

[illegible]

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, on October 27, 2020, the Parties entered into that certain Cost Sharing Agreement for the design of additional improvements to restore the ditch slopes and mitigate future erosion and sloughing in Ditch H;

WHEREAS, in accordance with Section 3.04 of said Cost Sharing Agreement, the Parties have received approved plans and specifications (the "Approved Plans") from all regulatory agencies having jurisdiction over the Rehab Project (as hereinafter defined) and a final engineer's estimate of probable cost of construction, and have determined to proceed with the construction phase of the Rehab Project by execution of this Agreement in accordance with the terms and conditions provided herein.

NOW, THEREFORE, for and in consideration of the mutual covenants, agreements, benefits, the Parties agree as follows:

1. **Recitals.** The recitations and recitals set forth above are declared true and correct and are hereby incorporated as part of this Agreement.
2. **Definitions.**
 - (a) "Construction Contract(s)" means the contract(s) entered into between FBCDD, or FBCDD's Project Manager, and a qualified bidder for the construction of the Rehab Project as provided in Section 5 of this Agreement.
 - (b) "Cost Estimate" means the estimated Project Costs as provided in Section 8(c) of this Agreement.
 - (c) "Effective Date" means the effective date of this Agreement and is the date signed by the last Party hereto.
 - (d) "FBCDD Engineer" means the Fort Bend County Drainage District Chief Engineer, or his or her designee.
 - (e) "LID 2 Engineer" means LJA Engineering, Inc., or any successor engineering firm selected by LID 2.
 - (f) "LID 17 Engineer" means LJA Engineering, Inc., or any successor engineering firm selected by LID 17.
 - (g) "Project Costs" means the actual costs incurred by FBCDD for the construction phase of the Rehab Project including, without limitation: all costs of engineering, required studies, geotechnical, environmental, traffic control devices, surveying,

materials, labor, construction, testing, inspections, project management and other services arising in connection with or which occur as a result of the construction of the Rehab Project; all payments arising under any contracts entered into for the evaluation, clearing, grading and/or construction of the Rehab Project; all costs incurred in connection with obtaining governmental approvals, location and/or relocation of utilities, certificates and permits required in connection with the construction of the Rehab Project; and all other fees, services, and expenses related to the construction of the Rehab Project.

- (h) "Project Design" means the design of the Rehab Project in accordance with the final approved plans and specifications from all regulatory agencies having jurisdiction over the Rehab Project.
- (i) "Project Manager" means the project or construction manager for the Rehab Project selected by and working at the direction of FBCDD.
- (j) "Rehab Project" means the improvements to restore the ditch slopes and mitigate future sloughing and erosion of Ditch H, as provided in the Project Design.

3. **Project Management.** The Parties hereby agree that construction phase of the Rehab Project shall be facilitated, managed, and administered by FBCDD (or by FBCDD's Project Manager working at the direction of FBCDD) for the purpose of (1) procuring and overseeing performance of services necessary for the completion of the construction of the Rehab Project; (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 construction the Rehab Project to be completed in accordance with and subject to the terms of this Agreement.
4. **Bid Package.** The Parties agree that FBCDD shall cause its Project Manager to prepare a Bid Package for the Rehab Project based on the Approved Plans and shall make the same available to the Parties for review and approval, which approval shall not be unreasonably withheld, conditioned, or delayed. Upon written approval of said Bid Package by all Parties through their Engineers, either FBCDD or its Project Manager shall advertise for competitive bids for construction of the Rehab Project as provided in Section 5 of this Agreement.
5. **Competitive Bid and Award.** FBCDD will advertise for competitive bids for construction of the Rehab Project (together or in separate contracts) in accordance with requirements applicable to FBCDD. Upon receipt of bids for the Rehab Project, FBCDD will provide LID 2 and LID 17 with the final bid tabulation and the recommendation of award ("Notice of Award"). If either Party desires to object to the award of the contract, it must provide written notice to FBCDD within thirty (30) days of each Party's receipt of the Notice of

Award. Otherwise, the LID 2 and LID 17 will be deemed to have approved the award of the contract to the lowest responsible bidder, who, in FBCDD's judgment, would be most advantageous to the Parties and would result in the best and most economical completion of the Rehab Project. FBCDD will enter into a contract with the qualified bidder which may be subject to change orders that increase, decrease, or otherwise alter the Project Costs under such contract. LID 2 and LID 17 shall receive copies of all change order requests. LID 2 and LID 17 shall provide written notice to FBCDD within thirty (30) days of any objections or approvals of any change orders. If FBCDD constructs the Rehab Project in multiple contracts, the provisions of this Agreement shall apply to each Construction Contract.

