

AGREEMENT FOR CONSTRUCTION AND MAINTENANCE OF A SOUND WALL

This Agreement (the "Agreement"), is made and entered into to be effective as of the date signed by the last party hereto, (the "Effective Date"), by and between Fort Bend County, Texas (the "County"), a body corporate and politic, acting by and through its Commissioners Court, the Fort Bend Grand Parkway Toll Road Authority, a local government corporation organized and operating under the laws of the State of Texas (the "TRA"), and Canyon Gate at the Brazos Owners Association, Inc. (the "Association"), a non-profit corporation organized under the laws of the State of Texas. The County, the TRA, and the Association may be referred to collectively herein as the "Parties."

RECITALS

WHEREAS, Association is a Texas non-profit corporation created to, among other things, maintain common areas and provide certain services for the benefit of the residents of the Canyon Gate at the Brazos Subdivision ("Subdivision"); and

WHEREAS, the Association desires to have a sound wall constructed adjoining the Grand Parkway/FM 2759 right of way to address concerns regarding future elevated noise levels generated by additional traffic along the improved roadway; and

WHEREAS, the Association owns certain real property adjoining the Grand Parkway/FM 2759 right of way, which is the same location in which the Association desires to have the sound wall constructed (the "Property"); and

WHEREAS, the Association desires to grant an easement on the Property to the Public for purposes of constructing and maintaining the sound wall, fund a portion of the costs associated with the adjustment, removal, or relocation of utility facilities necessary to construct the sound wall on the Property (if any), and fund the maintenance of the Property and the sound wall until 2025; and

WHEREAS, the County finds it is a public interest to enter into this Agreement to (i) accept the Association's grant of an easement on the Property and the Association's commitments to fund utility relocation costs (if any) and fund the maintenance of the Property and the sound wall until 2025, and in exchange for such, (ii) cooperate with the Texas Department of Transportation ("TxDOT") to cause a sound wall to be constructed under the terms of this Agreement; and

WHEREAS, the TRA is responsible for maintenance and operation of the Grand Parkway and related facilities, and the County therefore desires to assign the easement on the Property and convey the sound wall to the TRA after construction of the sound wall, and the TRA desires to (i) accept the County's assignment of the easement on the Property and conveyance of the completed sound wall, and (ii) maintain the sound wall, using its own funds and funds from the Association, as further described herein;

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

AGREEMENT

1. PURPOSE

The purpose of this Agreement is to outline the obligations related to the construction and maintenance of a sound wall along the Grand Parkway/FM 2759 right of way adjoining Canyon Gate Subdivision, an existing residential development.

2. CONVEYANCES

- A. The Association will grant a perpetual non-exclusive easement to the Public, for public right of way purposes, including the right to construct and maintain a sound wall, and all necessary appurtenances thereto in, on, under, over and across a certain tract of land owned by the Association (the "Sound Wall Easement"), further described as follows "(the Sound Wall Easement Property)":

All of the real property approximately 1,700 linear feet in length and 20 feet in width within Canyon Gate at the Brazos, Section 1, Acres 1.3544, Restricted Reserve "C", directly adjoining the Grand Parkway/FM 2759 right of way from Sansbury Boulevard to Middle Bayou.

- B. The Association will grant a temporary construction easement, subject to conditions of terms of a tree preservation commitment to be determined before completion of the design of the sound wall in, on, under, over and across the entire Restricted Reserve "C" owned by the Association, (the "Construction Easement"), further described as follows:

Restricted Reserve "C", Canyon Gate at the Brazos, Section 1, Acres 1.3544 Subdivision

3. CONVEYANCE DOCUMENT

The Association will grant the Sound Wall Easement and the Construction Easement to the County pursuant to the form of Easement attached hereto as Exhibit "A" (the "Easement"), subject to TxDOT's approval or comments to the form of Easement. The execution and delivery of the Easement will occur within ten (10) calendar days of the Effective Date.

4. ACCEPTANCE OF EASEMENT

Upon execution and delivery of the Easement by the Association, the County shall accept the Easement and record same in the Fort Bend County Real Property Records.

