

COST SHARING AGREEMENT
FOR DESIGN OF DITCH H REHABILITATION PROJECT

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

This Cost Sharing Agreement for Ditch H Rehabilitation Project (“Agreement”) is made and entered into as of the last date signed by the parties hereto, by and among Fort Bend County Levee Improvement District No. 2 , a political subdivision of the State of Texas (“LID 2”); Fort Bend County Drainage District, a political subdivision of the State of Texas (“FBCDD”); and Fort Bend County Levee Improvement District No. 17, a political subdivision of the State of Texas (“LID 17”) (collectively, the “Parties”).

RECITALS

WHEREAS, Ditch H is a major outfall drainage channel that begins near the intersection of Highway 90A and State Highway 6 and serves property within the boundaries of LID 2, LID 17, the City of Sugar Land (the “City”), and certain unincorporated areas within Fort Bend County (“Ditch H”);

WHEREAS, LID 2 constructed and financed the original improvements to Ditch H;

WHEREAS, LID 17 was created after initial construction of Ditch H to provide drainage protection for the developed property within its boundaries;

WHEREAS, LID 17 determined it would be most cost effective to utilize Ditch H to provide outfall drainage for property within LID 17;

WHEREAS, in 2002, LID 2, FBCDD, and the City commissioned a study regarding the drainage capacity in Ditch H;

WHEREAS, based on that study, LID 2, FBCDD, and the City determined that it was necessary to undertake additional excavation to expand the drainage capacity in Ditch H and to reconstruct the existing drop structure in Ditch H and to install erosion protection near such drop structure;

WHEREAS, the Parties and the City entered into a Cost Sharing Agreement For Ditch H Expansion and Improvements to jointly finance the improvements to Ditch H to

serve the developed property in LID 17 and to better serve property within LID 2 and certain unincorporated areas within the County and the City (the “Expansion Project”);

WHEREAS, since completion of the Expansion Project, Ditch H has experienced erosion and sloughing in certain locations;

WHEREAS, LID 17 and FBCDD have made improvements to restore the ditch slopes in certain locations along the western side of Ditch H; and

WHEREAS, the Parties have determined that it is necessary to design additional improvements to restore the ditch slopes and mitigate future erosion and sloughing in Ditch H; NOW, THEREFORE:

AGREEMENT

For and in consideration of the mutual promises, covenants, obligations and benefits in this Agreement, LID 2, FBCDD, and LID 17 contract and agree as follows:

ARTICLE I

Section 1.01 Recitals. The recitations and recitals set forth above are declared true and correct and are hereby incorporated as part of this Agreement.

ARTICLE II

Section 2.01 Definitions. Throughout this Agreement, the following terms and expressions as used in this Agreement shall have meanings as follows.

“City” means the City of Sugar Land, Texas.

“Design Engineer” means the engineering firm engaged by FBCDD to complete the Project Design.

“FBCDD” means the Fort Bend County Drainage District.

“FBCDD Engineer” means the Fort Bend County Drainage District Chief Engineer or his or her designee.

“LID 2” means Fort Bend County Levee Improvement District No. 2.

“LID 2 Engineer” means LJA Engineering & Surveying, Inc., or any successor engineering firm selected by LID 2.

“LID 17” means Fort Bend County Levee Improvement District No. 17.

“LID 17 Engineer” means LJA Engineering & Surveying, Inc., or any successor engineering firm selected by LID 17.

“Party” or “Parties” according to the context, means one or more of LID 2; LID 17; and FBCDD.

“Project Design” means the design of the Rehab Project.

“Project Design Costs” means engineering fees and expenses incurred by the FBCDD Engineer for the Project Design.

“Rehab Project” means the improvements to restore the ditch slopes and mitigate future sloughing and erosion of Ditch H, as more specifically detailed in **Exhibit A** and as may be amended by the final Project Design.

ARTICLE III

Design Administration and Scope of Work

Section 3.01 Design Manager. The Parties hereby designate FBCDD as design manager for purposes of (1) procuring and overseeing performance of services necessary for the completion of the Project Design; (2) coordinating the collection of amounts owed pursuant to the terms and provisions of this Agreement; (3) administering this Agreement; and (4) such other actions as may be reasonably necessary to implement the provisions and purposes of this Agreement. FBCDD agrees to use its best efforts and due diligence to cause the Project Design to be completed in accordance with and subject to the terms of this Agreement. It is the intention of the Parties that all common expenses incurred by FBCDD for the Project Design and under this Agreement shall be shared by the Parties in accordance with this Agreement. FBCDD shall preserve the books, records, charges and other records relating to all such costs and make them available during reasonable business hours in order for any Party to inspect to the extent necessary to verify their accuracy. If any such inspection reveals any inaccuracy in such billings heretofore made, the necessary adjustment shall be promptly made by FBCDD.