6. **Insurance Requirements.** FBCDD will require its contractor's insurance policies to name LID 2 and LID 17, in addition to FBCDD, as additional insured on all policies except for Worker's Compensation and Professional Liability. Any such insurance policies shall include at least the following minimum coverage:
 - (a) Workers Compensation in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.
 - (b) Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
 - (c) Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
7. **Construction of the Rehab Project.** After awarding the Construction Contract(s), FBCDD shall administer the Construction Contract(s) for the benefit of the Parties. FBCDD shall provide on-site inspection of the construction of the Rehab Project in accordance with the terms of the Construction Contract(s). FBCDD shall approve or deny all applications for payment and requests for extensions of time and shall pay all valid pay applications issued under the Construction Contract(s). FBCDD shall approve or deny all change orders submitted under the Construction Contract(s). All change orders shall be submitted to LID 2 and LID 17 for review and approval, which approval shall not be unreasonably withheld, conditioned, or delayed. FBCDD shall have the right to terminate the Construction Contract(s) and to enforce its remedies thereunder, as determined by FBCDD to be necessary. In the event of any such termination, FBCDD shall have the right to complete and/or cause the completion of the Rehab Project itself and/or through such other contractor(s) as FBCDD determines to be appropriate; provided that all work done in connection with such completion shall be in compliance with the standards approved by

the FBCDD Engineer. The costs of any such necessary and approved completion work shall be considered part of the Rehab Project.

8. **Allocation and Payment of Project Costs.**

- (a) It is the intention of the Parties that all Project Costs incurred by FBCDD for the construction phase of the Rehab Project under this Agreement, including expenses incurred for construction management and necessary inspections, shall be proportionately shared by the Parties as follows:

(1) LID 2 = 23.62%

(2) LID 17 = 23.62%

(3) FBCDD = 52.77%

- (b) The Parties agree that FBCDD shall directly pay all Project Costs 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 for the Rehab Project through the date of such invoice. LID 2 and LID 17 shall pay FBCDD within forty-five (45) days of receipt of FBCDD's invoice.

- (c) As of the Effective Date of this Agreement, the Cost Estimate for the Rehab Project is \$9,002,028.00, which estimate includes the cost of construction at \$8,100,000.00 and the cost of project/ construction management and inspections at \$902,028.00. LID 2's proportionate share of the Project Costs is not anticipated to exceed \$2,126,279.00 and LID 17's proportionate share of the Project Costs is not anticipated to exceed \$2,126,279.00. The Parties understand that such Project Costs could be higher or lower than the estimates provided herein and FBCDD may reallocate the same based on actual costs incurred as required to complete the construction of the Rehab Project – provided however, that any Project Costs exceeding the Cost Estimate must be pre-approved by the Parties in writing if FBCDD requests additional funds from LID 2 or LID 17.

9. **Appropriation of Funds.** Each Party represents and warrants to the other that, as of the Effective Date, each Party has appropriated, and set aside sufficient monies to fund the Project Costs pursuant to the terms of this Agreement.

10. **Completion of the Rehab Project.** Completion of the construction phase of the Rehab Project shall occur upon the Parties' final inspection of the Project and the issuance of a certificate of completion by the FBCDD Engineer and/or its Project Manager to all Parties.

11. **Inspection and Deficiencies.** Each Party shall have a right to inspect the progress of the construction of the Rehab Project from time to time as it deems necessary in order to confirm the conformance of the Rehab Project with the Project Design. LID 2 and/or LID 17 shall notify FBCDD in writing of any complaints regarding any deficiencies and quality of workmanship by FBCDD for the Rehab Project. FBCDD shall address and correct such deficiencies within a reasonable time, if the FBCDD Engineer determines that such deficiencies are actionable under the terms of the Construction Contract(s).
12. **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.
13. **Assignment.** 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.
14. **Successors and Assigns.** This Agreement shall apply to all permitted successors and assigns of the Parties.
15. **Regulatory** 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.
16. **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.

17. **Time is of the Essence.** Time is of the essence in the performance of this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.
18. **Entire Agreement and Modification.** This Agreement constitutes the entire Agreement between the Parties and supersedes any and all previous agreements, written or oral, pertaining to the subject matter of this Agreement. 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.
19. **No Waiver of Immunity.** Neither the execution of this Agreement nor any other conduct of any Party under this Agreement shall be considered a waiver or surrender of its governmental powers or immunity under the Texas Constitution or the laws of the State of Texas.
20. **Inspection of Books and Records.** FBCDD shall preserve the books, records, charges and other records relating to all Project 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.
21. **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.
22. **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.
23. **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 author this Agreement.

