

INTERLOCAL AGREEMENT
FOR JOINT PARTICIPATION TO APPLY FOR HUD CDBG-MIT FUNDS
(PROTECTION OF MEMORIAL PARK)

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

This Interlocal Agreement for Joint Participation to Apply for U.S. Department of Housing and Urban Development Community Development Block Grant – Mitigation (“CDBG-MIT”) Funds (“Agreement”) is made and entered into pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, as of the last date signed by the parties hereto, by and among Fort Bend County Drainage District, a political subdivision of the State of Texas (the “District”) and the City of Sugar Land, Texas, a municipal corporation and home-rule city of the State of Texas, (the “City”). Each may be individually referred to as a “Party” and collectively referred to as the “Parties” herein.

RECITALS

WHEREAS, accelerated and continued bank erosion on the Brazos River following significant flooding in recent years may lead to loss of human life while threatening residences, roads, levees, including the levee at Memorial Park in Sugar Land, Texas; and

WHEREAS, addressing riverbank erosion along Memorial Park is necessary to protect park, University Boulevard, Ditch “H”, a municipal fire station, Fort Settlement Middle School and approximately 5,000 residents within Fort Bend County Levee Improvement District No. 14; and

WHEREAS, under a preliminary allocation of CDBG-MIT funds based on the Houston-Galveston Area Council’s Method of Distribution (“MOD”), the Texas General Land Office (the “GLO”) allocated \$56,030,000.00 to the District and \$4,063,600.00 to the City for risk mitigation projects related to flooding, hurricanes, and other natural disasters; and

WHEREAS, the Parties desire to enter into this Agreement to coordinate efforts to complete the application process for CDBG-MIT funds and jointly participate in the Protection of Memorial Park Project as described by the Memorandum dated November 8, 2022, attached hereto as Exhibit A and incorporated herein for all purposes (the “Project”); and

WHEREAS, the Project contemplated in this Agreement will promote the health, safety and welfare of the area citizens, and such Project is desired by the District and the City; and

WHEREAS, the governing bodies of both Parties find that the Project contemplated in this Agreement serves a public purpose, and agree to participate in this

Project according to the terms of this Agreement; and

NOW, THEREFORE, for and in consideration of the mutual covenants, agreements and benefits to both Parties, it is agreed as follows:

AGREEMENT

Section 1. Purpose

The purpose of this Agreement is to outline the obligations related to the Parties' coordination of efforts to apply for CDBG-MIT funding and jointly participate in the Protection of Memorial Park Project.

Section 2. Incorporation of Recitals

The recitations and recitals set forth above are declared true and correct and are hereby incorporated as part of this Agreement.

Section 3. The Project

A. Each Party shall continue efforts to complete and submit their respective applications to the GLO to finalize eligibility for the award of the allocated CDBG-MIT funds by January 9, 2023.

B. Subject to final approval of, and the award of the CDBG-MIT funds from the GLO, the Parties hereby commit to contribute a portion of their funds received to the Project as follows:

Protection of Memorial Park Project			
Activity	Total Cost	Drainage District	City of Sugar Land
Construction	\$ 9,410,500.00	\$ 7,710,500.00	\$ 1,700,000.00
Engineering	\$ 1,411,575.00	\$ 1,208,075.00	\$ 203,500.00
Administration	\$ 425,000.00	\$ 296,700.00	\$ 128,300.00
Total	\$ 11,247,075.00	\$ 9,215,275.00	\$ 2,031,800.00

C. The Parties agree that the terms and conditions for bidding, awarding, entering into, and administering the contract for the construction of the Project shall be governed by a separate agreement to be entered into by the Parties. Upon receipt of approved plans and specifications from all regulatory agencies having jurisdiction over the Project and a final engineer's estimate of probable cost to construct the Project according to such approved plans and specifications, the Parties agree to cooperate with each other in good faith to enter an Interlocal agreement to memorialize their mutual understanding of responsibilities for managing the design and construction necessary to complete the Project in compliance with the applicable state and federal laws, as well as the Parties' respective financial contributions therefor consistent with this Agreement. Such Interlocal agreement shall also include the designation of a Party responsible for maintaining the Project upon completion.