Section 3.02 Scope of Work for Design of Rehab Project. The Parties agree that FBCDD shall cause the FBCDD Engineer to prepare a scope of work for the Rehab Project. As a starting point, the Parties have discussed the general scope of work outlined in **Exhibit B**, which shall be finalized by the FBCDD Engineer as described in this Section 3.02. Upon completion of the scope of work for the Rehab Project, the FBCDD Engineer will make available the scope of work to the Parties for review and approval. Upon approval of the scope of work by the LID 2 Engineer and the LID 17 Engineer, FBCDD shall engage or authorize, as appropriate, the Design Engineer to complete the Project Design.

Section 3.03 Engineering for Plans and Specifications. The Parties agree that FBCDD shall cause the Design Engineer to design and to prepare plans and specifications for construction of the Rehab Project, including an engineer's estimate of probable cost to construct the project in accordance with the approved plans and specifications. FBCDD shall cause the Design Engineer to make the plans and specifications for the Rehab Project available to the Parties for review and comment at reasonable intervals during the design process and to take into account any comments from the Parties in preparing the final plans and specifications. FBCDD shall cause the Design Engineer to make available the plans and specifications for the Rehab Project to the Parties for review and approval, which approval shall not be unreasonably withheld, conditioned, or delayed. The Parties shall have thirty (30) calendar days to review the plans and specifications; should any Party not submit written comments within this 30-day period, the plans and specifications are deemed approved.

Section 3.04 Construction of the Rehab Project. The Parties agree that this Agreement does not constitute an agreement to move forward with or participate in construction of the Rehab Project. The Parties agree that the terms and conditions for bidding, awarding, entering into, and administering the contract for the construction of the Rehab Project, as well as the Parties' respective financial contributions therefor, shall be governed by a separate agreement to be entered into by the Parties. Upon receipt of approved plans and specifications from all regulatory agencies having jurisdiction over the Rehab Project and a final engineer's estimate of probable cost to construct the Rehab Project according to such approved plans and specifications, the Parties agree to cooperate with each other in good faith to determine whether to proceed with construction of the Rehab Project and, if so, the most advantageous manner and schedule for doing so. If they determine to proceed with construction of the Rehab Project, the Parties agree to negotiate in good faith with each other on the terms and conditions of an agreement for the construction of the Rehab Project, including the Parties' respective financial contributions therefor.

ARTICLE IV Financing

Section 4.01 Project Design Costs. Each Party's proportionate share for the Project Design Costs is as follows:

LID 2	=	25%
LID 17	=	25%
FBCDD	=	50%

Section 4.02 Reimbursement for Project Design Costs. The Parties agree that FBCDD shall directly pay all Project Design Costs to the Design Engineer and shall quarterly invoice LID 2 and LID 17 for their proportionate shares of such costs as they are incurred, with supporting documentation on the work completed through the date of such invoice. Currently, total Project Design Costs are not anticipated to exceed \$200,000, with each of LID 2 and LID 17's proportionate share not to exceed \$50,000. Project Design Costs exceeding \$200,000 must be approved by the Parties in writing if FBCDD requests additional funds from LID 2 or LID 17.

ARTICLE V Miscellaneous Provisions

Section 5.01 Force Majeure. If any 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, 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. Such cause, as far as possible, shall be remedied with reasonable diligence. The term "force majeure", as used herein, shall include, but not be limited to 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 any agency, department or branch thereof, or the State of Texas or any agency, department, branch or political subdivision thereof, or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, 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.

Section 5.02 Assignability. This Agreement shall not be assignable, in whole or in part, without first obtaining the written consent of the other Parties, which consent shall not be unreasonably withheld.

Section 5.03 Successors and Assigns. This Agreement shall apply to all permitted successors and assigns of the Parties.

Section 5.04 Regulatory Agencies. This Agreement shall be subject to all present and future valid laws, orders, rules and regulations of the United States of America, the State of Texas, and of any regulatory body having jurisdiction.

