. Conference

At the request of the FBGPTRA, the Engineer shall provide appropriate personnel for conferences at its offices, or attend conferences at the various offices of the FBGPTRA, or at the site of the Project, and shall permit inspections of its offices by the FBGPTRA, or others when requested by the FBGPTRA.

12. Appearance as Witness

If requested by the FBGPTRA, or on its behalf, the Engineer shall prepare such engineering exhibits and plans as may be requested for all hearings and trials related to the Project and, further, it shall prepare for and appear at conferences at the office of the FBGPTRA's Executive Director and shall furnish competent expert engineering witnesses to provide such oral testimony and to introduce such demonstrative evidence as may be needed throughout all trials and hearings with reference to any litigation relating to the Project ("Litigation Services"). Litigation Services shall be provided subject to, and must be developed in a manner consistent with, the Texas Engineering Practice Act and the Rules Concerning the Practice of Engineering and must be developed in accordance with all Texas statutes, rules, and regulations relating to Engineers. Litigation Services are Additional Services and compensation will be made in accordance with the schedule contained in Exhibit B-1.

13. Compliance with Laws

The Engineer 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 matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required, the Engineer shall furnish the FBGPTRA with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

14. Insurance

The Engineer shall obtain and maintain, throughout the term of the Agreement, insurance of the types and in the minimum amounts set forth in Attachment C.

15. Indemnification

With respect to claims brought by third parties against either Engineer of the FBGPTRA relating to the property or facilities with respect to which this Agreement pertains, Engineer and the FBGPTRA agree as follows:

- a. **ENGINEER WILL INDEMNIFY AND HOLD HARMLESS THE FBGPTRA, ITS DIRECTORS, OFFICERS, AND EMPLOYEES AGAINST ANY CLAIMS, DEMANDS OR CAUSES OF ACTION; AND COSTS, LOSSES, LIABILITIES, EXPENSES AND JUDGMENTS INCURRED IN CONNECTION THEREWITH, INCLUDING REASONABLE**

ATTORNEY'S FEES AND COURT COSTS, BROUGHT BY ANY OF ENGINEER'S EMPLOYEES OR REPRESENTATIVES, OR BY ANY OTHER THIRD PARTY, BASED UPON, IN CONNECTION WITH, RESULTING FROM OR ARISING OUT OF THE NEGLIGENT ACTS, ERRORS OR OMISSIONS OF ENGINEER; HOWEVER, ENGINEER'S CONTRACTUAL OBLIGATION OF INDEMNIFICATION SHALL NOT EXTEND TO THE NEGLIGENCE OR OTHER FAULT OF THE FBGPTRA OR STRICT LIABILITY IMPOSED UPON THE FBGPTRA AS A MATTER OF LAW (INCLUDING STRICT LIABILITY IMPOSED UPON THE FBGPTRA AS A RESULT OF THE CONDITION OF THE PROPERTY OR FACILITIES WITH RESPECT TO WHICH THIS AGREEMENT PERTAINS).

- b. In the event that both the FBGPTRA and Engineer are adjudicated negligent or otherwise at fault or strictly liable without fault with respect to damage or injuries sustained by the claimant, each shall be responsible for its own costs of litigation and pro rata share of damages as determined by the proceedings.

It is a condition precedent to the indemnitor's contractual obligation of indemnification under this Agreement that the party seeking indemnity shall provide written notice of a third party claim, demand or cause of action within thirty (30) days after such third party claim, demand or cause of action is received by the party seeking indemnity. It is a further condition precedent to the indemnitor's contractual obligation of indemnification under this Agreement that the indemnitor shall thereafter have the right to participate in the investigation, defense and resolution of such third party claim.

16. Dispute Resolution

Except as expressly provided in section 4, if a dispute arises out of, or relates to this Agreement, the parties set forth herein, or the breach thereof, and if the dispute cannot be settled through negotiation, then the FBGPTRA and the Engineer agree to submit the dispute to mediation. In the event the FBGPTRA or the Engineer desires to mediate any dispute, that party shall notify the other party in writing of the dispute desired to be mediated. If the parties are unable to resolve their differences within ten (10) days of the receipt of such notice, such dispute shall be submitted for mediation in accordance with the procedures and rules of the American Arbitration Association (or any successor organization) then in effect. The deadline for submitting the dispute to mediation can be changed if the parties mutually agree in writing to extend the time between receipt of notice and submission to mediation. The expenses of the mediator shall be shared fifty (50) percent by the FBGPTRA and fifty (50) percent by the Engineer. This requirement to seek mediation shall be a condition required before filing an action at law or in equity.

