



**LOWER BRUSHY CREEK WCID**  
Regular called meeting of the Board of Directors  
On Monday, August 24, 2020 at 7:30 am

**Ed Komandosky, President**  
**John Kitsmiller, Vice President**      **Monica Masters, Secretary**  
**Scott Ging, Treasurer**                      **Mike Schneider, Director**

Notice is hereby given for a special called meeting of the Board of Directors of the Lower Brushy Creek WCID to be held on **Monday, August 24, 2020 at 7:30 am** via **Zoom\*** for the purpose of considering the following agenda items. The Board of Directors will meet, consider, deliberate and may take action on all agenda items.

To view, listen and/or participate in the meeting, you may log in at:  
<https://us02web.zoom.us/j/87661561992?pwd=WWhYaHIWd1gxaXE5S3dOM21RWdICQOT09>

Meeting ID: 876 6156 1992  
Passcode: 852008

To listen and/or participate in the meeting, you may also dial in at either of the following numbers:

+1 346 248 7799 US (Houston)  
+1 669 900 6833 US (San Jose)  
Meeting ID: 876 6156 1992  
Passcode: 852008

**Board Packet**

- |     |   |          |
|-----|---|----------|
| 1.  | Agenda  | 2 pages  |
| 2.  | Regular meeting minutes of June 8, 2020   | 3 pages  |
| 3.  | Special meeting minutes of July 13, 2020  | 2 pages  |
| 4.  | Special meeting minutes of August 10, 2020  | 1 pages  |
| 5.  | Checking Account Register for June and July   | 1 page   |
| 6.  | Financial Statement for June and July   | 1 page   |
| 7.  | Investment Report for Third Quarter of FY 20  | 2 pages  |
| 8.  | Proposed Budget for FY 21   | 3 pages  |
| 9.  | Ordinance #2020-01 – An Order Levying Taxes for the Maintenance and Operation of the Lower Brushy Creek Water Control & Improvement District; | 1 page   |
| 10. | <i>Engagement letter</i> with Maxwell, Locke and Ritter, LLP to perform auditing Services for FY 20;  | 12 pages |

11. *Cooperative Agreement for Flood Control Structural Repairs* with the Texas State Soil and Water Conservation Board for repairs to Lower Brushy Creek Sites 12 and 22 in the amount of \$1,169,459.50; 15 pages
12. *Site 12 Release Agreement* with Laverne Purcell and John and Carol Krenek 8 pages



LOWER BRUSHY CREEK WCID **AUG 17 2020**  
Regular called meeting of the Board of Directors  
On Monday, August 24, 2020 at 7:30 am

*Handwritten:* Kelly C. Kasper 2:44pm  
Williamson Co., TX DM

Ed Komandosky, President  
John Kitsmiller, Vice President  
Scott Ging, Treasurer  
Monica Masters, Secretary  
Mike Schneider, Director

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**Citizens Communications:**

- Members of the public that desire to provide public comment may do so via ZOOM during the Public Hearing portion of the meeting (Agenda Item 6).
- Members of the public will be muted during all other portions of the meeting.

**AGENDA**

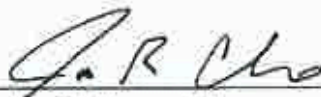
1. Welcome, Call to Order, and determination of a Quorum;
2. Citizens Communications - *an opportunity for the public to address the Board on agenda items or concerns not on the agenda (limited to 3 minutes each);*
3. Presentation by General Manager of Proposed Budget for FY 21 and Tax Rate for 2020;
4. Public Hearing on Proposed Budget for FY 21 and Tax Rate for 2020;
5. Consider approval of meeting minutes:
  - a. Regular meeting of June 8, 2020
  - b. Special Meeting of July <sup>13</sup>14, 2020 and
  - c. Special Meeting of August 10, 2020.

6. Consider approval of financial reports:
  - a. *Checking Account Register for June and July*
  - b. *Financial Statement for June and July and*
  - c. *Investment Report for Third Quarter of FY 20.*
7. Consideration and possible action to approve the second reading (final) of the Proposed Budget for FY 21;
8. Consideration and possible action to approve the second reading (final) of *Ordinance #2020-01 – An Order Levying Taxes for the Maintenance and Operation of the Lower Brushy Creek Water Control & Improvement District;*
9. Consideration and possible action to enter into an agreement with authorize Maxwell, Locke and Ritter, LLP to perform auditing services for FY 2020;
10. Consideration and possible action to enter into a *Cooperative Agreement for Flood Control Structural Repairs* with the Texas State Soil and Water Conservation Board for repairs to Lower Brushy Creek Sites 12 and 22 in the amount of \$1,169,459.50;
11. Consideration and possible action to approve the *Lower Brushy Creek Watershed Site 12 Release Agreement* with Laverne Purcell, John Krenek and Carol Krenek;
12. Consideration and possible action to appoint Board Officers;
13. Consideration and discussion of the General Manager's report and update;
14. Director's Comments; and
15. Adjournment.

"The Lower Brushy Creek Water Control & Improvement District Board of Directors reserves the right to adjourn into executive session at any time during the meeting to discuss any of the matters listed above, as authorized by Texas Local Government Code Sections 551.071 (Consultation with Attorney), 551.072 (Deliberations regarding Real Property), 551.073 (Deliberations regarding Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations regarding Security Devices), and 551.087 (Deliberations regarding Economic Development Negotiations)."

**CERTIFICATION**

I certify that a copy of the August 24, 2020 agenda of items to be considered by the Board of Directors of the Lower Brushy Creek WCID was posted on August 17, 2020.



James R. Clarno, P.E.  
General Manager

\* NOTE: The Board of Directors will be conducting a "Video Conference Open Meeting" as authorized by Governor Abbot on March 16, 2020.

Minutes of the June 8, 2020 Meeting of the  
Board of Directors of the Lower Brushy Creek WCID

In accordance with the Governor's emergency proclamation suspending certain provisions of the Texas Open Meetings Act effective March 16, 2020 in response to the COVID-19 virus, all persons, including Board members and members of the public may participate in the meeting remotely by videoconferencing using the instructions included on the posted agenda. Due to COVID-19 social gathering restrictions, members of the public and the board may not physically enter the Greater Taylor Chamber of Commerce offices. Therefore, the meeting took-place on Zoom Videoconferencing. Meeting ID 881 3261 4749

President Ed Komandosky called the Regular Meeting of the Board of Directors of the Lower Brushy Creek WCID to order at 7:34 am on Monday, June 8, 2020 on Zoom Videoconference Meeting ID: 881 3261 4749. Board Members present included Scott Ging, Monica Masters and Mike Schneider. Others present included General Manager Jim Clarno, Board Attorney Ted Hejl, PR/Webpage Consultant Richard Stone, District Clerk Sue Lilly and Hal Boone.

Ed Komandosky called the meeting to order and announced that a quorum was present.

There were no citizen's communications

The minutes of the April 13, 2020 meeting were presented for consideration. A motion was made by Director Mike Schneider to approve the minutes as presented. The motion was seconded by Treasurer Scott Ging and approved by a vote of 4-0.

Clarno presented the WCID Financial Statements and Checking Account Registers for April and May for consideration. A motion was made by Secretary Monica Masters to approve the financial reports as presented. The motion was seconded by Treasurer Ging and approved by a vote of 4-0.

Clarno reported that there were two applications for the appointment of a public officer, a member of the Board of Directors of the Lower Brushy Creek WCID. An Executive Session was posted on the agenda, but Ed Komandosky noted that it was not needed. A suggestion was made to hold a special meeting before taking any action. All members of the board agreed.

Clarno recommended to defer actions of the May 2, 2020 General Election and Appointments for Board Officers until notary services can be completed on Statement of Officers and Oath of Office forms for the re-elected and appointed directors and an official singing-in can be made. All board members agreed.

Board Attorney, Ted Hejl presented for consideration and possible action to approve an Ethics Policy. A motion made by Director Schneider to approve the Ethics Policy as presented. The motion was seconded by Treasurer Ging and approved by a vote of 4-0.

Clarno presented for consideration and possible action the approval an agreement for FY 20 Summer Maintenance with a plan of action from Hall Bros Construction LLC in the amount of \$28,000. A motion was made by Treasurer Ging to approve the plan as presented. The motion was seconded by Director Schneider and approved by a vote of 4-0.

Clarno recommended possible action to approve Assurances Relating to Real Property Acquisition as required by the Texas Soil and Water Conservation Board for the Lower Brushy Creek Watershed Site No. 12 Repair Project and the Lower Brushy Creek Watershed Site No. 22 Repair Project. Revised letters will need to be sent to the new owners. A motion was made by Secretary Masters to approve the action as presented. The motion was seconded by Treasurer Ging and approved by a vote of 4-0.

Clarno opened discussion for consideration and possible direction on Site 12 (Access to property). This has been an on-going issue. The property owner has requested work to be completed (culverts, pipes and road work) The owners have agreed to contribute 10K towards the over-all cost of the project. Clarno suggested that Lower Brushy Creek WCID cover 1/3 of the cost, up to 10K with an agreement from the landowner that LBCWCID would be given a waiver of liability for future issues. A motion was made by Secretary Masters to approve the possible direction as presented. The motion was seconded by Director Schneider and approved by a vote of 3-0, with one abstention.

Clarno presented the Drafts on FY 21 Goals/Strategic Plan, FY 21 Budget and Proposed FY 20 Tax Rate. Will move forward with gate signs, update goals for approval at Aug meeting and suggested that the tax rate remain the same.

There were no agency reports or updates.

In his report, Clarno:

- Updated the Board on open positions with the state board. Offered himself as Flood District Position for Brazos District.
- Need for a tax hearing; suggested a tax hearing for 8/6/20 and board meeting for 8/10/20

There being no further business, the meeting was adjourned without objection at 8:59 am.