Section 5.05 No Additional Waiver Implied. The failure of any Party hereto to insist, in any one or more instances, upon performance of any of the terms, covenants or conditions of this Agreement, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant, or condition by any other Party hereto,

but the obligation of such other Party with respect to such future performance shall continue in full force and effect.

Section 5.06 Modification. Except as otherwise provided in this Agreement, this Agreement shall be subject to change or modification only with the written mutual consent of the Parties hereto.

Section 5.07 Parties in Interest. This Agreement shall be for the sole and exclusive benefit of the Parties and their permitted successors and assigns and shall not be construed to confer any rights upon any third party.

Section 5.08 Severability. The provisions of this Agreement are severable, and if any provision or 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 provision or part of this Agreement to other persons or circumstances shall not be affected thereby.

Section 5.09 Merger. This Agreement embodies the entire understanding between the Parties with respect to the Project Design, and there are no prior effective representations, warranties or agreements between the Parties with respect to the Project Design.

Section 5.10 Construction of Agreement. This Agreement shall not be construed in favor of or against any Party on the basis that the Party did or did not authorize this Agreement.

Section 5.11 Notices. Notices required or permitted to be given by any Party to the other hereunder, including bills, shall be deemed to have been received by the Party or entity to whom they are sent, within five (5) days after their deposit in the United States Mail, properly stamped and addressed. The Parties shall have the right from time to time to change their respective address and each shall have the right to specify as its address any other address by at least fifteen (15) days written notice to the FBCDD Engineer and the Parties. Notices shall be in writing and shall be mailed to the Parties at the following address:

If to LID 2, to:

Fort Bend County Levee Improvement District No. 2
c/o Allen Boone Humphries LLP
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027
Attn: David Oliver

If to LID 17, to:

Fort Bend County Levee Improvement District No. 17
c/o Allen Boone Humphries LLP
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027
Attn: Lynne Humphries

If to FBCDD, to:

Fort Bend County Drainage District
P.O. Box 1028
1004 Blume Road
Rosenberg, Texas 77471
Attention: Mark Vogler

ARTICLE VI

Section 6.01 Default. In the event of default by any Party, any Party may employ attorneys to pursue its legal rights; and the prevailing Party shall be entitled to payment by the other Party(ies) of all reasonable attorneys' fees incurred.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract in multiple copies, each of equal dignity, as of the date and year first herein.

[EXECUTION PAGES FOLLOW]

FORT BEND COUNTY LEEVE
IMPROVEMENT DISTRICT NO. 2

By: Bryan K. Chapline

Name: Bryan K. Chapline

Title: President

Date: September 16, 2020

ATTEST:

By: Rashid K. HOKHAR

Name: RASHID K HOKHAR

Title: SECRETARY

(SEAL)



FORT BEND LEVEE IMPROVEMENT
DISTRICT NO. 17

By: 

Name: DAVID W. GORNET

Title: PRESIDENT

Date: 9/11/2020

ATTEST:

By: 

Name: NG FOOK MING (FRANCIS)

Title: SECRETARY

(SEAL)



FORT BEND COUNTY DRAINAGE DISTRICT

By: _____

Name: _____

Title: _____

Date: _____

ATTEST:

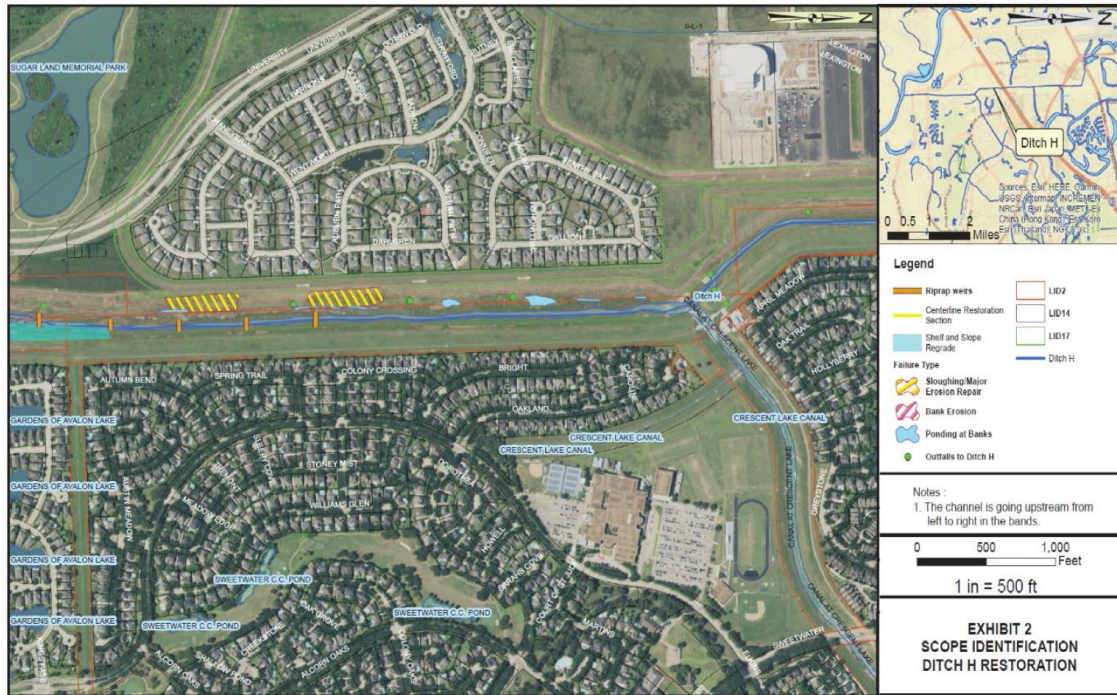
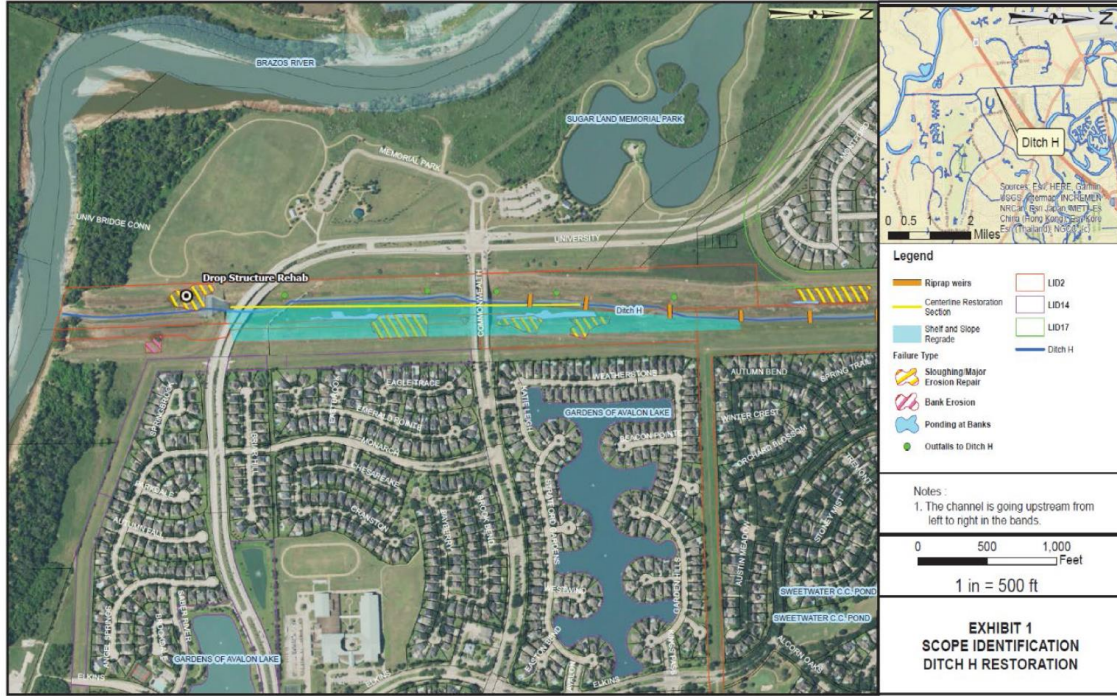
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