D. The Parties mutually understand and acknowledge that as a condition of receiving CDBG-MIT funds administered by the GLO, the Parties shall remain in compliance with all federal and or state terms as stated in Exhibit B attached hereto and incorporated herein for all purposes. The Parties also mutually agree to only use the funds as allowed in accordance with the rules and regulations promulgated under the CDBG-MIT Program, and any other applicable laws. The Parties acknowledge that all funds are subject to recapture and repayment for non-compliance. The terms and limitations stated in the aforementioned flow down to all third party contractors and their subcontracts at every tier that exceed the simplified acquisition threshold set at \$50,000.00, unless a particular award term or condition specifically indicates otherwise. The Parties shall require that these clauses shall be included in each covered transaction at any tier.

E. The funding obligations under this Agreement are contingent in nature and intended to become effective upon the GLO's award of the anticipated amount of CDBG-MIT funds sufficient to fulfill the funding obligations in accordance with Section 3. B. above.

Section 4. Liability

A. Other than a waiver of immunity to suit under Local Government Code Chapter 271, the District and the City are entitled to the immunities and defenses of the Texas Tort Claims Act and nothing in the Agreement shall be construed to waive either party's sovereign immunity. Each Party warrants and represents that it is insured under a commercial insurance policy or is self-insured for all claims falling within the Texas Tort Claims Act.

B. Each Party is solely responsible for the actions and omissions of its employees and officers. Other than a waiver of immunity to suit under Local Government Code Chapter 271, no party hereto waives or relinquishes any immunity or defense on behalf of itself, its trustees, its officers, employees, and agents as a result of the execution of this Agreement and the performance of the covenants contained herein.

Section 5. Period of Agreement and Termination

This Agreement becomes effective on the date signed by the last Party and shall remain in effect until either (i) the GLO fails to award either Party with sufficient anticipated CDBG-MIT funds to fulfill the funding obligations in accordance with Section 3. B. above, or (ii) full execution of the Interlocal agreement to be executed by the Parties pursuant to Section 3. C. above.

Section 6. Miscellaneous

A. In addition to specific obligations within this Agreement, each Party generally agrees that it will perform such other acts, and execute, acknowledge, and/or deliver such other instruments, documents, and other materials as the other may reasonably request in order to achieve the intentions and objectives of this Agreement.

B. 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.

C. This Agreement shall apply to all permitted successors and assigns of the Parties.

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

District: Fort Bend County Drainage District
Attention: Chief Engineer
301 Jackson Street
Richmond, Texas 77469

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

City: City of Sugar Land, Texas
Attention: City Engineer
2700 Town Center Boulevard, North
Sugar Land, Texas 77479

E. This instrument contains the entire Agreement between the parties relating to the rights herein granted and the obligations herein assumed. This Agreement may only be amended by a written instrument signed by both Parties.

F. If any provision contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision and this Agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

G. This Agreement shall be for the sole and exclusive benefit of the Parties and their successors and assigns and shall not be construed to confer any benefit or right upon any other party, including, without limitation, any resident of any Party.

H. Nothing in this Agreement shall be deemed or construed as creating the relationship of principal and agent, partnership, or joint venture between the Parties, or a joint enterprise between the Parties and/or any other parties.

I. The failure of any Party to insist, in any one or more instances, upon performance of any 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, but the obligation with respect to such future performance shall continue in full force and effect.

J. The governing body of each Party has authorized its execution and the Agreement has been approved at a duly called and posted meeting, as applicable.

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

FORT BEND COUNTY DRAINAGE DISTRICT

KP George
KP George, County Judge

January 3, 2023
Date

ATTEST:

Laura Richard
Laura Richard, County Clerk



CITY OF SUGAR LAND, TEXAS


Joe Zimmerman, Mayor

December 20, 2022

Date

ATTEST


Thomas Harris, III, City Secretary

EXHIBIT A

Memorandum

DATE: November 8, 2022

TO: Mark Vogler
General Manager/Chief Engineer
Fort Bend County Drainage District

FROM: Gregory R. Wine, P.E., LEED AP

SUBJECT: Erosion Repair of the Brazos River
Protection of Memorial Park
Fort Bend County Application for CDBG-MIT Funding

Project Site & Description:

Due to the accelerated bank erosion on the Brazos River following significant flooding in 2015, 2016 and Hurricane Harvey in 2017, Huitt-Zollars, Inc. was retained by the Fort Bend County Drainage District to conduct geomorphologic studies of the meander migration and bank erosion at several locations along the Brazos River in Fort Bend County, Texas. These locations focused on government infrastructure to include roads, levees, bridges, buildings and parklands along the river. The results of these studies are most disturbing. In less than 30 years, continuing erosion of the riverbank may cause loss of human life while threatening residences, roads, levees and Hurricane Evacuation Routes on Farm to Market Roads, State Highways and Interstate Highway bridges.