24. **Notice.** 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 Robinson LLP
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027
Attn: David Oliver

Invoices and Items Requiring LID 2 Engineer Review shall be sent to:
LJA Engineering, Inc.
1904 W Grand Parkway N, Suite 100
Katy, Texas 77449
Attn: Craig W. Kalkomey, PE CFM
ckalkomey@lja.com

If to LID 17, to:

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

Invoices shall be sent via email to:
Myrtle Cruz, Inc.
3401 Louisiana Street, Suite 400
Houston, Texas 77002
Attn: Chris Linn
chris_linn@mcruz.com

Items requiring LID 17 Engineer review shall be sent to:
LJA Engineering, Inc.
3600 West Sam Houston Parkway South, Suite 600
Houston, Texas 77042
Attn: Chris LeBlanc, PE
cleblanc@lja.com

If to FBCDD, to:

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

25. **Dispute Resolution.** The Parties agree to cooperate in good faith in all activities and actions relating to this Agreement. If a dispute should arise in connection with this Agreement, the Parties agree to first attempt to resolve such dispute by either negotiating in good faith than or submitting the same to non-binding mediation pursuant to Section 791.015 of the Texas Government Code. If the Parties are unable to resolve a dispute after engaging in either good faith negotiations after ten (10) business days or non-binding mediation after five (5) business days, then such dispute shall may be litigated and resolved in a court of appropriate jurisdiction in Fort Bend County, Texas.
26. **Applicable Law and Venue.** This Agreement shall be construed according to the laws of the State of Texas. Venue for any claim arising out of or relating to the subject matter of this Agreement shall lie in a court of competent jurisdiction of Fort Bend County, Texas.
27. **Captions.** The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of the Agreement.
28. **Electronic and Digital Signatures.** The Parties to this Agreement agree that any electronic and/or digital signatures of the Parties included in this Agreement are intended to authenticate this writing and shall have the same force and effect as the use of manual signatures.
29. **Multiple Counterparts.** This Agreement may be executed in multiple counterparts, each having equal force and effect of an original.
30. **Authorization.** This Agreement shall become binding and effective only after it has been authorized and approved by the governing bodies of each Party, as evidenced by the signature of the appropriate authority. Each Party further represents that, by execution of this Agreement, it has been duly authorized by its governing body or other appropriate authority from whom such Party is legally bound to obtain authorization.

[EXECUTION PAGES FOLLOW]

FORT BEND COUNTY LEVEE IMPROVEMENT
DISTRICT NO. 2

By: Rashid W. Khokhar

Name: Rashid Khokhar

Title: President, Board of Directors

Date: 2/19/2025

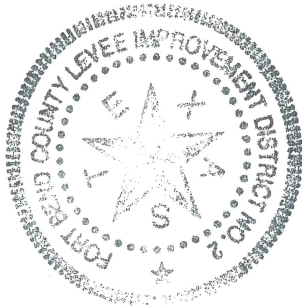
ATTEST:

By: Jeffrey C. Wiley

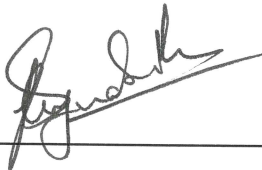
Name: Jeffrey C. Wiley

Title: Secretary, Board of Directors

(SEAL)



FORT BEND COUNTY LEVEE IMPROVEMENT
DISTRICT NO. 17

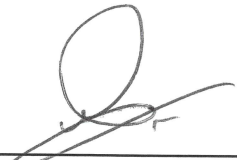
By: 

Name: Shyama Popuri

Title: Vice President

Date: October 10, 2024

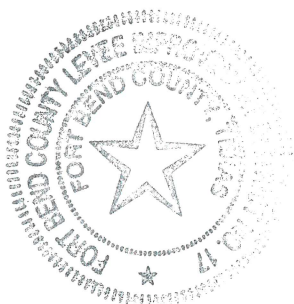
ATTEST:

By: 

Name: FRANCIS NG FOOK MING

Title: Secretary

(SEAL)



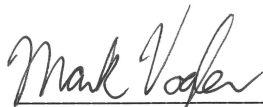
FORT BEND COUNTY DRAINAGE DISTRICT

By: _____
KP George,
County Judge

ATTEST:

By: _____
Laura Richard,
County Clerk

APPROVED:



Mark Vogler, Chief Engineer

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$_____ to accomplish and pay the obligation of the Fort Bend County Drainage District under this Agreement.

Robert E. Sturdivant,
County Auditor

i:\agreements\2024 agreements\drainage district\cost sharing (24-drng-100880)\cost sharing agreement - ditch h.docx - JLF