

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is entered into between **Fort Bend Grand Parkway Toll Road Authority** (Owner) and **Wendorf Beward & Partners, LLC** (WB&P), for the following reasons:

1. The Owner has a bridge crossing the Brazos River that has deteriorated at a rapid and accelerated rate due to increased Brazos River Flows during significant storm events in 2015 and 2016.
2. This deterioration has caused the Owner to commence rapid emergency engineering analysis, selection of contractors and mobilization to effect repairs.
3. WB&P staff and team has experience in assisting public owners in the identification, application, obtaining and executing repairs, replacement, recapitalization, improving resiliency and sustainability for publically owned infrastructure in Texas, Louisiana, New York and other states across the country. These activities are Recovery Services.
4. WB&P staff has also managed the programs and projects to provide Full Recovery Services in a programmatic process that maximizes funding potential, expenditure effectiveness and infrastructure soundness and resilience.
5. WB&P provides funding identification, application, strategy and management services. WB&P State of Texas licensed engineering firm # 18170 and will provide oversight and completeness reviews for program and project activities. WB&P provides reporting services to the governing body and constituencies. WB&P works shoulder to shoulder with staff, consultants, funding agencies, regulatory agencies and others to accomplish the desired outcomes of the Owner.
6. WB&P is prepared to provide the Services described above.

In consideration of the promises contained in this Agreement, Owner and WB&P agree as follows:

ARTICLE 1 - EFFECTIVE DATE

The effective date of this Agreement shall be July 17, 2017.

ARTICLE 2 - TASK ORDERS

Task Orders shall be used to describe the parties' mutual agreement on the scope of the Services, schedule, compensation and other particulars as stated therein. Task Orders shall be in the general form shown in attached **Exhibit "A"**. Task Orders are binding only after acceptance and execution by duly authorized representatives of both parties. Each Task Order shall govern the parties' rights and obligations with respect to each assignment, but all within the framework of this Agreement.

ARTICLE 3 - SCOPE OF SERVICES

WB&P shall provide the Services described in Section A (Scope of Services) of each Task Order.

ARTICLE 4 - SCHEDULE

WB&P shall exercise its reasonable efforts to perform those Services within the time frame set forth in Section B (Schedule) of each Task Order.

ARTICLE 5 - COMPENSATION

A. Owner shall pay WB&P in accordance with Section C (Compensation) of each Task Order.

B. WB&P shall invoice Owner for Services rendered Bi-weekly based on the invoicing schedule referenced in **Exhibit C – Invoice & Payment Schedule**. Invoices shall be due and payable upon receipt. Owner shall give written notice within 1 week of any disputed amount and shall pay the remaining amount. Invoice amounts not paid within 30 days after receipt shall accrue interest at the rate of 1.5% per month (or the maximum rate permitted by law, if less), with payments applied first to accrued interest and then to unpaid principal. Owner shall pay WB&P's reasonable attorneys' fees incurred in connection with any litigation instituted to recover invoice amounts.

ARTICLE 6 - OWNER'S RESPONSIBILITIES

A. Owner shall be responsible for all matters described in Section D (Owner's Responsibilities), of each Task Order. In addition, Owner shall perform and provide the following in a timely manner so as not to delay the Services of WB&P:

- (1) Place at WB&P's disposal all available information pertinent to the Project, including previous reports, drawings, specifications or any other data as may be reasonably required by WB&P to perform its Services.
- (2) Give prompt written notice to WB&P whenever Owner becomes aware of any development that affects the scope or timing of WB&P's Services, or any defect in the Services of WB&P.

(3) Advise WB&P of the identity and scope of services of any independent consultants retained by Owner to provide services in regard to the Project.

B. Owner hereby represents that it owns the intellectual property rights in any plans, documents or other materials provided by Owner to WB&P. If Owner does not own the intellectual property rights in such plans, documents or other materials, prior to providing same to WB&P, Owner shall obtain a license or right to use, including the right to sublicense to WB&P. Owner hereby grants WB&P the right to use the intellectual property associated with plans, documents or other materials it owns or has the right to use for the limited purpose of performing the Services. Owner represents that WB&P's use of such documents will not infringe upon any third parties' rights and Owner will indemnify and protect WB&P from any infringement claims arising from WB&P's use of any plans, documents or other materials provided to WB&P in the performance of its Services hereunder.

ARTICLE 7 - STANDARD OF CARE

The same degree of care, skill, and diligence shall be exercised in the performance of the Services as is ordinarily possessed and exercised by a member of the same profession, currently practicing, under similar circumstances. No other warranty, express or implied, is included in this Agreement or in any Task Order, drawing, specification, report, opinion, or other instrument of service, in any form or media, produced in connection with the Services.