5. COOPERATION WITH TXDOT FOR IMPROVEMENTS TO WALL

The County shall enter an Advance Funding Agreement with TxDOT (the "AFA") to cause the construction of the sound wall under terms required by TxDOT to satisfy all applicable sound barrier requirements and consistent with this Agreement.

6. COSTS FOR DESIGN, CONSTRUCTION AND UTILITY RELOCATION

The County shall pay for costs associated with the design and construction of the sound wall from funds provided by TxDOT pursuant to the AFA. The County shall not be required to pay for any costs associated with the modification or maintenance of the Property or sound wall. Further, the Association shall be responsible for costs associated with the adjustment, removal, or relocation of utility facilities in accordance with applicable State laws, regulations, rules, policies and procedures, including any costs of a delay during construction of the sound wall resulting from the Association's failure to ensure that the utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction (collectively, the "Utility Relocation Costs"). Notwithstanding the foregoing, the Association shall not be responsible for more than \$20,000 in Utility Relocation Costs. In the event Utility Relocation Costs are more than \$20,000 ("Utility Relocation Cost Overage"), the County shall (i) request authorization from the Association for any Utility Relocation Cost Overage before proceeding with the related adjustment, removal, or relocation of utility facilities, or (ii) if the Association does not grant authorization for the Utility Relocation Cost Overage after the County requests same, the TRA shall pay for the Utility Relocation Cost Overage.

7. COUNTY SHALL ASSIGN EASEMENT AND CONVEY IMPROVEMENTS

After the sound wall is constructed, the County shall assign the Easement and convey the sound wall to the TRA (the "Assignment"). Upon execution and delivery of the Assignment by the County, the TRA shall accept the Assignment and record same in the Fort Bend County Real Property Records. The Association hereby consents to the Assignment.

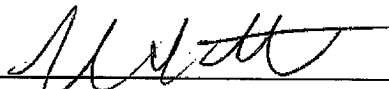
8. MAINTENANCE OF SUBJECT PROPERTY AND IMPROVEMENTS

The TRA shall maintain the Sound Wall Easement Property and the sound wall, but the Association shall pay the TRA \$10,000 per year for the cost of such maintenance (collectively, the "Maintenance Costs"). After January 1, 2025, the TRA shall continue to maintain the Sound Wall Easement Property and the sound wall, but the TRA, and not the Association, shall be responsible for the Maintenance Costs. The Association waives, releases, and discharges the TRA and the County from (i) any and all liability for personal injury or damage of property belonging to the Association's members, employees, agents, consultants, or contractors, while the TRA or County is performing maintenance on the Sound Wall Easement Property or the sound wall, and (ii) any and all liability for personal injury, damage of property, or flooding caused by, exacerbated by, or related to the sound wall.

[Signatures Follow]

IN WITNESS WHEREOF, the parties have duly executed and delivered this Agreement as set forth above.

CANYON GATE AT THE BRAZOS OWNERS ASSOCIATION, INC.

By: 
Raymond Stone, President

Date: 5/24/2019

FORT BEND COUNTY, TEXAS

By: _____
K.P. George, County Judge

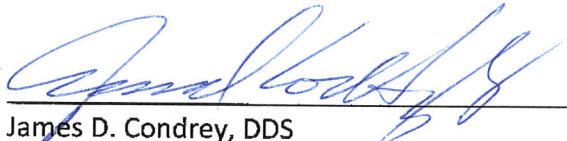
Date: _____

APPROVED:

Stacy Slawinski, P.E., County Engineer

Approved by the County Attorney

FORT BEND GRAND PARKWAY TOLL ROAD AUTHORITY

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

Date: 7-24-2019

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.: _____

EXHIBIT A

(see attached)

