

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

This INTERLOCAL AGREEMENT FOR THE DESIGN AND CONSTRUCTION OF EROSION CONTROL FACILITIES (this "Agreement") is made and entered into as of 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 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 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. 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"), and the District intends to submit an application to the Texas Commission on Environmental Quality (the "Commission") to change the use of \$2,000,000 of the Drainage Channel Bond Proceeds to fund the first \$2,000,000 of the District's Proportionate Share of Engineering Fees and Construction Costs (the "First \$2 Million").

M. The District has \$12,150,000 principal amount of authorized but unissued bonds which the District may use to sell bonds to fund the balance of the District's Proportionate Share of Engineering Fees and Construction Costs in excess of the First \$2 Million.

N. Pursuant to and in accordance with the terms and conditions of this Agreement, the Authority and the District desire to each be responsible for their Proportionate Share of

Engineering Fees and Construction Costs with (i) the Authority depositing into the Joint Construction Account a sum of money in the amount of the Authority's Proportionate Share of the estimated design phase Engineering Fees, (ii) the District depositing into the Joint Construction Account a sum of money to be paid from the First \$2 Million in the amount of the District's Proportionate Share of the estimated design phase Engineering Fees, (iii) the District depositing into the Joint Construction Account the balance of the First \$2 Million (over and above the District's Proportionate Share of the estimated design phase Engineering Fees) to partially fund the District's Proportionate Share of the estimated construction phase Engineering Fees and Construction Costs, (iv) the Authority depositing into the Joint Construction Account a sum of money sufficient to cover (a) the Authority's Proportionate Share of the estimated construction phase Engineering Fees and Construction Costs, and (b) the District's remaining Proportionate Share of the estimated construction phase Engineering Fees and Construct Costs (the "Funding Balance"), and (v) the District repaying to the Authority the Funding Balance by the earlier of (x) ninety (90) days following the District's next sale of bonds, or (y) one (1) year from the Effective Date.

O. Pursuant to and in accordance with the terms and conditions of this Agreement, the Authority and the District desire for: (i) the District to acquire an easement to certain tracts of land from the NTRCA which will be 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 (the "Easement"), (ii) the Authority to acquire any permits required to construct the Erosion Control Facilities, and (iii) the Authority to design and construct the Erosion Control Facilities.

P. Pursuant to and in accordance with the terms and conditions of this Agreement, upon completion of the construction of the Erosion Control Facilities, the Authority and the

District desire for the District to maintain the Erosion Control Facilities with the costs of such maintenance to be paid by the Authority and the District pursuant to their Proportionate Shares of Maintenance Expenses.

Q. The Authority and the District have determined that: (i) the provisions of this 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 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 Agreement shall have the meanings set out below:

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

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

1.1.3 "Authority Engineer" means FNI, or its successor as appointed by the Authority.

1.1.4 "Authority Erosion Control Facilities" has the meaning given to such term in Recital I of this Agreement.

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

1.1.6 "Commission" has the meaning given to such term in Recital L of this Agreement.

1.1.7 "Construction Budget" has the meaning given to such term in Section 2.4.2 of this Agreement.

1.1.8 "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 contingency on the foregoing not to exceed ten percent (10%).

1.1.9 "District" has the meaning given to such term in the preamble of this Agreement.

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

1.1.11 "District Erosion Control Facilities" has the meaning given to such term in Recital I of this Agreement.

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

1.1.13 "Drainage Channel Bond Proceeds" has the meaning given to such term in Recital L of this Agreement.

1.1.14 "Easement" has the meaning given to such term in Recital O of this Agreement.

1.1.15 "Encumbrances" has the meaning given to such term in Section 2.7.1 of this Agreement.

1.1.16 "Effective Date" means June 1, 2017.

1.1.17 "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 contingency on the foregoing not to exceed ten percent (10%).

1.1.18 "Erosion Control Facilities" has the meaning given to such term in Recital I of this Agreement.

1.1.19 "First \$2 Million" has the meaning given to such term in Recital L of this Agreement.

1.1.20 "FNI" has the meaning given to such term in Recital F of this Agreement.

1.1.21 "Funding Balance" has the meaning given to such term in Recital N of this Agreement.

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

1.1.23 "Joint Construction Account" means the account so designated which the Authority is required to establish pursuant to Section 4.1 of this Agreement.

