



THE STATE OF TEXAS §
§
COUNTY OF FORT BEND §

RIGHT OF WAY EASEMENT ENCROACHMENT AGREEMENT

This Encroachment Agreement (this "Agreement") is made and entered into by FORT BEND COUNTY (the "County"), a political subdivision of the State of Texas, acting by and through its Commissioners Court, and HARRIS-FORT BEND COUNTIES MUNICIPAL UTILITY DISTRICT NO. 5 (the "MUD"), a political subdivision of the State of Texas organized pursuant to the provisions of Article XVI, Section 59 of the Texas Constitution and operating pursuant to Chapters 49 and 54 of the Texas Water Code, acting by and through its Board of Directors.

RECITALS

WHEREAS, pursuant to that document identified in the Official Public Records of Fort Bend County as under Volume 887, Page 757, the County acquired certain right of way for the purpose of maintaining a public road or public ditch, with availability to accommodate water distribution lines, and electric or telephone transmission and distribution lines (the "Right of Way"); and

WHEREAS, the MUD owns and is responsible for the operation and maintenance of a retaining wall and related appurtenances as described in Exhibit "A" attached hereto (the "Retaining Wall"), part of which encroaches or will encroach upon the aforementioned Right of Way (the "Encroachment"); and

WHEREAS, the County is willing to consent to the Encroachment on the terms and conditions set forth herein.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that the County hereby consents to this Encroachment subject to the following terms and conditions:

AGREEMENT

Article 1. Consent. The County consents to the Encroachment and the MUD's continued ownership, operation, maintenance, and use of the Encroachment, but only insofar as it affects the Right of Way.

Article 2. Notification. The MUD shall notify the County within fifteen (15) calendar days before starting improvements or performing maintenance on the Encroachment.

Article 3. Permits. If not previously provided, the MUD will provide the County with any plans, specifications, and estimates, all as necessary for the Encroachment. The

MUD will obtain all approvals required by any governmental authority possessing jurisdiction over the Encroachment, including, without limitation, any approvals required by the County and the Fort Bend County Drainage District prior to improving or modifying the Encroachment.

Article 4. Operation and Maintenance. The MUD, at its sole cost and expense, shall be solely responsible for the ownership, operation, maintenance, use, and removal of the Encroachment and for any and all expenses related to such ownership, operation, maintenance, use, and removal.

Article 5. Abandonment. If the MUD no longer desires to operate and maintain the Encroachment, the MUD shall remove the Encroachment in its entirety and restore the Property as closely as possible to its previous condition.

Article 6. County Maintenance. In the event the County plans to alter its facilities in the Right of Way, and it appears from the preliminary plans and specifications that the Encroachment may impede County facilities, the MUD, at its own expense, agrees to remove or relocate the Encroachment, subject to the terms of this Article 6. The County shall first provide a copy of said plans and specifications to the District, and if the District's comments regarding said plans and specifications, which comments must be promptly provided by the District, show a feasible path forward to leave the Encroachment in place, the Encroachment shall remain in place if the District agrees to pay for the increase, if any, in design and construction costs to leave the Encroachment in place.

Article 7. Insurance. The MUD shall obtain and maintain, at its own expense, comprehensive public liability insurance on the Encroachment so long as it exists in an amount which will insure the County against risk of loss due to claims under the Texas Tort Claims Act. The MUD shall present a copy of the insurance to the County upon request. The insurance shall include the County as an added insured. The MUD shall not cancel the insurance without providing thirty (30) days written notice to the County.

Article 8. Indemnification. **TO THE EXTENT ALLOWED BY LAW, THE MUD SHALL PROTECT, DEFEND, HOLD HARMLESS AND INDEMNIFY THE COUNTY FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LOSSES, DAMAGES, FINES, COSTS, ACTIONS, JUDGMENTS, EXPENSES, LIABILITIES, AND CONSEQUENTIAL DAMAGES OF EVERY KIND AND NATURE WHATSOEVER WHICH IN ANY WAY IS CONNECTED WITH THE PERFORMANCE OF WORK, FAILURE TO PERFORM WORK, MAINTENANCE, REPAIR AND ENGINEERING BY THE MUD OR ITS CONTRACTORS ARISING FROM OR INCIDENT TO THE ENCROACHMENT. IN THE EVENT THE PROVISIONS OF THIS ARTICLE ARE INVALID OR UNCONSTITUTIONAL, THIS PROVISION SHALL BE SEVERABLE AND THE REMAINDER OF THIS AGREEMENT SHALL BE ENFORCEABLE TO THE EXTENT ALLOWED BY LAW.**