Project Brazos, a multi-jurisdictional effort to address riverbank erosion, has identified bank erosion at thirteen (13) of the most critical sites along the Brazos River in Fort Bend County. One of the more critical locations is the erosion at the Memorial Park in Sugar Land, Fort Bend County, Texas, which threatens the park, University Boulevard, Ditch "H", a municipal fire station, Fort Settlement Middle School and the residents within the Fort Bend County Levee Improvement District (FBCLID) #14. The erosion at this location is threatening the levee which protects around 5,000 residents, a municipal fire station and a middle school. In addition, University Boulevard is a traffic relief route connecting Hurricane Evacuation Routes State Highway 6 and Interstate Highway 69/State Highway 59. This critical road would be negatively impacted should the river levee be breached at Memorial Park due to bank erosion.

The Project is a regional approach with broad support from local, state and federal stakeholders to include TxDOT, the Brazos River Authority and the United States Army Corps of Engineers (USACE) - Galveston District and its Engineer Research and Development Center (ERDC) in Vicksburg, Mississippi. Currently, fourteen (14) Resolutions and a Letter of Support have been received supporting Project Brazos. Over the past four years, Fort Bend County Drainage District and the City of Sugar Land have invested time and money into understanding the problem and in developing feasible solutions to address it. This project employs an environmentally friendly repair using a longitudinal stone dike along the toe of the bank with stone tiebacks constructed at around 200 feet on center to protect the upstream and downstream portions of the repair from being flanked by the erosion. This repair method was coordinated with USACE ERDC's River and Estuarine Engineering Branch. In addition, this repair method promotes revegetation

and habitat development and is in accordance with USACE's "Engineering with Nature and Implementation of Natural and Nature-Based Features" (EWN-NNBF) Guidelines.

Beneficiary:

The beneficiaries of this project will be the thousands of residents of FBCLID #14, University Boulevard, Ditch "H", a municipal fire station and Fort Settlement Middle School.

The boundary of the benefit area is the boundary for the FBCLID #14.

Mitigation:

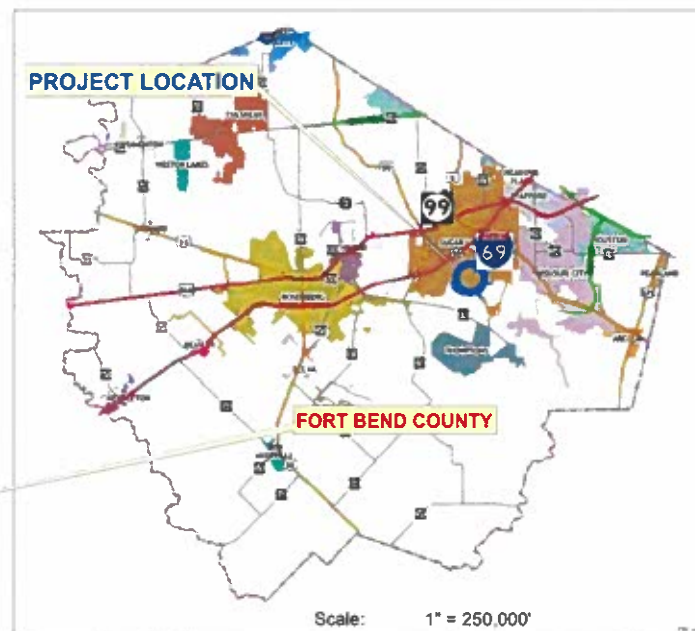
River bank erosion protection for this project will mitigate the risk and associated consequences to the City of Sugar Land's Memorial Park, University Boulevard, Ditch "H", a municipal fire station, Fort Settlement Middle School and the 6,370 residents within the Fort Bend County Levee Improvement District (FBCLID) #14.

