

## FIRST AMENDMENT TO INTERLOCAL AGREEMENT

This First Amendment to Interlocal Agreement (this "First Amendment") is entered into as of the 20<sup>th</sup> day of June, 2018, by and between FORT BEND COUNTY TOLL ROAD AUTHORITY, a Texas Local Government Corporation (the "Authority") and FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 50, a political subdivision of the State of Texas (the "District"). The Authority and the District may be referred to herein collectively as the "Parties."

### RECITALS

WHEREAS, the Authority and the District previously entered into that certain Interlocal Agreement dated January 21, 2015 (the "Agreement"), governing, among other things, the expansion and maintenance of certain detention facilities (the "Facilities") and property interests related thereto on Property owned by the Authority;

WHEREAS, the Parties now wish to amend the Agreement to adjust certain maintenance and repair obligations, payment considerations for detention capacity, and the term of the Agreement; and

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

### AGREEMENT

1. Section 1 of the Agreement is hereby deleted in its entirety and replaced with the following:

Section 1. Facility Capacity. The Authority agrees to grant the District easement rights for an additional 40.7 acre feet of detention capacity (the "Additional Detention Capacity") in the Facilities once the Improvements are complete, subject to the terms and conditions set forth in this Agreement. Upon completion of the Improvements, the Authority shall execute an easement instrument to the District in a form mutually agreeable to the Parties: (i) granting the Additional Easement Rights, and (ii) including the maintenance provisions necessary to perform the work set forth in Section 6 hereof, for the entirety of the Facilities.

2. Section 6 of the Agreement is hereby deleted in its entirety and replaced with the following:

Section 6. Ownership and Maintenance of the Improvements. Upon completion of the Improvements, the Authority shall retain ownership of the Property and the Facilities, subject to the Easement Rights, the Detention Capacity, the Additional Easement Rights, and the Additional Detention Capacity. During construction of the Improvements, the District shall be responsible for maintaining the Facilities, including the Improvements, to the standard at which the Authority generally maintains its detention facilities. The District will warrant that the Improvements will be free from defects for a period of one (1) year from the date of final acceptance and will include and enforce such warranty within the Construction Contract and/or assign such warranty to the Authority. In consideration for the Additional Easement Rights, following completion of the Improvements, the District hereby agrees to maintain the Facilities to the standard to which the Authority generally maintains its detention facilities for the entirety of the term of this Agreement; provided however, that the District shall retain the right, but not the obligation, to maintain the Facilities to a higher standard in its sole discretion. The District shall perform all regular maintenance of the Facilities, including, routine mowing and fertilization.

In the event that in the course of performing regular maintenance the District's maintenance contractor observes any repairs or extraordinary maintenance that needs to be performed, the District's maintenance contractor shall provide information related to such repair or maintenance to the District's Board of Directors at its next regular meeting, and the District shall in turn notify the Authority in writing within fourteen (14) calendar days of the date of such meeting. Upon receipt of the written notification by the Authority, the District and the Authority shall work in good faith to jointly determine a scope of work mutually agreeable to both Parties to perform any repairs or extraordinary maintenance, with costs associated for such work to be borne based on each Party's pro-rata share of the Detention Capacity and the Additional Detention Capacity relative to the overall capacity of the Facilities, which for purposes of this Agreement is 52.4% by the District and 47.6% by the Authority. In the event that the Parties cannot mutually agree on a scope of work within ninety (90) days following the delivery of written notification of the repair or extraordinary maintenance by the District to the Authority, either Party may proceed with the necessary work as determined in that Party's sole and reasonable discretion, with costs associated for such work to be borne based on each Party's pro-rata share of the Detention Capacity and the Additional Detention Capacity relative to the overall capacity of the Facilities, which for purposes of this Agreement is 52.4% by the District and 47.6% by the Authority. The Parties agree that the District shall have the right to make emergency repairs to the Facilities, as determined necessary in the sole and reasonable discretion of the District's Board of Directors, in order to protect the structural integrity or functionality of the Facilities; provided, however that should the District opt to make such emergency repairs, such repairs

shall be made at the District's sole cost and expense, subject to the Authority's right to pay for its pro-rata share in its sole discretion. Notwithstanding the foregoing, the District assumes no obligation or responsibility as it relates to extraordinary repairs and/or maintenance to be performed to the Facilities on behalf of itself and/or its maintenance contractor.

3. Section 7 of the Agreement is hereby deleted in its entirety and replaced with the following:

Section 7. Termination of the Agreement and Transfer of Maintenance Obligations. This Agreement is to remain in full force and effect unless terminated by mutual agreement of the Parties hereto. Notwithstanding the foregoing, either Party may terminate the District's maintenance obligation as set forth in Section 6 at any time, with or without cause, upon sixty (60) days written notice (the "Maintenance Termination Right"); provided, however, that in no event may the District exercise its Maintenance Termination Right within ten (10) years of the date of completion of the Improvements. In the event of termination of the District's maintenance obligation, the Authority shall have the obligation to maintain the Facilities; provided however, that: (i) the District shall continue to be obligated to reimburse the Authority for its pro-rata share of the costs of maintaining the Facilities based on the ratio of the Detention Capacity and the Additional Detention Capacity relative to the overall capacity of the Facilities, which for purposes of this Agreement is 52.4%; and (ii) the District shall retain the right, but not the obligation, to maintain the Facilities to a higher standard upon written notification to the Authority's general manager of the District's intent to complete such maintenance activities. In the event that the maintenance responsibility is transferred to the Authority, the Authority will provide the District with an estimated maintenance cost allocation annually and will invoice the District annually based on the actual maintenance costs incurred.

4. Except as specifically amended in this First Amendment, the Agreement shall remain in full force and effect in accordance with its original terms and conditions.
5. Capitalized terms used herein shall have the same meanings given them in the Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment in multiple copies, each of equal dignity, effective as of the date and year set forth on the first page hereof.

FORT BEND COUNTY MUNICIPAL UTILITY  
DISTRICT NO. 50

By:   
President, Board of Directors

ATTEST:

By:   
Secretary, Board of Directors

(SEAL)



FORT BEND COUNTY TOLL ROAD  
AUTHORITY

By: [Signature]  
Chairman, Board of Directors

ATTEST:

By: [Signature]  
Secretary, Board of Directors

(SEAL)



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