1.1.24 "NTRCA" means New Territory Residential Community Association, Inc., a Texas nonprofit corporation, the community association for owners of residential property in New Territory.

1.1.25 "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.

1.1.26 "Professional Services Procurement Act" means Chapter 2254 of the Texas Government Code, as the same may be amended from time to time.

1.1.27 "Project Engineer" has the meaning given to such term in Section 2.2 of this Agreement.

1.1.28 "Proportionate Share of Engineering Fees and Construction Costs" or "Proportionate Shares of Engineering Fees and Construction Costs" means, as to each the Authority and the District, fifty percent (50%) of the total Engineering Fees and Construction Costs, that the Authority and the District are responsible for paying, respectively, pursuant to and in accordance with the terms and conditions of this Agreement.

1.1.29 "Proportionate Share of Maintenance Expenses" or "Proportionate Shares of Maintenance Expenses" means, 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.

1.1.30 "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 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 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 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 Agreement. The parties agree that this Agreement shall not be construed in favor of or against a party on the basis that the party did or did not author the Agreement. Nothing in this 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 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. 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 Agreement, be subject to (i) the District's acquisition of the Easement from the NTRCA, and (ii) 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.

Section 2.2 Selection of Project Engineer; Preparation of Design Budget. Pursuant to and in accordance with the Professional Services Procurement Act, the Authority shall select an engineer to design the Erosion Control Facilities and provide construction contract administration services related to the construction of the Erosion Control Facilities (the "Project Engineer"). The estimated Engineering Fees to design the Erosion Control Facilities is \$480,000.

Section 2.3 Design. Subject to the funding of the estimated design phase Engineering Fees in the Joint Construction Account pursuant to and in accordance with Section 3.1 of this Agreement, and any other conditions specified elsewhere in this Agreement, the Authority shall direct or cause the Project Engineer to commence design of the Erosion Control Facilities which design must meet all Regulatory Requirements. The Authority shall cause the Project Engineer to use its best efforts to prepare such plans and specifications and obtain approval of same within six (6) months from the date that the Authority authorizes the Project Engineer to commence the

design of the Erosion Control Facilities. The Authority shall cause the Project Engineer 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 Project Engineer 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 2.4 Regulatory Permits; Preparation of Construction Budget.

2.4.1 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.

2.4.2 Prior to award of a construction contract for the Erosion Control Facilities, the Authority shall cause the Project Engineer to prepare and deliver to the District a budget of the estimated construction phase Engineering Fees and Construction Costs (the "Construction Budget"). After the Project Engineer delivers the Construction Budget to the District, the District's designated representative authorized pursuant to Section 2.5 of this Agreement shall have the right to review and approve the Construction Budget, which approval shall not be unreasonably withheld, conditioned, or delayed.

Section 2.5 Construction Contract. Subject to the District's approval of the Construction Budget and the funding of the construction phase Engineering Fees and Construction Costs in the Joint Construction Account pursuant to and in accordance with Section

3.2 of this Agreement, the Authority shall enter into a contract for the construction of the Erosion Control Facilities if the contract amount is within the approved Construction Budget. The Authority shall not award a construction contract for the Erosion Control Facilities that exceeds the Construction Budget without approval of 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. Change orders to the contract or contracts which, in the aggregate with other change orders to date, increase the cost of the construction by the lesser of \$75,000 or ten-percent (10%) of the contract amount shall be submitted to the District for approval, which approval shall not be unreasonably withheld, conditioned or delayed. The District shall delegate to one of its members of the Board of Directors the authority to approve the Construction Budget, the award of a construction contract in excess of the Construction Budget, and any change orders on behalf of the District pursuant to the preceding sentence in this Section 2.5. 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 2.6 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 2.7 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' 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 2.8 Maintenance of the Erosion Control Facilities. Upon the completion of the construction of the Erosion Control Facilities, the District shall be responsible for the maintenance and repair of the Erosion Control Facilities, and the District shall maintain the Erosion Control Facilities in good condition for the benefit of itself and the Authority. The District and the Authority shall be responsible for their Proportionate Share of Maintenance Expenses. The District shall send invoices to the Authority for its Proportionate Share of Maintenance Expenses, and the Authority shall pay such invoices with forty-five (45) days of its receipt of any such invoice. Notwithstanding the foregoing, in the event of disrepair, a break, rupture, or other defect occurs with respect to the Erosion Control Facilities which could, in the reasonable determination of the Authority Engineer, endanger the integrity of the 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 its Proportionate Share of such Maintenance Expenses, 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.