ARTICLE 8 - INDEMNIFICATION AND LIABILITY

A. Having considered the potential liabilities that may exist during the performance of the Services, the relative benefits and risks of the Project, and WB&P's fee for the Services, and in consideration of the promises contained in this Agreement, Owner and WB&P agree to allocate and limit such liabilities in accordance with this Article.

B. WB&P agrees to indemnify and hold the Owner harmless from and against legal liability for all judgments, losses, damages, and expenses to the extent such judgments, losses, damages, or expenses are caused by WB&P's negligent acts, errors, or omissions arising out of its performance of the Services.

C. Owner agrees to indemnify and hold WB&P harmless from and against legal liability for all judgments, losses, damages, and expenses to the extent such judgments, losses, damages, or expenses are caused by the Owner's negligent acts, errors, or omission arising out of its performance of this Agreement.

D. In the event judgments, losses, damages, or expenses are caused by the joint or concurrent negligence of WB&P and Owner, they shall be borne by each party in proportion to its own negligence.

E. To the fullest extent permitted by law, the total aggregate liability of WB&P and its subconsultants to Owner for all judgments, losses, damages, and expenses resulting in any way from the performance of the Services shall not exceed the total compensation actually received by WB&P for Task Orders completed under this Agreement.

F. To the fullest extent permitted by law, WB&P shall not be liable to Owner for any consequential damages resulting in any way from the performance of the Services.

G. The terms and conditions of this Article shall survive completion of the Services, or any termination of this Agreement.

ARTICLE 9 - INSURANCE

A. During the term of this Agreement, WB&P shall maintain the following insurance:

(1) General Liability Insurance, with a limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

(2) Automobile Liability Insurance, with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.

(3) Workers' Compensation Insurance in accordance with statutory requirements and Employers' Liability Insurance, with a limit of \$500,000 for each occurrence.

(4) Professional Liability Insurance, with a limit of \$1,000,000 per claim and annual aggregate.

B. WB&P shall, upon written request, furnish Owner certificates of insurance which shall include a provision that such insurance shall not be canceled without at least thirty days' written notice to Owner. Owner shall require all Project contractors to include Owner, WB&P, and its parent company, affiliated and subsidiary entities, directors, officers and employees as additional insureds on their General and Automobile Liability insurance policies, and to indemnify both Owner and WB&P, each to the same extent.

C. WB&P and Owner waive all rights against each other and their directors, officers, partners, commissioners, officials, agents, and employees for damages covered by property insurance during and after the completion of the Services. If the Services result in any construction related to the Project, a similar provision shall be incorporated into all construction contracts entered into by Owner and shall protect Owner and WB&P to the same extent.

ARTICLE 10 - LIMITATIONS OF RESPONSIBILITY

A. WB&P shall not be responsible for (a) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project; (b) the failure of any contractor, subcontractor, vendor, or other Project participant, not under contract to WB&P, to fulfill contractual responsibilities to Owner or to comply with federal, state, or local laws, regulations, and codes; or (c) procuring permits, certificates, and licenses required for any construction unless such procurement responsibilities are specifically assigned to WB&P in a Task Order. In the event the Owner requests WB&P to execute any certificates or other documents, the proposed language of such certificates or documents shall be submitted to WB&P for review at least 15 days prior to the requested date of execution. WB&P shall not be required to execute any certificates or documents that in any way would, in WB&P's sole judgment, (a) increase WB&P's legal or contractual obligations or risks; (b) require knowledge, services or responsibilities beyond the scope of this Agreement; or (c) result in WB&P having to certify, guarantee or warrant the existence of conditions whose existence WB&P cannot ascertain.

ARTICLE 11 - OPINIONS OF COST AND SCHEDULE

Because WB&P has no control over the cost of labor, materials, or equipment furnished by others, or over the resources provided by others to meet Project schedules, WB&P's opinion of probable costs and of Project schedules, if any, shall be made on the basis of experience and qualifications as a practitioner of its profession. WB&P does not guarantee that proposals, bids, or actual Project costs will not vary from WB&P's cost estimates or that actual schedules will not vary from WB&P's projected schedules.

ARTICLE 12 - REUSE OF DOCUMENTS

All documents, including, but not limited to, plans, drawings, and specifications prepared by WB&P as deliverables pursuant to the Scope of Services are instruments of service in respect to the Project. They are not intended or represented to be suitable for reuse by Owner or others on modifications or extensions of the Project or on any other project. Any reuse without prior written verification or adaptation by WB&P for the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to WB&P. Owner shall indemnify and hold harmless WB&P and its subconsultants against all judgments, losses, damages, injuries, and expenses, including reasonable attorneys' fees, arising out of or resulting from such reuse. Any verification or adaptation of documents will entitle WB&P to additional compensation at rates to be agreed upon by Owner and WB&P.