Article 9. Liability For Other Work. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, THE MUD ASSUMES NO RESPONSIBILITY FOR, AND SHALL NOT INDEMNIFY THE COUNTY FOR, ANY AND ALL CLAIMS, DEMANDS, LOSSES, DAMAGES, FINES, COSTS, ACTIONS, JUDGMENTS, EXPENSES, LIABILITIES, AND CONSEQUENTIAL DAMAGES OF EVERY KIND AND NATURE WHATSOEVER WHICH ARE ANY WAY CONNECTED WITH THE PERFORMANCE OF WORK, FAILURE TO PERFORM WORK, MAINTENANCE, REPAIR AND ENGINEERING PRIOR TO OR AFTER THIS AGREEMENT FOR PURPOSES UNRELATED TO THIS AGREEMENT.

Article 10. Amendments. Amendments to this Agreement may be enacted only through a mutually agreed upon, written amendment, duly executed by the MUD and the County.

Article 11. Successors and Assigns. The MUD and the County each binds itself, its successors, executors, assigns, and administrators to the other party to this Agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this Agreement. The MUD shall not assign or otherwise transfer its rights and obligations under this Agreement without the prior written consent of the County, which consent shall not be unreasonably withheld or delayed, in the event the rights and obligations are transferred to a governmental entity acceptable to County.

Article 12. Remedies. Violation or breach of contract terms by either party shall be grounds for termination of this Agreement, provided that one party has given the other party written notice of such violation or breach and that the breaching party, within 30 days after receiving such notice, has not resolved such violation or breach or, if such violation or breach cannot be resolved within such 30-day period, has not commenced efforts in good faith to resolve such violation or breach.

Nothing in this Agreement shall be construed as a limitation of the parties' rights and remedies at law, including but not limited to breach of contract, injunctive relief, or other legal remedy. In the event legal action is instituted, venue shall be proper only in Fort Bend County, Texas.

Article 13. Notice. All notices to either party under this Agreement shall be delivered personally or sent by certified or registered U.S. mail, postage prepaid, addressed to such party at the following addresses:

To the County: Fort Bend County
Attn: County Judge
401 Jackson Street
Richmond, Texas 77469

With a copy to: Fort Bend County Engineering
Attn: County Engineer
301 Jackson Street
Richmond, Texas 77469

To the MUD: Harris-Fort Bend Counties Municipal Utility District No. 5
c/o Schwartz, Page & Harding, LLP
Attn: Matthew Reed
1300 Post Oak Boulevard, Suite 2400
Houston, Texas 77056

Notices shall be deemed given on the date so delivered or received, unless otherwise provided herein. Either party hereto may change the above by sending written notice of such change to the other party in the manner provided above.

Article 14. Prior Agreements. It is understood that this agreement in no way modifies or supersedes the terms and provisions of any existing agreements between the parties hereto.

Article 15. Term of Agreement. This Agreement becomes effective when finally executed by the County. This Agreement will terminate upon mutual agreement and consent of both parties.

[SIGNATURE PAGES FOLLOW]

IN TESTIMONY WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate on the dates below stated.

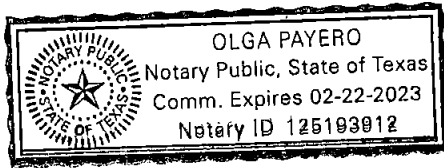
FORT BEND COUNTY

By: KP George
KP George, Fort Bend County Judge

Date: 8.23.22

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

This instrument was acknowledged before me on the 23rd day of August, 2022 by KP George, Fort Bend County Judge, FORT BEND COUNTY.



Olga Payero
Notary Public, State of Texas

HARRIS-FORT BEND COUNTIES
MUNICIPAL UTILITY DISTRICT NO. 5

Elizabeth Caballero
Vice President, Board of Directors

THE STATE OF TEXAS §
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COUNTY OF HARRIS §

This instrument was acknowledged before me on the 20th day of July 2022 by Elizabeth Caballero, Vice President, Board of Directors of HARRIS-FORT BEND COUNTIES MUNICIPAL UTILITY DISTRICT NO. 5.