Section 2.9 Acquisition of Easement by the District; Right of Entry.

2.9.1 The District and the Authority acknowledge and agree that, as of the Effective Date, the Erosion Control Facilities have not yet been completely designed and constructed, and, therefore, the exact location and layout for the Erosion Control Facilities have not yet been definitively determined. The District and the Authority further acknowledge and agree that the Erosion Control Facilities cannot be completely designed and constructed without the District's acquisition of the Easement from the NTRCA. The District shall use commercially

reasonable efforts to acquire the Easement from the NTRCA as soon as possible. If necessary, the District may use its power of eminent domain under Section 49.222 of the Texas Water Code, as amended, to acquire the Easement, consistent with the rights, remedies, and procedures of the Texas Property Code, Chapter 21, as amended, and the Landowner's Bill of Rights prescribed by the Texas Legislature in Section 402.031 of the Texas Government Code, as amended. Notwithstanding anything to the contrary in this Agreement, any obligation on the part of the District to deposit funds into the Joint Construction Account to pay for its Proportionate Share of the Engineering Fees and Construction Costs as provided in Article III of this Agreement shall be subject to and conditioned on the District's acquisition of the Easement from the NTRCA. Notwithstanding anything to the contrary in this Agreement, the Authority may terminate this Agreement if the District is unable to acquire the Easement from the NTRCA on or before July 31, 2017.

2.9.2 Subject to the District's acquisition and recording of the Easement in the Official Public Records of Real Property of Fort Bend County, Texas, 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 2.8 of this Agreement, (ii) the maintenance and/or repair of the Erosion Control Facilities. In connection with any pre-construction activities and/or the construction of the Erosion Control Facilities, the Authority shall not remove any trees in the Easement Tracts with a diameter of six inches (6") or greater without first marking such trees to be removed, notifying the NTRCA of such markings, and conferring with the NTRCA regarding the necessity of removing such

marked trees; provided, however, that the final determination as to the necessity of removing such trees shall be made in the sole discretion of the Authority.

### **ARTICLE III**

#### **FUNDING OF ENGINEERING FEES AND CONSTRUCTION COSTS**

Section 3.1 Funding of Design Phase Engineering Fees. Subject to the Commission's approval of the District's application to use a portion of the First \$2 Million to pay the District's Proportionate Share of the estimated design phase Engineering Fees, within thirty (30) days of the Effective Date of this Agreement, both the Authority and the District shall, in the absence of other satisfactory arrangements between the Authority and the District, set aside and deposit into the Joint Construction Account their respective Proportionate Shares of the estimated design phase Engineering Fees, and said funds shall be used by the Authority for the sole purpose of funding the design of the Erosion Control Facilities. If at any time during the design phase, the District's Proportionate Share of the design phase Engineering Fees exceeds its deposit, the Authority may provide a written request to the District to fund such deficit and the District agrees to do so within forty-five (45) days of receiving the request. If at any time during the design phase, the Authority's Proportionate Share of the design phase Engineering Fees exceeds its deposit, the Authority shall promptly set aside and deposit into the Joint Construction Account a sufficient amount of money to fund such deficit.

Section 3.2 Funding of Construction Phase Engineering Fees and Construction Costs. Within thirty (30) day following the District's approval of the Construction Budget pursuant to and in accordance with Section 2.4.2 of this Agreement, (a) subject to the Commission's approval of the District's application to use the balance of the First \$2 Million (over and above the District's Proportionate Share of the estimated design phase Engineering Fees) to partially



pay the District's Proportionate Share of the estimated construction phase Engineering Fees and Construction Costs, the District shall, in the absence of other satisfactory arrangements between the Authority and the District, deposit into the Joint Construction Account the balance of the First \$2 Million (over and above the District's Proportionate Share of the estimated design phase Engineering Fees) to partially fund the District's Proportionate Share of the estimated construction phase Engineering Fees and Construction Costs as reflected in the accepted bid, and (b) the Authority shall, in the absence of other satisfactory arrangements between the Authority and the District, set aside and deposit into the Joint Construction Account a sum of money sufficient to pay for (x) the Authority's Proportionate Share of the estimated construction phase Engineering Fees and Construction Costs as reflected in the accepted bid and (y) the Funding Balance, and said funds shall be used by the Authority for the sole purpose of funding the construction of the Erosion Control Facilities. If at any time during the construction phase of the Erosion Control Facilities, the construction phase Engineering Fees and Construction Costs exceed the deposits in the Joint Construction Account, the Authority shall set aside and deposit into the Joint Construction Account a sufficient amount of money to fund such deficit; provided, however, that if the Authority is required to make such a deposit, the District's Proportionate Share of said additional deposit shall be added to the Funding Balance.