Respectfully submitted:

Monica P Masters

Monica P Masters

Secretary

Minutes of the July 13, 2020 Special Meeting of the  
Board of Directors of the Lower Brushy Creek WCID

In accordance with the Governor's emergency proclamation suspending certain provisions of the Texas Open Meetings Act effective March 16, 2020 in response to the COVID-19 virus, all persons, including Board members and members of the public may participate in the meeting remotely by videoconferencing using the instructions included on the posted agenda. Due to COVID-19 social gathering restrictions, all members of the public and the board may not physically enter the Greater Taylor Chamber of Commerce offices. Therefore, the meeting took-place with limited in-person contact and on Zoom Videoconferencing. Meeting ID 512 517 7596

President Ed Komandosky called the Special Meeting of the Board of Directors of the Lower Brushy Creek WCID to order at 7:34 am on Monday, July 13, 2020 at the Greater Taylor Chamber of Commerce offices and on Zoom Videoconference Meeting ID: 512 517 7596. Board Members present included Scott Ging, Monica Masters and Mike Schneider. Others present included General Manager Jim Clarno, Board Attorney Ted Hejl, District Clerk Sue Lilly and board candidates Allen Ray David and Hal Boone

Ed Komandosky called the meeting to order and announced that a quorum was present.

Ed Komandosky introduced the candidates for the open Board of Directors position, Allen David and Hal Boone. Allen and Hal introduced themselves and answered questions from the board.

At 7:38 am, Ed Komandosky announced that the Board would adjourn into executive session regarding the appointment of a member of the Board of Directors. Allen David and Hal Boone vacated the board conference room.

At 8:20 am, Ed Komandosky reconvened the meeting in open session and reported that no actions had been taken. Allen David and Hal Boone returned to the board conference room.

It was moved by Monica Masters that Allen Ray David be appointed to the open Board position vacated by John Kitsmiller. The motion was seconded by Mike Schneider and approved by a vote of 3-0.



Jim Clarno offered for consideration and discussion the schedule for the upcoming months.

There being no further business, the meeting was adjourned at 8:40 am.

Respectfully submitted

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Monica P Masters  
Secretary

DRAFT

Minutes of the August 10, 2020 Special Meeting of the  
Board of Directors of the Lower Brushy Creek WCID

In accordance with the Governor's emergency proclamation suspending certain provisions of the Texas Open Meetings Act effective March 16, 2020 in response to the COVID-19 virus, all persons, including Board members and members of the public may participate in the meeting remotely by videoconferencing using the instructions included on the posted agenda. Due to COVID-19 social gathering restrictions, all members of the public and the board may not physically enter the Greater Taylor Chamber of Commerce offices. Therefore, the meeting took-place with limited in-person contact and on Zoom Videoconferencing. Meeting ID 837 8891 6755

President Ed Komandosky called the Special Meeting of the Board of Directors of the Lower Brushy Creek WCID to order at 7:07 pm on Monday, August 10, 2020 at the Greater Taylor Chamber of Commerce offices and on Zoom Videoconference Meeting ID: 837 8891 6755. Board Members present included Scott Ging, Monica Masters, Mike Schneider and Allen David. Others present included General Manager Jim Clarno, Board Attorney Ted Hejl, District Clerk Sue Lilly and communications consultant Richard Stone.

Ed Komandosky called the meeting to order and announced that a quorum was present.

Ed Komandosky announced that the Board would begin a Public Hearing on the proposed Budget for FY 21 and the 2020 Tax Rate. There were no comments received so he asked General Manager Clarno to review the proposed budget and tax rate. Following a short discussion, Ed Komandosky closed the Public Hearing.

It was moved by Allen David that the meeting be adjourned. The motion was seconded by Monica Masters and approved by a vote of 5-0 at 7:36 pm.

Respectfully submitted.

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Monica P Masters  
Secretary

**LOWER BRUSHY CREEK WCID  
CERTIFIED AGENDA - EXECUTIVE SESSION**

1. OPEN MEETING ANNOUNCEMENT

The Lower Brushy Creek WCID Board of Directors convened in Open Session, declared a quorum on July 13, 2020, and has posted an Official Agenda indicating the possible need for an Executive Session. The Directors will now adjourn into Executive Session pursuant to the Texas Open Meetings Act, Government Code Section:

- |                                     |         |   |
|-------------------------------------|---------|---|
| <input type="checkbox"/>            | 551.071 | To consult with its attorney regarding a matter in which the duty of the attorney to the Board of Directors conflicts with the Open Meetings Act. |
| <input type="checkbox"/>            | 551.072 | To conduct deliberations regarding the purchase, exchange, lease, or value of real property.  |
| <input checked="" type="checkbox"/> | 551.074 | Regarding personnel matters   |

SUBJECT MATTER:

- Deliberate the appointment of a member of the Board of Directors of the Lower Brushy Creek WCID.

No action was taken in the Executive Session.

2. BACK TO OPEN SESSION

The time is now 8<sup>00</sup> AM and we will reconvene into Open Session. No action or vote was taken on any matter discussed in Executive Session.

CERTIFICATION

As President of the Board of Directors for the Lower Brushy Creek WCID, I do hereby certify that this Agenda of an Executive Session of the City Council is a true and correct record of the proceedings.

WITNESS my hand this the 13th day of July, 2020.

  
Edmond S. Komandosky, President

**LOWER BRUSHY CREEK WCID**

**Account Register**

Period ending July 31, 2020

**Balance as of June 1, 2020**

TexPool Acct	\$307,776.19
City National Bank Acct	<u>\$25,236.01</u>

**Total Funds Available**

**\$333,012.20**

**Income**

06/03/20	TSSWCB - Clarno Consulting	Site 20- Pay Est	\$3,644.55
06/19/20	TSSWCB - HWH Industrial	Site 20- Pay Est	\$28,868.35
06/22/20	TexPool	Transfer from TexPool to checking	\$30,000.00
06/26/20	TSSWCB - Hall Bros Construcdtion	Summer O&M	\$104,334.30
07/28/20	TSSWCB - HWH Industrial	Site 20- Pay Est	\$53,778.80
various	TexPool	Tax Revenue- June	\$3,126.11
06/30/20	TexPool	Interest posted - June	\$53.01
various	TexPool	Tax Revenue- July	\$2,874.63
07/31/20	TexPool	Interest posted - July	<u>\$49.93</u>

**Total Income**

**\$226,729.68**

**Expenses**

06/01/20	Debit Card- Austin Business Furniture	Office Furniture	\$85.00
06/01/20	Debit Card- Austin Business Furniture	Office Furniture	\$178.00
06/01/20	1605 Monica Masters	Board Mtgs Per Diem	\$100.00
06/02/20	1604 Ed Komandosky	Board Mtgs Per Diem	\$100.00
06/02/20	1608 HWH Industrial	Site 20 Rehab	\$18,819.72
06/22/20	TexPool	Transfer from TexPool to checking	\$30,000.00
06/23/20	1618 Taylor Press	Notices	\$378.00
06/24/20	1617 Wmsn Central Appraisal District	3rd Quarter	\$654.00
06/24/20	1619 Clark Jackson	Accounting Services -June	\$350.00
06/25/20	1624 Clarno Consulting	Salary- June	\$3,250.00
06/25/20	1625 Clarno Consulting	Site 20 Rehab	\$3,644.55
06/26/20	1609 Freese & Nichols	Projects - EAP	\$6,553.25
06/29/20	1623 Michael Schneider	Board Mtgs Per Diem	\$100.00
06/29/20	Debit Card- Minute Man Press	Gate Signs	\$550.00
06/30/20	1626 HWH Industrial	Site 20 Rehab	\$28,868.35
07/01/20	1615 RTS Connect	Media/Communications- June	\$1,000.00
07/02/20	1627 Hall Bros Construction LLC	Maintenance	\$112,916.00
07/03/20	1622 Scott Ging	Board Mtgs Per Diem	\$100.00
07/06/20	Debit Card- Home Depot	Locks	\$113.47
07/13/20	Debit Card- Minute Man Press	Gate Signs	\$552.50
07/24/20	1616 Sue Lilly	District Clerk Fee- June	\$162.00
07/24/20	1620 Ed Komandosky	Board Mtgs Per Diem	\$100.00
07/30/20	1629 Clark Jackson	Accounting Services -July	<u>\$350.00</u>

