

ENCROACHMENT AGREEMENT

The UPPER BRUSHY CREEK WATER CONTROL AND IMPROVEMENT DISTRICT (“District”) shall authorize WILLIAMSON COUNTY, TEXAS (“County”), to construct, operate and maintain improvements to an existing roadway, “Sam Bass Road,” to include curb and gutter, pavement, bridge, storm sewer trunkline, storm sewer inlets / outfall, shared use path, driveway replacement, roadway sign and fencing, and the required abandonment of the existing conflicting fencing, and additional related activities (collectively the “Improvements”), including long-term operation and maintenance within portions of the designated Dam #13 Structure Easement Area (“Structure Easement Area”), conditioned upon the following:

1. The Improvements as described in this agreement shall be located as shown on Exhibit “A,” attached hereto and incorporated herein by reference for all purposes. No other improvements shall be installed within the Structure Easement Area as identified in Exhibit “A,” without permission from District.

2. Upon completion and acceptance of the Improvements by County, County shall maintain the Improvements at all times according to standard County Road & Bridge policies, making necessary repairs immediately to avoid damage to the Dam #13 structure or spillways and continue proper operation of the Improvement facilities as designed within the Structure Easement Area. County shall not be required or responsible to maintain any replacement fencing, gate, and driveway portions of the Improvements which are to be constructed as part of Sam Bass Road, and upon completion of initial construction all ownership and maintenance obligations are automatically transferred to the District or the underlying property owner. Should County fail to make the needed repairs or substantial progress to District’s satisfaction towards the repairs within

thirty (30) days of receiving written notice from District, District may, at its option, commence any and all necessary repairs, but shall not otherwise be allowed to remove any public use Improvements without agreement from County. County shall be responsible for all reasonable costs directly related to the repair. In emergency situations which directly impact the structural integrity or safe operation of the Dam #13 structure or spillways, District may commence necessary repairs, and County shall be responsible for all reasonable costs directly related to said emergency repairs.

3. County shall make reasonable efforts to give District not less than thirty (30) days written notice prior to commencement of any operations by County for the construction, maintenance, alteration, replacement, repair or removal of the Improvements, except in cases of actual emergency. In the case of an actual emergency, County shall make reasonable efforts to provide District with immediate written notice, along with a full description of the emergency and the action to be undertaken by County and confirming that the action meets the current standards of Texas Commission on Environmental Quality ("TCEQ") Dam Safety at the time of the proposed action.

4. County shall pay District for any damage to District's Dam #13 structure or spillways which may arise as a direct and proximate result of any design, construction operation or maintenance of County's Improvements contemplated herein, and to the extent allowed by law County shall further be responsible for any injury or death to any person or persons or damage or destruction of any property, caused as a proximate result of the construction, use, operation, replacement, repair or removal of the Improvements; provided, however, County shall not be liable for any such injury, death, destruction or damage to the extent caused by the negligence or willful misconduct of District. County shall pay all damages due to District within ninety (90) days after

receiving notice of any incident which requires the payment of damages hereunder, subject to additional time for factual investigation as reasonably requested by County.

5. District acknowledges that County may access any portion of the Structure Easement Area which lies within the proposed Roadway Easement or existing public right of way as shown on Exhibit "A" and final design plans per Condition 8 below, and no access to or other construction of the Improvements shall extend beyond the Roadway Easement or existing public right of way without advance approval from District. County shall not drive motorized vehicles on the slopes of the dam or spillway embankments. County shall not store materials or equipment of any kind on the slopes of the dam embankments. At all times during initial construction of the Improvements, County shall keep all replacement fencing, gate and driveway areas phased to maintain current access control level in these areas, including locking after each use.

6. To the extent allowed by law, County shall indemnify, defend, save, protect and hold District and its officers, directors, employees, and agents, harmless from and against any and all claims, liabilities, losses, damages, demands, lawsuits, causes of action, including but not limited to claims for personal injuries, death, damages to property, and all other claims or demands and costs and expenses (including attorney's fees, costs of litigation and/or investigation or other costs associated therewith) resulting from County's exercise of the rights granted hereunder.