Section 3.3 District's Obligation to Repay the Authority for the Funding Balance.

The District shall repay to the Authority the full amount of the Funding Balance by the earlier of (a) ninety (90) days following the District's next sale of bonds, or (b) one (1) year from the Effective Date. If the District fails to pay the full amount of the Funding Balance by the deadline established in this Section 3.3, per annum interest shall accrue on any Funding Balance that remains unpaid as of said deadline at a rate equal to the interest rate on a 2-year U.S. Treasury

Note as of January 1, 2017, according to the U.S. Department of the Treasury. Interest shall accrue beginning on the day the Funding Balance comes due and ending on the day that the Funding Balance is paid in full.

Section 3.4 Method of Payment for Engineering Fees and Construction Costs.

3.4.1 Pending their use for the appropriate purposes, any funds deposited into the Joint Construction Account 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.

3.4.2 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, the Project Engineer's recommendation for payment, and the cost allocation between the parties. The Authority or the Project Engineer will provide such documentation in advance of the Authority's payment of the monthly pay estimate, invoice or change order. The Authority shall pay each party's Proportionate Share of any pay estimate, invoice, or change order out of the Joint Construction Account. The District shall have full access to all of the Authority's and the Project Engineer's contracts, books, and records relating to the design and construction of the Erosion Control Facilities.

3.4.3 Within forty-five (45) days after the construction of the Erosion Control Facilities is certified complete by the Project Engineer, the Authority shall make a final accounting of all payments made, and shall make such adjustments as may be necessary and provide same to the District. Following such final accounting, any funds remaining in the Joint Construction Account following completion and payment of all Engineering Fees and

Construction Costs of the Erosion Control Facilities shall be withdrawn from the Joint Construction Account and returned to the contributing party in accordance with their respective applicable Proportionate Shares of Engineering Fees and Construction Costs; provided, however, that any such funds that would otherwise be returned to the District shall instead be paid to the Authority to be applied against any Funding Balance owed by the District to the Authority if the District has not, within forty-five (45) days after the construction of the Erosion Control Facilities has been certified complete, repaid the Funding Balance to the Authority.

3.4.4 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 Establishment of Joint Construction Account. The Authority shall establish the Joint Construction Account with respect to the deposits to be made by the Authority and the District under this Agreement. Said account and the funds therein shall be kept separate and apart from all other accounts and funds of the Authority and from each other. All funds of the Authority and the District to pay Engineering Fees and Construction Costs for the Erosion Control Facilities pursuant to this Agreement shall be deposited into and paid from the Joint Construction Account.

Section 4.2 Security of Funds. Subject to the other specific requirements of this Agreement with respect to the deposit of funds, any cash balances in the Joint Construction Account 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 Agreement.

Section 4.3 Earnings From Investments. The interest accruing on and any profits realized from investing monies in the Joint Construction Account shall be credited to the account from which such investment was made and allocated to each party based upon its Proportionate Share contributed.

Section 4.4 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 Constructions to the Erosion Control Facilities in the applicable Proportionate Shares of Engineering Fees and Construction Costs, including the Funding Balance, 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 4.5 Insurance.

4.5.1. 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 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.

4.5.2. 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 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 4.6 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 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 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 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 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 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 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 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 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 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 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 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 Agreement, nothing in this 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 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 Easements; Right of Entry. 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 Agreement, constructing the Erosion Control Facilities, and performing any other functions or duties authorized by this Agreement. 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 Agreement, maintaining the Erosion Control Facilities, and performing any other functions or duties authorized by this 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.

Section 7.5 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 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 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 inability 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 7.6 Waiver of Governmental Immunity; Interlocal Agreement. The Authority and the District acknowledge and agree that this 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 Agreement against each other; provided, however, that (i) the Authority waives such rights only as to the District and this Agreement, and (ii) the District waives such rights only as to the Authority and this Agreement. The Authority and the District acknowledge and agree that this Agreement is

enforceable against each other as an "interlocal contract" as defined by and pursuant to Chapter 791, Texas Government Code, as amended.