**Total Expenses**

**\$208,924.84**

**Balance as of July 31, 2020**

TexPool Acct	\$283,879.87
City National Bank Acct	<u>\$66,937.17</u>

**Total Funds Available**

**\$350,817.04**

**Revised August 12, 2020**

**LOWER BRUSHY CREEK WCID**  
**Financial Statement**  
For the period ending July 31, 2020

ADMINISTRATIVE INCOME AND EXPENSES	Oct-Nov	Dec-Jan	Feb-Mar	Apr-May	Jun-Jul	Total to Date	FY 2020 Budget (Approved)	% of budget
<b>INCOME</b>								
Tax Income	\$25,757.80	\$316,236.31	\$82,533.20	\$7,026.69	\$6,000.74	\$437,554.84	\$439,454.39	99.57%
TSSWCB Grants								
Maintenance Grants		\$20,515.95			\$86,291.78	\$106,807.73	\$220,000.00	48.44%
Repair Grants						\$0.00	\$1,575,000.00	0.00%
Rehabilitation Grants	\$114,696.23	\$171,789.13	\$155,192.26	\$24,347.69	\$104,334.20	\$570,359.51	\$1,040,000.00	54.84%
Total TSSWCB Grant Income	\$114,696.23	\$192,305.08	\$155,192.26	\$24,347.69	\$109,626.00	\$677,167.28	\$2,835,000.00	23.88%
Other Income								
Williamson County						\$0.00	\$0.00	
Permits, Fees and Intellet	\$15.49	\$364.37	\$853.92	\$188.30	\$102.94	\$1,825.02	\$500.00	305.00%
Total Other Income	\$15.49	\$364.37	\$853.92	\$188.30	\$102.94	\$1,525.02	\$500.00	305.00%
<b>TOTAL INCOME</b>	<b>\$140,469.54</b>	<b>\$508,905.76</b>	<b>\$238,579.48</b>	<b>\$31,562.68</b>	<b>\$196,729.68</b>	<b>\$1,116,247.14</b>	<b>\$3,275,454.39</b>	<b>34.08%</b>
<b>EXPENSES</b>								
Administrative Expenses								
General Manager	\$9,750.00	\$28,000.00	\$9,750.00	\$6,300.00	\$1,000.00	\$87,000.00	\$61,000.00	93.44%
District Clerk		\$162.00	\$828.00	\$522.00	\$162.00	\$1,874.00	\$12,000.00	13.95%
Directors Fees		\$500.00	\$600.00	\$900.00	\$598.00	\$2,600.00	\$7,500.00	29.33%
Professional Services - Accounting	\$3,615.88		\$1,750.00	\$700.00	\$700.00	\$6,765.88	\$4,000.00	169.18%
Professional Services - Auditing			\$8,500.00		\$0.00	\$8,500.00	\$18,000.00	62.96%
Professional Services - Communications	\$2,000.00	\$1,000.00	\$3,000.00	\$2,000.00	\$1,000.00	\$9,000.00	\$12,000.00	75.00%
Professional Services - Engineering/Surveying			\$18,303.41		\$0.00	\$18,303.41	\$2,000.00	948.17%
Professional Services - Legal	\$1,883.20		\$800.00	\$600.00	\$0.00	\$2,983.20	\$10,000.00	29.83%
Advertising/Legal Notices	\$526.30		\$188.00		\$378.00	\$1,165.50	\$1,000.00	116.55%
Bonds/Insurance	\$852.34	\$452.00			\$0.00	\$1,414.38	\$1,300.00	94.29%
Buses/Subscriptions/Prof Development	\$200.00		\$180.00	\$250.00	\$0.00	\$630.00	\$2,500.00	25.20%
Meals/Entertainment		\$181.08	\$169.82		\$0.00	\$350.90	\$500.00	70.18%
Office Supplies		\$2,808.83	\$182.16	\$120.87	\$263.00	\$3,374.86	\$400.00	525.79%
Postage/Delivery Charges			\$210.00	\$8.70	\$0.00	\$218.70	\$300.00	39.57%
Travel/Mileage					\$290.00	\$290.00	\$3,500.00	7.14%
Website	\$512.94	\$191.75			\$0.00	\$704.69	\$1,000.00	44.04%
Williamson Central Appraisal District		\$654.00	\$654.00		\$654.00	\$1,962.00	\$3,800.00	51.63%
Williamson County - Election Office					\$0.00	\$0.00	\$18,000.00	0.00%
Williamson County - Tax Collector/Assessor		\$3,956.94			\$0.00	\$3,956.94	\$4,200.00	94.21%
Misc (3% contingency)		\$100.00			\$0.00	\$100.00	\$8,250.00	1.21%
Total Administrative Expenses	\$19,222.26	\$37,806.38	\$45,596.39	\$11,301.67	\$6,907.00	\$129,833.70	\$167,750.00	72.08%
Project Expenses								
Dam Maintenance		\$33,070.50		\$46,671.53	\$112,918.00	\$192,660.03	\$251,000.00	72.77%
Dam Repairs				\$5,846.78	\$0.00	\$5,846.78	\$1,650,000.00	0.35%
Dam Rehabilitation	\$268,881.27	\$171,892.13	\$122,005.68		\$51,352.67	\$614,131.75	\$1,040,000.00	59.04%
Other Projects					\$7,769.22	\$7,769.22	\$135,000.00	5.75%
Total Project Expenses	\$268,881.27	\$194,962.63	\$122,005.68	\$52,518.33	\$172,017.84	\$810,323.75	\$3,076,000.00	26.34%
<b>TOTAL EXPENSES</b>	<b>\$288,103.53</b>	<b>\$232,769.01</b>	<b>\$167,602.07</b>	<b>\$63,820.00</b>	<b>\$178,924.84</b>	<b>\$931,159.45</b>	<b>\$3,243,750.00</b>	<b>28.71%</b>



**LOWER BRUSHY CREEK WCID**  
c/o USDA – Natural Resources Conservation Service  
505 West University Avenue, Suite C  
Georgetown, Texas 78626

**Board of Directors**

*Edmond Komandosky*  
President

*Monica P. Masters*  
Secretary

*Scott Ging*  
Treasurer

*Mike Schneider*  
Investment Officer

*Allen R. David*  
Director

**General Manager**

*James R. Clarno, P.E.*  
108 Trinity Lane  
Georgetown, TX 78633  
Cell: 512.517.7596  
Email: [jclarno.pe@att.net](mailto:jclarno.pe@att.net)

**Board Attorney**

*Ted W. Hejl*  
Hejl & Schroeder, PC  
P.O. Box 192  
311 Talbot Street  
Taylor, Texas 76574  
Office: 512.365.6348  
FAX: 512.365.2226

LowerBrushyCreekWCID.com

**TO:** President and Member of the Board of Directors  
**FROM:** Mike Schneider, Investment Officer  
**DATE:** August 24, 2020  
**SUBJECT:** Investment Report  
Third Quarter of FY 20

Following please find the Third Quarter Investment Report for FY 20 as required by the *Public Fund Investment Act* (Chapter 2459 of the Texas Government Code, as amended by Chapter 2256) and the *Investment Policy* adopted by the Board of Directors of the Lower Brushy Creek WCID on June 10, 2019:

Fund	TexPool – Operating Account
Book and Market Value on April 1, 2020	\$320,561.20
Total Deposits	\$10,152.80
Total Withdrawn	\$50,000.00
Interest Earned	241.31
Book and Market Value on June 30, 2020	\$280,955.31
Trade Date	n/a
Maturity Date	n/a

If you have any questions, please contact Jim Clarno or myself.

Sincerely,

Mike Schneider,  
Investment Officer

# Custom Summary Statement

LOWER BRUSHY CREEK WCID  
 06/30/2020  
 ATTN JAMES R CLARNO  
 1-866-TEX-POOL  
 C/O USDA-NRCS 505 W UNIVERSITY AVE  
 STE C  
 GEORGETOWN TX 78626

Statement Period 04/01/2020 -

Customer Service

Location ID 000079681

## LOWER BRUSHY CREEK WCID - 07968100001

### 04/01/2020 - 04/30/2020

Pool Name	Beginning Balance	Total Deposit	Total Withdrawal	Total Interest	Current Balance	Average Balance
TexPool	\$320,561.20	\$2,532.49	-\$10,000.00	\$117.13	\$313,210.82	\$312,987.15
Total Dollar Value	\$320,561.20	\$2,532.49	-\$10,000.00	\$117.13	\$313,210.82	

### 05/01/2020 - 05/31/2020

Pool Name	Beginning Balance	Total Deposit	Total Withdrawal	Total Interest	Current Balance	Average Balance
TexPool	\$313,210.82	\$4,494.20	-\$10,000.00	\$71.17	\$307,776.19	\$311,316.29
Total Dollar Value	\$313,210.82	\$4,494.20	-\$10,000.00	\$71.17	\$307,776.19	

### 06/01/2020 - 06/30/2020

Pool Name	Beginning Balance	Total Deposit	Total Withdrawal	Total Interest	Current Balance	Average Balance
TexPool	\$307,776.19	\$3,126.11	-\$30,000.00	\$53.01	\$280,955.31	\$297,891.06
Total Dollar Value	\$307,776.19	\$3,126.11	-\$30,000.00	\$53.01	\$280,955.31	

### Account Totals

Pool Name	Beginning Balance	Total Deposit	Total Withdrawal	Total Interest	Current Balance	
TexPool	\$320,561.20	\$10,152.80	-\$50,000.00	\$241.31	\$280,955.31	
Total Dollar Value	\$320,561.20	\$10,152.80	-\$50,000.00	\$241.31	\$280,955.31	

### GRAND TOTALS

Pool Name	Beginning Balance	Total Deposit	Total Withdrawal	Total Interest	Current Balance	
TexPool	\$320,561.20	\$10,152.80	-\$50,000.00	\$241.31	\$280,955.31	
Total Dollar Value	\$320,561.20	\$10,152.80	-\$50,000.00	\$241.31	\$280,955.31	

**LOWER BRUSHY CREEK WCID  
PROPOSED FY 21 BUDGET  
As of August 17, 2020**

BUDGET SUMMARY	FY 19 Budget (Approved)	FY 20 Budget (Approved)	FY 21 Budget (Proposed)
<b><u>INCOME</u></b>			
Property Tax Income	\$0.00	\$439,454.39	\$462,000.00
TSSWCB <sup>1</sup> Maintenance Grants	\$157,500.00	\$220,500.00	\$226,800.00
TSSWCB <sup>1</sup> Repair Grants	\$0.00	\$1,575,000.00	\$1,169,500.00
TSSWCB <sup>1</sup> Rehabilitation Grants	\$1,000,000.00	\$1,040,000.00	\$817,600.00
Other Income	\$45,000.00	\$500.00	\$1,800.00
<b>TOTAL INCOME</b>	<b>\$1,202,500.00</b>	<b>\$3,275,454.39</b>	<b>\$2,677,700.00</b>
<b><u>EXPENSES</u></b>			
Administrative	\$67,000.00	\$167,750.00	\$174,300.00
Dam Maintenance	\$165,000.00	\$251,000.00	\$264,000.00
Dam Repairs	\$0.00	\$1,650,000.00	\$1,172,315.00
Dam Rehabilitation	\$1,000,000.00	\$1,040,000.00	\$830,000.00
Other Projects	\$0.00	\$135,000.00	\$180,000.00
<b>TOTAL EXPENSES</b>	<b>\$1,232,000.00</b>	<b>\$3,243,750.00</b>	<b>\$2,620,615.00</b>

**Notes:**

1. TSSWCB is the Texas State Soil and Water Conservation Board
2. WCID Board approval is required if any line items exceeds 10% of budgeted amount or exceed budgeted amount by \$10,000



