

INTERLOCAL AGREEMENT FOR CONSTRUCTION OF THE SOUTH PUMP STATION DISCHARGE CHANNEL REPAIR

This Interlocal Agreement ("Agreement") is made and entered into by and between Fort Bend County Drainage District, a body corporate and politic, under the laws of the State of Texas, (the "Drainage District") and Sienna Plantation Levee Improvement District of Fort Bend County, Texas, a body politic and corporate and a political subdivision of the State of Texas ("SPLID") (each a "Party" and together, the "Parties").

RECITALS

The South Pump Station Discharge Channel (the "Facility") serves as an outfall drainage facility for both the Parties; and

Damage to the Facility caused by Hurricane Harvey necessitates immediate repairs to the Facility.

The Parties desire to enter into this Agreement, which will define the responsibilities and financial obligations of the Parties associated with construction repairs to the Facility; and

The Parties to this Agreement both find that this Agreement serves a public purpose for each entity; and

For and in consideration of the mutual promises, obligations, and benefits herein set forth, the Parties hereby agree as follows:

AGREEMENT

SECTION 1. DESIGN AND CONSTRUCTION

Section 1.01 Engineering for Plans and Specifications. SPLID's engineer (LJA Engineering, Inc.) has prepared plans, specifications, and construction contract documents for the construction repairs to the Facility, and will provide each Party with the Facility plans and specifications. The Drainage District has approved the plans, specifications, and contract documents.

Section 1.02 Advertisement, Contract for, and Oversight of Construction. SPLID has advertised for bids for the construction repairs to the Facility in accordance with the laws applicable to the Parties.

Section 1.03 Contract Name. The contract for the construction repairs to the Facility was advertised and awarded in SPLID's name. SPLID has entered into the following contract (the "Contract") on behalf of itself and the Drainage District:

1. Construction of the South Pump Station Discharge Channel Repair to Jerdon Enterprise, L.P. ("Jerdon") in the amount of \$2,354,917.30.

Section 1.04 Construction. SPLID shall cause construction of the Facility repairs to be performed in accordance with the approved plans and specifications and the Contract. SPLID's engineer shall provide periodic, on-site inspection during the construction repairs to the Facility to ensure that construction is completed in substantial compliance with the approved plans and specifications.

Section 1.05 Completion of the Facilities. Upon SPLID's engineer's written certification of completion of the construction repair to the Facility in substantial compliance with the approved plans and specifications and written recommendation of acceptance, SPLID shall accept the Facility and provide the Drainage District with a copy of the engineer's written certification of completion.

Section 1.06 Record Keeping. SPLID 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 either 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.

SECTION 2. PROJECT FUNDING

Section 2.01 Project Costs. "Project Costs" means the cost obligations of SPLID for the Contract.

1. The Drainage District agrees to pay SPLID \$800,000 as its share of the Project Costs.
2. SPLID understands and agrees, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation SPLID shall receive from the Drainage District will in no case exceed eight hundred thousand dollars and no/100 (\$800,000.00).
3. SPLID will be responsible for all Project Costs in excess of \$800,000.00.
4. The Drainage District shall forward the amount due, as described in this Section, to SPLID on or before the fifteenth (15th) day after execution of this Agreement.
5. SPLID further states that the payment provided for by this Agreement fairly compensates SPLID for the services performed under this Agreement.

SECTION 3. TERM

Section 3.01 The time for performance of this Agreement shall begin on the date of execution by the final Party and end no later than thirty days after the final completion of the construction repairs to the Facility. Final completion of the construction repairs, in accordance with the Contract, is expected within 130 days of the issuance of the Notice to Proceed by SPLID to Jerdon.

SECTION 4. MODIFICATIONS AND WAIVERS

Section 4.01 The Parties may not amend this Agreement, except by a written agreement executed by all Parties.

SECTION 5. TERMINATION

Section 5.01 Termination for Default. Either Party may terminate the whole or any part of this Agreement for cause if either Party materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to the other Party's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from the other Party specifying such breach or failure. If, after termination, it is determined for any reason whatsoever that the Party accused of the breach was not in default, or that the default was excusable, the rights and obligations of the Parties shall be the same as if the termination had been issued for the convenience in accordance with Section 1. above.

Section 5.02 Termination under this Section. If this Agreement is terminated as provided in this Section, no fees of any type, other than fees due and payable at the termination date, may be retained by SPLID for payments to the independent contractor(s).

SECTION 6. LIABILITY

Section 6.01 The Parties are each governmental entities entitled to the immunities and defenses available to governmental units under state and federal law, except as may be waived by the Texas Tort Claims Act, Chapter 101 of the Texas Civil Practice and Remedies Code, or other applicable law, and each may take all such actions as necessary to avail each of the maximum protection legally available in order to minimize or eliminate any potential loss or liability with respect to the construction repairs to the Facility. No Party hereto waives or relinquishes any immunity or defense on behalf of itself, its officers, employees or agents as a result of its execution of this Agreement and performance of the covenants contained herein.