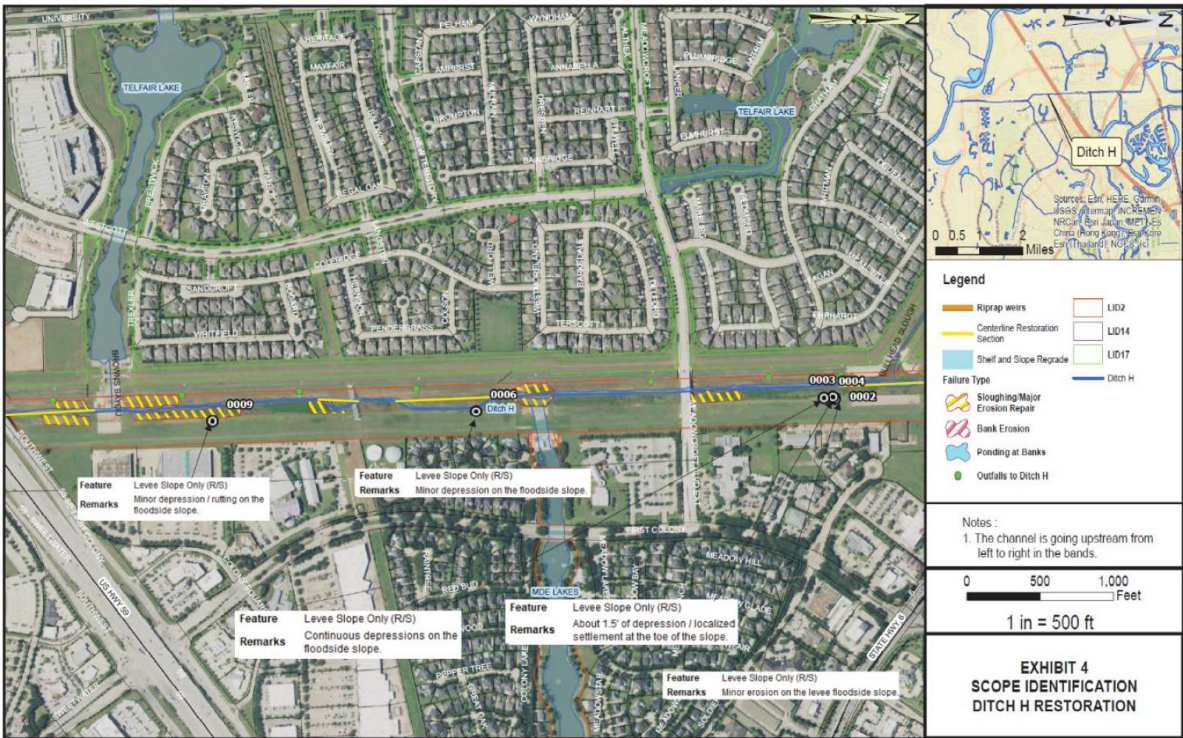
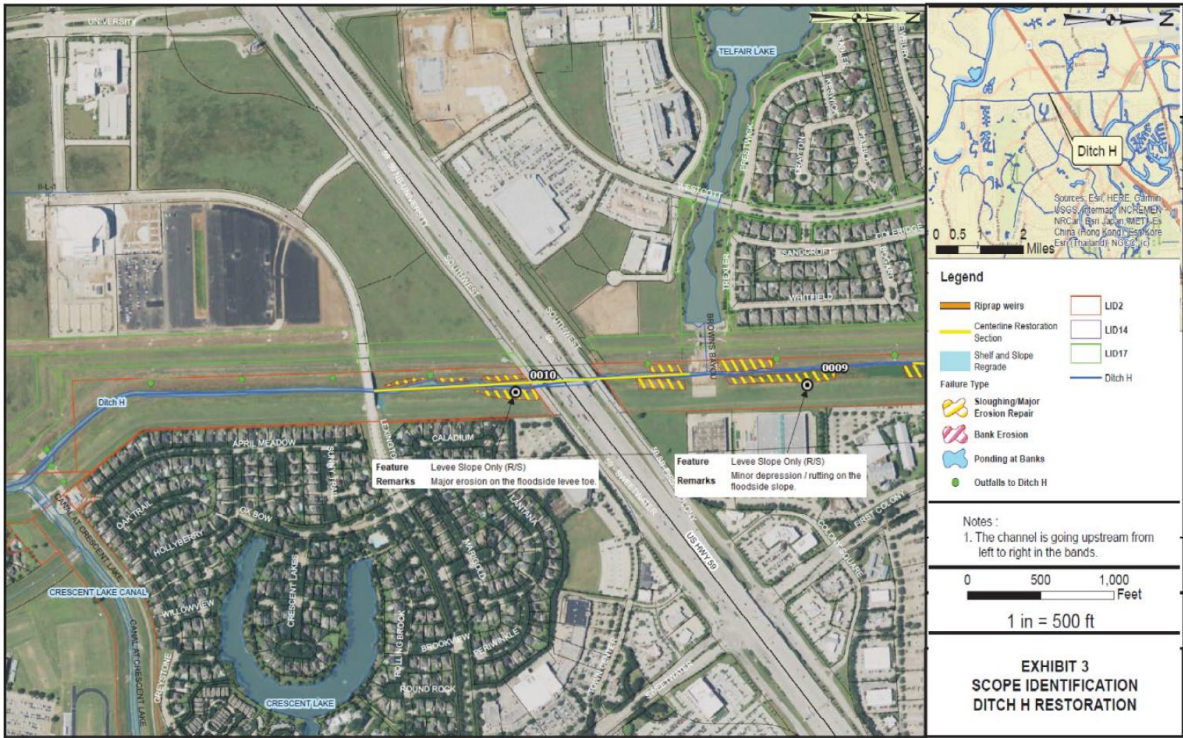
Name: _____

