

21B

AGREEMENT REGARDING FOOTBRIDGES

This Agreement Regarding Recreational Facilities (the "Agreement") is entered into as of this 12th day of August, 2014 (the "Effective Date"), by and between **Fort Bend County**, a body corporate and politic, acting by and through its Commissioners Court (the "County") Fort Bend County Municipal Utility District No. 124, a political subdivision of the State of Texas ("MUD No. 124") (County and MUD No. 124 may be individually referred to herein as a "Party" and collectively as the "Parties").

RECITALS

WHEREAS, the County and Willow Fork Drainage District ("WFDD") have entered into an Interlocal Governmental Agreement (the "Interlocal Agreement") dated July 1, 2014 whereby County and WFDD have determined to jointly participate in the design and construction of certain footbridges to be owned and operated by WFDD and within the boundaries of WFDD for the benefit of residents within their boundaries;

WHEREAS, the County will pay for the construction and installation of certain footbridges in an amount not to exceed \$200,000.00;

WHEREAS, WFDD will pay for the construction and installation of certain park and recreational projects in an amount not to exceed \$250,000.00;

WHEREAS, Fort Bend County Municipal Utility District No. 124 has agreed to fund the construction of certain footbridges (the "Project"), all as described in the Interlocal Agreement in "Exhibit A" attached hereto;

WHEREAS, the estimated construction costs of the Project is \$515,545.00 and MUD No. 124 wishes to contribute the sum of \$50,000.00 to the County to fund a portion of the balance of the Project (the "Contribution");

WHEREAS, the County desires to accept the Contribution from MUD No. 124 solely for the purpose of constructing the Project and pursuant to the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, obligations, and benefits herein set forth, the Parties contract and agree as follows:

1. Acceptance of Contribution. The County hereby accepts the Contribution from MUD No. 124 for the sole purpose of constructing the Project. The County agrees that the Contribution will be applied solely to any necessary costs allocated to the Project by the County. On or before the time the County funds its obligations to WFDD under the Interlocal Agreement,

the County will provide the Contribution to WFDD to be used for the construction of the Project. The County hereby finds that the Contribution amount and the conditions associated with the Contribution as described in the Recitals and this Section 1 are reasonable.

2. Refund of Contribution. In the event that the County and WFDD do not construct the Project within six (6) months of the termination date of the Interlocal Agreement for any reason, the Contribution shall be returned to MUD No. 124. In the event of a refund of the Contribution to the MUD No. 124, the County and WFDD are no longer obligated to construct the Project, and the Parties have no further obligations between each other.
3. Recitals Confirmed. The matters set forth above in the Recitals of this Agreement are found to be true and correct.
4. Representations. Each Party represents that it has the full legal authority to enter into this Agreement and that the person signing below on behalf of each Party has full authority to bind such Party by executing this Agreement.
5. Parties in Interest. This Agreement shall be for the sole and exclusive benefit of the Parties and shall not be construed to confer any benefit or right upon any other party, and may not be assigned without the written consent of the Parties.
6. Interpretations. This Agreement and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of this Agreement. The Parties agree that this Agreement shall not be construed in favor of or against any Party on the basis that the Party did or did not author the Agreement. Nothing in this Agreement shall be construed to violate any state or federal statutory provision or any provision of the state or federal Constitutions and all acts done pursuant to this Agreement shall be performed in such manner as to conform thereto whether expressly provided or not.
7. 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.
8. Notices and Addresses. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by (a) depositing same in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested; (b) by delivering the same in person to such party; or (c) by sending same by facsimile. Notice given by mail shall be effective three (3) days after deposit in the United States mail, and notice delivered in person or sent by facsimile shall be effective upon receipt. For the purpose of notice, addresses and facsimile numbers of the Parties shall, until changed as hereinafter provided, be as follows:

If to the County: Fort Bend County Judge
401 Jackson Street
Richmond, Texas 77469
Attn: The Honorable Robert Hebert
hebertb@co.fort-bend.tx.us
Phone: 281-341-8608
Facsimile: 281-341-8609

With a copy to:
Fort Bend County, Precinct 3
22333 Grand Corner Drive
Katy, Texas 77494
Attn: The Honorable Andy Meyers
meyersan@co.fort-bend.tx.us

If to MUD No. 124: Fort Bend County Municipal Utility District No. 124
c/o Allen Boone Humphries Robinson LLP
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027
Attention: President
taustin@abhr.com

The Parties have the right from time to time to change their respective addresses and each has the right to specify as its address any other address upon at least fifteen (15) days written notice to the other Parties.