17. Delivery of Notices, Etc.

- a. All written notices, demands, and other papers or documents to be delivered to the FBGPTRA under this Agreement shall be delivered to the Fort Bend Grand Parkway Toll Road Authority, P.O. Box 2789, Sugar Land, Texas 77487-9740,

Attention: Bill Jameson, or at such other place or places as it may from time to time designate by written notice delivered to the Engineer. For purposes of notice under this Agreement, a copy of any notice or communication hereunder shall also be forwarded to the following address: Fort Bend County Clerk, 301 Jackson Street, Richmond, Texas 77469, Attention: County Judge.

- b. All written notices, demands, and other papers or documents to be delivered to the Engineer under this Agreement shall be delivered to Raba-Kistner Infrastructure, Inc., 7700 Chevy Chase Dr., Building 1, Suite 110; Austin, Texas 78752, Attention: John A. Roberts, or such other place or places as the Engineer may designate by written notice delivered to the FBGPTRA.

18. Reports of Accidents, Etc.

Within twenty-four (24) hours after becoming aware of the occurrence of any accident or other event arising in any manner from the performance of the Services or Additional Services by Engineer or Engineer's subcontractor, which results in, or might result in, injury to the person or property of any third person (other than an employee of the Engineer), whether or not it results from or involves any action or failure to act by the Engineer or any employee or agent of the Engineer and which arises in any manner from the performance of this Agreement, the Engineer shall send a written report of such accident or other event to the FBGPTRA, setting forth a full and concise statement of the facts pertaining thereto. The Engineer shall also immediately send the FBGPTRA a copy of any summons, subpoena, notice, other documents served upon the Engineer, its agents, employees, or representatives, or received by it or them, in connection with any matter before any court arising in any manner from the Engineer's performance of work under this Agreement.

19. The FBGPTRA's Acts

Anything to be done under this Agreement by the FBGPTRA may be done by such persons, corporations, or firms as the FBGPTRA may designate.

20. Limitations

Notwithstanding anything herein to the contrary, all covenants and obligations of the FBGPTRA under this Agreement shall be deemed to be valid covenants and obligations only to extent authorized by the Act creating the FBGPTRA and permitted by the laws and the Constitution of the State of Texas. This Agreement shall be governed by the laws of the State of Texas, and no officer, director, or employee of the FBGPTRA shall have any personal obligation hereunder.

21. Captions Not a Part Hereof

The captions of subtitle of the several sections and divisions of this Agreement constitute no part of the content hereof, but are only labels to assist in locating and reading the provisions hereof.

22. Controlling Law, Venue

This Agreement shall be governed and construed in accordance with the laws of the State of Texas. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all disputes arising hereunder and waive the right to sue or be sued elsewhere.

23. Successors and Assigns

The FBGPTRA and the Engineer bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

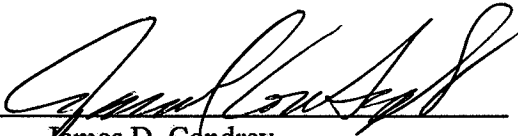
24. Appendices

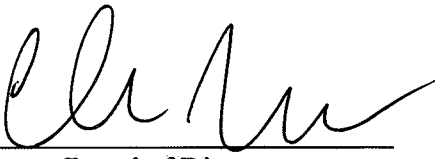
The Appendices attached to this Agreement, which consists of:

Attachment A	Scope of Services
Attachment A-1	Additional Services
Attachment B	Compensation for Scope of Services
Attachment B-1	Compensation for Additional Services
Attachment C	Insurance Requirements

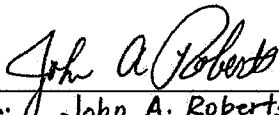
IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the 20th day of July, 2011.

FORT BEND GRAND PARKWAY TOLL ROAD
AUTHORITY, a local government Texas
corporation

By: 
James D. Condrey
Chairman, Board of Directors

ATTEST: 
By _____
Secretary, Board of Directors

Raba-Kistner Infrastructure, Inc.
ENGINEER

By: 
Name: John A. Roberts
Title: Vice-President

Attachment A - SCOPE OF SERVICES

The Engineer shall provide the following professional engineering services for Toll Road grade separation structures from US 59 to north of the Fort Bend Westpark Tollway (FM 1093) (the "Project").

