

INTERLOCAL AGREEMENT FOR CHANNEL MAINTENANCE

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

This Interlocal Agreement for Channel Maintenance (“Agreement”) is made and entered by and between **FORT BEND COUNTY LEVEE IMPROVEMENT DISTRICT NO. 12**, a body politic and corporate organized as a conservation and reclamation district under Article XVI, Section 59 of the Constitution of the State of Texas and operating pursuant to Chapters 49 and 57, Texas Water Code (hereinafter “District”), and **FORT BEND COUNTY DRAINAGE DISTRICT**, a governmental agency and body politic and corporate and a political subdivision of the State of Texas (hereinafter “County Drainage District”).

WITNESSETH:

RECITALS

Whereas, the County Drainage District was created for purposes including the control, storage, preservation, and distribution of storm and flood waters and the waters of the rivers and streams in Fort Bend County and their tributaries for domestic, municipal, flood control, irrigation, and other useful purposes, the reclamation and drainage of the overflow land in Fort Bend County, the conservation of forests, and to aid in the protection of navigation on navigable waters by regulating the flood and storm waters that flow into said navigable streams;

Whereas, the Board of Directors of the Fort Bend County Drainage District (hereinafter “Board”) serves as the governing body of the Fort Bend County Drainage District;

Whereas, Board is empowered, on behalf of the County Drainage District, to acquire land rights and interest therein and any other character of property needed to carry on the work of flood control, by gift, devise, purchase or condemnation;

Whereas, Board is empowered to devise plans and construct works to lessen and control floods; to reclaim lands in the County Drainage District; to prevent the deposit of silt in navigable streams, to remove obstructions, natural or artificial, from streams and water courses; to regulate the flow of surface and flood water; and to provide drainage where essential to the flood control project;

Whereas, Board is empowered to cooperate with, or to contract with, any adjacent county, or any agency or political subdivision of the state or any city or town in relation to surveys, the acquisition of land or rights-of-ways, the construction, operation or maintenance of projects or parts thereof or the financing of the same in connection with any matter within the scope of the purposes of the County Drainage District;

Whereas, the District was created for purposes including the construction and maintenance of levees and other improvements on, along and contiguous to rivers, creeks and streams within the District; reclamation of lands within the District from overflow of rivers and streams; the control and distribution of the waters of rivers and streams within and adjacent to the District by straightening and otherwise improving them; and the provision of proper drainage and other improvements of the reclaimed land within the District;

Whereas, the County Drainage District acquired easements and rights-of-ways as hereinafter described for construction and operation of flood control and drainage facilities necessary for development and construction of improvements and utilization of lands within the District, and the District constructed certain flood control and drainage facilities as hereinafter described upon and within said easements and rights-of-ways consistent with the overall purposes and programs of the County Drainage District and which contribute to accomplishment of the purposes of the County Drainage District;

Whereas, following construction of said flood control and drainage facilities by the District, the County Drainage District acquired the facilities constructed by the District;

Whereas, by virtue of an August 15, 1988 Agreement for Construction and Maintenance of Flood Control and Drainage Facilities between the County Drainage District and the District (the "1988 Agreement") and various subsequent Interlocal Agreements regarding maintenance, the County Drainage District and the District operated and maintained said facilities through May, 1995 for accomplishment of the District's and the County Drainage District's lawful aims and purposes;

Whereas, after May, 1995, by virtue of rejection of the 1988 Agreement in the District's federal bankruptcy proceedings, the County Drainage District has since operated and maintained said facilities;

Whereas, solely to the extent it is financially able, the District desires to participate from time to time in maintenance, repair and rehabilitation of said flood control and drainage facilities upon and within the County Drainage District's easements and rights-of-ways to contribute to and enhance the County Drainage District's maintenance, repair and rehabilitation of such facilities.

Whereas, the County Drainage District and the District have determined that they are authorized by the laws of the State of Texas, including, but not by way of limitation, the Interlocal Cooperation Act, Tex. Gov't. Code Ann., Section 791.001, et seq., to enter into an agreement to carry out the purposes and actions described above.