Project Schedule:

Fort Bend County has properly procured the services of a Grant Administrator and Project Engineering Firm to properly execute the project. Upon the authorization to proceed, the Engineering will begin with the performance of Surveying and Geotechnical Investigations. There will be an in-depth hydrologic and hydraulic study performed to finalize the design and ensure all floodplain regulations of Fort Bend County are properly followed. Findings of these investigations and studies will be memorialized in a study document. The design phase is anticipated to take approximately 8 months. During this phase the project will be coordinated with local, state and federal partners to ensure all permits are properly obtained. Upon the permitting of the project, the bidding phase will take approximately 2 months and will follow all County, state and federal procurement requirements. Construction will take approximately 12 months to complete. The engineering firm will participate in the review of all construction related documentation.



TEXAS



Legend
Counties



HUITT-ZOLIARS

MEMORIAL PARK
BRAZOS RIVER - FORT BEND COUNTY
STONE EROSION PROTECTION

Location:

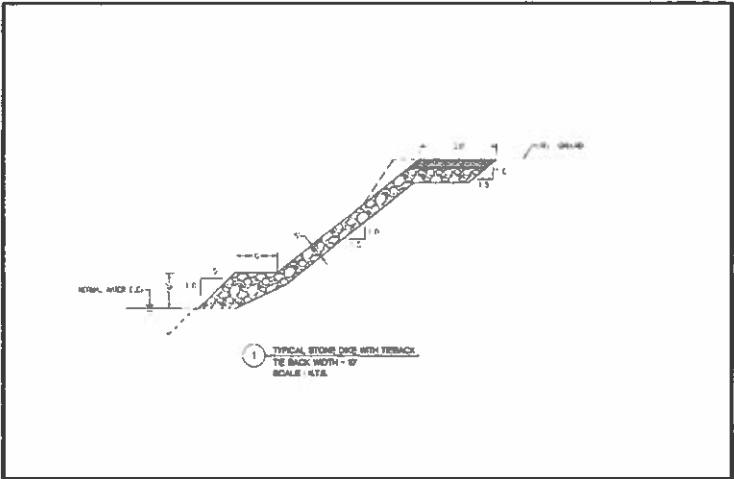
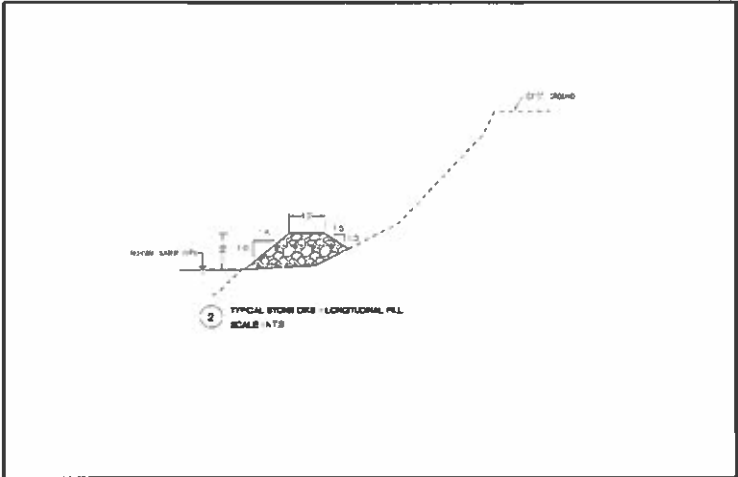
LAT 29 33'33.45" N 29.559292 N
LONG 95 38'38.54" W 95.644039 W

Scale: 1" = 2,500,000'

