

RIGHT OF WAY EASEMENT ENCROACHMENT AGREEMENT

THE STATE OF TEXAS           §  
   §  
 COUNTY OF FORT BEND       §

This Encroachment Agreement (this "Agreement") dated December 12, 2024, is made and entered into by FORT BEND COUNTY DRAINAGE DISTRICT (the "Drainage District"), a political subdivision of the State of Texas, acting by and through its duly authorized officials, and WILLOW FORK DRAINAGE DISTRICT ("WFDD"), 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 51 of the Texas Water Code, as amended, acting by and through its duly authorized officers.

## RECITALS

WHEREAS, pursuant to that document identified on the Official Public Records of Fort Bend County as Document No. 104681, J.S. Abercrombie, W.M. Wheless, W.M. Wheless, Jr., Mary Wheless Powell, and W.M. Powell, Jr. granted, sold, and conveyed to the Drainage District that certain right of way and easement for construction and operation of drainage facilities (the "Easement"); and

WHEREAS, WFDD desires to construct, maintain, and operate a pedestrian underpass and related appurtenances as described in Exhibit "A" attached hereto (the "Underpass") which will encroach upon the aforementioned Easement (the "Encroachment"); and

WHEREAS, the Drainage District 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 Drainage District hereby consents to this Encroachment subject to the following terms and conditions:

## AGREEMENT

Article 1. Notification. WFDD shall notify the Drainage District within fifteen (15) calendar days before starting construction or performing maintenance on the Underpass.

Article 2. Permits. WFDD will prepare or have prepared any plans, specifications, and estimates, all as necessary for the Underpass. WFDD will obtain all approvals required by any governmental authority possessing jurisdiction over the Underpass, including, without limitation, any approvals required by Fort Bend County and the Drainage District prior to installing the Underpass.

Article 3. Operation and Maintenance. Upon completion of the Underpass, WFDD, at its sole cost and expense, will assume responsibility for the operation and maintenance of the Underpass.

Article 4. Abandonment. If WFDD closes or abandons the Underpass, WFDD shall remove the Underpass in its entirety and restore the property as closely as possible to its previous condition.

Article 5. Drainage District Maintenance. WFDD shall close the Underpass at such times as the Drainage District performs maintenance or construction operations on the property. The Drainage District agrees to provide notice to WFDD of such maintenance and construction operations at least one (1) week prior to the initiation of maintenance or construction operations.

In the event the Drainage District alters its facilities within the property and the Underpass may impede Drainage District facilities, WFDD, at its own expense, agrees to remove or relocate the Underpass.

Article 6. Insurance. WFDD shall obtain and maintain, at its own expense, comprehensive public liability insurance on the Underpass so long as it exists in an amount which will insure the Drainage District against risk of loss due to claims under the Texas Tort Claims Act. WFDD shall present a copy of the insurance to the Drainage District prior to opening the Underpass to the public. The insurance shall include the Drainage District as an additional insured. WFDD shall not cancel the insurance without providing thirty (30) days written notice to the Drainage District.

With respect to the construction, maintenance, and operation of the pedestrian trail under this Agreement, WFDD will require its contractor's insurance policies to name the Drainage District, in addition to WFDD, as additional insured on all policies except for Worker's Compensation and Professional Liability. Any such insurance policies shall include at least the following minimum coverage:

- (a) Workers Compensation in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.
- (b) Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. 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.
- (c) Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
- (d) WFDD may require insurance in excess of the amount of coverage set out above, as it deems necessary. In such cases, the Drainage District shall remain an additional insured.



WFDD shall provide the Drainage District with proof of insurance required under this section within thirty (30) days of WFDD's award of any construction contracts for any work performed under this Agreement.

**Article 7. Indemnification.** TO THE EXTENT ALLOWED BY LAW, WFDD SHALL PROTECT, DEFEND, HOLD HARMLESS AND INDEMNIFY THE DRAINAGE DISTRICT 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 ARISING FROM OR INCIDENTAL TO THE UNDERPASS, INCLUDING BUT NOT LIMITED TO ACTUAL OR ALLEGED BODILY INJURY, RESULTING FROM ANY ACT OR OMISSION, NEGLIGENCE OR OTHERWISE, ON THE PART OF THE DRAINAGE DISTRICT, ITS OFFICER, EMPLOYEES, AGENTS OR CONTRACTORS. 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 8. Liability for Drainage District Work.** NOTWITHSTANDING THE PROVISIONS OF ARTICLE 7 OF THIS AGREEMENT, ABOVE, WFDD ASSUMES NO RESPONSIBILITY FOR, AND SHALL NOT INDEMNIFY THE DRAINAGE DISTRICT 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 WORK COMMITTED BY AND THROUGH THE DRAINAGE DISTRICT WHICH OCCURRED PRIOR TO OR AFTER THIS AGREEMENT FOR ANY PURPOSES.