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

EASEMENT

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS
COUNTY OF FORT BEND §

THAT CANYON GATE AT THE BRAZOS OWNERS ASSOCIATION, INC, a non-profit corporation, ("Grantor"), for and in consideration of the sum of One and No/100 Dollars (\$1.00) and other good and valuable consideration in hand paid by FORT BEND COUNTY, TEXAS, a body corporate and politic under the laws of the State of Texas, ("Grantee"), has GRANTED, GIVEN and CONVEYED and by these presents does GRANT, GIVE and CONVEY unto the said Grantee, its successors and assigns, forever, a permanent, perpetual and non-exclusive easement and right-of-way (the "Easement"), for the maintenance, repair, operation and replacement of a sound wall, and all related appurtenances thereto (collectively, the "Facilities"), in, across, along, under and upon a certain tract of land described herein (the "Easement Tract"), together with the right and privilege of ingress and egress across the Easement Tract as may be necessary, requisite, convenient or appropriate in connection therewith. The Easement Tract is described as follows:

All of the real property approximately 1,700 linear feet in length and 20 feet in width directly adjoining the Grand Parkway/FM 2759 right of way from Sansbury Boulevard to Middle Bayou within Restricted Reserve "C", Acres 1.3544, Canyon Gate at the Brazos, Section 1 Subdivision, in plat recorded under Slide Number 1848B of the Official Public Records of Fort Bend County, Texas.

Further, the Grantor hereby grants a temporary construction easement (the "Construction Easement"), for the construction and installation of the Facilities, including, without limitation, the right to clear and remove trees, undergrowth, shrubbery and other improvements, subject to conditions of terms of a tree preservation commitment to be determined before completion of the design of the sound wall, in, on, under, over and across a certain tract of land described herein, further described as follows:

All of the real property within Restricted Reserve "C", Acres 1.3544, Canyon Gate at the Brazos, Section 1 Subdivision, in plat recorded under Slide Number 1848B of the Official Public Records of Fort Bend County, Texas.

Grantee's rights shall include, without limitation, the right to bring and operate any equipment on the above-described properties as may be necessary, requisite, convenient or appropriate to effectuate the purposes for which the easements are granted.

This grant is further made subject to any restrictions, covenants, easements, rights- of-way, liens, encumbrances and mineral or royalty reservations or interests affecting the easements and appearing of record in the Official Records of Fort Bend County, Texas, to the extent that said items and matters are in effect and validly enforceable against the easements granted herein;

provided, however, Grantors will not enforce said items and matters, to the extent that it has the ability to enforce any of said items or matters, in a manner which would unreasonably prejudice or interfere with Grantee's rights in the easements granted herein.

TO HAVE AND TO HOLD, subject to the matters set forth herein, the above-described Easement and the Construction Easement for the said purposes, including all necessary rights of ingress, egress and regress, unto said Grantee, its successors and assigns, forever. Subject to the matters set forth herein, Grantors do hereby bind themselves, their successors and assigns, to WARRANT AND FOREVER DEFEND, all and singular the said easements and right-of-way and other rights described herein unto Grantee, its successors and assigns, by, through or under Grantor, but not otherwise.

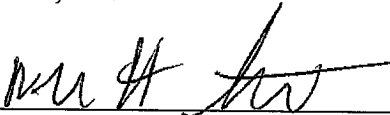
Grantee's address is 301 Jackson Street, Richmond, Texas 77469.

[Signatures Follow]

EXECUTED to be effective as of May 24, 2019.

GRANTOR:

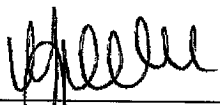
CANYON GATE AT THE BRAZOS OWNERS
ASSOCIATION, INC.

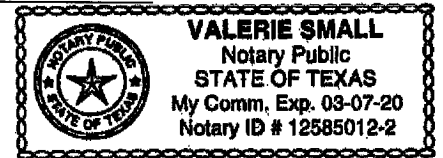
By: 
Raymond Stone, President

Date: 5/24/2019

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

This instrument was acknowledged before me on May 24, by Raymond Stone, President of the Canyon Gate at the Brazos Owners Association, Inc., a _____ non-profit corporation, on behalf of said non-profit corporation.


Notary Public, State of Texas



After Recording Return to:
Fort Bend County Engineering
Attn: County Engineer
301 Jackson Street
Richmond, Texas 77469