Section 7.7 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 Agreement.

Section 7.8 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 7.9 Addresses and Notice. Unless otherwise provided in this 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 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 7.10 Amendment; Modification. This 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 7.11 Assignment. This Agreement shall not be assigned by either party without the prior written consent of the other party.

Section 7.12 Parties in Interest. This 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 7.13 Severability. The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this 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 Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to any other Person or circumstances shall not be affected thereby.

Section 7.14 Merger. This 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.

IN WITNESS WHEREOF, the parties hereto have executed this 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.

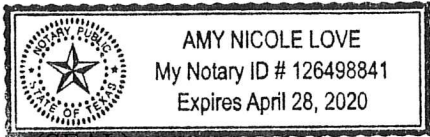
[Signatures commence on the following page.]

FORT BEND GRAND PARKWAY TOLL  
ROAD AUTHORITY

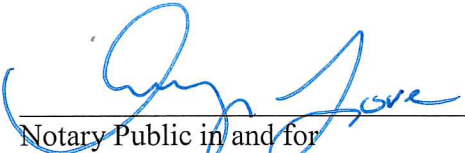
By   
Dr. James D. Condrey, DDS  
Chairman, Board of Directors

THE STATE OF TEXAS           §  
  §  
COUNTY OF Fort Bend       §

This instrument was acknowledged before me on this 19<sup>th</sup> day of April, 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.



(SEAL)

  
Notary Public in and for  
the State of Texas

**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.: \_\_\_\_\_



FORT BEND COUNTY LEVEE IMPROVEMENT  
DISTRICT NO. 7

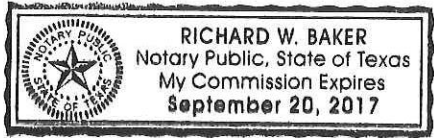
By:   
Epifanio Salazar, Jr.  
Chairman, Board of Directors

THE STATE OF TEXAS    §  
  §  
COUNTY OF FORT BEND §

This instrument was acknowledged before me on this 5<sup>th</sup> day of MAY, 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

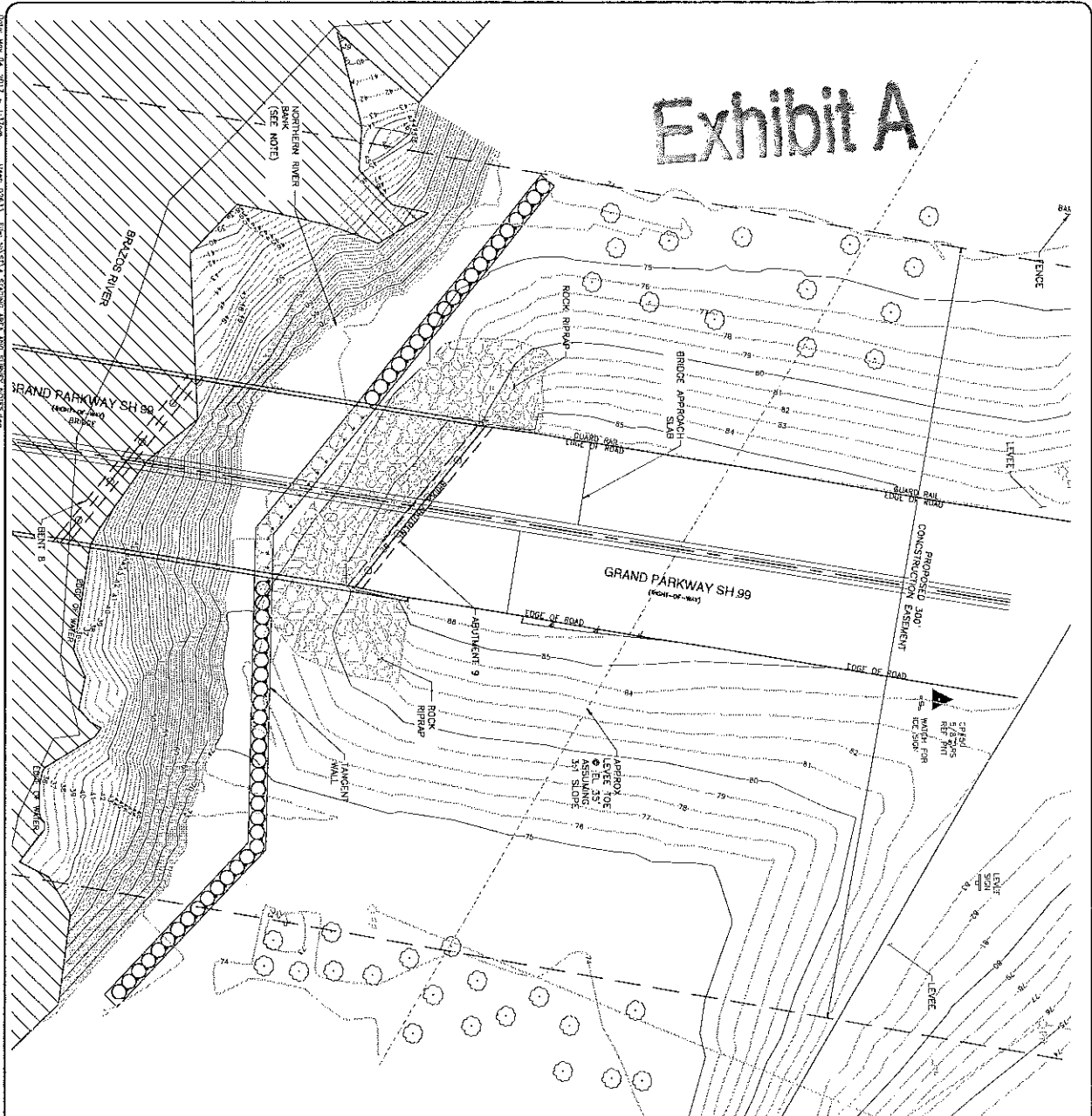
Exhibit A - Depiction of Erosion Control Facilities

