

AGREEMENT BETWEEN OWNER AND CONTRACTOR

The Parties to this agreement are:

Owner:

FORT BEND GRAND PARKWAY TOLL ROAD AUTHORITY,
a political subdivision of the State of Texas.
c/o The Muller Law Group, PLLC
16555 Southwest Freeway, Suite 200
Sugar Land, Texas 77479

Contractor:

NBG Constructors, Inc.
9702 Synott Road
Houston, TX 77083

THIS AGREEMENT (“Agreement”) is made and entered into this 17th day of February, 2016 between the Parties, for and in consideration of the mutual covenants hereinafter set forth, and under the conditions expressed in the Bonds bearing even date herewith, the Contractor and Owner hereby agree as follows:

Scope of Work:

Contractor shall commence and complete the Work generally described as follows:

Installation of Concrete Barrier and Pavement Markings at Peek Rd and Other Locations
Fort Bend Grand Parkway Toll Road, Segment D,
for Fort Bend Grand Parkway Toll Road Authority,
Fort Bend County, Texas,
according to those particular Plans and Technical Specifications
prepared by Brown & Gay Engineers, Inc. (“Engineer”)

and all Extra Work in connection therewith, under the terms as stated in the General and Special Conditions of the Agreement, and, at Contractor’s own proper cost and expense, to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said Work, in accordance with the conditions and prices stated in the Bid attached hereto and in accordance with the Contract Documents, including, but not limited to, Invitation to Bidders, Instructions to Bidders, General and Special Conditions of the Agreement, Plans, and other drawings and printed or written explanatory matter thereof, and the Technical Specifications, on file with Engineer. Contractor represents and warrants to the Owner that it has carefully examined this Agreement and all other Contract Documents, which are made a part of the Contract, and is thoroughly familiar therewith.

Under this Agreement and the Contract Documents, Contractor shall furnish all materials, appliances, tools, equipment, transportation, services, and all labor and superintendence necessary for

the construction of the Work as described in the Technical Specifications and as shown on the Plans. The completed installation shall not lack any part that can be reasonably implied as necessary to its proper functioning or any subsidiary item that is customarily furnished, and Contractor shall deliver the installation to Owner in operating condition.

The Work, in general, under the Contract includes:

Installation of Concrete Barrier and Pavement Markings at Peek Rd and Other Locations

Time for Completion:

The Contractor hereby agrees to begin work within **10 calendar days** after Engineer has given written Notice to Proceed. Contractor hereby also agrees to achieve Final Completion of the Work within **30 calendar days** after the date of the written Notice to Proceed.

Surety Bonds Required:

It is further agreed by the parties to this Contract that Contractor will execute:

- a Payment Bond in the sum of 100% of the initial Contract Price, if the initial Contract Price is \$25,000 or more

AND

- a Performance Bond in the sum of 100% of the initial Contract Price, if the initial Contract Price is \$100,000 or more,

for the satisfactory performance of the Work, the fulfillment of any guarantees required, and the prompt payment to all persons supplying labor and materials in the prosecution of the Work, in accordance with this Contract on the forms provided for this purpose; and it is agreed that this Contract shall not be in effect until such Bonds are furnished and approved by Owner. Upon increase of the Contract Price authorized by Change Order, Contractor shall immediately provide revised Bonds for such increased Contract Price. Contractor's failure to provide compliant Bonds may be grounds for immediate termination regardless of whether the Contractor has started work on the Project.

All Bonds shall be in the form prescribed by the Contract Documents except as required otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 370 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A certified copy of the agent's authority to act must accompany all Bonds signed by an agent. Surety must have a minimum Best's Key Rating of "B+". If the surety company does not have such a rating due to the length of time it has existed, the surety company must be eligible to participate in the surety bond guarantee program of the Small Business Administration and must be an approved surety listed in the current U.S. Department of Treasury Circular 570, and must meet all of the rules and regulations of the Treasury Department with respect to performance and payment bonds for federal jobs, including specifically the rules related to the underwriting limitation.

