

ACCESS AGREEMENT

This Access Agreement (this “**Agreement**”) is made as of April 3, 202³ (the “**Effective Date**”) and between FORT BEND COUNTY TOLL ROAD AUTHORITY, a political subdivision of the State of Texas (the “**Owner**”), and 1093 RAILS TO TRAILS LOCAL GOVERNMENT CORPORATION, a public non-profit corporation organized under the laws of the State of Texas (the “**Rails to Trails LGC**”). Owner and Rails to Trails LGC are hereinafter sometimes collectively referred to as the “Parties.”

R E C I T A L S

WHEREAS, Owner owns or holds that certain real property and related rail corridor beginning at Milepost 34.0 and headed west to Milepost 61.2 near Eagle Lake, Colorado County, Texas crossing Fort Bend, Austin, and Colorado Counties, Texas, and more particularly depicted on Exhibit “A” attached hereto (the “**Property**”);

WHEREAS, the Rails to Trails LGC desires to construct, develop, maintain, and use a recreational and nature preserving park and trail system through and on the Property (the “**Trail**”) pursuant to a separate lease agreement (the “**Lease**”) that as the Effective Date of this Agreement is currently being negotiated;

WHEREAS, in connection with the leasing and anticipated development of the Trail in accordance with the Lease, Rails to Trails LGC desires to survey, inspect, and conduct a non-invasive site review of the Property in connection with the construction and development of the Trail; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Permitted Access. Owner agrees that Rails to Trails LGC shall be permitted access to the Property on and subject to the terms and conditions provided herein. The access afforded Rails to Trails LGC by Owner shall be limited to, and solely for the purpose of, conducting a survey and non-invasive site review of the Property and any reasonable necessary inspections to determine the feasibility of construction or development of the proposed Trail. The Owner must approve any other activities related to the entry onto and inspection of the Property by Rails to Trails LGC. Additionally, prior to and as a condition to entry onto the Property to conduct any work or other activities on the Property, Rails to Trails LGC must inform and obtain the written consent of an authorized representative from MSA (as defined below) in accordance with Section 4 of this Agreement and deliver evidence of same to Owner, to confirm such entry, work and/or activities proposed will not impact the rail corridor and/or right-of-way within the Property, and Rails to Trails LGC hereby acknowledges and agrees that any impact to the rail corridor and/or right-of-way within the Property shall cause significant harm and damages to Owner. At all times during the term of this Agreement, Rails to Trails LGC shall be permitted access only to those parts of the Property reasonable and necessary for the completion of any survey, non-invasive site review, inspection, feasibility studies and any other non-invasive activities approved by the Owner related to Rails to Trails LGC’s survey of the Property and inspections to determine feasibility of the construction and development of the Trail as described herein. Further, the duration of any of Rails to Trails LGC’s access to the Property must be only for the shortest time reasonably necessary for Rails to Trails LGC to complete any survey, non-invasive site review, inspection, feasibility studies or other activities approved in writing by Owner.

2. Forbidden Activities. Rails to Trails LGC shall not be permitted to make any changes or

cause any harm to the Property, including, without limitation, clearing any foliage or disturbing any soil, both of which are specifically prohibited unless previously approved in writing by the Owner. Additionally, Rails to Trails LGC shall not be permitted to make any improvements on the Property.

3. Termination. Access to the Property, and this Agreement, except for the provisions reserved herein, shall immediately, and without additional notice, terminate upon the earlier of:

- (A) Rails to Trails LGC's completion of the survey, non-invasive site review, and any reasonably necessary inspection directly connected to the construction and development of the Trail;
- (B) Rails to Trails LGC exceeding the scope of access afforded by this Agreement, in Owner's sole discretion;
- (C) Any Rails to Trails LGC misconduct on the Property, to be determined in Owner's sole discretion; or
- (D) The expiration of twelve (12) months from the date of this Agreement.

Further, Owner may terminate this Agreement at any time upon the provision of written notice delivered to the Rails to Trails LGC.