**Article 9. Amendments.** Amendments to this Agreement may be enacted only through a mutually agreed upon written amendment, duly executed by WFDD and the Drainage District.

**Article 10. Successors and Assigns.** WFDD and the Drainage District 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. WFDD shall not assign or otherwise transfer its rights and obligations under this Agreement without the prior written consent of the Drainage District, which consent shall not be unreasonably withheld or delayed, in the event the rights and obligations are transferred to a governmental entity acceptable to the Drainage District.

**Article 11. 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 thirty (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' remedies at law, including but not limited to reach 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 12. 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 WFDD: Willow Fork Drainage District  
c/o Allen Boone Humphries Robinson LLP  
Attn: Katie Carner  
3200 Southwest Freeway, Suite 2600  
Houston, Texas 77027

To Drainage District: Fort Bend Drainage District  
Attn: Chief Engineer  
301 Jackson Street  
Richmond, Texas 77469

With a Copy to: Fort Bend County  
Attn: County Judge  
401 Jackson Street  
Richmond, Texas 77469

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

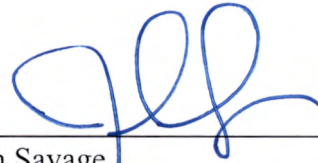
Article 13. Prior Agreements. It is understood that this Agreement in no way modifies or supersedes the terms and provisions of any existing agreements between the parties hereto.

Article 14. Term of Agreement. This Agreement becomes effective when finally executed by the Drainage District. This Agreement will terminate upon mutual agreement and consent of both parties.

[EXECUTION PAGES FOLLOW]

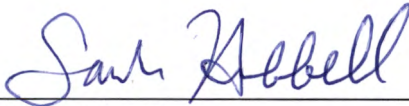
IN TESTIMONY WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate on the dates below stated.

**WILLOW FORK DRAINAGE  
DISTRICT**



John Savage  
President, Board of Directors

ATTEST:



Sarah Hubbell  
Secretary, Board of Directors

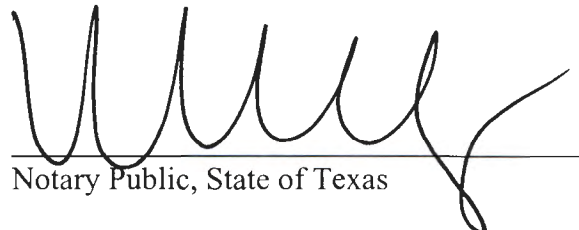
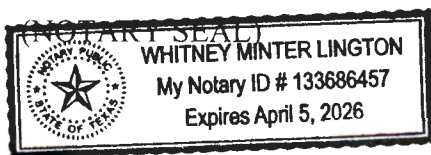
Date: Feb 4, 2025

(SEAL)



THE STATE OF TEXAS      §  
COUNTY OF Fort Bend      §  
   §

This instrument was acknowledged before me on the 4<sup>th</sup> day of February, 2025, by John Savage, President, and Sarah Hubbell, Secretary, of **WILLOW FORK DRAINAGE DISTRICT**, a political subdivision of the State of Texas, on behalf of said political subdivision.



Notary Public, State of Texas

FORT BEND COUNTY DRAINAGE DISTRICT, a corporation of Fort Bend County, Texas

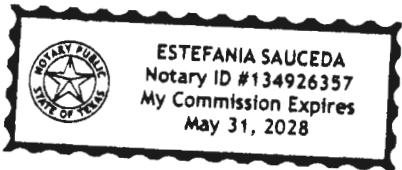
By: KP George  
Name: KP George  
Title: County Judge

THE STATE OF TEXAS  
COUNTY OF Fort Bend

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This instrument was acknowledged before me on the 23 day of January, ~~2024~~<sup>2025</sup>, by KP George, County Judge of **FORT BEND COUNTY DRAINAGE DISTRICT**, a corporation of Fort Bend County, Texas, on behalf of said corporation.

(NOTARY SEAL)