7. County shall comply with all applicable Federal and State safety and environmental laws, rules, and regulations.

8. Before construction, County shall coordinate the following:

- a. Ensure that the final design plans and specifications for the Improvements within the Structure Easement Area are submitted by a Texas Licensed Professional

Engineer for review and acceptance by District and its consultant(s). Final design plans shall:

- i. Replace existing driveway with a concrete driveway with no substantial increases in width (existing driveway is approximately twelve (12) feet in width and proposed driveway shall not exceed twelve (12) feet in width, and maintain existing clearance to gate (approximately thirty-one (31) feet from the edge of pavement);
 - ii. Shift the proposed driveway north of the existing driveway location in order to get past the end of the Dam #13 structure (approximate driveway centerline Sta 259+23);
 - iii. Ensure existing District fencing near the toe of the Dam #13 embankments shall remain in place, unless specifically shown on Exhibit "A"; and
 - iv. Reference the proposed Roadway Easement to be acquired from the City of Round Rock, Texas. No fee ownership or other property rights shall be acquired by the County from the City of Round Rock within the District's Structure Easement Area that would allow for the installation of other utilities without permit or notice.
- b. Coordinate and receive acceptance from District on the Dam #13 Stability Analysis prepared by Freese and Nichols for impacts of the Improvements.
 - c. Coordinate submittal and receive approval (or concurrence) from TCEQ Dam Safety Division on the Dam #13 Stability Analysis prepared by Freese & Nichols for impacts of the improvements.

- d. Ensure County's contractor responsible for the construction of the Improvements is acquired using all standard County Roadway Construction Contract procurement and selection criteria for similar roadway projects.
9. Final permitting from District for the encroachment of the Improvements shall be contingent on District's acceptance and TCEQ Dam Safety's approval/concurrence on the Dam #13 Stability Analysis prepared by Freese and Nichols.
10. During County's construction of the Improvements, County agrees to the following:
- a. Prior to the commencement of work within District's Structure Easement Area, County, or County's designated representative, shall coordinate with District and District's consultant(s) to include review and acceptance of the proposed schedule, access plans, and other items related to the Improvements within the Structure Easement Area.
 - b. County's contractor shall promptly proceed with construction of the Improvements and diligently complete all activities within District's Structure Easement Area, including the revegetation of the Structure Easement Area as required by the terms of the Improvements construction contract with County.
 - c. County, or alternately the County's designated representative, shall coordinate the timing of the existing driveway closure and removal with District. County shall not close the existing driveway prior to completed construction of the new proposed driveway.
 - d. County agrees that modification to any existing fencing or gates shall be completed as shown on Exhibit "A" and final design plans per Condition 8 above.

- e. All County's contractors, including but not limited to construction contractor, subcontractors, inspectors, engineers, surveyors, materials testing laboratories shall not access the Dam #13 crest road or embankment slopes at any time, including for the storage of materials, equipment, or spoils.
- f. All changes to the design or field modifications within District's Structure Easement Area must be approved by District prior to County commencing work.
- g. Commencing upon notice to proceed for construction of Improvements, County shall submit on the 1st of each month to District a monthly progress report of construction activities completed within the Structure Easement Area during the previous month and anticipated in the current month. Said monthly progress reports shall continue until all Improvements within the Structure Easement Area are completed, including establishment of revegetation.
- h. Upon final completion of the Improvements, County's contractor and design engineer shall coordinate to produce "as built" drawings to District. Any post construction surveying activity must be agreed to between County and District in advance.

11. Additional Encroachments. Any additional proposed encroachment by County not specifically set forth herein and in the attached Exhibit "A" and final design plans per Condition 8 above must be submitted to District for review and approval.

12. Offset. The parties agree that County's customary charge of fees for a change in driveway material and District's typical fee for encroachment permitting are offsetting, and no monies shall be due to either party pursuant to this Agreement.

13. Governmental Immunity. Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to either party to this Agreement. Neither party waives, modifies or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas.

14. Appropriations. Notwithstanding any provision contained herein, any financial obligations of the parties contained herein are subject to and contingent upon appropriations by the Williamson County Commissioners' Court or District Board of Directors of such funds or other revenues being available, received and appropriated by the parties in amounts sufficient to satisfy said obligations. In no event shall this instrument be construed to be a debt of either party.

[Signatures on the following page.]

WILLIAMSON COUNTY, TEXAS

BY: Bill Gravell Jr.
Bill Gravell Jr., County Judge

DATED: 09-13-2022

ATTEST:

BY: Nancy E. Rister
Nancy Rister, County Clerk

**UPPER BRUSHY CREEK
WATER CONTROL AND IMPROVEMENT DISTRICT**

BY: Alysha Girard
Alysha Girard, General Manager

DATED: 29 AUG 2022

ATTEST:

BY: Lisa Moravitz
Lisa Moravitz, District Clerk

EXHIBIT “A”

**LOCATION OF IMPROVEMENTS WITHIN
STRUCTURE EASEMENT AREA
OF DAM #13**