**LOWER BRUSHY CREEK WCID**  
**PROPOSED FY 21 BUDGET**  
As of August 17, 2020

ADMINISTRATIVE INCOME AND EXPENSES	FY 19 Budget (Approved)	FY 20 Budget (Approved)	FY 21 Budget (Proposed)
<b><u>ADMINISTRATIVE INCOME</u></b>			
Proprrty Tax Income	\$0.00	\$439,454.39	\$462,000.00
Other Income			
Williamson County	\$45,000.00	\$0.00	\$0.00
Permits, fees and interest	\$0.00	\$500.00	\$1,800.00
<b>Total Other Income</b>	<b>\$45,000.00</b>	<b>\$500.00</b>	<b>\$1,800.00</b>
<b>TOTAL ADMINISTRATIVE INCOME</b>	<b>\$45,000.00</b>	<b>\$439,954.39</b>	<b>\$463,800.00</b>
<b><u>ADMINISTRATIVE EXPENSES</u></b>			
<b>Administrative Expenses</b>			
General Manager (incl accounts payable)	\$18,000.00	\$61,000.00	\$36,000.00
District Clerk	\$0.00	\$12,000.00	\$15,000.00
Directors Fees (12 regular + 3 special meetings)	\$3,000.00	\$7,500.00	\$7,500.00
Professional Services - Accounting	\$3,000.00	\$4,000.00	\$4,800.00
Professional Services - Auditing (regular + federal grants)	\$12,000.00	\$13,500.00	\$14,000.00
Professional Services - Communciations	\$0.00	\$12,000.00	\$18,000.00
Professional Services - Engineering/Surveying	\$3,000.00	\$2,000.00	\$2,000.00
Professional Services - Legal	\$6,000.00	\$10,000.00	\$10,000.00
Professional Services - USGS guage maintenance	\$0.00	\$0.00	\$34,000.00
Advertising/Legal Notices	\$1,000.00	\$1,000.00	\$4,000.00
Bonds/Insurance	\$1,500.00	\$1,500.00	\$1,800.00
Dues/Subscriptions/Prof Development	\$1,500.00	\$2,500.00	\$2,500.00
Meals/Entertainment	\$300.00	\$500.00	\$500.00
Office Supplies	\$250.00	\$600.00	\$800.00
Postage/Delivery Charges	\$100.00	\$300.00	\$400.00
Travel/Mlieage	\$300.00	\$3,500.00	\$3,500.00
Website	\$2,000.00	\$1,500.00	\$2,400.00
Williamson Central Appraisal District	\$0.00	\$3,800.00	\$4,000.00
Williamson County - Election Office	\$12,000.00	\$18,000.00	\$0.00
Williamson County - Tax Collector/Assessor	\$0.00	\$4,200.00	\$4,800.00
Misc. (5% contingency)	\$3,050.00	\$8,250.00	\$8,300.00
<b>TOTAL ADMINISTRATIVE EXPENSES</b>	<b>\$67,000.00</b>	<b>\$167,750.00</b>	<b>\$174,300.00</b>

**LOWER BRUSHY CREEK WCID**  
**PROPOSED FY 21 BUDGET**  
**As of August 17, 2020**

GRANT INCOME AND PROJECT EXPENSES	FY 19 Budget (Approved)	FY 20 Budget (Approved)	FY 21 Budget (Proposed)
<b>GRANT INCOME</b>			
<b>TSSWCB<sup>1</sup> Maintenance Grants</b>			
Annual Maintenance (90% state/10% local)	\$0.00	\$60,000.00	\$81,000.00
Annual Maintenance (5% admin fee)	\$0.00	\$3,000.00	\$4,050.00
Deferred Maintenance (90% state/10% local)	\$157,500.00	\$150,000.00	\$135,000.00
Deferred Maintenance (5% admin fee)	\$0.00	\$7,500.00	\$6,750.00
<b>Total TSSWCB Maintenance Grants</b>	<b>\$157,500.00</b>	<b>\$220,500.00</b>	<b>\$226,800.00</b>
<b>TSSWCB<sup>1</sup> Repair Grants</b>			
Site 12 & 22 - construction <sup>2</sup> (95% state/5% local)	\$0.00	\$1,500,000.00	\$1,119,100.00
Site 12 & 22 - project management/land rights	\$0.00	\$75,000.00	\$50,400.00
<b>Total TSSWCB Repair Grants</b>	<b>\$0.00</b>	<b>\$1,575,000.00</b>	<b>\$1,169,500.00</b>
<b>TSSWCB<sup>1</sup> Rehabilitation Grants</b>			
Site 20 - rehabilitation (100% federal and state/0% local)	\$1,000,000.00	\$1,000,000.00	\$200,000.00
Site 20 - project management/land rights (100% grants/0% local)	\$0.00	\$40,000.00	\$10,000.00
Site 18 - Upgrade to High Hazard <sup>3</sup> (98% state/2% local)			\$588,000.00
Site 18 - project management/land rights (98% state/2% local)			\$19,600.00
<b>Total TSSWCB Rehabilitation Grants</b>	<b>\$1,000,000.00</b>	<b>\$1,040,000.00</b>	<b>\$817,600.00</b>
<b>TOTAL GRANT INCOME</b>	<b>\$1,157,500.00</b>	<b>\$2,835,500.00</b>	<b>\$2,213,900.00</b>
<b>PROJECT EXPENSES</b>			
<b>Dam Maintenance</b>			
Annual maintenance (incl 10% match)	\$0.00	\$66,000.00	\$90,000.00
Deferred maintenance (incl 10% match)	\$165,000.00	\$165,000.00	\$150,000.00
Gates, entrances, locks and signage	\$0.00	\$20,000.00	\$24,000.00
<b>Total Dam Maintenance</b>	<b>\$165,000.00</b>	<b>\$251,000.00</b>	<b>\$264,000.00</b>
<b>Dam Repairs</b>			
Site 12 & 22 - construction <sup>2</sup> (incl 5% local match)	\$0.00	\$1,575,000.00	\$1,121,915.00
Site 12 & 22 - project management/legal/land rights	\$0.00	\$75,000.00	\$50,400.00
<b>Total Dam Repairs</b>	<b>\$0.00</b>	<b>\$1,650,000.00</b>	<b>\$1,172,315.00</b>
<b>Dam Rehabilitation</b>			
Site 20 - rehabilitation (incl 0% match)	\$1,000,000.00	\$1,000,000.00	\$200,000.00
Site 20 - project management/legal/land rights (incl 0% match)	\$0.00	\$40,000.00	\$10,000.00
Site 18 - upgrade to high hazard stds <sup>3,4</sup> (incl 2% match)			\$600,000.00
Site 20 - project management/legal/land rights (incl 2% match)			\$20,000.00
<b>Total Dam Rehabilitation</b>	<b>\$1,000,000.00</b>	<b>\$1,040,000.00</b>	<b>\$830,000.00</b>
<b>Other Projects</b>			
Inspection of all dams	\$0.00	\$45,000.00	\$40,000.00
Breach maps for 8 dams in Turkey Creek basin	\$0.00	\$90,000.00	\$0.00
Breach maps for 4-5 additional dams in Brushy Creek basin			\$50,000.00
Emergency Action Plans / updates for Turkey Creek basin sites			\$40,000.00
Special surveys update actual elevations			\$50,000.00
<b>Total Other Projects</b>	<b>\$0.00</b>	<b>\$135,000.00</b>	<b>\$180,000.00</b>
<b>TOTAL PROJECT EXPENSES</b>	<b>\$1,165,000.00</b>	<b>\$3,076,000.00</b>	<b>\$2,446,315.00</b>

**Notes:**

1. TSSWCB is the Texas State Soil and Water Conservation Board
2. Construction assumed to take 6-8 months and be started and be completed within FY 21
3. Construction assumed to take 18-24 months and be started in 3rd quarter of FY 21
4. Preliminary construction cost estimate is \$5 million

**ORDINANCE #2020-01  
ORDER**

**AN ORDER LEVYING TAXES FOR THE MAINTENANCE AND OPERATION  
OF THE LOWER BRUSHY CREEK WATER CONTROL & IMPROVEMENT  
DISTRICT.**

BE IT ORDERED BY THE BOARD OF THE LOWER BRUSHY CREEK WATER  
CONTROL & IMPROVEMENT DISTRICT:

**I.**

That there is hereby levied and there shall be collected for the maintenance and operation of the LOWER BRUSHY CREEK WATER CONTROL & IMPROVEMENT DISTRICT, for the Tax Year 2020, upon all property within the corporate limits of said District subject to taxation, real, personal and mixed, a tax of two cents (\$0.02) on each One Hundred Dollars (\$100.00) valuation of property.

**II.**

The Board hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Order was adopted was posted and that such meeting was open to the public as required by law at all time during which this Order and the subject matter hereof was discussed, considered, and formally acted upon as required by the Open Meetings Act, Chapter 551, Texas Local Government Code, as amended.

READ and APPROVED on this the 24<sup>th</sup> day of August 2020.

By:

\_\_\_\_\_  
Edmond S. Komandosky  
Board President

ATTEST:

By:

\_\_\_\_\_  
Monica P. Masters  
Board Secretary



August 7, 2020

To the Board of Directors and Mr. Jim Clarno  
Lower Brushy Creek Water Control and Improvement District  
108 Trinity Lane  
Georgetown, Texas 78633

Dear Board Members:

We are pleased to confirm our understanding of the services we are to provide Lower Brushy Creek Water Control and Improvement District (the "District") for the year ended September 30, 2020. We will audit the financial statements of the governmental activities and the General Fund, including the related notes to the financial statements, and the budgetary comparison information for the General Fund, which collectively comprise the basic financial statements, of the District as of and for the year ended September 30, 2020. Accounting standards generally accepted in the United States of America provide for certain required supplementary information ("RSI"), such as management's discussion and analysis ("MD&A"), to supplement the District's basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to the District's RSI in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We will not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance. The following RSI is required by U.S. generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

- Management's Discussion and Analysis

We have also been engaged to report on supplementary information other than RSI that accompanies the District's financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America, and we will provide an opinion on it in relation to the financial statements as a whole, in a report combined with our auditors' report on the financial statements:

- Supplemental Schedules Required by the Texas Commission on Environmental Quality
- Schedule of Expenditures of Federal Awards

### **Audit Objectives**

The objective of our audit is the expression of opinions as to whether your financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles and to report on the fairness of the supplementary information referred to in the second paragraph when considered in relation to the financial statements as a whole. The objective also includes reporting on:

- Internal control over financial reporting and compliance with provisions of laws, regulations, contracts, and award agreements, noncompliance with which could have a material effect on the financial statements in accordance with *Government Auditing Standards*.
- Internal control over compliance related to major programs and an opinion (or disclaimer of opinion) on compliance with federal statutes, regulations, and the terms and conditions of federal awards that could have a direct and material effect on each major program in accordance with the Single Audit Act Amendments of 1996 and Title 2 U.S. *Code of Federal Regulations* (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* ("Uniform Guidance").

The *Government Auditing Standards* report on internal control over financial reporting and on compliance and other matters will include a paragraph that states that (1) the purpose of the report is solely to describe the scope of testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance, and (2) the report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. The Uniform Guidance report on internal control over compliance will include a paragraph that states that the purpose of the report on internal control over compliance is solely to describe the scope of testing of internal control over compliance and the results of that testing based on the requirements of the Uniform Guidance. Both reports will state that the report is not suitable for any other purpose.

Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America; the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; the Single Audit Act Amendments of 1996; and the provisions of the Uniform Guidance, and will include tests of accounting records, a determination of major program(s) in accordance with the Uniform Guidance, and other procedures we consider necessary to enable us to express such opinions. We will issue written reports upon completion of our Single Audit. Our reports will be addressed to management and the Board of Directors of the District. We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions or add emphasis-of-matter or other-matter paragraphs. If our opinions are other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or issue reports, or may withdraw from this engagement.

### **Audit Procedures - General**

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. We will plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the government or to acts by management or employees acting on behalf of the government. Because the determination of waste and abuse is subjective, *Government Auditing Standards* do not expect auditors to perform specific procedures to detect waste or abuse in financial audits nor do they expect auditors to provide reasonable assurance of detecting waste or abuse.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because we will not perform a detailed examination of all transactions, an unavoidable risk exists that some material misstatements or noncompliance may exist and not be detected by us, even though the audit is properly planned and performed in accordance with U.S. generally accepted auditing standards and *Government Auditing Standards*. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements or on major programs. However, we will inform the appropriate level of management of any material errors, any fraudulent financial reporting, or misappropriation of assets that come to our attention. We will also inform the appropriate level of management of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential. We will include such matters in the reports required for a Single Audit. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about your responsibilities for the financial statements; schedule of expenditures of federal awards; federal award programs; compliance with laws, regulations, contracts, and grant agreements; and other responsibilities required by generally accepted auditing standards.

#### **Audit Procedures - Internal Control**

Our audit will include obtaining an understanding of the government and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*.

As required by the Uniform Guidance, we will perform tests of controls over compliance to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each major federal award program. However, our tests will be less in scope than would be necessary to render an opinion on those controls and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to the Uniform Guidance.

An audit is not designed to provide assurance on internal control or to identify significant deficiencies or material weaknesses. Accordingly, we will express no such opinion. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards, *Government Auditing Standards*, and the Uniform Guidance.

#### **Audit Procedures - Compliance**

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the District's compliance with provisions of applicable laws, regulations, contracts, and agreements, including grant agreements. However, the objective of those procedures will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

The Uniform Guidance requires that we also plan and perform the audit to obtain reasonable assurance about whether the auditee has complied with federal statutes, regulations, and the terms and conditions of federal awards applicable to major programs. Our procedures will consist of tests of transactions and other applicable procedures described in the *OMB Compliance Supplement* for the types of compliance requirements that could have a direct and material effect on each of the District's major programs. The purpose of these procedures will be to express an opinion on the District's compliance with requirements applicable to each of its major programs in our report on compliance issued pursuant to the Uniform Guidance.

### **Other Services**

We will also assist in preparing the financial statements, schedule of expenditures of federal awards, and related notes of the District in conformity with U.S. generally accepted accounting principles and the Uniform Guidance based on information provided by you. These nonaudit services do not constitute an audit under *Government Auditing Standards* and such services will not be conducted in accordance with *Government Auditing Standards*. We will perform the services in accordance with applicable professional standards. The other services are limited to the financial statements, schedule of expenditures of federal awards, and related notes services previously defined. We, in our sole professional judgment, reserve the right to refuse to perform any procedure or take any action that could be construed as assuming management responsibilities.

### **Management Responsibilities**

Management is responsible for (1) designing, implementing, establishing, and maintaining effective internal controls relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error, including internal controls over federal awards, and for evaluating and monitoring ongoing activities to help ensure that appropriate goals and objectives are met; (2) following laws and regulations; (3) ensuring that there is reasonable assurance that government programs are administered in compliance with compliance requirements; and (4) ensuring that management and financial information is reliable and properly reported. Management is also responsible for implementing systems designed to achieve compliance with applicable laws, regulations, contracts, and grant agreements. You are also responsible for the selection and application of accounting principles; for the preparation and fair presentation of the financial statements, schedule of expenditures of federal awards, and all accompanying information in conformity with U.S. generally accepted accounting principles; and for compliance with applicable laws and regulations (including federal statutes) and the provisions of contracts and grant agreements (including award agreements). Your responsibilities also include identifying significant contractor relationships in which the contractor has responsibility for program compliance and for the accuracy and completeness of that information.



Management is also responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. You are also responsible for providing us with (1) access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements, (2) access to personnel, accounts, books, records, supporting documentation, and other information as needed to perform an audit under the Uniform Guidance, (3) additional information that we may request for the purpose of the audit, and (4) unrestricted access to persons within the government from whom we determine it necessary to obtain audit evidence.

Your responsibilities include adjusting the financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that the government complies with applicable laws, regulations, contracts, agreements, and grants. Management is also responsible for taking timely and appropriate steps to remedy fraud and noncompliance with provisions of laws, regulations, contracts, and grant agreements that we report. Additionally, as required by the Uniform Guidance, it is management's responsibility to evaluate and monitor noncompliance with federal statutes, regulations, and the terms and conditions of federal awards; take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings; promptly follow up and take corrective action on reported audit findings; and prepare a summary schedule of prior audit findings and a separate corrective action plan. The summary schedule of prior audit findings should be available for our review on the date audit fieldwork commences.

You are responsible for identifying all federal awards received and understanding and complying with the compliance requirements and for the preparation of the schedule of expenditures of federal awards (including notes and noncash assistance received) in conformity with the Uniform Guidance. You agree to include our report on the schedule of expenditures of federal awards in any document that contains and indicates that we have reported on the schedule of expenditures of federal awards. You also agree to include the audited financial statements with any presentation of the schedule of expenditures of federal awards that includes our report thereon. Your responsibilities include acknowledging to us in the written representation letter that (1) you are responsible for presentation of the schedule of expenditures of federal awards in accordance with the Uniform Guidance; (2) you believe the schedule of expenditures of federal awards, including its form and content, is stated fairly in accordance with the Uniform Guidance; (3) the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the schedule of expenditures of federal awards.

You are also responsible for the preparation of the other supplementary information, which we have been engaged to report on, in conformity with U.S. generally accepted accounting principles. You agree to include our report on the supplementary information in any document that contains, and indicates that we have reported on, the supplementary information. You also agree to include the audited financial statements with any presentation of the supplementary information that includes our report thereon. Your responsibilities include acknowledging to us in the written representation letter that (1) you are responsible for presentation of the supplementary information in accordance with GAAP; (2) you believe the supplementary information, including its form and content, is fairly presented in accordance with GAAP; (3) the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the supplementary information.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying and providing report copies of previous financial audits, attestation engagements, performance audits, or other studies related to the objectives discussed in the Audit Objectives section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or studies. You are also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions, for the report, and the timing and format for providing that information.

You agree to assume all management responsibilities relating to the financial statements, schedule of expenditures of federal awards, and related notes, and any other nonaudit services we provide. You will be required to acknowledge in the management representation letter our assistance with preparation of the financial statements, schedule of expenditures of federal awards, and related notes and that you have reviewed and approved the financial statements, schedule of expenditures of federal awards, and related notes prior to their issuance and have accepted responsibility for them. Further, you agree to oversee the nonaudit services by designating an individual, preferably from senior management, with suitable skill, knowledge, or experience; evaluate the adequacy and results of those services; and accept responsibility for them.

Management is also responsible to notify us in advance of your intent to print our report, in whole or in part, for inclusion in a document containing other information and to give us the opportunity to review such printed matter before its issuance. With regard to the electronic dissemination of audited financial statements, including financial statements published electronically on the District's website, management understands that electronic sites are a means to distribute information and, therefore, we are not required to read the information contained in these sites or to consider the consistency of other information in the electronic site with the original document.

### **Engagement Administration, Fees, and Other**

We understand that your employees will prepare all confirmations we request and will locate any documents selected by us for testing.

At the conclusion of the engagement, we will complete the appropriate sections of the Data Collection Form that summarizes our audit findings. It is management's responsibility to electronically submit the reporting package (including financial statements, schedule of expenditures of federal awards, summary schedule of prior audit findings, auditors' reports, and corrective action plan) along with the Data Collection Form to the federal audit clearinghouse. We will coordinate with you the electronic submission and certification. The Data Collection Form and the reporting package must be submitted within the earlier of 30 calendar days after receipt of the auditors' reports or nine months after the end of the audit period.

We will provide copies of our reports to the District; however, management is responsible for distribution of the reports and the financial statements. Unless restricted by law or regulation, or containing privileged and confidential information, copies of our reports are to be made available for public inspection.

The audit documentation for this engagement is the property of Maxwell Locke & Ritter LLP ("ML&R") and constitutes confidential information. However, subject to applicable laws and regulations, audit documentation and appropriate individuals will be made available upon request and in a timely manner to a cognizant or oversight agency or its designee, a federal agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of ML&R personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

The audit documentation for this engagement will be retained for a minimum of five years after the report release date or for any additional period requested by a cognizant agency, oversight agency for audit, or pass-through entity. If we are aware that a federal awarding agency, pass-through entity, or auditee is contesting an audit finding, we will contact the party(ies) contesting the audit finding for guidance prior to destroying the audit documentation.

We expect to begin our audit in December 2020 and to issue our reports no later than February 2021. Jimmy Romell is the engagement partner and is responsible for supervising the engagement and signing the reports or authorizing another individual to sign them. To ensure that ML&R's independence is not impaired under the AICPA Code of Professional Conduct, management agrees to inform the engagement partner before entering into any substantive employment discussions with any of our personnel. Our audit engagement ends on delivery of our audit report. Any follow-up services that might be required will be a separate, new engagement. The terms and conditions of that new engagement will be governed by a new, specific engagement letter for that service.

Our base fee for these services will be \$9,000. In addition to the base fee, we will charge a fee for each major program to be tested under the Uniform Guidance of \$5,000 per major program. The fee estimate is based on anticipated cooperation from the District's personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will keep management informed of any problems we encounter and our fees will be adjusted accordingly. Our invoices for these fees will be rendered as work progresses and are payable upon presentation.

In the event we are required to respond to a subpoena, court order, or other legal process for the production of documents and/or testimony relative to information we obtained and/or prepared during the course of this engagement, the District agrees to compensate us at our hourly rates for the time we expend in connection with such response, and to reimburse us for all of our out-of-pocket costs incurred in that regard.