9. Entire Agreement; Modification; Exhibits. This Agreement is the entire agreement between the Parties concerning the Contribution, and there are no prior effective representations, warranties or agreements among the Parties with respect thereto. No modification hereof or subsequent agreement relative to this Agreement shall be binding on any Party unless reduced to writing and signed by all of the Parties. The exhibit attached hereto is incorporated herein by reference for all purposes.
10. Limitation of Remedies. The Parties understand that the Project is a public project by WFDD and the County and construction of the Project is in their sole discretion. In the event that WFDD and the County do not acquire or construct the Project, MUD No. 124 shall have no remedy or recourse against WFDD and the County other than a refund of the Contribution, without penalty, in accordance with Section 2.
11. Term. The term of this Agreement shall be the earlier of one year from the Effective Date or when WFDD completes construction of the Project.

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

Fort Bend County Municipal Utility District No. 124

By: *Paula M. Bays*
Paula Bays, President

Fort Bend County, Texas

By: *Robert E. Hebert*
Robert E. Hebert, County Judge

Date: 8/18/14
Approved by Commissioners Court 8/12/14

ATTEST:

Dianne Wilson
Dianne Wilson, County Clerk

(SEAL)

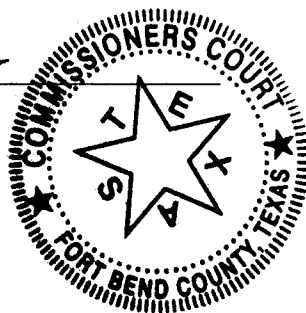


Exhibit A

STATE OF TEXAS

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COUNTY OF FORT BEND

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KNOW ALL MEN BY THESE PRESENTS:

INTERLOCAL PROJECT AGREEMENT

This Interlocal Project Agreement (the "Agreement"), effective as of the 1 day of July, 2014 ("Effective Date"), is entered into by Fort Bend County, a body corporate and politic, acting by and through its Commissioners Court (the "County") and Willow Fork Drainage District, a political subdivision of the State of Texas ("WFDD")(each a "Party" and collectively, the "Parties").

RECITALS

WHEREAS, WFDD has been created and organized for the purposes, among others, of protecting, preserving, and restoring the purity and sanitary condition of water within the State, and has the authority pursuant to Chapters 49 and 51 of the Texas Water Code, as amended, to finance, develop and maintain, parkways, greenbelts, sidewalks, trails and other recreational facilities for its residents; and

WHEREAS, the County is a body corporate and politic under the laws of the State of Texas and has the authority to, amongst other things, install and maintain parks, trail ways and other recreational facilities; and

WHEREAS, the County and WFDD have entered into a Primary Interlocal Agreement dated December 8, 2011 to assist in performing certain governmental functions;

WHEREAS, it is the intent of the Parties to enter into this Agreement for the participation in the construction of a 110' Span Bridge and a 150' Span Footbridge crossing the Willow Fork Drainage Ditch and, connections to existing trails (the "Project") as generally shown on Exhibit A and such Project is beneficial to residents of the County and WFDD;

WHEREAS, the Parties have determined that it would be economically advantageous for each Party to participate in the Project pursuant to a series of construction contracts to be administered by WFDD;

WHEREAS, the Parties affirmatively find that the performance of this Agreement is in the common interest of all Parties and the undertaking this Agreement will benefit the public.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, obligations, and benefits herein set forth, the Parties contract and agree as follows:

1. **Scope of the Project.** The Parties agree that the scope of the Project described by this Agreement, includes the construction of a 110' Span Bridge and a 150' Span Footbridge crossing the Willow Fork Drainage Ditch with connections to existing trails within the District.
2. **Project Costs and Allocations.** The total estimated cost of design, construction, engineering and other related costs (the "Project Costs") is \$515,545, as detailed in Exhibit B. The Parties agree to allocate the Project Costs such that WFDD and the County each pay for the total Project Costs as follows:
 - a. WFDD agrees to pay \$250,000.00 of the total Project Costs;
 - b. The County agrees to pay an estimated amount not to exceed \$145,545.00 (plus 10% of Project Costs) unless approved by the County Engineer as described in Section 3 below. The County's share of the Project Costs will not exceed \$200,000.00 unless approved by Commissioners Court;
 - c. Fort Bend County Municipal Utility District No. 124 agrees to pay \$50,000.00 of the total Project Costs;
 - d. Falcon Ranch Homeowners Association, Inc. agrees to pay \$50,000.00 of the total Project Costs; and
 - e. Cinco Residential Property Association agrees to pay \$20,000.00 of the total Project Costs.

Fort Bend County Municipal Utility District No. 124, Falcon Ranch Homeowners Association, Inc., and Cinco Residential Property Association (the "Contributing Parties") agree to contribute their share of the Project Costs described above (the "Donated Funds") to the County. WFDD is not obligated to proceed with the advertising of bids for the Project until the Contributing Funds have been deposited with the County for the benefit of the Project. If one of the Contributing Parties does not contribute its Donated Funds to the Project, neither the County nor WFDD is obligated to proceed with the Project and unless a Party agrees to fund more than its share of Project Costs stated above, the Agreement may terminate and any Donated Funds returned to the Contributing Parties.

3. **Competitive Bid and Award of the Project.**

- a. Prior to advertising for bids for the Project, WFDD, through its engineers or authorized representatives, shall provide all of the project plans, designs and any other documents related to the Project requested by the County, for final approval of the designs and costs by the County Engineer. Within thirty (30) days of the approval by the County of all appropriate plans, WFDD shall advertise for competitive bids for the construction of the Project, (together or in separate contracts) in accordance with state law and WFDD policy for WFDD contracts. Upon receipt of bids for the Project, WFDD will notify the County (the "Notice of Intent to Award") of the amount of the recommended bid (with a 10% contingency) and each Party's apportionment of the Project Costs, as determined in accordance with Section 2. If the County desires to object to

the award of the contract, it must provide written notice to WFDD within fifteen (15) days of the date the Notice of Intent to Award is sent by WFDD. Otherwise, if the County's share is within the amount authorized in Section 2(b), the County will be deemed to have approved the award of the contract to the lowest responsible bidder, in the WFDD's judgment, which would be most advantageous to the Parties and would result in the best and most economical completion of the Project.

- b. If the County objects to the recommended bid, WFDD will not award the contract for the Project, and this Agreement shall terminate with neither Party obligated to fund or construct the Project. The County will return the Donated Funds to the Contributing Parties pursuant to its donation agreements with the Contributing Parties.
- c. If there are no objections to the award of the contract and the County's share is within the amount authorized in Section 2(b), the County will deposit its share of the Project Costs along with the Donated Funds, with WFDD within thirty (30) days of the date the Notice of Intent to Award is sent to the County. WFDD will not be required to award the bid for the Project until the County has received Donated Funds as described in Section 2 above. If WFDD does not receive the Donated Funds or the County's share of the Project Costs within 30 days of the date the Notice of Intent to Award is sent to County, WFDD is not obligated to construct the Project, and this Agreement will terminate.
- d. Upon receipt of all funds from the County (including Donated Funds), WFDD will award the construction contract to the qualified bidder (the "Construction Contract"), which may be subject to change orders that increase, decrease, or otherwise alter the Project Costs under such Construction Contract. If WFDD constructs the Project in multiple contracts, the provisions of this Agreement shall apply to each such construction contract.
- e. The Construction Contract for the Project shall be advertised and awarded in WFDD's name and WFDD shall be the owner of the construction work for the Project for all purposes.
- f. In the event WFDD ultimately does not award the Construction Contract, WFDD will return any payments made hereunder, this Agreement shall terminate, and neither Party will be obligated to fund or construct the Project.
- g. The Parties acknowledge that WFDD must obtain a temporary construction easement or right of entry agreement from third parties, including Katy Independent School District, for construction of the Project. If WFDD is unable to obtain a temporary construction easement or right of entry agreement from such third parties, WFDD shall not be obligated to construct the Project, this Agreement shall terminate, and neither Party will be obligated to fund or construct the Project.