ARTICLE 13 - OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

Except as otherwise provided herein, documents, drawings, and specifications prepared by WB&P and furnished to Owner as part of the Services shall become the property of Owner; provided, however, that WB&P shall have the unrestricted right to their use. WB&P shall retain its copyright and ownership rights in its design, drawing details, specifications, data bases, computer software, and other proprietary property. Intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of WB&P.

ARTICLE 14 - TERMINATION AND SUSPENSION

A. This Agreement may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement; provided, however, the nonperforming party shall have 14 calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the other party.

B. Either party may terminate or suspend performance of this Agreement for Owner's convenience upon written notice to the other party. The parties will meet to prepare a schedule acceptable to both parties for the termination or suspension of performance of the Services. If the termination or suspension is by Owner, then Owner shall pay WB&P for all the Services performed up to the date of termination plus termination or suspension expenses. If the parties mutually agree to restart the suspended Services, an equitable adjustment shall be made to WB&P's compensation and the Project schedule.

C. The provisions of this Article shall also apply to each individual Task Order, separate and apart from any other Task Orders, and without terminating or otherwise affecting this Agreement as a whole.

ARTICLE 15 - DELAY IN PERFORMANCE

A. Neither Owner nor WB&P shall be considered in default of this Agreement or any Task Order for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and delay in or inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either Owner or WB&P under this Agreement or any Task Order. WB&P shall be granted a reasonable extension of time for any delay in its performance caused by any such circumstances.

B. Should such circumstances occur, the nonperforming party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance.

ARTICLE 16 - NOTICES

A. Any notice required by this Agreement shall be made in writing to the address specified below:

Owner: Mike Stone
Fort Bend Grand Parkway Toll Road Authority
P.O. Box 1307
Richmond, Texas 77406
(281) 242-9740
Mikestone@mikestoneassociates.com

WB&P: Nancy Beward, CFM
President
Wendorf Beward & Partners, LLC
602 Rock Cove
Houston, Texas 77079
(830) 310-4883
NBeward@WBPConsult.com

B. Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of Owner and WB&P.

ARTICLE 17 - DISPUTES

A. In the event of a dispute between Owner and WB&P arising out of or related to this Agreement, or any Task Order, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. If the parties cannot thereafter resolve the dispute, each party shall nominate a senior officer of its management to meet to resolve the dispute by direct negotiation or mediation.

B. Should such negotiation or mediation fail to resolve the dispute, either party may pursue resolution of the dispute by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association; provided, however, in the event the parties are unable to reach agreement to arbitrate under terms reasonably acceptable to both parties, either party may pursue resolution in any court having jurisdiction.

C. During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder.

ARTICLE 18 - EQUAL EMPLOYMENT OPPORTUNITY

A. WB&P hereby affirms its support of affirmative action and that it abides by the provisions of the "Equal Opportunity Clause" of Section 202 of Executive Order 11246 and other applicable laws and regulations.

B. WB&P affirms its policy to recruit and hire employees without regard to race, age, color, religion, sex, sexual preference/orientation, marital status, citizen status, national origin or ancestry, presence of a disability or status as a Veteran of the Vietnam era or any other legally protected status. It is WB&P's policy to treat employees equally with respect to compensation, advancement, promotions, transfers and all other terms and conditions of employment.

ARTICLE 19 - WAIVER

A waiver by either Owner or WB&P of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

ARTICLE 20 - SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement or any Task Order. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if it did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

ARTICLE 21 - INTEGRATION

This Agreement, including **Exhibit "A"** (incorporated by this reference), and subsequently issued Task Orders (and their respective attachments, if any), represents the entire and integrated agreement between Owner and WB&P. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement.

ARTICLE 22 - SUCCESSORS AND ASSIGNS

Owner and WB&P each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners, to the other party to this Agreement and to the successors, executors, administrators, permitted assigns, legal representatives, and partners of such other party in respect to all provisions of this Agreement.

ARTICLE 23 - ASSIGNMENT

Neither Owner nor WB&P shall assign any rights or duties under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, WB&P may assign its rights to payment without Owner's consent. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Article shall prevent WB&P from engaging independent consultants, associates, and subcontractors to assist in the performance of the Services.

ARTICLE 24 - NO THIRD PARTY RIGHTS

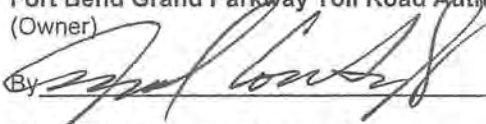
The Services provided for in this Agreement are for the sole use and benefit of Owner and WB&P. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than Owner and WB&P.