Management may request that we perform additional services not addressed in this engagement letter. If this occurs, we will communicate with management regarding the scope and estimated fees for those additional services. We also may issue a separate engagement letter covering the additional services. In the absence of any other written communication from us documenting such additional services, our services will be governed by the terms of this engagement letter.

In accordance with our firm policies, work may be suspended if the District's account becomes significantly overdue and will not be resumed until the District's account is paid in full. If we elect to terminate our services for nonpayment, our engagement will be deemed to have been completed upon written notification of termination, even if we have not completed our report. The District will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket expenditures through the date of termination.

At the conclusion of this engagement, we will return to the District all original records management supplied to us. The District's records are the primary records for the District's operations and comprise the backup and support for the District's financial reports. Our records and files are our property and are not a substitute for the District's own records. Our firm destroys our client files and all pertinent work papers after a retention period of five years, after which time these items will no longer be available. Catastrophic events or physical deterioration may also result in our firm's records being unavailable.

The District agrees that ML&R has the right to place advertisements in financial and other newspapers and journals at its own expense describing its services rendered to the District hereunder, provided that ML&R will submit a copy of any such advertisements to the District so that you can consent to the form and content of the advertisements. Without such consent, ML&R agrees not to make any public representations regarding the services rendered to the District, other than including the District in a list of clients served.

*Government Auditing Standards* require that we provide you with a copy of our most recent external peer review report and any letter of comment, and any subsequent peer review reports and letters of comment received during the contract period. Accordingly, our 2019 peer review report accompanies this letter.

### **Disputes and Claims**

The parties to this engagement agree that any dispute that may arise regarding the meaning, performance or enforcement of this or any prior engagement between them (except actions by the firm to enforce payment of its professional invoices), will, prior to resorting to litigation, be submitted to mediation, and that they will engage in the mediation process in good faith. Any mediation initiated as a result of this engagement shall be administered within the county of Travis, Texas, by the American Arbitration Association, according to its mediation rules, and any ensuing litigation shall be conducted within said county, according to Texas law without regard to the conflict of laws or provisions thereof. The results of any such mediation shall be binding only upon agreement of each party to be bound. The parties participating in the mediation shall bear their own costs, except that any charges assessed by the mediation organization shall be shared equally by the participating parties.

Any claim arising out of this engagement, except our actions to enforce payment of our invoices, must be asserted within one year from the completion of services or the date any such cause of action accrues, whichever is later, unless otherwise barred by the applicable statute of limitation.

In connection with this engagement, you agree that we may communicate with you or others via email transmission, and by signing this letter the District authorizes us to do so. As emails can be intercepted and read, disclosed, or otherwise used or communicated by an unintended third party, or may not be delivered to each of the parties to whom they are directed and only to such parties, we cannot guarantee or warrant that emails from us will be properly delivered and read only by an addressee. Therefore, we specifically disclaim and waive any liability or responsibility whatsoever for interception or unintentional disclosure of emails transmitted by us in connection with the performance of this engagement. In that regard, the District agrees that we shall have no liability for any loss or damage to any person or entity resulting from the use of email transmissions, including any consequential, incidental, direct, indirect, or special damages, such as loss of revenues or anticipated profits, or disclosure or communication of confidential or proprietary information.

The District agrees to hold ML&R and its partners, heirs, executors, personal representatives, successors, and assigns harmless from any and all claims of the District which arise from knowing misrepresentations to ML&R by the management of the District, or the intentional withholding or concealment of information from ML&R by the management of the District. The District also agrees to indemnify ML&R for any and all claims made against ML&R by third parties which arise from any of these actions by the management of the District, as long as ML&R is not negligent in the performance of its services.



We appreciate the opportunity to be of service to the District and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us.

Sincerely,

*Maxwell Locke & Ritter LLP*

Maxwell Locke & Ritter LLP

This letter correctly sets forth the understanding of Lower Brushy Creek Water Control and Improvement District:

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Name, Title

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Date

## Report on the Firm's System of Quality Control

December 2, 2019

To To the Partners of  
Maxwell Locke & Ritter LLP  
and the Peer Review Committee of the TSCPA

We have reviewed the system of quality control for the accounting and auditing practice of Maxwell Locke & Ritter LLP in effect for the year ended May 31, 2019. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants (Standards).

A summary of the nature, objectives, scope, limitations of, and the procedures performed in a System Review as described in the Standards may be found at [www.aicpa.org/prsummary](http://www.aicpa.org/prsummary). The summary also includes an explanation of how engagements identified as not performed or reported in conformity with applicable professional standards, if any, are evaluated by a peer reviewer to determine a peer review rating.

### Firm's Responsibility

The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. The firm is also responsible for evaluating actions to promptly remediate engagements deemed as not performed or reported in conformity with professional standards, when appropriate, and for remediating weaknesses in its system of quality control, if any.

### Peer Reviewer's Responsibility

Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on our review.

### Required Selections and Considerations

Engagements selected for review included an engagement performed under *Government Auditing Standards*, including a compliance audit under the Single Audit Act, audits of employee benefit plans and examinations of service organizations (Service Organizations Control (SOC) 1 and 2 engagements). As a part of our peer review, we considered reviews by regulatory entities as communicated by the firm, if applicable, in determining the nature and extent of our procedures.

### Opinion

In our opinion, the system of quality control for the accounting and auditing practice of Maxwell Locke & Ritter LLP, in effect for the year ended May 31, 2019, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of *pass*, *pass with deficiency(ies)* or *fail*. Maxwell Locke & Ritter LLP has received a peer review rating of *pass*.

*Gollob Morgan Peddy PC*

Gollob Morgan Peddy PC  
Certified Public Accountants

**COOPERATIVE AGREEMENT**  
**Flood Control: Structural Repair Activities – State Funds**

THIS COOPERATIVE AGREEMENT is entered into by and between the parties shown below, pursuant to the authority granted and in compliance with the provisions of: Title 7, Chapter 201, Agriculture Code of Texas, and Title 31, Part 17, Chapter 529, Texas Administrative Code.

**SECTION I. CONTRACTING PARTIES:** This Agreement is made and entered into by and between the Texas State Soil and Water Conservation Board, hereinafter referred to as "TSSWCB" whose principal place of business is located at 1497 Country View Lane, Temple, Texas 76501; and Lower Brushy Creek Water Control and Improvement District (WCID), whose principal place of business is located at c/o USDA-Natural Resources Conservation Service, 505 West University Avenue, Suite C, Georgetown, Texas 78626, hereinafter referred to as the "SPONSOR" with reference to the following facts:

**SECTION II. SCOPE OF WORK:**

1. Project. The SPONSOR shall complete all structural repair activities on flood control dams as follows in Table 1 (the "Project").

Table 1.

Flood Control Dam Common Name	Structural Repair Activity to be Performed
Lower Brushy Creek 12 and 22	SPONSOR's costs for construction related to repair of the dam according to USDA- NRCS or TCEQ approved plans and specifications.

2. Land rights. The SPONSOR represents and warrant that they possess or will acquire all land rights, easements, licenses, or right-of-way as will be needed in connection with accomplishing the work outlined in Table 1.
3. Compliance with laws. The SPONSOR represents and warrant that it will complete the Project in accordance with all applicable local, state, and federal laws and rules, including Texas Administrative Code, Title 31, Chapter 529.
4. The SPONSOR represents and warrants it shall:
  - a. perform the Project in accordance with the "Consideration/Price" specified in Section III of this cooperative agreement



- b. perform the Project with the professional skill, prudence and care ordinarily provided by similar professionals under the same or similar circumstances;
- c. perform the Project in a professional and workmanlike manner;
- d. perform the Project free from all liens, claims and other restrictions;
- e. perform the Project free from any violations of law and free from violations of any agreement to which SPONSOR, their agents, officers, employees or subcontractors may be subject; and
- f. perform the Project in accordance with engineering plans and design specifications provided to the SPONSOR by the TSSWCB and shall seek approval by the TSSWCB prior to initiating work that in any way deviates from the plans and specifications of the Project previously provided by TSSWCB.

5. Inspection of products and services. The parties agree and acknowledge that the NCRS has the right and authority to review and inspect products and services purchased through this Agreement, in performance of this Agreement, or to review and inspect the Project work completed, and/or work-in-progress, to ensure compliance with the plans and specifications. Notwithstanding the foregoing, the TSSWCB, or designated agents, may also review and inspect products and services purchased or performed through this Agreement, inspect Project work-in-progress to ensure compliance with this Agreement and monitor adherence to the completion schedule as set forth in the plans and specifications of the Project previously provided by TSSWCB.

### SECTION III. CONSIDERATION/PRICE:

1. Reimbursement Rate and Maximum Contract Price. The TSSWCB shall provide the SPONSOR reimbursement for work performed pursuant to the Scope of Work and the plans and specifications of the Project and otherwise required under this Agreement at the rates set herein for labor, material, and/or completion of such work. **Maximum Contract Price is \$1,169,459.50.** Invoices will be reimbursed at a rate of 1). 95% of construction cost, not to exceed a maximum amount of \$1,119,100.00; and 2). 4.5% of reimbursed amount for SPONSOR' administration cost, not to exceed a maximum amount of \$50,359.50.

2. Pursuant to The Texas Administrative Code Title 31, Part 17, Rule 529.52(e), SPONSOR is required to provide 5% of the total contract cost with funds not originating from state appropriations. The estimated SPONSOR' cost for this contract is \$58,900.00. The SPONSOR shall successfully complete the Project in accordance with contract requirements and within the Maximum Contract Price as specified by this subsection. Any additional cost over the Maximum Contract Price will be the responsibility of the SPONSOR unless prior written approval is obtained from TSSWCB.

3. Project Budget.

Description of Work	TSSWCB Cost Share	Sponsor Lower Brushy Creek WCID Cost Share	Total Cost of Project
<b>Cost Share Items:</b>			
Construction	\$1,119,100.00	\$58,900.00	\$1,178,000.00
<b>Total of Project Costs</b>	<b>\$1,119,100.00</b>	<b>\$58,900.00</b>	<b>\$1,178,000.00</b>
<b>Non-Cost Share Costs:</b>			
Contract Administration (5% of TSSWCB cost share)	\$50,359.50		
<b>Total Agreement Costs</b>	<b>\$1,169,459.50</b>	<b>\$58,900.00</b>	

4. Eligible Costs. Pursuant to The Texas Administrative Code Title 31, Part 17, Rule 529.52, costs eligible for reimbursement include those associated with the performance of the structural repair activities required by the Scope of Work as well as costs associated with contract administration. ("Eligible Costs"). No other costs related to the structural repair activities contemplated by this Agreement are eligible for reimbursement without prior written approval by TSSWCB.