Title: _____

(SEAL)

EXHIBIT A





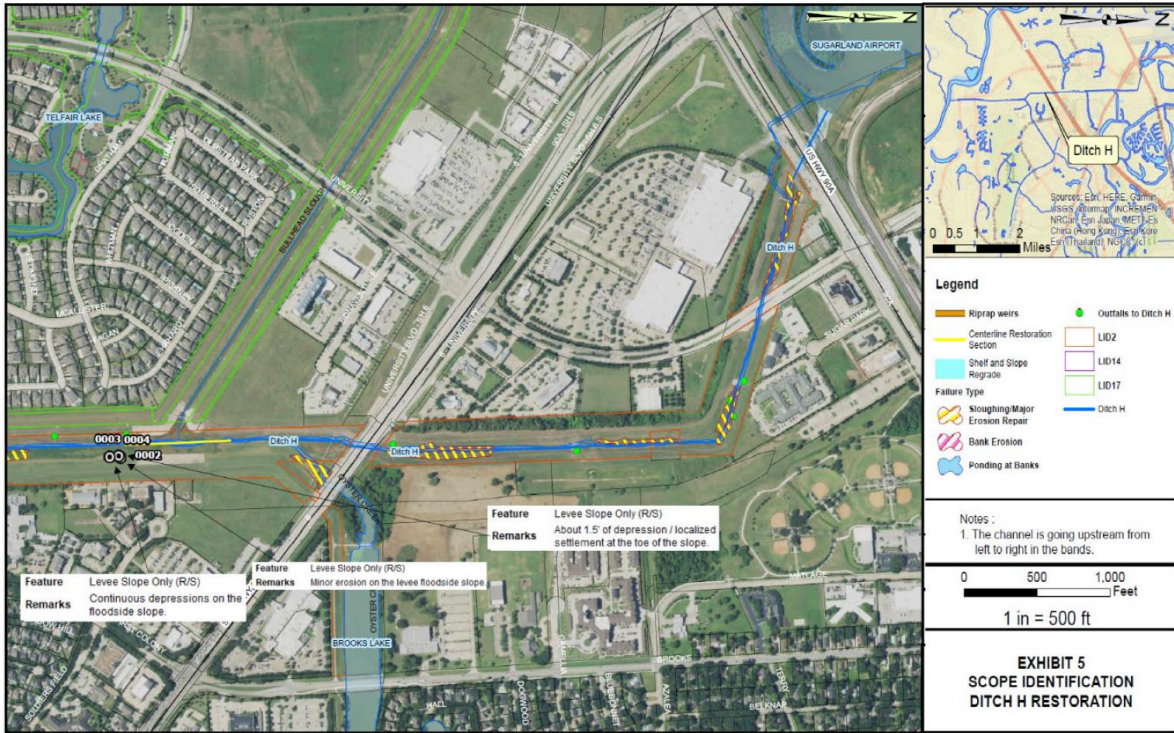


EXHIBIT B

General Scope of Work

FBCDD area:

- Pilot Channel Restoration – Center line straightening and toe restoration
- Restoration of inline weir structures
- Sediment deposition cleanup
- Riprap protection across outfall structures

LID 2 area:

- Sloughing and erosion repairs at downstream end drop structure south of University Blvd.
- East Bank repairs – sloughing and erosion repairs and slope restoration
- Eliminate ponding areas on the lower shelf located close to toe of slope of the East Bank
- Riprap protection at outfalls and downstream of bridges

LID 17 area:

- Sloughing and erosion repairs at downstream end drop structure south of University Blvd.
- West Bank repairs – sloughing and erosion repairs and slope restoration
- Riprap protection at outfalls, and at upstream and downstream of bridges (US 59/I-69)