Drawn by: JG

Date: 10/31/2022

VICINITY MAP
SHEET 1 / 3



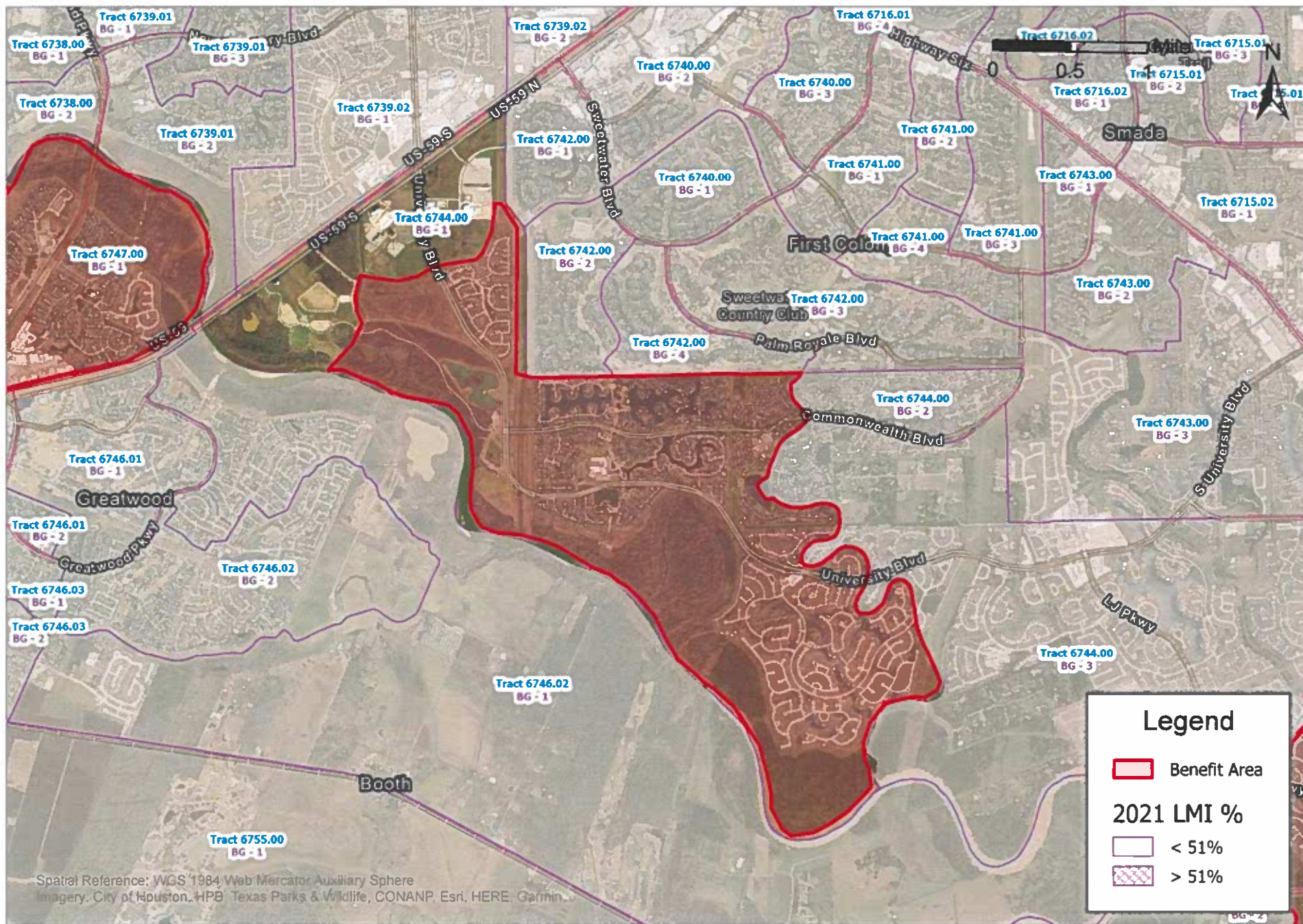
MUTT-BILLARD, INC.
Consulting Engineers

DATE	DESCRIPTION	REV. No.
REVISIONS AND ISSUE DATES		
LONGITUDINAL STONE TOE DETAILS		
BRAZOS RIVER		
STONE EROSION PROTECTION		
FORT BEND COUNTY, TEXAS		



HUNT-ZOLLARS
Professional Engineering &
Surveying
P.O. Box 1018
Houston, Texas 77255-1018
Phone (713) 962-9999
Fax (713) 962-9998

SCALE 1" = 10' NTS	SHEET <div style="font-size: 2em; font-weight: bold;">3 / 3</div>
DATE 08/10/2009	



GEOID	geoname	Stusab	State	County	Low	Lowmod	Lmmi	Lowmoduniv	Lowmod_pct
481576744001	Block Group 1, Census Tract 6744, Fort Bend County, Texas	TX	48	157	75	150	830	6370	2.35%