5. Reimbursement Requests. Funds due under this Agreement will be paid on a cost reimbursement basis pursuant to the cost reimbursement rate set forth above in this Section III, subsection 1.

a. The SPONSOR shall submit, each month, a monthly request for reimbursement for the actual and allowable, allocable, Eligible Costs incurred by SPONSOR for the provision of services required under this Agreement during the prior month. Payments made to SPONSOR shall not exceed the SPONSOR' actual and allowable, allocable, Eligible Costs incurred to provide the services required under this Agreement.

b. The SPONSOR' reimbursement requests must comply with the TSSWCB's invoice processing procedures. The TSSWCB may reject requests for payment which fail to demonstrate that costs are allowable and eligible for reimbursement or which fail to conform to the conditions in this Agreement.

6. Financial management. The SPONSOR shall develop, implement, and maintain appropriate financial management and control systems, which include: budgets that adequately reflect all functions and resources necessary to carry out authorized activities and the adequate determination of costs; accurate and complete payroll, accounting, and financial reporting records; effective internal and budgetary controls; allocation of costs;

and timely and appropriate audits and resolution of any findings and applicable annual financial statements.

#### **SECTION IV. TERM OF AGREEMENT:**

This Agreement begins upon the date the Agreement becomes executed by both parties and ends November 30, 2021 ("Initial Term"). This Agreement may be extended as needed, ("Extension"), provided both parties agree to extend prior to the expiration date. Any extensions shall be at the same terms and conditions, plus any approved changes. The Initial Term and all Extensions, if any, shall collectively become the total duration of the Agreement ("Term").

#### **SECTION V. CONTRACT SUSPENSION, TERMINATION, AND CLOSEOUT**

1. Suspension. TSSWCB may, on reasonable notice to the SPONSOR, suspend the Agreement, withhold further payments, and prohibit the SPONSOR from incurring additional obligations under the Agreement, pending corrective action by the SPONSOR, or a decision by TSSWCB to terminate the Agreement.
2. Availability of Funds. This Agreement is contingent upon the continued availability of funding. If funds become unavailable through lack of appropriations; legislative or executive budget cuts, amendment of the Appropriations Act, state agency consolidations, or any other disruptions of current appropriations, this Agreement is subject to Termination by TSSWCB without penalty or further obligation of TSSWCB, either in whole or part.
3. Termination for Cause. This Agreement may be terminated for cause, by either party upon written notice to the other party, if the other party commits a material breach of any term of this Agreement.

Additionally, if the SPONSOR fails to provide the goods or services contracted for and/or fails to perform the Project in according to the provisions of this Agreement, OR fails to comply with any terms or conditions of the Agreement, submits falsified documents or fraudulent billings, or makes false representations concerning this Agreement, TSSWCB may, upon written notice to the SPONSOR, immediately terminate all or any part of the Agreement.

Termination is not an exclusive remedy, but will be in addition to any rights or remedies as provided in equity, or by law or under the Agreement. TSSWCB may exercise any other right, remedy, or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of the Agreement. The exercise of any of the foregoing remedies will not constitute a termination of the Agreement unless TSSWCB notifies the SPONSOR in writing prior to the exercise of such remedy. The SPONSOR shall be liable for all costs and expenses, including court costs, incurred by TSSWCB with respect to the enforcement of any of the remedies listed herein.

4. Termination for Convenience. TSSWCB may, in its sole discretion, terminate this Agreement upon thirty (30) days' written notice to the SPONSOR. Such notice may be provided by facsimile or certified mail return receipt requested and the termination is effective upon the expiration of thirty (30) days after receipt. In the event of such termination, the SPONSOR shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TSSWCB shall be liable only for payments for any goods or Project Services required under this Agreement and provided by SPONSOR and accepted by TSSWCB prior to the termination date.
  
5. Negotiation Prior to Termination. If the SPONSOR give notice of its intent to terminate this Agreement in accordance with Paragraphs 3, the SPONSOR and TSSWCB shall try to resolve in good faith any issues related to the anticipated termination during the thirty (30) days following TSSWCB's receipt of the SPONSOR's notice of intent to terminate. During this time, the SPONSOR will continue to have the responsibility to provide Services under this Agreement and TSSWCB will continue to have the responsibility to pay for the Services in the manner specified in this Agreement.
  
6. Effect of Termination. Upon termination of this Agreement, the SPONSOR and TSSWCB will be discharged from any further obligation created under the terms of this Agreement, except for the equitable settlement of the respective accrued interests or obligations incurred prior to termination and any obligations of warranty and indemnification. Termination does not, however, constitute a waiver of any remedies for breach of this Agreement. Termination for convenience shall not be construed as a waiver of any right or remedy of TSSWCB that may apply. In addition, the obligations of the SPONSOR to retain records and maintain the confidentiality of information shall survive any termination of this Agreement for any reason.
  
7. Rights upon Termination or Expiration. In the event this Agreement is terminated for any reason, the TSSWCB shall retain ownership of all partially-performed work completed pursuant to Table 1 along with all associated supplies, materials, associated work. In such an event of termination, SPONSOR shall immediately deliver to TSSWCB all Deliverables, in whatever form, as they exist as of the date of termination.
  
8. Survival of Terms. Termination of the Agreement for any reason shall not release the SPONSOR from liability or obligation set forth in the Agreement that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including without limitation the provisions regarding confidentiality, indemnification, transition, records, audit, dispute resolution, invoice and fees verification.
  
9. Closeout Procedure. The SPONSOR shall submit a final payment request and other reports that are required under the Agreement, within forty-five (45) days after the Agreement end date. TSSWCB shall not be liable for any costs incurred by the SPONSOR

in the performance of the Agreement which have not been received by TSSWCB within forty-five (45) days following the close of the Agreement Term.

## SECTION VI. MISCELLANEOUS

### A. Retention and Custodial Requirements for Records

1. Retention. The SPONSOR agrees to keep financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of seven (7) years, with the following qualification: If any litigation, claim, or audit is started before the expiration of the seven-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved. The retention period starts from the date of the submission of the final expenditure report or from the date of TSSWCB's final payment under the Agreement.

2. Inspection. Upon request of the Texas State Auditor's Office or any authorized representative of TSSWCB, the SPONSOR shall make all records, books, papers, documents, or recordings prepared pursuant to this Agreement available for inspection, audit, or reproduction during normal business hours:

3. State Auditor Authority. Pursuant to Section 2262.154 of the Texas Government Code, the SPONSOR understands that acceptance of state funds under this Agreement acts as acceptance of the authority of the State Auditor's Office to conduct an audit or investigation in connection with those funds. The SPONSOR further agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. The SPONSOR will ensure that this clause concerning the State Auditor's Office authority to audit state funds and the requirement to cooperate fully with the State Auditor's Office is included in any subcontract it awards. Additionally, the State Auditor's Office shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of the SPONSOR relating to any of the Project Services under this Agreement.

### B. Indemnification.

1. Acts or Omissions. TO THE EXTENT ALLOWED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS SPONSOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND AGENCIES, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED DAMAGES, COSTS, ATTORNEY FEES, AND EXPENSES CAUSED BY, ARISING OUT OF, OR RESULTING FROM ANY ACTS OF NEGLIGENCE, OMISSIONS, INTENTIONAL TORTS, WILLFUL MISCONDUCT, PERSONAL INJURY OR DAMAGE TO PROPERTY, AND/OR OTHERWISE RELATED TO SPONSOR'S PERFORMANCE, AND/OR FAILURES TO PAY A SUBCONTRACTOR OR SUPPLIER BY THE SPONSOR OR ITS AGENTS,

EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, CONSULTANTS UNDER CONTRACT TO SPONSOR, OR ANY OTHER ENTITY OVER WHICH THE SPONSOR EXERCISES CONTROL, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE AGREEMENT. THE DEFENSE SHALL BE COORDINATED BY SPONSOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND SPONSOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. SPONSOR AND TSSWCB AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM

2. Infringements.

(a) TO THE EXTENT ALLOWED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS SPONSOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND AGENCIES, AND/OR THEIR OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS, TRADE SECRETS, TRADE AND SERVICE MARKS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS OR PROPRIETARY RIGHTS IN CONNECTION WITH THE DELIVERABLES, PROJECT IMPLEMENTATION, PERFORMANCES, OR ACTIONS OF SPONSOR PURSUANT TO THIS AGREEMENT, AND/OR VIOLATIONS OR INFRINGEMENTS ARISING FROM THE STATE'S OR SPONSOR'S USE OF OR ACQUISITION OF ANY SERVICES, DELIVERABLES OR OTHER ITEMS PROVIDED TO THE STATE OF TEXAS BY SPONSOR. SPONSOR AND TSSWCB AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. SPONSOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY SPONSOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND SPONSOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

(b) SPONSOR shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed unless SPONSOR has approved such other use, (ii) any modification made to the product without SPONSOR's written approval, (iii) any modifications made to the product by the SPONSOR pursuant to TSSWCB specific

instructions, (iv) any intellectual property right owned by or licensed to TSSWCB by another SPONSOR, or (v) any use of the product or service by TSSWCB that is not in conformity with the terms of any applicable license agreement.

(c) If SPONSOR becomes aware of an actual or potential claim, or TSSWCB provides SPONSOR with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall) at SPONSOR's sole expense; (i) procure for the TSSWCB the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that TSSWCB's use is non-infringing.

3. Taxes/Workers' Compensation/Unemployment Insurance

(a) SPONSOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS AGREEMENT, SPONSOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF SPONSOR'S AND SPONSOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS AGREEMENT. SPONSOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. TSSWCB AND/OR THE STATE SHALL NOT BE LIABLE TO THE SPONSOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY OR AGENCY.