Estefania Saucedo  
Notary Public, State of Texas

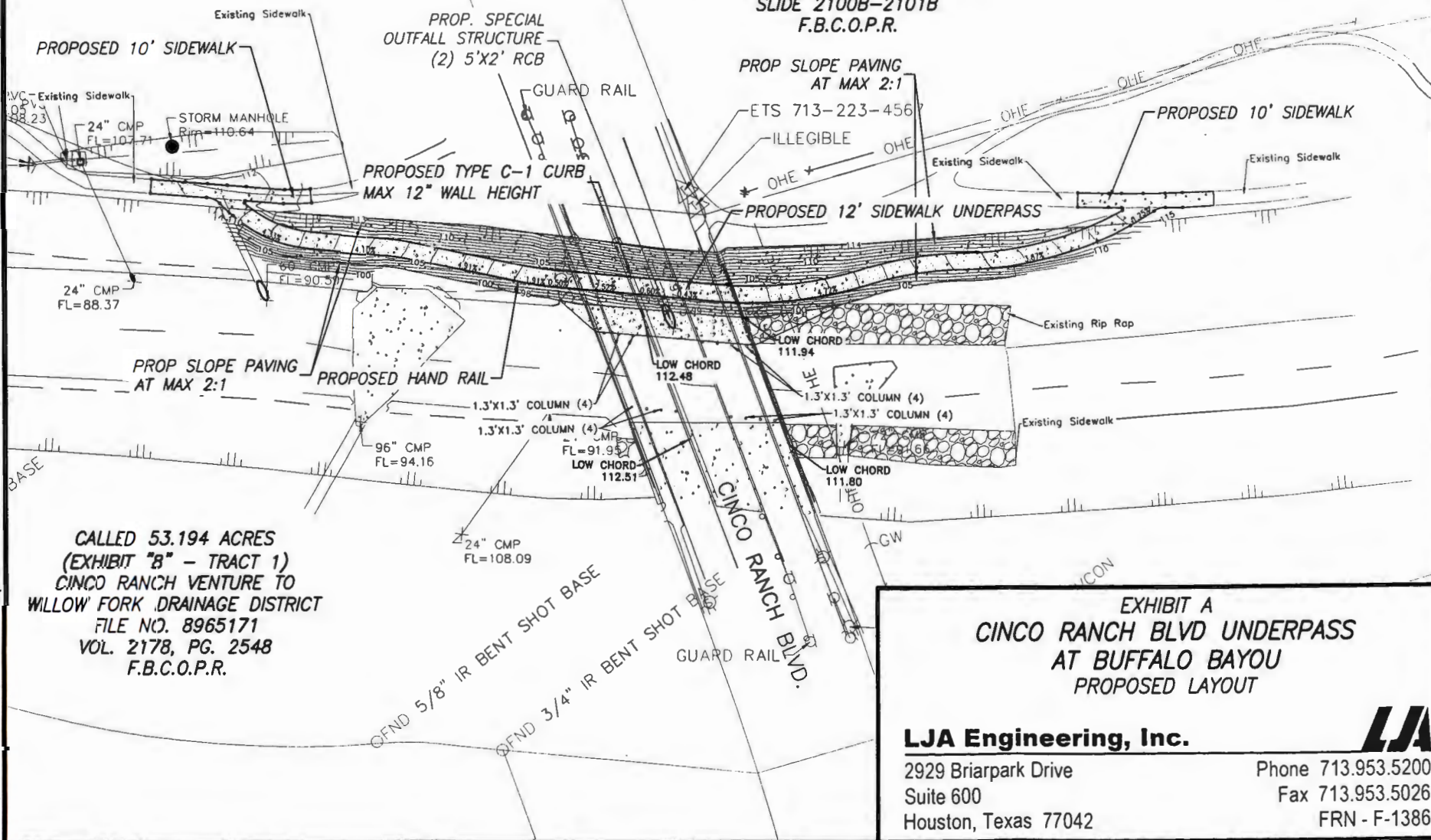
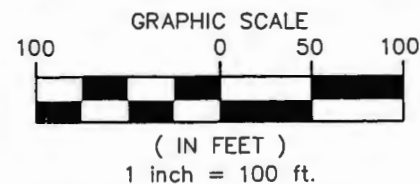
Exhibit "A"



Date/Time : Wed, 24 Apr 2024 - 2:22pm  
 Path/Name : I:\Projects\2642\0014T Cinco Ranch Boulevard Underpass\ACAD\Exhibits\2642-0014T AGMNT - EXHIBIT A.dwg  
 User Name : jwinter

CINCO RANCH WEST  
 SECTION THREE  
 FILE NO. 2000105286  
 SLIDE 2088A-2088B  
 F.B.C.O.P.R.

CINCO RANCH WEST SECTION ONE  
 FILE NO. 2001002801  
 SLIDE 2100B-2101B  
 F.B.C.O.P.R.



CALLED 53.194 ACRES  
 (EXHIBIT "B" - TRACT 1)  
 CINCO RANCH VENTURE TO  
 WILLOW FORK DRAINAGE DISTRICT  
 FILE NO. 8965171  
 VOL. 2178, PG. 2548  
 F.B.C.O.P.R.

EXHIBIT A  
 CINCO RANCH BLVD UNDERPASS  
 AT BUFFALO BAYOU  
 PROPOSED LAYOUT

**LJA Engineering, Inc.**

2929 Briarpark Drive  
 Suite 600  
 Houston, Texas 77042

Phone 713.953.5200  
 Fax 713.953.5026  
 FRN - F-1386



FILED AND RECORDED  
OFFICIAL PUBLIC RECORDS

*Laura Richard*

Laura Richard, County Clerk

Fort Bend County Texas

February 13, 2025 04:27:41 PM

FEE: \$0.00

DP2

**2025013699**