SECTION 7. INDEMNITY AND HOLD HARMLESS

TO THE EXTENT PERMITTED BY LAW, THE PARTIES EACH SHALL HOLD HARMLESS THE OTHER PARTY AND THE OTHER PARTY'S DIRECTORS, OFFICERS, AND EMPLOYEES AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, INJURIES AND DAMAGES INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY AND PROPERTY DAMAGE TO THE EXTENT CAUSED BY ANY OF ITS OWN INTENTIONAL ACTS OR OMISSIONS OR FROM THE NEGLIGENT ACTS OR OMISSIONS OF ITS OWN OFFICERS OR EMPLOYEES ARISING OUT OF OR DUE TO THE PERFORMANCE, FAILURE TO PERFORM, OR BREACH OF THIS AGREEMENT.

SECTION 8. INSURANCE REQUIREMENTS

Section 8.01 Each Party agrees to provide such insurance, if any, that the Party deems appropriate for this Agreement.

Section 8.02 SPLID shall require that the contractor contemplated by this Agreement furnish SPLID with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to SPLID. The contractor shall maintain such insurance coverage from the time the contractor commences work until the work is completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of the work. The contractor shall obtain such insurance written on an Occurrence form (or a Claims Made form for Professional Liability insurance) from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

1. Workers' Compensation insurance: Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease. Substitutes to genuine Workers' Compensation Insurance will not be allowed.
2. Commercial General Liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate, \$1,000,000 products comps/ops aggregate, and \$1,000,000 person and advertising injury. 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.
3. Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.
4. Professional Liability may be made on a Claims Made form with insurance with limits not less than \$1,000,000.
5. Builder's Risk insurance in the amount of the Contract.

Section 8.03 If required coverage is written on a claims-made basis, the contractor shall warrant that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that any work under this Agreement is completed.

SECTION 9. NOTICES

Section 9.01 All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, or delivered to the following addresses:

If to the Drainage District: Fort Bend County Drainage District
ATTN: Mark Vogler, P.E.
P.O. Box 1028
1124 Blume Road
Rosenberg, Texas 77471

With a copy to: Fort Bend County
Attn: County Judge
401 Jackson Street, 1st Floor
Richmond, Texas 77469

If to SPLID: Sienna Plantation Levee Improvement District
ATTN: Rich Muller
16555 Southwest Freeway, Suite 200
Sugar Land, Texas 77479

SECTION 10. INDEPENDENT CONTRACTOR

Section 10.01 The relationship of the Parties is that of independent contractors. Neither Party shall be deemed to be the agent, partner, nor fiduciary of the other, and neither is authorized to take any action binding upon the other. The officers and employees of one Party shall not be deemed or construed to the officers or employees of the other Party for any purposes whatsoever.

SECTION 11. COMPLIANCE WITH LAWS

Section 11.01 SPLID shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required, SPLID shall furnish the Drainage District with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

SECTION 12. APPLICABLE LAW

Section 12.01 The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The Parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive either Party's sovereign immunity.

SECTION 13. ASSIGNMENT

Section 13.01 No Party hereto shall make, in whole or in part, any assignment of this Agreement or any obligation hereunder without the prior written consent of the other Parties.

SECTION 14. NO THIRD PARTY BENEFICIARIES

Section 14.01 The Parties do not intend that any specific third Party obtain a right by virtue of the execution or performance of this Agreement. Any purported assignment of rights or delegation of performance in violation of this Section is void.

SECTION 15. SEVERABILITY

Section 15.01 If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each Party remain valid, binding, and enforceable.

SECTION 16. PUBLICITY

Section 16.01 Contact with citizens of Fort Bend County, media outlets, or governmental agencies by either Party shall be permitted with the express written permission of the other Party, except where required to do so by law.

SECTION 17. EXECUTION

Section 17.01 This Agreement has been executed by the Parties, upon and by the authority of their respective governing bodies. This Agreement shall become effective on the date of execution by the final Party.

SECTION 18. AVAILABILITY OF FUNDS

Section 18.01 All expenditures made by each Party in fulfilling its obligations hereunder shall be paid only from current revenues legally available to the Party. Each Party agrees that it shall make payments for this Agreement from current revenues available to the Party and that it will not budget or expend funds for other governmental services unless it has current revenues available to make payments for this Agreement.

[EXECUTION PAGES TO FOLLOW]

FORT BEND COUNTY DRAINAGE DISTRICT

Robert Hebert

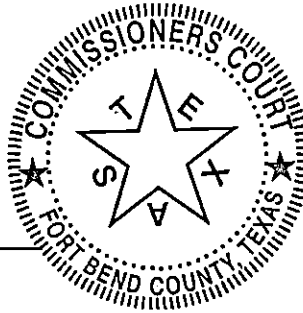
Robert E. Hebert, County Judge

Date: 1/29/18

ATTEST:

Laura Richard

Laura Richard, County Clerk

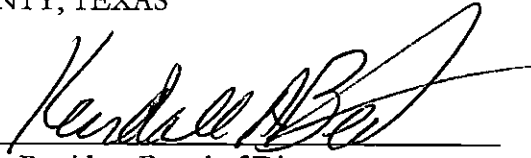


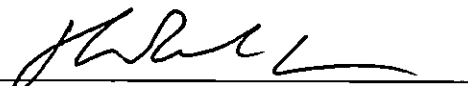
Reviewed by:

Mark Vogler

Mark Vogler, Chief Engineer

SIENNA PLANTATION LEVEE
IMPROVEMENT DISTRICT OF FORT BEND
COUNTY, TEXAS

By: 
President Board of Directors

By: 
Assistant Secretary, Board of Directors