4. Construction Contract.

- a. After award of the Construction Contract, WFDD shall administer the Construction Contract for the benefit of the Parties. WFDD, through its engineers or authorized representatives, shall

provide on-site inspection of the construction of the Project in accordance with the Construction Contract. If requested by the County, WFDD will provide copies of inspection reports, testing reports and any project related correspondence or information.

- b. Change orders resulting in an increase to the Project Cost price over 10% submitted under the Construction Contract and recommended by WFDD shall be subject to review and approval by the County Engineer, or his designated authorized agent, which review and approvals will not be unreasonably withheld, conditioned or delayed. If the County desires to object to a proposed change order, the County Engineer must provide written notice to WFDD within fifteen (15) business days of the date the proposed change order is sent to the County. Otherwise, the County will be deemed to have approved the change order.
 - c. The County, through their authorized representatives, may observe all construction for conformity with good engineering standards and in accordance with applicable rules, regulations and requirements of all governmental entities having jurisdiction over the Project, if any, and shall immediately request changes or corrections to work performed under the Construction Contract if any Party finds such changes or corrections to be necessary upon such inspection. Any change orders for work requested by the County shall be subject to review and approval by WFDD, which shall not be unreasonably withheld, conditioned or delayed if the work being performed is clearly shown to be out of compliance with the applicable standards. WFDD will schedule and coordinate the final inspection of the construction project with the County Engineer, or his designated authorized agent.
 - d. The Parties agree that WFDD and the County do not warrant the quality of any engineering or construction work done by any third party in connection with, or materials provided for, the Project, nor for compliance of the same with the County standards and other governmental codes and regulations applicable thereto, nor shall WFDD be deemed to be responsible for any such compliance.
 - e. WFDD shall have the right to terminate the Construction Contract and to enforce its remedies thereunder, as determined by WFDD to be necessary after consultation with the County. In the event of any such termination, WFDD shall have the right to complete and/or cause the completion of the Project themselves and/or through such other contractor(s) as WFDD determines to be appropriate and as are approved by the County; provided that all work done in connection with such completion shall be in compliance with good engineering standards and in accordance with applicable rules, regulations and requirements of all governmental entities having jurisdiction over the Project, if any.
5. **Ownership and Maintenance of Project.** Upon completion of the Project, WFDD will own and maintain the Project.
6. **Final Accounting, Cost Overrun Collection, Cost Refunds.**
- a. Within ninety (90) days of completion of the Project, WFDD will submit to the County a final accounting of each Party's allocated costs. The County may review WFDD's records regarding

this Project at any time by providing at least twenty-four (24) hours written notice to WFDD.