AGREEMENT

NOW THEREFORE, for and in consideration of the mutual covenants and benefits hereinafter set forth, the District and the County Drainage District hereby contract and agree as follows:

ARTICLE I

Maintenance, Repair and Rehabilitation

The District may from time to time, and in accordance with the provisions of this Agreement, elect to undertake certain maintenance, repair or rehabilitation of all or a portion the flood control and drainage facilities constructed by the County Drainage District and the District for development and construction of improvements and utilization of lands within the District, such facilities being more particularly designated as the drainage channel, including drains, ditches and laterals, backslope interceptor structures and pipes, maintenance berms, side slopes and channel flowline (collectively, the "Channel"), which Channel is located within particular existing County Drainage District easements ("Easements"), which Easements are shown in Exhibit "A" attached hereto and by this reference incorporated herein.

ARTICLE II

Project Identification and Authorization

Section 1. In the event the District desires and is financially able to undertake a project for maintenance, repair or rehabilitation of the Channel or a portion thereof as contemplated in the above Article I, the District shall prepare a written proposal describing such project, including the scope of work and the estimated time for completion. The District may propose more than one project during the term of this Agreement. Upon approval of any such proposal by the District's Board of Directors, the District shall submit said proposal to the County Drainage District. If the County Drainage District desires to amend the proposed project such as by reducing or enlarging the project scope or making any other amendment, the County Drainage District may so notify the District. The District agrees to consider such amendment and if acceptable to it, to modify the proposal to include the amendment.

Section 2. If the County Drainage District finds the project described in a written proposal from the District to be necessary and appropriate and if the work described therein is not otherwise planned to be undertaken by the County Drainage District, the County Drainage District may by formal action officially authorize the District to perform the proposed project ("Authorized Project"). Upon authorization by the County Drainage District, the District may elect, but is not obligated, to perform the Authorized Project.

ARTICLE III
Procedures to Perform Work

Section 1. If the District elects to undertake an Authorized Project, the District shall first confirm same with County Drainage District in writing and provide information on the anticipated time for commencement and completion of the Authorized Project. Thereafter the District shall at no cost to the County Drainage District prepare a contract for accomplishment of the Authorized Project, advertise as necessary for bids for construction and let a contract(s) for same, and supervise and pay for the work, subject to all applicable laws and regulations and to the conditions set out below.

- (a) District shall have access upon, over, through and across the Channel and Easements to engage in all activities as may be necessary, requisite, convenient, or appropriate in connection with performing an Authorized Project.
- (b) District will be responsible for repair of any damage caused by its use of the Easements as aforesaid. In the event that District fails within 60 days of receiving notice from the County Drainage District to repair such damage, the County Drainage District, in its sole discretion, may elect to perform such repair, and District will be responsible for payment of County Drainage District's actual expenses incurred in making such repair.
- (c) Notwithstanding any provision hereof, the appropriate governmental entity(ies), but not the District, shall be responsible for maintenance, repair, replacement and operation of (i) roads, (ii) bridges, (iii) storm sewers and outfalls, or (iv) other facilities that are accepted (for maintenance, operation, or otherwise) by, or conveyed to, such appropriate governmental entity(ies).
- (d) Access and travel along and through the Easements by District, its agents, workmen and representatives with maintenance equipment shall be limited to occurring solely along and through an unobstructed maintenance berm located on each side of the Channel.
- (e) District agrees to maintain policies of liability insurance, showing County Drainage District as an additional insured, insuring against personal injury and property damage arising from District's use of the Easements and the Channel, such policies to provide coverage in amounts not less than those carried for other similar properties by District. District shall maintain such policies of insurance at all times for so long as this Agreement is in effect and shall provide to County Drainage District upon request certificates evidencing such coverage.
- (f) To the extent allowed by law, District agrees to indemnify, hold harmless, and defend County Drainage District against any and all suits, actions or claims of any character, type or description brought or made for or on account of any injuries or damages,

legal or equitable, received or sustained by any person or persons or property arising out of or occasioned by the negligent use of the Easements by District, its invitees, assigns, agents, employees, workmen and representatives.