Exhibit B - Form of Conveyance

**EXHIBIT A**

**DEPICTION OF EROSION CONTROL FACILITIES**

# Exhibit A



**WARNING! BEFORE YOU DIG**  
**TEXAS ONE CALL SYSTEM**  
 DIG TESS AT (800) 344-6377  
 COORDINATION WITH UTILITIES  
 CONTRACTOR SHALL CONTACT ALL UTILITY COMPANIES PRIOR TO ANY EXCAVATION AND/OR RELOCATION OF EXISTING UTILITIES ENCOUNTERED DURING CONSTRUCTION WORK.

**CAUTION!**  
 OVERHEAD ELECTRIC LINES EXIST WITHIN THE WORK AREA. THE UTILITIES SHOWN ON THESE PLANS ARE APPROXIMATE AND FOR INFORMATION ONLY. ADDITIONAL UTILITIES MAY BE ENCOUNTERED. THE CONTRACTOR SHALL BE RESPONSIBLE FOR DAMAGE TO ALL UTILITIES CAUSED BY THE CONTRACTOR'S OPERATION.



**SURVEY CONTROL TABLE**

DESCRIPTION	NORTHING (FT)	EASTING (FT)	ELEVATION (FT-MSL)	DESCRIPTION
CP-90	302470.42	1377492.98	64.03	SIP MON ROD
CP-91	302485.40	1377492.07	62.58	SIP MON ROD
CP-93	302495.13	1377524.98	63.30	SIP MON ROD

- NOTE:**
- CONTRACTOR TO IMPROVE AREA AS NECESSARY FOR PROSECUTION OF WORK.
  - LEAVE AREA IN AS GOOD OR BETTER CONDITION FOLLOWING COMPLETION OF PROJECT.
  - DO NOT DAMAGE EXISTING CONSTRUCTION.
  - DO NOT DAMAGE EXISTING UTILITIES.
  - EDGE OF RIVER BANK IS UNSTABLE. CONTRACTOR TO PROCEED WITH CAUTION.
  - TOPOGRAPHIC INFORMATION ADJACENT TO THE RIVER HAS BEEN CHANGED DUE TO FLOODING SUBSEQUENT TO THIS SURVEY.
  - CONTRACTOR TO BURY BUMP NORTH OF PROJECT TO PREVENT FURTHER CONSTRUCTION OF BRIDGE APPROACH AT NORTH RIVER BANK.
  - CONTRACTOR TO BURY BUMP NORTH OF PROJECT TO PREVENT FURTHER CONSTRUCTION OF BRIDGE APPROACH AT SOUTH RIVER BANK.
  - BRIDGE EQUIPMENT WATER DISCHARGE TRUCK FALLING ON GROUND BELOW IN PONDING ON BRIDGE DECK.
  - CONTRACTOR SHALL COORDINATE WITH TARRANT CONCERNING FUTURE PLANS OF SH99 BRIDGE EXPANSION. COORDINATE ANY NECESSARY TANGENT WALL ADJUSTMENTS WITH ENGINEER PRIOR TO FABRICATION OR CONSTRUCTION.