Applicant/Subrecipient:	Fort Bend County
Site/Activity Title:	Brazos River Erosion at Memorial Park

Materials/Facilities/Services	\$/Unit	Unit	Quantity	Construction	Acquisition	Total
Site Preparation	\$ 400,000.00	LS	1	\$ 400,000	\$ -	\$ 400,000
NPDES SWPPP	\$ 25,000.00	LS	1	\$ 25,000	\$ -	\$ 25,000
Clearing and Grubbing	\$ 1.00	SY	75000	\$ 75,000	\$ -	\$ 75,000
Excavation, Stockpile and Backfill	\$ 10.00	CY	53000	\$ 530,000	\$ -	\$ 530,000
Excavation and Offsite Disposal	\$ 20.00	CY	1650	\$ 33,000	\$ -	\$ 33,000
Stone, 18" - 21"	\$ 250.00	CY	33120	\$ 8,280,000	\$ -	\$ 8,280,000
Hydromulch Seeding	\$ 1.00	SY	67500	\$ 67,500	\$ -	\$ 67,500
Engineering	\$ 1,296,575.00	LS	1	\$ 1,296,575	\$ -	\$ 1,296,575
Surveying	\$ 85,000.00	LS	1	\$ 85,000	\$ -	\$ 85,000
Geotechnical Services	\$ 30,000.00	LS	1	\$ 30,000	\$ -	\$ 30,000
	\$ -		0	\$ -	\$ -	\$ -
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TOTAL				\$ 10,822,075	\$ -	\$ 10,822,075

Annual maintenance of stone erosion protection and vegetation of slopes is estimated to be around \$12,000.

None

**Seat**

Phone Number:	281-496-0066
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Signature of Registered Engineer/Architect
Responsible For Budget Justification:

	Total Cost	Fort Bend County	City of Sugar Land	Total Cost
Construction	\$ 9,410,500.00	\$ 7,710,500.00	\$ 1,700,000.00	\$ 9,410,500.00
Engineering	\$ 1,411,575.00	\$ 1,208,075.00	\$ 203,500.00	\$ 1,411,575.00
Administration	\$ 425,000.00	\$ 296,700.00	\$ 128,300.00	\$ 425,000.00
Total	\$ 11,247,075.00	\$ 9,215,275.00	\$ 2,031,800.00	\$ 11,247,075.00

EXHIBIT B



**Texas General Land Office
Community Development and Revitalization Division
Mitigation – Local Certifications**

Each Applicant for Community Development Block Grant Mitigation ("CDBG-MIT") funding must complete Federal Assistance Standard Form 424 (SF-424) and certify that local certifications included in this application guide were followed in the preparation of any CDBG-MIT program application. Additionally, Applicant must certify that it will continue to follow local certifications in the event that funding is awarded and Applicant is reclassified as a Subrecipient.

Each Applicant/Subrecipient must comply with the provisions of the National Environmental Policy Act ("NEPA"), the Council on Environmental Quality ("CEQ") regulations, the requirements set forth in Title 24 of the Code of Federal Regulations ("CFR") part 58, and applicable Texas General Land Office policy directives.

Each Applicant/Subrecipient must comply with all applicable federal and state laws, including environmental, labor (Davis-Bacon Act), the procurement procedures and contract requirements found at 2 C.F.R. §200.318 – §200.326, and all civil rights requirements.

Each Applicant/Subrecipient certifies, as outlined in 84 FR 45838 (August 30, 2019), the following:

- A. The Applicant/Subrecipient certifies that it has in effect and is following a residential anti-displacement and relocation assistance plan in connection with any activity assisted with CDBG-MIT funds.
- B. The Applicant/Subrecipient certifies its compliance with restrictions on lobbying as required by 24 C.F.R. part 87, together with disclosure forms, if required by part 87.
- C. Any entity or entities designated by the subrecipient, and any contractor, subrecipient, or designated public agency carrying out an activity with CDBG-MIT funds, possess(es) the legal authority to carry out the program for which it is seeking funding, in accordance with applicable HUD regulations and the federal register notice. The subrecipient certifies that activities to be undertaken with CDBG-MIT funds are consistent with the Action Plan.
- D. The Applicant/Subrecipient certifies that it will comply with the acquisition and relocation requirements of the Uniform Relocation Act ("URA"), as amended, and implementing regulations at 49 CFR part 24, except where waivers or alternative requirements are provided for CDBG-MIT funds.
- E. The Applicant/Subrecipient certifies that it will comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. §1701u) and implementing regulations at 24 C.F.R. part 135.

