

**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.**

**SECOND AMENDMENT TO DETENTION CAPACITY EASEMENT AGREEMENT**

THIS Second Amendment to Detention Capacity Easement Agreement (this "Second Amendment") is made between Poarch/Swinbank LLC, a Texas limited liability company ("P/S") and Fort Bend County, Texas, a body politic of the State of Texas ("Grantee").

WHEREAS, P/S and Grantee executed and accepted that certain Detention Capacity Easement Agreement (the "Easement Agreement") recorded in the Official Public Records of Fort Bend County, Texas under Instrument Number 2015126405, as amended by the Amendment to the Detention Capacity Easement Agreement (the "Amendment") recorded in the Official Public Records of Fort Bend County, Texas under Instrument Number 2019032215, a copy of both of which are attached hereto as Exhibit "A" and incorporated herein for all purposes, to provide storm water detention capacity for Grantee's FM 1093/Westpark Extension Phase I roadway project; and

WHEREAS, P/S and Grantee desire to further amend the Easement Agreement to increase the volume of storm water detention capacity available to the Grantee to accommodate the storm water detention needs for its Fulshear-Gaston Road Improvement Project Number 17312 (the "Fulshear-Gaston Project").

NOW, THEREFORE, P/S and Grantee so mutually agree to incorporate the following changes to the Easement Agreement as follows:

1. P/S hereby TRANSFERS, BARGAINS, GRANTS, SELLS, CONVEYS and ASSIGNS to Grantee an additional **25.99** acre-feet of storage to serve the storm water detention needs for the Fulshear-Gaston Project within the Detention Easement granted pursuant to the Easement Agreement.
2. The total amount of storage to serve the storm water detention needs of Grantee for is Road Extension Project and Fulshear-Gaston Project within the Detention Easement is hereby increased to **351.82** acre-feet by P/S's grant of the additional **25.99** acre-feet pursuant to this Second Amendment.
3. P/S and Grantee shall enter an Agreement Regarding Consideration for Additional Detention Capacity of even date to memorialize the consideration given for the additional storage granted herein.
4. To the extent the terms, provisions, covenants, or conditions in this Second Amendment are inconsistent with those in the Easement Agreement or the Amendment, the terms, provisions, covenants, or conditions in this Second Amendment shall control and be binding on the parties as of the Effective Date of this Second Amendment. All other provisions of the Easement Agreement and the Amendment shall continue in full force and effect.

5. This Second Amendment can only be amended or modified upon written agreement executed by the authorized representatives of the parties.

Executed on the dates of the acknowledgments below, to be effective when executed and acknowledged by both parties hereto (the "Effective Date").

POARCH/SWINBANK LLC,  
a Texas limited liability company

By: \_\_\_\_\_  
Donald L. Poarch, its Vice President

STATE OF TEXAS           §  
  §  
COUNTY OF HARRIS       §

This instrument was acknowledged before me on \_\_\_\_\_ day of \_\_\_\_\_, 2019, by Donald L. Poarch, Vice President of Poarch/Swinbank LLC, a Texas limited liability company, on behalf of said limited liability company.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Name of Notary

My Commission expires: \_\_\_\_\_

GRANTEE:

FORT BEND COUNTY, TEXAS,  
a body politic of the State of Texas

By: \_\_\_\_\_  
KP George, County Judge

STATE OF TEXAS           §  
  §  
COUNTY OF FORT BEND   §

This instrument was acknowledged before me on \_\_\_\_\_ day of \_\_\_\_\_,  
2019, by KP George, in his capacity as County Judge of Fort Bend County, Texas, a body politic  
of the State of Texas, on behalf of said body politic of the State of Texas.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Name of Notary

My Commission expires: \_\_\_\_\_

# EXHIBIT A



**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.**

### **AMENDMENT TO DETENTION CAPACITY EASEMENT AGREEMENT**

This Amendment to Detention Capacity Easement Agreement (this "Amendment") is made between Poarch/Swinbank LLC, a Texas limited liability company ("P/S") and Fort Bend County, Texas, a body politic of the State of Texas ("Grantee"). This Amendment incorporates the following changes to the Detention Capacity Easement Agreement (the "Easement Agreement") recorded in the Official Public Records of Fort Bend County, Texas under Instrument Number 2015126405, a copy of which is attached hereto as Exhibit "A" and incorporated herein for all purposes, as if a part of the Easement Agreement:

#### **AMENDMENT**

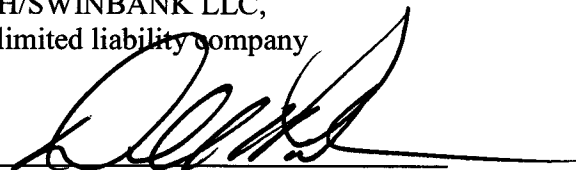
1. The definition of "Road Extension Project" and the volume of detention as stated in Recitals Paragraph (b) of the Easement Agreement are changed as follows:
  - (b) In connection with the FM 1093/Westpark Extension Phase I and Future FM 1463 Widening Project in Fort Bend County, Texas (the "Road Extension Project"), Grantee needs storm water detention in a volume sufficient under all regulatory requirements, calculated as **325.83** acre-feet of storage (1.04 storage rate using Atlas 14), to serve the storm water detention needs for the Road Extension Project as completed (the "Needed Capacity").
2. The date of the revised "Drainage Study" and the amount of available capacity as stated in Recitals Paragraph (c) of the Easement Agreement are changed as follows:
  - (c) P/S owns a detention pond (the "Detention Pond") that is located on the P/S Land, as described in the Sprint Regional Detention Pond Drainage Study prepared by Provident Engineers, Inc., as revised January 2019 (the "Drainage Study") as same may be modified or updated as set forth in Paragraph 3. below, and P/S is in a position to, and is willing to, provide the Needed Capacity in the Detention Pond, (which currently has **351.82** acre-feet of available capacity for the Road Extension Project (1.04 storage rate using Atlas 14), in accordance with the terms of this Easement Agreement.
3. To the extent the terms, provisions, covenants, or conditions in this Amendment are inconsistent with those in the Easement Agreement, the terms, provisions, covenants, or conditions in the Amendment shall control and be binding on the parties as of the Effective Date of this Amendment. All other provisions of the Easement Agreement shall continue in full force and effect.

4. This Amendment can only be amended or modified upon written agreement executed by the authorized representatives of the parties.

Executed on the dates of the acknowledgments below, to be effective when executed and acknowledged by both parties hereto (the "Effective Date").

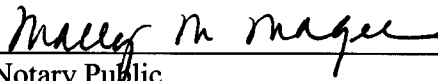
POARCH/SWINBANK LLC,  
a Texas limited liability company

By:

  
Donald L. Poarch, its Vice President

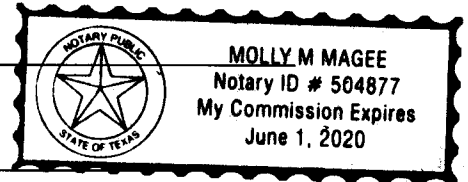
STATE OF TEXAS           §  
  §  
COUNTY OF HARRIS       §

This instrument was acknowledged before me on 20<sup>th</sup> day of March, 2019, by Donald L. Poarch, Vice President of Poarch/Swinbank LLC, a Texas limited liability company, on behalf of said limited liability company.

  
Notary Public

Molly M Magee  
Printed Name of Notary

My Commission expires: \_\_\_\_\_



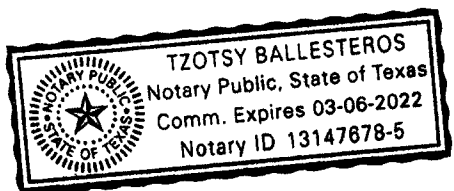
GRANTEE:

FORT BEND COUNTY, TEXAS,  
a body politic of the State of Texas

By: *KP George*  
KP George, County Judge

STATE OF TEXAS           §  
  §  
COUNTY OF FORT BEND   §

This instrument was acknowledged before me on 26<sup>th</sup> day of March,  
2019, by KP George, in his capacity as County Judge of Fort Bend County, Texas, a body politic  
of the State of Texas, on behalf of said body politic of the State of Texas.



*Tzotsy Ballesteros*  
Notary Public  
Tzotsy Ballesteros  
Printed Name of Notary  
My Commission expires: 3-6-2022

# EXHIBIT A

67



**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.**

**DETENTION CAPACITY EASEMENT AGREEMENT**

This Detention Capacity Easement Agreement ("Easement Agreement") is made between Poarch/Swinbank LLC, a Texas limited liability company ("P/S") and Fort Bend County, Texas, a body politic of the State of Texas ("Grantee").