4. No Improvements and Removal of Items Upon Termination. Any equipment, tools, or devices must be immediately removed following the completion of any survey, non-invasive site review, inspection, feasibility study, or previously approved activity by Owner. Similarly, any stakes, markers, flags, or other indicia of surveyed, reviewed, or inspected locations must be either removed following completion of the survey, non-invasive site review, or inspection, or their presence expressly consented to in writing by Owner following their installation on the Property. Owner reserves the right to keep and use or sell any equipment, tools, or devices left on the Property after completion of a survey, non-invasive site review, or inspection, or termination of this Agreement. In no event shall Rails to Trails LGC or any of its invitees, employees, contractors, agents, representatives, or other persons acting by, through, or under Rails to Trails LGC commit or allow any act or omission that does or potentially could impact the rail corridor and/or right-of-way within the Property without the prior written consent and approval of Mike Stone & Associates, Inc. ("MSA"), which consent may be withheld in MSA's sole and absolute discretion. In this regard, all plans for any work or other action to be taken on the Property by Rails to Trails LGC or any of its invitees, employees, contractors, agents, representatives, or other persons acting by, through, or under Rails to Trails LGC pursuant to the rights under this Agreement shall be subject to the prior written consent and approval of MSA, which consent may be withheld in MSA's sole and absolute discretion.

5. Indemnity. **RAILS TO TRAILS LGC SHALL, TO THE EXTENT PERMITTED BY APPLICABLE LAW, CAUSE ITS CONTRACTORS, REPRESENTATIVES, OR OTHER PERSONS ACTING BY, THROUGH, OR UNDER RAILS TO TRAILS LGC TO RELEASE, DEFEND, HOLD HARMLESS, AND INDEMNIFY THE OWNER AND ANY OTHER PERMITTEE OR LICENSEE OF THE OWNER TO THE PROPERTY, AND THE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, AND CONTRACTORS OF THE OWNER OR SUCH OTHER PERMITTEES OR LICENSEES OF OWNER (COLLECTIVELY, THE "INDEMNIFIED PARTIES") FROM AND AGAINST ALL CLAIMS, SUITS, LIABILITIES, DAMAGES, PENALTIES, LOSSES, COSTS, AND EXPENSES (INCLUDING REASONABLE**

ATTORNEYS' FEES) FOR ANY BODILY INJURY TO OR DEATH OF PERSONS OR DAMAGE TO PROPERTY (INCLUDING, BUT NOT LIMITED TO, THE PROPERTY OF ANY INDEMNIFIED PARTY) ARISING DIRECTLY OR INDIRECTLY OUT OF THE ENTRY UPON, USE, OR MAINTENANCE OF, THE PROPERTY BY RAILS TO TRAILS LGC OR ANY INVITEE, EMPLOYEE, CONTRACTOR, AGENT, REPRESENTATIVE, OR OTHER PERSON ACTING BY, THROUGH, OR UNDER RAILS TO TRAILS LGC, OR OUT OF RAILS TO TRAILS LGC'S BREACH OF ANY TERM OR PROVISION OF THIS AGREEMENT. IN CONNECTION WITH ANY SUCH LITIGATION IN WHICH ANY INDEMNIFIED PARTY IS NAMED AS A PARTY, THE OWNER SHALL, IN ITS SOLE DISCRETION, BE ENTITLED TO SELECT COUNSEL OF ITS CHOICE TO REPRESENT THE INTERESTS OF ANY SUCH INDEMNIFIED PARTY. RAILS TO TRAILS LGC'S OBLIGATIONS UNDER THIS SECTION SHALL BECOME EFFECTIVE UPON THE EARLIER OF (1) THE EFFECTIVE DATE OF THIS AGREEMENT OR (2) ANY ENTRY UPON THE PROPERTY BY RAILS TO TRAILS LGC OR ANY INVITEE, EMPLOYEE, CONTRACTOR, AGENT, REPRESENTATIVE, OR OTHER PERSON ACTING BY, THROUGH, OR UNDER RAILS TO TRAILS LGC. RAILS TO TRAILS LGC AGREES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, CAUSE ITS CONTRACTORS, REPRESENTATIVES, OR OTHER PERSONS ACTING BY, THROUGH, OR UNDER RAILS TO TRAILS LGC TO INDEMNIFY THE OWNER FOR ANY AND ALL DAMAGES ARISING FROM NEGLIGENCE, INCLUDING THE OWNER'S OWN NEGLIGENCE, NEGLIGENT ACTS, OR OMISSIONS.