Section 2. Upon completion of a contract(s) for an Authorized Project resulting in construction of improvements, and after inspection and written acceptance by the County Drainage District, any such improvements shall be and become the property of the County Drainage District, and the District shall have no ownership interest in or maintenance liability for such improvements. As necessary and appropriate the District shall assign to the County Drainage District any and all obligations, warranties, guarantees or other assurances of workmanship, materials or equipment by the contractors, materialmen or other suppliers of labor, material or equipment with respect to the installation and construction of the Authorized Project.

ARTICLE IV Termination of Agreement

Section 1. This Agreement may be terminated at any time by either party upon thirty (30) days' written notice. Notwithstanding the foregoing, if the District is party to a contract for construction an Authorized Project that will result in the construction of improvements, the District and the County Drainage District agree that this Agreement may not be terminated until construction of said Authorized Project is complete and the improvement has been inspected and accepted in writing by the County Drainage District.

Section 2. This Agreement shall be in effect from and after the date of execution by the County Drainage District ("Effective Date") and shall continue in effect until terminated in writing by either party pursuant to Article IV, Section 1.

ARTICLE V General Provisions

Section 1. Any notice required or permitted by this Agreement shall be in writing, delivered in person or deposited in the United States Mail, postage paid, registered or certified mail, return receipt requested, as follows:

To the District:

Fort Bend County Levee Improvement District No. 12
c/o Smith, Murdaugh, Little & Bonham, L.L.P.
1100 Louisiana Street, Suite 400
Houston, Texas 77002

To the County Drainage District:

Fort Bend County Drainage District
1004 Blume Road
Rosenberg, Texas 77471
Attn: Mark Vogler, Chief Engineer

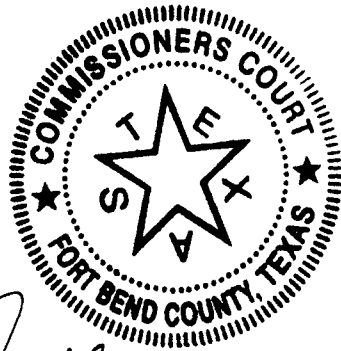
with copy to:

Fort Bend County Commissioner, Precinct 3
22333 Grand Corner Drive
Katy, Texas 77494

Section 2. This Agreement shall be subject to change or modification only in writing and with the mutual consent of the County Drainage District and the District.

Section 3. 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 be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement or its application to other persons or in other circumstances shall not be affected thereby.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of which shall be deemed to be an original, as of the date and year first written above.



Attest:

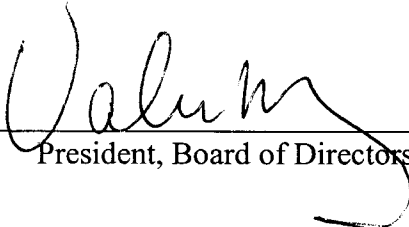
Dianne Wilson, County Clerk

FORT BEND COUNTY DRAINAGE DISTRICT

By: 
Fort Bend County Judge

Date: May 10, 2011

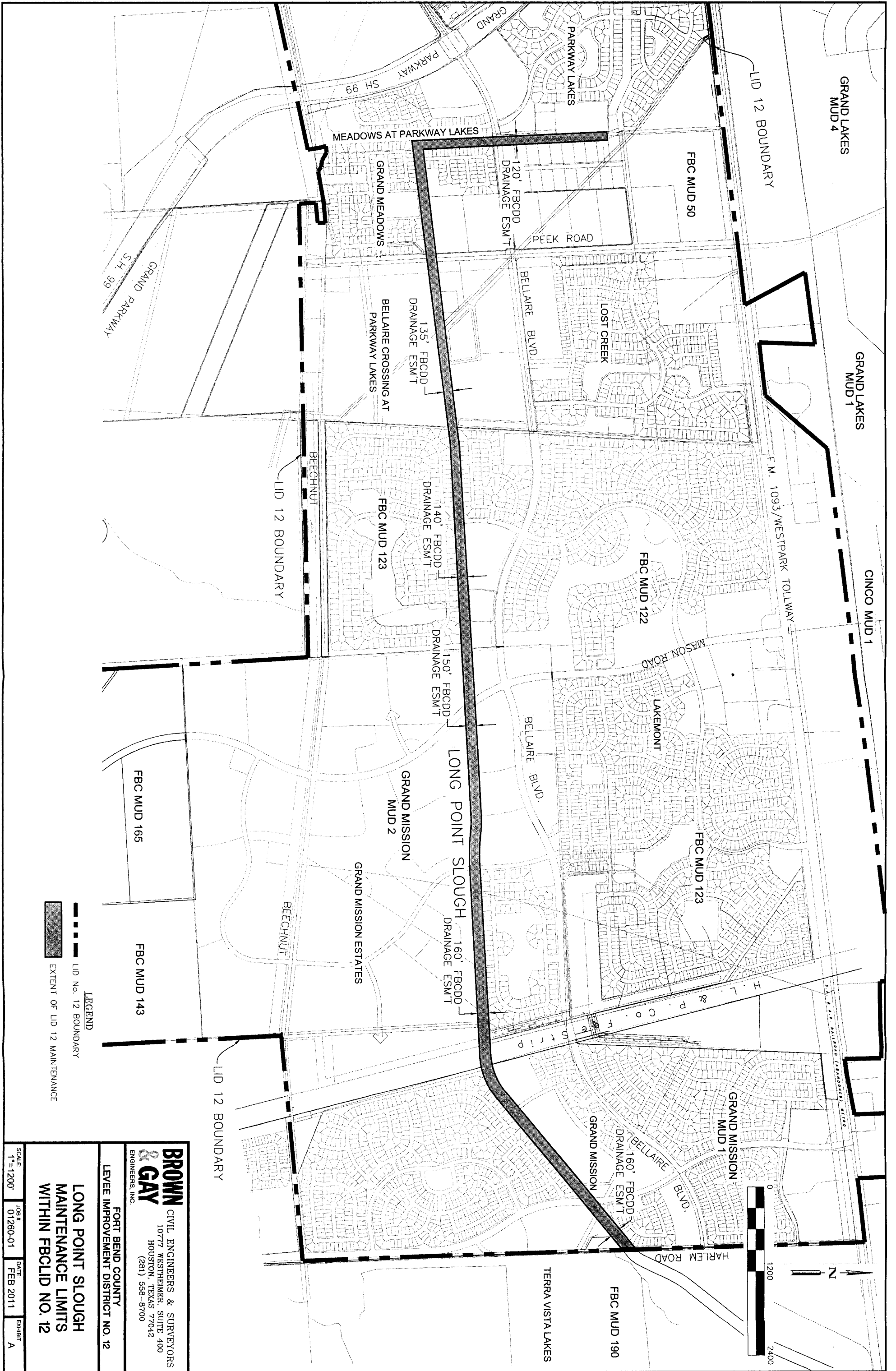
FORT BEND COUNTY LEVEE IMPROVEMENT DISTRICT NO. 12

By: 
President, Board of Directors

Attest:

Secretary, Board of Directors





BROWN & GAY
 CIVIL ENGINEERS & SURVEYORS
 10777 WESTHEIMER, SUITE 400
 HOUSTON, TEXAS 77042
 (281) 558-8700

ENGINEERS, INC.

FORT BEND COUNTY
 LEVEE IMPROVEMENT DISTRICT NO. 12

LONG POINT SLOUGH
MAINTENANCE LIMITS
WITHIN FBCLID NO. 12