F. The Applicant/Subrecipient certifies that it is following a detailed citizen participation plan that satisfies the requirements of 24 CFR §91.115 or §91.105 (except as provided for in notices providing waivers and alternative requirements for this grant). Also, each local government receiving assistance from a state grantee must follow a detailed citizen participation plan that satisfies the requirements of 24 CFR §570.486 (except as provided for in notices providing waivers and alternative requirements for this grant).

G. The Applicant/Subrecipient certifies that it is complying with each of the following criteria:

1) Funds will be used solely for necessary expenses related to mitigation activities, as applicable, in the most impacted and distressed areas for which the President declared a major disaster in 2015, 2016, or 2017 pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. §5121 et seq.).

2) With respect to activities expected to be assisted with CDBG-MIT funds, the relevant action plan has been developed to give priority to activities that will benefit low- and moderate-income families.

3) The aggregate use of CDBG-MIT funds shall principally benefit low- and moderate-income families in a manner that ensures that at least 50 percent (or another percentage permitted by HUD in a waiver published in an applicable Federal Register notice) of the CDBG-MIT grant amount is expended for activities that benefit such persons.

4) The Applicant/Subrecipient will not attempt to recover any capital costs of public improvements assisted with CDBG-MIT funds by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless:

i. CDBG-MIT funds are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under this title; or

ii. For purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary that it lacks sufficient CDBG funds (in any form) to comply with the requirements of clause (a).

H. The Applicant/Subrecipient certifies that the grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d), the Fair Housing Act (42 U.S.C. §3601-§3619), and implementing regulations, and that it will affirmatively further fair housing.

I. The Applicant/Subrecipient certifies that it has adopted and is enforcing the following policies, and, in addition, must certify that they will require local governments that receive grant funds to certify that they have adopted and are enforcing:

1) A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations;

2) A policy of enforcing applicable state and local laws against physically barring entrance to or exit from a facility or location that is the subject of such nonviolent civil rights demonstrations within its jurisdiction.

J. The Applicant/Subrecipient certifies that it (and any administering entity) currently has or will develop and maintain the capacity to carry out mitigation activities, as applicable, in a timely manner and that the subrecipient has reviewed the respective requirements of this notice.

K. The Applicant/Subrecipient certifies that it will not use CDBG-MIT funds for any activity in an area identified as flood prone for land use or hazard mitigation planning purposes by the state, local, or tribal government or delineated as a Special Flood Hazard Area (or 100-year floodplain) in FEMA's most current flood advisory maps, unless it also ensures that the action is designed or modified to minimize harm to or within the floodplain, in accordance with Executive Order 11988 and 24 C.F.R. part 55. The relevant data source for this provision is the state, local, and tribal government land use regulations and hazard mitigation plans and the latest-issued FEMA data or guidance, which includes advisory data (such as Advisory Base Flood Elevations) or preliminary and final Flood Insurance Rate Maps.

L. The Applicant/Subrecipient certifies that its activities concerning lead-based paint will comply with the requirements of 24 CFR part 35, subparts A, B, I, K, and R.

M. The Applicant/Subrecipient certifies that it will comply with environmental requirements at 24 CFR part 58.

N. The Applicant/Subrecipient certifies that it will comply with applicable laws.

WARNING: ANY PERSON WHO KNOWINGLY MAKES A FALSE CLAIM OR STATEMENT TO HUD MAY BE SUBJECT TO CIVIL OR CRIMINAL PENALTIES UNDER 18 U.S.C. §287; 18 U.S.C. §1001, AND 31 U.S.C. § 3729.

Except as otherwise provided under federal law, any person who knowingly and willfully falsifies, conceals, or covers up a material fact by any trick, scheme or device or who makes any materially false, fictitious, or fraudulent statement or representation or who makes or uses any false writing or document knowing the writing or document to contain materially false, fictitious, or fraudulent statement or entry shall be prosecuted under Title 18, United States Code, §1001.

Printed Name of Authorized Signatory

Date

Signature of Authorized Signatory