Michelle Guild
Notary Public, State of Texas

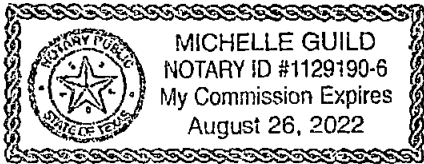
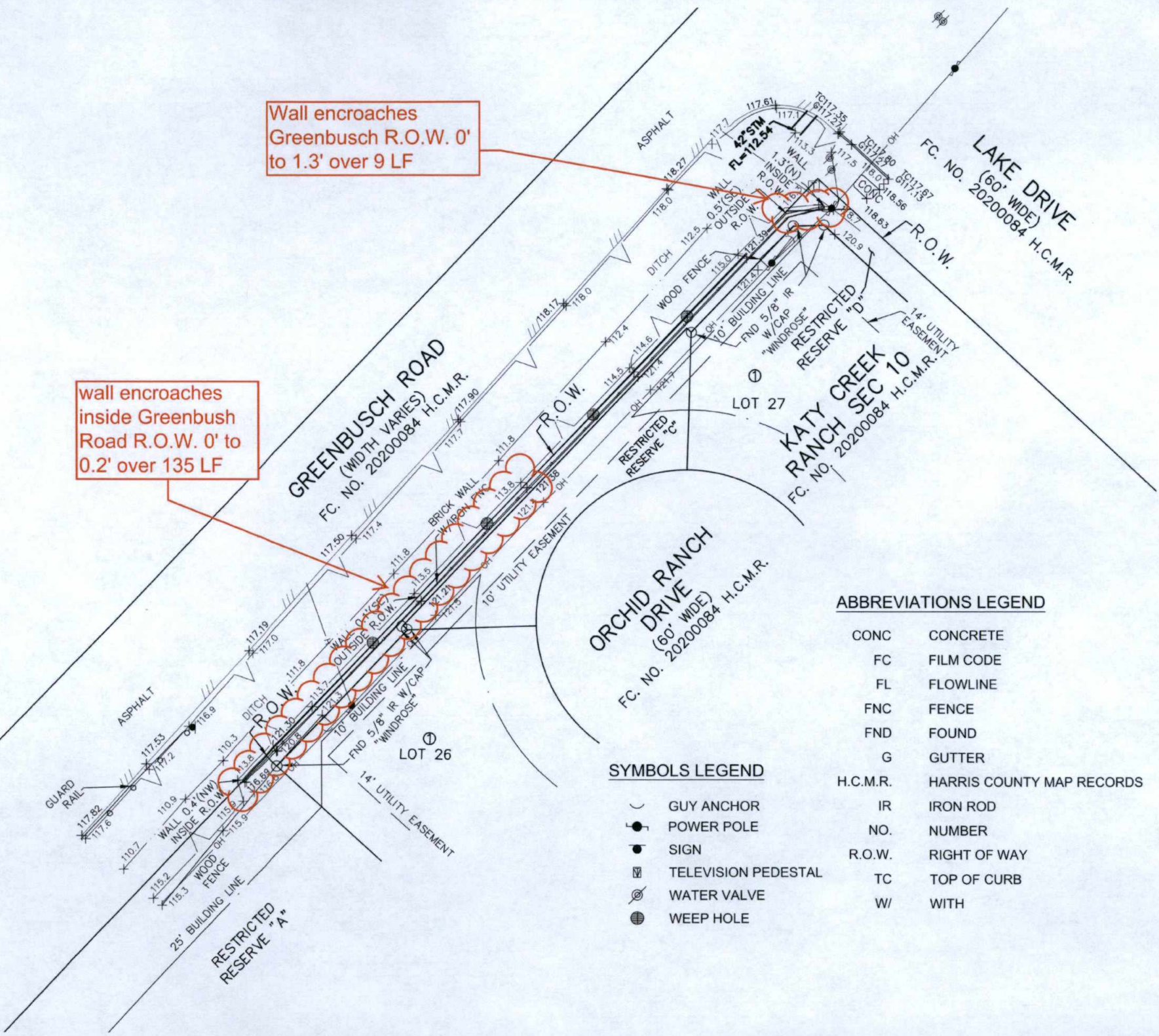


EXHIBIT "A"

Description and/or Depiction of the Retaining Wall and Encroachment

This page is not satisfactory for photographic recordation due to carbon or photocopy, discolored paper, etc. All block-outs, additions and changes were presented at time instrument was filed and recorded.

RECORDER'S MEMORANDUM



ABBREVIATIONS LEGEND

CONC	CONCRETE
FC	FILM CODE
FL	FLOWLINE
FNC	FENCE
FND	FOUND
G	GUTTER
H.C.M.R.	HARRIS COUNTY MAP RECORDS
IR	IRON ROD
NO.	NUMBER
R.O.W.	RIGHT OF WAY
TC	TOP OF CURB
W/	WITH

SYMBOLS LEGEND

- GUY ANCHOR
- POWER POLE
- SIGN
- ⊠ TELEVISION PEDESTAL
- ⊙ WATER VALVE
- WEEP HOLE

**FILED AND RECORDED
OFFICIAL PUBLIC RECORDS**

Laura Richard

Laura Richard, County Clerk

Fort Bend County Texas

August 29, 2022 04:51:58 PM



FEE: \$0.00

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