**RECITALS**

- a. P/S is the owner of a 100-acre, more or less, tract of land that is described by metes and bounds on Exhibit A attached hereto and made a part hereof (the "P/S Land").
- b. In connection with the FM 1093/Westpark Extension Phase I project in Fort Bend County, Texas (the "Road Extension Project"), Grantee needs storm water detention in a volume sufficient under all regulatory requirements, calculated as **123.79** acre-feet of storage, to serve the storm water detention needs for the Road Extension Project as completed (the "Needed Capacity").
- c. P/S owns a detention pond (the "Detention Pond") that is located on the P/S Land, as described in the Sprint Regional Detention Pond Drainage Study prepared by Provident Engineers, Inc., as revised June 2015 (corrected) (the "Drainage Study") as same may be modified or updated as set forth in Paragraph 3. below, and P/S is in a position to, and is willing to, provide the Needed Capacity in the Detention Pond, (which currently has **467.99** acre-feet of available capacity), in accordance with the terms of this Easement Agreement.
- d. Grantee joins in the execution of this Easement Agreement to evidence its agreement to the terms and provisions hereof.

**AGREEMENT:**

In consideration of the premises and Ten Dollars and other good and valuable consideration as set forth in that certain Agreement Regarding Consideration for Detention Capacity dated of even date herewith between P/S and Grantee (the "Detention Capacity Consideration"), which shall be paid by Grantee to P/S at the time of execution of this Easement Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

- 1. Grant of Detention Capacity. P/S hereby TRANSFERS, BARGAINS, GRANTS, SELLS, CONVEYS and ASSIGNS to Grantee (i) a perpetual non-exclusive easement (the "Detention Easement") in and to the Detention Pond for the purpose of providing

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CCM 11-03-15 #21A  
Fort Bend County Clerk  
Return Admin Serv Coord *RAC*

storm water detention capacity for the Road Extension Project in a volume of up to 123.79 acre-feet, (same being the Needed Capacity).

2. Maintenance of the Detention Pond. As between P/S and Grantee, P/S shall have the sole responsibility, at no cost to Grantee (other than the Detention Capacity Consideration), for maintaining and repairing the Detention Pond in a manner that assures that the Needed Capacity shall be available for use by Grantee in the Detention Pond.
3. Non-Exclusive Provisions. P/S reserves the right to use and enjoy the Detention Pond and the land upon which same is constructed and maintained (together with the balance of the P/S Land) for any purposes as long as such use and enjoyment does not unreasonably interfere with the rights herein granted to Grantee and as long as the Needed Capacity in favor of Grantee is maintained and made available in the Detention Pond at all times. Subject to the limitations set forth in the preceding sentence of this Easement Agreement, P/S specifically reserves the right to use, and to convey or transfer to others the right to use, other or additional detention or water storage capacity in the Detention Pond, and the right to expand, enlarge or otherwise modify the Detention Pond. P/S shall provide Grantee with an update to Drainage Study prepared by an engineer selected by P/S reflecting any proposed modification of the Detention Pond no later than thirty (30) days prior to the start of construction of any such modification to insure that Grantee's rights granted hereunder are preserved.
4. Effect of Invalidation. If any term or condition of this Easement Agreement is held to be invalid or unenforceable by any court or other body with appropriate jurisdiction, the invalidity or unenforceability of such term or condition shall not affect the validity of the remaining terms and conditions of the Easement Agreement.
5. Term of Easement. The term of the Detention Easement shall be perpetual.
6. Successors and Assigns. The rights, interest and obligations of Grantee or Grantor under this Easement Agreement may be sold, assigned or transferred by Grantee or Grantor without any approval or consent of the other party to this Easement Agreement. This Easement Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns and shall run with the land affected hereby. This Detention Easement is a covenant running with the Land binding on all future owners of the P/S Land.
7. Title Warranty. TO HAVE AND TO HOLD the Detention Easement for the Needed Capacity, together with all and singular the rights and appurtenances thereto in anywise belonging unto Grantee, its successors and assigns, forever; and P/S does hereby bind P/S and P/S's successors and assigns to WARRANT AND FOREVER DEFEND, all and singular, the Detention Easement for the Needed Capacity unto Grantee, and its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through and under P/S but not otherwise, subject to all matters of record and all matters that a true and correct survey or a visual inspection of the Detention Pond or the P/S Land would reveal, to the extent same are currently in existence and affect the Detention Pond or the P/S Land; provided, however, that P/S

warrants and represents to Grantee that there are no deed of trust liens or any other consensual liens affecting the Detention Pond or the P/S Land.