1.0 Construction Inspection

- 1.1 Inspection services assessing the compliance of construction, completed by others, for compliance with the construction contract requirements (e.g. plans and specifications).**
- 1.2 Reporting results of inspections on forms and in the manner prescribed by the Fort Bend Grand Parkway Toll Road Authority (FBGPTRA).**

Attachment B - Schedule of Fees & Payments

1.0 Contract PRICE

Engineer compensation for performance of the Services and compliance with all terms and conditions of the Agreement shall be the sum of the following:

- 1.1 Direct Labor Cost ("DLC") – Shall mean the actual labor cost recorded on employees W-2 form (before FICA, fringe benefits, etc.) incurred for the actual number of hours worked under this Contract by Engineer's employees.

<u>Position</u>	<u>Direct Labor Cost/hour</u>	
	<u>Minimum</u>	<u>Maximum</u>
Senior Construction Inspector	\$26.00	\$37.00
Construction Inspector	\$17.00	\$30.00

- 1.2 Labor Multiplier – Shall mean a factor which, when multiplied by DLC, shall compensate Engineer for all of Engineer's DLC, profit, and home office overhead expenses and operational expenses, payroll taxes, workers compensation insurance and other labor burdens, other taxes, office equipment depreciation and maintenance, dues/registration/licenses, professional training and education, legal expenses and accounting expenses. The established Labor Multiplier for this Project is 2.35 for Engineer personnel providing Services to the project and using FBGPTRA provided office space and FBGPTRA supplied office equipment and supplies.
- 1.3 Other Direct Costs ("ODCs") – Shall mean authorized expenditures incurred by Engineer and specifically related to the Contract and the Services
- A) Vehicle Rate - \$1100/month for vehicles used by Engineer's personnel performing Services on the Project.
 - B) Cellular Telephone – invoice amount + 10%.

2.0 Pricing Basis

2.1 The DLC, ODC, and Labor Multiplier are established from the following:

- A) DLCs are subject to an annual escalation cap of 4%. Prior to the commencement of each calendar year, Engineer and FBGPTRA shall mutually agree upon escalation factor below the escalation cap prior to implementation and commencement of the upcoming calendar year. In the event Engineer and FBGPTRA are unable to mutually agree upon escalation factor, the escalation factor shall be the 4% cap of an individual's actual base labor rate.
- B) The DLCs and ODCs are estimates only. Independent circumstances shall control actual quantities performed and payment shall be for actual quantities and services provided and not estimated quantities.
- C) Overtime shall only be paid to Engineer where Engineer demonstrates that the employee was entitled to over time payment, and received over time payment shall be paid at a 2.35 multiplier times the actual labor cost paid to the employee for overtime.

Attachment C

The Engineer shall furnish certificates of insurance to the FBGPTRA evidencing compliance with the insurance requirements hereof. Certificates shall indicate name of the Engineer, name of insurance company, policy number, term of coverage and limits of coverage. The Engineer shall cause its insurance companies to provide the FBGPTRA with at least 30 days prior written notice of any reduction in the limit of liability by endorsement of the policy, cancellation or non-renewal of the insurance coverage required under this Agreement. The Engineer shall obtain such insurance from such companies having a Bests rating of B+/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

- a. Workers' Compensation insurance in accordance with the laws of the State of Texas, or state of hire/location of Services, and Employers' Liability coverage with a limit of not less than \$1,000,000 each employee for Occupational Disease, \$1,000,000 policy limit for Occupational Disease; and Employer's Liability of \$1,000,000 each accident.
- b. Commercial General Liability insurance including coverage for Products/Completed Operations, Blanket Contractual, Contractors' Protective Liability Broad Form Property Damage, Personal Injury/Advertising Liability, and Bodily Injury and Property Damage with limits of not less than:

\$2,000,000	general aggregate limit
\$1,000,000	each occurrence, combined single limit
\$2,000,000	aggregate Products, combined single limit
\$1,000,000	aggregate Personal Injury/Advertising Liability
\$50,000	Fire Legal Liability
\$5,000	Premises Medical
- c. Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
- d. Umbrella Excess Liability insurance written as excess of Employer's Liability, with limits not less than \$2,000,000 each occurrence combined single limit.
- e. Professional Liability insurance with limits not less than \$2,000,000 each claim/annual aggregate.

The FBGPTRA and the FBGPTRA's Directors shall be named as additional insureds to all coverages required above, except for those requirements in paragraphs "a" and "e." All policies written on behalf of the Engineer shall contain a waiver of subrogation in favor of the FBGPTRA and the FBGPTRA's Directors, with the exception of insurance required under paragraph "e."