For bonds over \$100,000, the surety must also hold a certificate of authority from the United States Secretary of Treasury to qualify as a surety on obligations permitted or required under federal law, or have obtained reinsurance for any liability in excess of \$1,000,000 from a reinsurer that is authorized and admitted as a reinsurer in the State of Texas and is the holder of a certificate of authority from the United States Secretary of Treasury to qualify as a surety or reinsurer on obligations permitted or required under federal law. The person executing the Bonds must be a licensed Texas local recording agent and such licensing must be recorded in the files of the Texas Department of Insurance.

The person executing the Bonds must be authorized by the surety company to execute the Bonds on behalf of the company in the amount required for the contract and such authorization must be recorded in the files of the Texas Department of Insurance. The Contract shall not be in effect until such bonds have been provided by the Contractor and accepted by the Owner.

If the surety on any Bond furnished by Contractor is declared bankrupt, becomes insolvent, its right to do business is terminated in any state where any part of the Project is located, or it ceases to meet the requirements herein Contractor shall promptly notify Contractor, Owner and Engineer and shall, within 10 calendar days after the event giving rise to such notification, provide another Bond and surety to fulfill the required obligations.

Contract Price:

The Contract Price for this Work is one hundred thirty-three thousand, four hundred six dollars (\$ 133,406.00). The initial Contract Price may increase or decrease due to Change Orders and the Contract Price Adjustment as provided by the Contract Documents.

Owner agrees to pay Contractor's invoices for work performed, in accordance with the terms of the Contract Documents, in an aggregate amount not to exceed the Contract Price, plus Change Orders and Extra Work approved by the Board of Directors of the Owner. Failure by Owner to make such payments to the Contractor shall constitute a default by Owner and shall entitle the Contractor to all rights and remedies arising under the Contract Documents for a default in payment of sums due.

Contractor and Owner agree that time is of the essence of this Contract. Therefore, Contractor and Owner agree that for each and every calendar day the Work or any portion thereof shall remain incomplete after the expiration of the time limits set in the Contract, or as extended under the provisions of the Contract Documents the Contract Price will decrease by \$500.00 for Final Completion ("Contract Price Adjustment"). The Owner shall have the option to deduct and withhold said amount from any monies that the Owner owes the Contractor or its sureties or to recover such amount from the Contractor or the sureties on the Contractor's performance bond.

IN WITNESS WHEREOF, the parties to these presents have executed this Agreement in the year and day first above written.

FORT BEND GRAND PARKWAY TOLL
ROAD AUTHORITY

Owner

By: [Signature]
Name: James D. Condrey, DDS
Title: Chairman

Contractor: NBG Constructors, Inc.

By: [Signature]
Name: Mike Westering

Title: Vice-President

(The following to be executed if Contractor is a Corporation)

I, Sharon Boehm certify that I am the secretary of the Corporation named as Contractor herein; that Mike Westering, who signed this Contract on behalf of Contractor, was then Vice President of said Corporation; that said Contract was duly signed for and on behalf of said Corporation by authority of its governing body and is within the scope of its corporate powers.

Corporate Seal:



4811-5798-0448, v. 1

Signed: [Signature]

EFFECTIVE DATE

THIS 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.: _____

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

1 **Name of business entity filing form, and the city, state and country of the business entity's place of business.**
NBG Constructors, Inc.
Houston, TX United States

Certificate Number:
2016-10540

Date Filed:
02/08/2016

Date Acknowledged:
2.16.16 AC

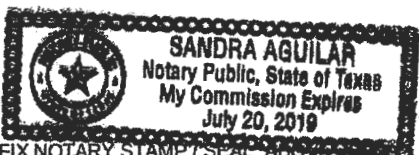
2 **Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**
Fort Bend Parkway Toll Road Authority

3 **Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the goods or services to be provided under the contract.**
Project No. GPD-015
concrete barrier

| 4 | Name of Interested Party | City, State, Country (place of business) | Nature of Interest (check applicable) | |
|---|--------------------------|--|---------------------------------------|--------------|
| | | | Controlling | Intermediary |
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5 Check only if there is NO Interested Party.

6 **AFFIDAVIT** I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



[Signature]
Signature of authorized agent of contracting business entity

Sworn to and subscribed before me, by the said David Boehm, this the 8th day of February, 2016, to certify which, witness my hand and seal of office.

[Signature] Signature of officer administering oath
Sandra Aguilar Printed name of officer administering oath
Notary Public Title of officer administering oath