- b. If the final accounting shows that the amounts owed by the County for their applicable Project Costs are less than the amounts previously remitted to WFDD, WFDD shall refund any overage to the County within forty-five (45) days of the submission of the final accounting. If the final accounting shows that the actual Project Costs exceed the amounts previously remitted to WFDD, the County shall pay to WFDD the remaining amount due for cost overruns up to an amount not to exceed \$200,000.00 within forty-five (45) days of the submission of the final accounting. The County shall not be responsible for any amount in excess of \$200,000.00 unless approved by Fort Bend County Commissioners Court.
7. **Notices.** All notices, requests, demands and other communications under this Agreement shall be given by electronic mail and either (i) overnight courier; (ii) facsimile; or (iii) hand delivery addressed as follows:

If to the WFDD: Willow Fork Drainage District
c/o Allen Boone Humphries Robinson LLP
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027
Attn: Steve Robinson
Phone: 713-860-6408
Facsimile: 713-860-6608

If to the County: Fort Bend County Engineering Department
301 Jackson Street
Richmond, Texas 77469
Attn: Richard Stolleis, PE
Phone: 281-633-7500
Facsimile: 281-342-7366
Fort Bend County Judge
301 Jackson Street, Suite 719
Richmond, Texas 77469
Attn: The Honorable Robert Hebert
hebertb@co.fort-bend.tx.us
Phone: 281-341-8608
Facsimile: 281-341-8609

With a copy to:
Fort Bend County, Precinct 3
22333 Grand Corner Drive
Katy, Texas 77494
Attn: The Honorable Andy Meyers
meyersan@co.fort-bend.tx.us

Phone: 281-238-1400
Facsimile: 281-238-1401

8. **Term and Termination.** The term of this Agreement shall begin on the Effective Date, and shall terminate two (2) years from the Effective Date, or upon completion of the Project, whichever is sooner. However, the maintenance obligations provided for in Section 5 of this Agreement, shall survive the term of this Agreement.

9. **Default and Remedies.**

- a. WFDD and the County agree that its failure to pay WFDD their share of the Project Costs, shown in Section 2 above, when due as provided in Section 3 above is an event of default (a "Payment Default") and WFDD shall be entitled to any and all of the remedies available in this Section or otherwise at law or equity. In the event of a Payment Default, WFDD may terminate this Agreement without penalty and is under no obligation to the County to construct the Project.
- b. A Party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if such Party fails to materially perform, observe or comply with any of its covenants, agreements or obligations hereunder or breaches or violates any of its representations contained in this Agreement.
- c. Before any failure of any Party to perform its obligations under this Agreement, except a Payment Default, shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify the Party alleged to have failed to perform of the alleged failure, in writing, and shall demand performance. No breach of this Agreement, except a Payment Default, may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within 30 days of the receipt of such notice.
- d. Upon a breach of this Agreement, the non-defaulting party, in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained, may be awarded damages for failure of performance, or both. Except as otherwise set forth herein, no action taken by a Party pursuant to the provisions of this Section or pursuant to the provisions of any other Section of this Agreement shall be deemed to constitute an election of remedies; and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any Party at law or in equity. Each of the parties shall have the affirmative obligation to mitigate its damages in the event of a default by the other Party.
- e. Notwithstanding anything in this Agreement which is or may appear to be to the contrary, if the performance of any covenant or obligation to be performed hereunder by any Party (except for a Payment Default) is delayed as a result of circumstances which are beyond the reasonable control of such party (which circumstances may include, without limitation, pending or threatened litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions [such as, by way of illustration and not limitation,

severe rain storms or below freezing temperatures, or tornadoes] labor action, strikes or similar acts) the time for such performance shall be extended by the amount of time of such delay ("Force Majeure").