ARTICLE 25 - GOVERNING LAW

This Agreement shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, Owner and WB&P have executed this Agreement. The individuals signing this Agreement represent and warrant that they have the power and authority to enter into this Agreement and bind the parties for whom they sign.

Fort Bend Grand Parkway Toll Road Authority
(Owner)

By 

Name Dr. James D. Condrey, DDS

Title Chairman, Board of Directors

Date August 16, 2017

Attached:

Exhibit A – Sample Task Order
Exhibit C – Invoice & Payment Schedule

Wendorf Beward & Partners, LLC
(WB&P)

By 

Name Nancy Ann Beward, CFM

Title President

Date 8/16/2017

Exhibit "A" - Sample Task Order

TASK ORDER NUMBER _____

This Task Order is made as of this _____ day of _____, 20__ under the terms and conditions established in the MASTER AGREEMENT FOR PROFESSIONAL SERVICES, dated _____ (the Agreement), between **Fort Bend County Toll Road Authority** (Owner) and **Wendorf Beward & Partners, LLC (WB&P)**. This Task Order is made for the following purpose, consistent with the Project defined in the Agreement:

[Insert a brief description of the Project elements to which the Task Order applies]

Section A. - Scope of Services

A.1. WB&P shall perform the following Services:

A.2. The following Services are not included in this Task Order, but shall be provided as Additional Services if authorized or confirmed in writing by the Owner:

A.3. In conjunction with the performance of the foregoing Services, WB&P shall provide the following submittals/deliverables (Documents) to Owner:

Section B. - Schedule

WB&P shall perform the Services and deliver the related Documents (if any) according to the following schedule:

Section C. - Compensation

C.1. In return for the performance of the foregoing obligations, Owner shall pay to WB&P the amount of \$_____, payable according to the following terms:

C.2. Compensation for Additional Services (if any) shall be paid by Owner to WB&P according to the following terms:

Section D. - Owner's Responsibilities

Owner shall perform and/or provide the following in a timely manner so as not to delay the Services of WB&P. Unless otherwise provided in this Task Order, Owner shall bear all costs incident to compliance with the following:

Section E. - Other Provisions

The parties agree to the following provisions with respect to this specific Task Order:

IN WITNESS WHEREOF, the Owner and WB&P have executed this Task

(Owner)

By: _____

Name: _____

Title: _____

Date: _____

**Wendorf Beward
& Partners, LLC**

By: _____

Name: Nancy Ann Beward, CFM

Title: President

Date: _____

Exhibit C – Invoice & Payment Schedule

Invoicing Period	Date WB&P will send Invoice	Date Payment is Expected
August 17 – 31, 2017	September 14, 2017	September 29, 2017
September 1 – 16, 2017	September 28, 2017	October 13, 2017
September 17 – 30, 2017	October 17, 2017	October 31, 2017
October 1- 16, 2017	October 31, 2017	November 17, 2017
October 17 – 31, 2017	November 14, 2017	November 30, 2017
November 1 – 16, 2017	November 28, 2017	December 15, 2017
November 17 – 30, 2017	December 12, 2017	December 29, 2017
December 1 – 16, 2017	December 27, 2017	January 12, 2018
December 17 – 31, 2017	January 16, 2018	January 26, 2018
January 1 – 16, 2018	January 30, 2018	February 16, 2018
January 17 – 31, 2018	February 13, 2018	March 2, 2018
February 1- 16, 2018	February 27, 2018	March 16, 2018
February 17 – 28, 2018	March 13, 2018	March 30, 2018

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.

Wendorf Beward & Partners, LLC
Houston, TX United States

Certificate Number:
2017-250782

Date Filed:
08/16/2017

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

Fort Bend Grand Parkway Toll Road Authority

Date Acknowledged:
8/17/2017

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 services, goods, or other property to be provided under the contract.

pending
Professional Engineering and Management Services

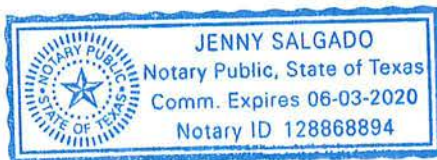
4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

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.



AFFIX NOTARY STAMP / SEAL ABOVE

T. Wendorf
Signature of authorized agent of contracting business entity

Sworn to and subscribed before me, by the said Tom Wendorf, this the 16th day of August, 20 17, to certify which, witness my hand and seal of office.

Jenny Salgado Jenny Salgado Notary
Signature of officer administering oath Printed name of officer administering oath Title of officer administering oath