6. Owner's Liability. Rails to Trails LGC is neither an agent nor an employee of Owner, and Owner shall have no responsibility to inspect or oversee Rails to Trails LGC's survey, non-invasive site review, and inspection operations nor to indemnify or correct any potentially harmful, dangerous or damaging conditions, and Owner shall have no liability arising out of or relating to any such conditions, including, without limitation, liability for any injuries to Rails to Trails LGC's employees, contractors, representatives, agents, equipment, tools, or devices. Neither Rails to Trails LGC nor its contractors shall have the right of contribution or indemnity from Owner for any matter relating to Owner's lands or conditions on said lands.

7. Representations and Warranties. Rails to Trails LGC represents that it shall be solely responsible for the health and safety of its contractors, employees, agents, or representatives at the Property, and the conduct of any of the foregoing. Rails to Trails LGC further represents and warrants that it will conduct its own examination of the Property prior to performing any surveying work, non-invasive site review, or inspections, and are not relying on any representation or warranty provided by Owner in connection with or related to the Property, of which none are provided.

8. Insurance. Prior to accessing the Property, Rails to Trails LGC shall provide Owner proof of insurance in amounts as follows:

- a. Workers' Compensation in the statutory limits;
- b. Comprehensive General Liability insurance providing coverage for bodily injury, property damage, personal injury and advertising injury, blanket contractual liability covering indemnity, products and completed operations liability with limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate. Such insurance shall cover, at a minimum, Rails to Trails LGC and its employees, agents, and representatives, while conducting work on the Property, together with liability coverage which shall include, without limitation, contractual indemnity

coverage. Further, each such policy shall include Owner as an additional insured, and Rails to Trails LGC's policies shall contain appropriate provisions or endorsements providing that Rails to Trails LGC's policies shall be primary and not contributory to any policies maintained by Owner, if any. The issuer of each policy shall waive all rights of subrogation against the additional insureds or their respective insurers. Rails to Trails LGC shall maintain such insurance throughout the duration of this Agreement.

9. Governing Law. This Agreement shall be governed by the laws of the State of Texas without regard to conflict of laws and principles. Venue for any dispute arising out of or relating to this Agreement shall be solely in the Courts of Fort Bend County, Texas, to the jurisdiction of which all parties submit themselves. The parties waive all defenses to the jurisdiction of said courts and any claims of non-convenience related to the venue lying therein.

10. Entire Agreement / Modification. This Agreement and any exhibits attached hereto constitute the full and entire agreement of the Parties regarding the subject matter hereof and supersede all prior or contemporaneous verbal or written agreements, representations or understandings pertaining thereto. This Agreement may be modified or amended only by a written agreement signed by each of the Parties hereto.

11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all of which shall constitute but one and the same instrument. PDF signatures shall be treated as originals and shall be acceptable and binding.

12. Severability. In the event any provision or any portion of any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable by reason of any law or public policy, such provision or portion thereof shall be considered to be deleted, and the remainder of this Agreement shall constitute the agreement between the Parties hereto covering the subject matter hereof.

13. Plural Form. Where the plural form of any word is used herein, that word shall be read to include both the singular and the plural.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.


“RAILS TO TRAILS LGC”

1093 Rails to Trails Local
Government Corporation

By: _____
Name: _____
Title: _____

“OWNER”

Fort Bend County Toll Road Authority

By:  _____
Name: Swapn Dhairyawan
Title: Secretary

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

“RAILS TO TRAILS LGC”

1093 Rails to Trails Local
Government Corporation

By: *Belinda S. Halpin*
Name: BELINDA S. HALFIN
Title: 1093 RAILS TO TRAILS LGC
BOARD CHAIR

“OWNER”

Fort Bend County Toll Road Authority

By: _____
Name: _____
Title: _____

EXHIBIT “A”

The Property

Those lands and/or other interests in real property located in Fort Bend County, Texas, from approximately Milepost 34.0 in Fort Bend County, Texas, west to Milepost 61.72, near Eagle Lake, Colorado County, Texas, described in that certain Deed and Assignment dated May 26, 2015, recorded under Clerk’s File No. 2015058468 in the Real Property Records of Fort Bend County, Texas.