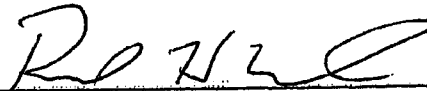
- f. In addition to any other right or remedy available to the Parties pursuant to this Agreement, in the event of a default or a breach by any Party under this Agreement which continues for thirty (30) days after written notice to the Party alleged to have defaulted or breached and the failure of the Party alleged to have defaulted or breached to cure or diligently proceed to cure such breach to the complaining Party's reasonable satisfaction, the complaining Party shall have the right (but not the obligation), in its sole discretion, to exercise its rights with regards to mandamus, specific performance or mandatory or permanent injunction to require the Party alleged to have defaulted or breached to perform.
10. **Entire Agreement; Modification.** This Agreement constitutes the entire agreement between the Parties concerning the Project. There have been and are no agreements, covenants, representations, or warranties between the Parties other than those expressly stated or provided for herein. No modification hereof or subsequent agreement relative to the subject matter hereof shall be binding on any Party unless reduced to writing and signed by the Parties.
11. **Merger.** This Agreement is the entire agreement among the Parties with respect to the subject matter hereof and, as to such matters, this Agreement sets forth all the promises and agreements among the Parties and supersedes all prior and contemporaneous agreements, understandings, inducements, or conditions, expressed or implied, oral or written.
12. **Parties in Interest.** This Agreement shall be for the sole and exclusive benefit of WFDD and the County and shall not be construed to confer any benefit or right upon any other party, including particularly any resident of WFDD or the County.
13. **Severability.** The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application thereof to any other person or circumstance shall ever be held by any court of competent jurisdiction to contravene or be invalid under the constitution or laws of the State of Texas for any reason, that contravention or invalidity shall not invalidate the entire Agreement. Instead, this Agreement shall be construed as if it did not contain the particular provision or provisions held to be invalid, the rights and obligations of the Parties shall be enforced accordingly, and this Agreement shall remain in full force and effect, as construed. The remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to the other parties or circumstances shall not be affected thereby.
14. **Successors and Assigns.** This Agreement shall apply to and be binding upon the Parties hereto and their respective officers, directors, successors, and assigns. This Agreement and any of the rights obtained hereunder are not assignable by any Party hereto without the express written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed.

15. **Authorization.** Each Party represents that (i) execution and delivery of this Agreement by it has been duly authorized by its governing body or other persons from whom such Party is legally bound to obtain authorization; (ii) that the consummation of the contemplated transactions will not result in a breach or violation of, or a default under, any agreement by which it or any of its properties is bound, or by any statute, rule, regulation, order, or other law to which it is subject; and (iii) this Agreement is a binding and enforceable agreement on its part.

16. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas. Venue shall be in Fort Bend County.


IN WITNESS WHEREOF, the Parties have executed this Agreement in multiple counterparts, each of which shall be deemed to be an original.

WILLOW FORK DRAINAGE DISTRICT

By: 
President, Board of Directors

Date: 6/9/14

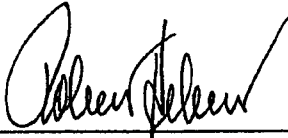
ATTEST:


Secretary, Board of Directors

(SEAL)



FORT BEND COUNTY, TEXAS

By: 
Robert E. Hebert, County Judge

Date: July 1, 2014

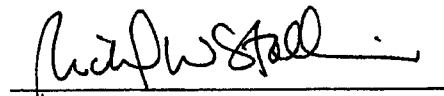
ATTEST:


Dianne Wilson, County Clerk



(SEAL)

REVIEWED:



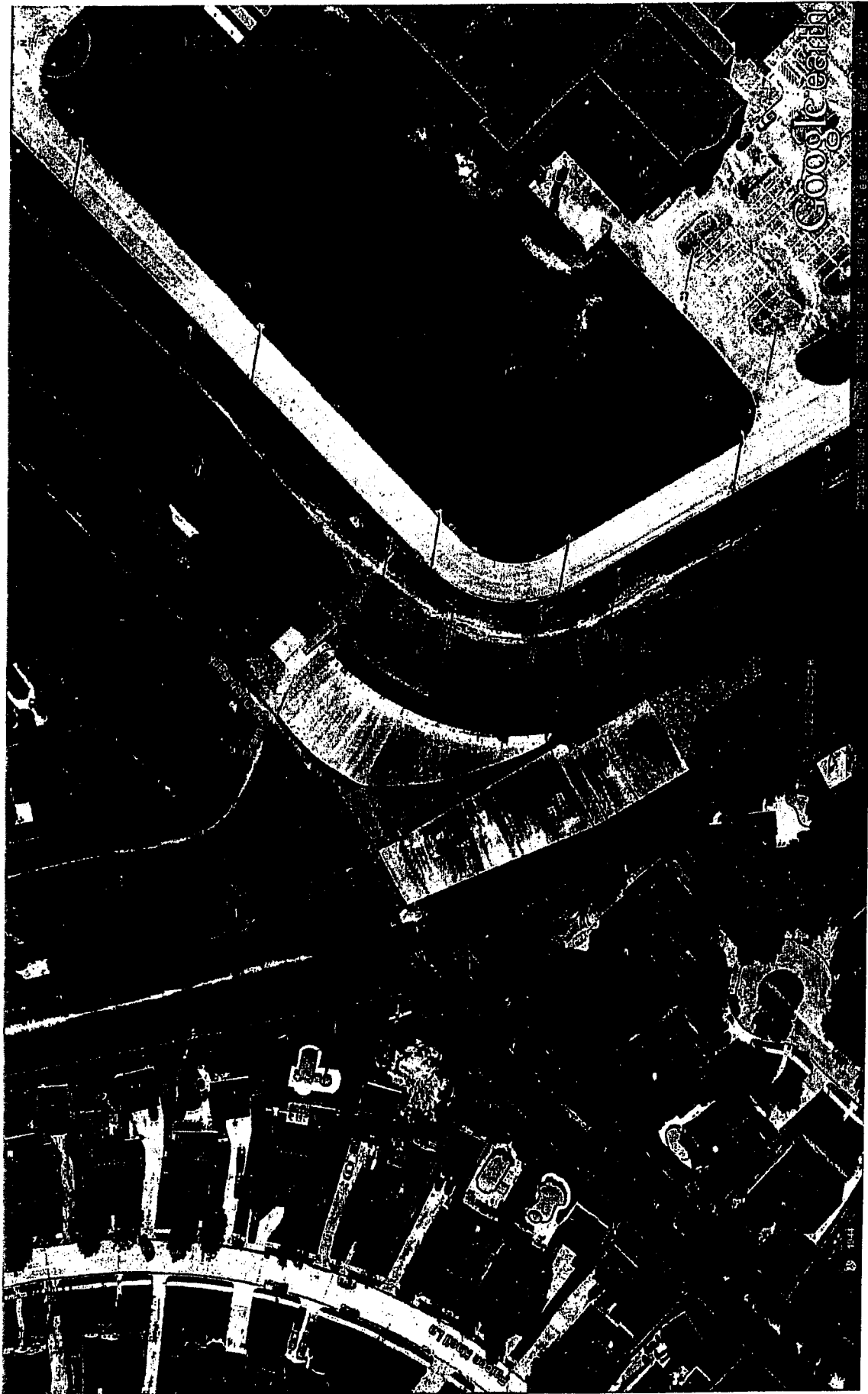
Richard Stolleis
Fort Bend County Engineer

AUDITOR'S CERTIFICATE

I hereby certify that funds are available from current revenues legally available in the amount of \$145,545.00 to accomplish and pay the obligation of Fort Bends County under this Project Agreement.



Ed Sturdivant, Fort Bend County Auditor



AS PER ORIGINAL

EXHIBIT B

V-A-3 and V-A-3-B DITCH BRIDGE CROSSING

Cinco Ranch, TX

Order of Magnitude Cost Estimate

October 17, 2013

	EXCEL BRIDGE		CONTECH		Avg. Cost
110' Span Bridge (Material Only) (V-A-3)	\$	75,000	\$	89,800	\$ 82,400
150' Span Bridge (Material Only) (V-A-3-B)	\$	120,000	\$	153,500	\$ 136,750
Bridge Installation (100% Bridge Material Cost)	\$	195,000	\$	243,300	\$ 219,150
Total Bridge Cost	\$	390,000	\$	486,600	\$ 438,300

Additional Related Costs

Trail Connection					
Soft Costs (15% of construction cost)*				\$	10,000
				\$	67,245

Total Turn-Key Estimate	\$	515,545
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Notes:

* includes design, engineering, geotech, permitting, bidding, construction administration