NO.	REV.	DATE	BY	CHKD.	APP. NO.
1		APR 2017			
2					
3					
4					

VERIFY SCALE: Bar is one inch on original drawing. If not one inch on this sheet, adjust scale.

**BRAZOS RIVER SH99 TANGENT WALL**  
 STRUCTURAL  
**STAGING AREA AND SURVEY CONTROL**

**FREESE NICHOLS**  
 15817 Farm and Country Way, Suite 600, Dallas, TX 75244  
 Phone: (214) 600-6200  
 Fax: (214) 600-6202  
 Web: www.fn.com

Freeze and Nichols, Inc.  
 Texas Registered Engineering Firm F-2144

**NOT FOR CONSTRUCTION**  
 THIS DRAWING IS RELEASED FOR THE PURPOSE OF REVIEW UNDER THE PROVISIONS OF THE OPEN HOUSE ACT. THIS DRAWING IS NOT FOR CONSTRUCTION OR FOR ANY OTHER PURPOSES.

**EXHIBIT B**  
**FORM OF CONVEYANCE**

CONVEYANCE AND BILL OF SALE OF FACILITIES  
(Erosion Control Facilities)

THE STATE OF TEXAS    §  
                                     §       KNOW ALL PERSONS BY THESE PRESENTS THAT:  
COUNTY OF FORT BEND §

FORT BEND GRAND PARKWAY TOLL ROAD AUTHORITY ("Grantor"), whose address is 16555 Southwest Freeway, Suite 200, Sugar Land, Texas 77479, a local government corporation organized and operating under the laws of the State of Texas, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, and in further consideration of FORT BEND COUNTY LEVEE IMPROVEMENT DISTRICT NO. 7 ("Grantee"), whose address is 1300 Post Oak Boulevard, Suite 1400, Houston, Harris County, Texas 77056, 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, paying its "Proportionate Share" as defined in and pursuant to the terms and conditions of that certain Interlocal Agreement for the Design and Construction of Erosion Control Facilities between the Grantor and the Grantee dated \_\_\_\_\_, 2017 (the "Agreement"), has TRANSFERRED, BARGAINED, GRANTED, SOLD, CONVEYED, ASSIGNED, SET OVER and DELIVERED, and by these presents does TRANSFER, BARGAIN, GRANT, SELL, CONVEY, ASSIGN, SET OVER and DELIVER, to Grantee, its successors and assigns, all its right, title and interest in and to the "District Erosion Control Facilities" as defined in and pursuant to the terms and conditions of the Agreement, as depicted on Exhibit "1" attached hereto and incorporated herein by this reference, and all goods, appliances, and works incorporated as part of such facilities, and/or as listed and described in the Contract, as defined below (collectively referred to herein as the "Facilities"), constructed under that certain agreement dated \_\_\_\_\_, 20\_\_ , between Grantor and \_\_\_\_\_, as amended or revised by any and all change orders (the "Contract"), providing for the construction of the Facilities, together with any and all benefits extending or services to be provided to the "Owner" (as defined in the Contract), including warranties and performance and payment bonds, under the Contract or relating to the Facilities, all of which are located within utility or other public easements or sites dedicated by plat or otherwise to Grantor, Grantee, Fort Bend County, another governmental entity, or the public generally and filed of record in the Official Public Records of Real Property of Fort Bend County, Texas, and which easements or sites are described in Exhibit "2" attached hereto and made a part hereof for all purposes. Except as otherwise provided in the Agreement, the conveyance and sale of the Facilities hereunder is made free and clear of all liens, claims, encumbrances, options, charges, assessments, restrictions, limitations, and reservations (except for restrictions, limitations and reservations which restrict the Facilities or said easements and sites for flood control purposes), and payments due to construction contractors, laborers and materialmen, affecting the 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]