8. **Notices.** Any notice required or permitted to be given under this Easement Agreement shall be in writing, and shall be deemed to have been given when delivered by hand delivery, or when deposited in the United States Post Office, registered or certified mail, postage prepaid, return receipt requested, if mailed. Notices shall be addressed as follows:

If to Grantee:

Fort Bend County, Texas  
Attn: County Engineer  
301 Jackson Street  
Richmond, Texas 77469

If to P/S:

Poarch/Swinbank LLC  
Attn: Donald Poarch  
1041 Conrad Sauer Road  
Houston, Texas 77043  
Telephone: 713-984-1473  
Email: dpoarch@thesprintcompanies.com

or such other address as either party from time to time shall specify in writing to the other in the manner set forth above.

9. **Limitations.** P/S shall have no liability or responsibility for constructing or arranging for any drainage lines or other facilities (i) to transport storm water from the Road Extension Project into the Detention Pond, or (ii) from the Detention Pond to allow outflow drainage from the Detention Pond other than any outflow lines or facilities that currently exist. The Detention Easement shall be used for the purpose of serving the detention capacity needs of the Road Extension Project only, and no other projects of Grantee without the prior written consent of P/S.
10. **Default.** In the event there is a breach by P/S with respect to any of the provisions of this Easement Agreement or its obligations under it, including preservation of Grantee's rights to its Needed Capacity and maintenance of the Detention Pond, Grantee shall give P/S written notice of such breach. After receipt of such written notice, P/S shall have forty-eight (48) hours in which to cure any such breach, if such breach constitutes an emergency, or ten (10) days if such breach does not constitute an emergency. Should P/S fail to cure breach, upon the expiration of forty-eight (48) hours or ten (10) days (as the case may be) of P/S's receipt of notice, Grantee shall have the right to enter upon the Land and make such modifications to the Detention Pond to prove the Needed Capacity or otherwise take any and all necessary actions necessary to cure such breach, and seek reimbursement from P/S for any and all expenses reasonably related to curing the breach.

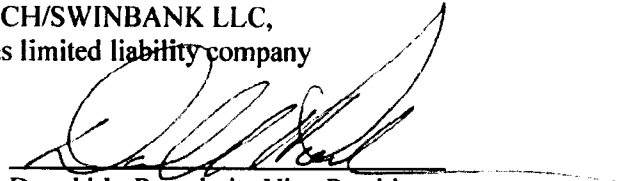
In the event of Grantee's default under this Easement Agreement, P/S will be entitled to seek any remedy in which may be available to P/S at law or in equity, including the right to seek reasonable attorney's fees and court costs.

11. **Counterparts.** This Easement Agreement may be executed in one or more counterparts, all of which taken together shall constitute a single instrument and the pages of which may be aggregated to form a single document.

Executed on the dates of the acknowledgments below, to be effective when executed and acknowledged by both parties hereto.

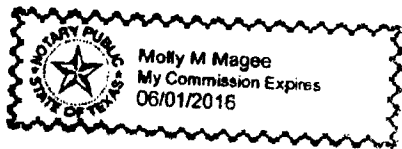
POARCH/SWINBANK LLC,  
a Texas limited liability company

By:

  
Donald L. Poarch, its Vice President

STATE OF TEXAS           §  
  §  
COUNTY OF HARRIS     §

This instrument was acknowledged before me on 20th day of October, 2015, by Donald L. Poarch, Vice President of Poarch/Swinbank LLC, a Texas limited liability company, on behalf of said limited liability company.



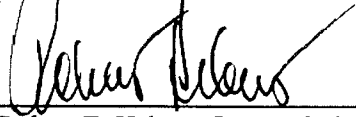
Molly M. Magee  
Notary Public

MOLLY M. MAGEE  
Printed Name of Notary

My Commission expires: 6/1/2016

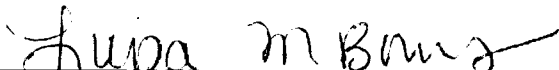
**GRANTEE:**

**FORT BEND COUNTY, TEXAS,  
a body politic of the State of Texas**

By:   
Robert E. Hebert, County Judge

STATE OF TEXAS           §  
   §  
   §  
COUNTY OF FORT BEND   §

This instrument was acknowledged before me on 3<sup>rd</sup> day of November, 2015, by Robert E. Hebert, in his/her capacity as County Judge of Fort Bend County, Texas, a body politic of the State of Texas, on behalf of said body politic of the State of Texas.

  
Notary Public

Luisa M Bowers  
Printed Name of Notary

My Commission expires: 9-7-16





FILED AND RECORDED  
OFFICIAL PUBLIC RECORDS

*Laura Richard*

Laura Richard, County Clerk  
Fort Bend County, Texas

November 05, 2015 03:07:24 PM

FEE: \$0.00 KA  
EASEMENT

2015126405