(b) To the extent allowed by the laws and Constitution of the State of Texas SPONSOR AGREES TO INDEMNIFY AND HOLD HARMLESS AGENCIES, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS AGREEMENT. SPONSOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY SPONSOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND

**SPONSOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. SPONSOR AND THE TSSWCB AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

**C. Administrative Provisions**

1. Independent Contractor. It is the intent of TSSWCB and the SPONSOR that the SPONSOR or SPONSOR's employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing the services required under this Agreement. SPONSOR or SPONSOR's employees, representatives, agents and any subcontractors shall not be employees of TSSWCB and shall observe all TSSWCB rules and procedures, including any applicable security procedures. Should SPONSOR subcontract any of the services required in this Agreement, SPONSOR expressly understands and acknowledges that in entering into such subcontract(s), TSSWCB is in no manner liable to any subcontractor(s) of SPONSOR, and that SPONSOR shall be solely responsible for payment due to such subcontractors, and subcontractors' performance and adherence to the provisions of this Agreement. In no event shall this provision relieve the SPONSOR of the responsibility for ensuring that the Services rendered under all subcontracts are rendered in compliance with this Agreement, and any specific Project Specifications, including without limitation, the performance standards set forth in Section II.

The SPONSOR and TSSWCB agree that: (a) TSSWCB will not withhold or pay on behalf of the SPONSOR any sums for income tax, unemployment insurance, social security, or any other withholding pursuant to any law or requirement of any governmental body, or make available to the SPONSOR any of the benefits, including workers' compensation insurance coverage, afforded to employees of TSSWCB and (b) all such withholdings, payments and benefits, if any, are the sole responsibility of the SPONSOR. The SPONSOR will be free from TSSWCB control in the manner and method of providing services.

2. U.S. Department of Homeland Security E-Verify System. By entering into this Agreement, the SPONSOR certifies and ensures that it utilizes and will continue to utilize for the term of this Agreement, the U.S. Department of Homeland Security E-Verify system to determine the eligibility of all persons and subcontractors performing duties within Texas during the term of the Agreement.

3. Compliance. The SPONSOR shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting the performance of this agreement, including, if applicable, workers compensation laws, compensation statutes and regulations, and licensing laws and regulations now in effect or that become effective during the term of this Agreement, including the Civil Rights Act of 1964, the Rehabilitation Act of 1973, the Age Discrimination in Employment Act, and the



Immigration Reform and Control Act of 1986 as amended. When required, SPONSOR shall furnish TSSWCB with satisfactory proof of its compliance. The SPONSOR shall be responsible for damage to TSSWCB's equipment, and/or the workplace and its contents, by its, or its contractors' work, negligence in work, personnel, and equipment. To the extent required by law, and without waiving any governmental immunity available to THE PERFORMING PARTY, the SPONSOR shall be responsible and liable for the safety, injury and health of its employees and contractors while they are performing work for TSSWCB under this Agreement. The SPONSOR shall provide all labor and equipment necessary to furnish the goods and/or perform the service and complete the Project. All employees shall be a minimum of 17 years of age and experienced in the type of work to be performed. No visitors or relatives of employees and contractors will be allowed on work site unless they are bona fide employees or contractors of the SPONSOR under this Agreement. PERFORMING AGENCY's liability under this section shall be limited to that authorized by the laws and Constitution of the State of Texas. The TSSWCB reserves the right, in its sole discretion, to unilaterally amend this agreement throughout its term only to incorporate any modification necessary for the TSSWCB's or SPONSOR's compliance with all applicable State and Federal laws and regulations.

4. Severability. In the event any provision of this Agreement or the rights of this Agreement becomes unenforceable or void, such shall not invalidate any other provision of this Agreement.

5. Assignability and Subcontracting. Without prior written consent of the TSSWCB, SPONSOR may not assign this Agreement, in whole or in part, and may not assign any right or duty required under it. Pursuant to Rule 529.59 of the Texas Administrative Code, SPONSOR may enter into subcontracts for engineering design, construction, and easement purchasing. All such contracts shall be in writing. Notwithstanding the foregoing, subcontracts for engineering design and/or construction related services shall be subject to the terms and conditions of this Agreement and provided to TSSWCB prior to execution for TSSWCB approval.

6. Force Majeure. Neither SPONSOR nor TSSWCB shall be liable to the other for any delay in, or failure of performance caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three business days of the existence of such force majeure, or otherwise waive this right as defense.

7. Entire Agreement. This Agreement constitutes the entire agreement between TSSWCB and the SPONSOR and supersedes any prior understandings or oral or written agreements between TSSWCB and the SPONSOR on matters contained herein.

8. Waiver. In no event shall any payment by TSSWCB to the SPONSOR or any act or omission of TSSWCB constitute or be construed in any way to be a waiver by TSSWCB of any breach of default of this Agreement which may then subsequently be committed by the SPONSOR. Neither shall such payment, act or omission in any manner impair or prejudice any right, power, privilege or remedy available to TSSWCB to enforce its rights hereunder, as such rights, powers, privileges and remedies are specifically preserved. No employee or agent of TSSWCB may waive the effect of this provision.

9. Notice. Except as expressly provided herein, any notice required or permitted to be given under this Agreement must be in writing and delivered in person or by registered or certified mail, return receipt requested, postage prepaid, to the individuals and addresses shown below:

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Texas State Soil and Water Conservation Board  
1497 Country View Lane  
Temple, Texas 76504

Lower Brushy Creek WCID  
c/o USDA-Natural Resources Conservation Service  
505 West University Avenue, Suite C  
Georgetown, Texas 78626

10. Governing Law. This Agreement is being executed and delivered and is intended to be performed in the State of Texas, and the laws of Texas shall govern the validity, construction, enforcement and interpretation of this Agreement. The venue of any suit arising under this Agreement is fixed in any court of competent jurisdiction of Travis County, Texas.

11. Dispute Resolution Process. The dispute resolution process provided for in Chapter 2260 of Texas Government Code shall be used by the TSSWCB and the SPONSOR to resolve all disputes arising under this Agreement including specifically any alleged breach of this Agreement.

12. Financial Interests; Gifts. SPONSOR represent and warrant that neither SPONSOR nor any person or entity that will participate financially in this Agreement has received compensation from TSSWCB for participation in preparation of specifications for this Agreement. SPONSOR represents and warrants that it has not given, offered to give, and does not intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to any public servant or employee in connection with this Agreement.

13. Confidential Information. Notwithstanding any provisions of this Agreement to the contrary, SPONSOR understands that TSSWCB will comply with the Texas Public Information Act, Texas Government Code, Chapter 552 as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. TSSWCB agrees to notify SPONSOR in writing within a reasonable time from receipt of a request for information related to SPONSOR's work under this Agreement. SPONSOR will cooperate with TSSWCB in the production of documents responsive to the request. SPONSOR acknowledges and agrees and understands that SPONSOR is required to make any information created or exchanged with the state pursuant to this Agreement, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state. TSSWCB will make a determination whether to submit a Public Information Act request to the Attorney General. SPONSOR will notify TSSWCB within twenty-four (24) hours of receipt of any third party requests for information that was provided by the State of Texas for use in performing the Agreement. No public disclosures or news releases pertaining to this Agreement shall be made without prior written approval of TSSWCB.

14. Abandonment or Default. If the SPONSOR defaults on this Agreement, TSSWCB reserves the right to cancel the Agreement without notice and either re-solicit or re-award the Agreement to the next best responsive and responsible respondent. The defaulting SPONSOR will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work significantly changed. The period of suspension will be determined by the TSSWCB based on the seriousness of the default.

15. Antitrust and Assignment of Claims. SPONSOR represents and warrants that neither SPONSOR nor any firm, corporation, partnership, or institution represented by SPONSOR, or anyone acting for such firm, corporation or institution has (1) violated the antitrust laws of the State of Texas under Tex. Bus. & Com. Code, Chapter 15, or the federal antitrust laws; or (2) communicated directly or indirectly the Proposal to any competitor or any other person engaged in such line of business during the procurement process for this Agreement. SPONSOR assigns to the State of Texas all of SPONSOR's rights, title, and interest in and to all claims and causes of action SPONSOR may have under the antitrust laws of Texas or the United States for overcharges associated with the Agreement.

16. Buy Texas. In accordance with Texas Government Code, Section 2155.4441, the State of Texas requires that during the performance of a contract for services, SPONSOR shall purchase products and materials produced in the State of Texas when available at a price and time comparable to products and materials produced outside the state.

17. Electronic and Information Resources Accessibility, as Required by I TAC Chapter 213 (Applicable to State Agency and Institution of Higher Education Purchases Only).

a) Effective September 1, 2006, state agencies and institutions of higher education shall

procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

- b) SPONSOR shall provide Texas Department of Information Resources (DIR) with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Vendors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

18. Ownership/Intellectual Property, including Rights to Data, Documents and Computer Software: Any software, research, reports studies, data, photographs, negatives or other documents, drawings or materials or any other Deliverables (collectively "Work Product") prepared by the SPONSOR in the performance of its obligations under this Agreement shall be the exclusive property of the exclusive property of TSSWCB. All right, title and interest in and to said Work Product and property shall vest in TSSWCB upon creation and shall be deemed to be a work made for hire (as defined under federal copyright law in Title 17 of the United States Code) and made in the course of the services rendered pursuant to this Agreement, without any further action or notification. To the extent that title to any such Work Product may not, by operation of law, vest in TSSWCB, or such work may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably assigned to TSSWCB without further consideration. TSSWCB shall have the right to obtain and to hold in its name any and all patents, copyrights, registrations or such other intellectual property protection or other protections as may be appropriate to the subject matter, and any extensions and renewals thereof. SPONSOR must give TSSWCB and/or the State of Texas, as well as any person designated by TSSWCB and/or the State of Texas, all assistance required to perfect the rights defined herein without any charge or expense beyond those amounts payable to SPONSOR for the services rendered under this Agreement, including without limitation, all necessary efforts to ensure that any subcontractors or affiliates participating in the performance of this Agreement similarly assign to TSSWCB all such rights, title and interest. SPONSOR agrees to execute and to cause any subcontractors and affiliates to execute any documents and take any other actions reasonably requested by TSSWCB to effectuate the purposes of this Section 20.

Any Work Product prepared or produced by the SPONSOR in the performance of its obligations under this Agreement shall be delivered to the TSSWCB by the SPONSOR

upon completion, termination, or cancellation of this Agreement, with the exception of one (1) copy of all Work Product, which may be retained by SPONSOR for its records and for compliance with state and federal requirements and its own records retention policy. TSSWCB may, at its own expense, keep copies of all its writings for its personal files. The ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works; however, SPONSOR may copy the Work Product as defined above as needed to comply with public information law or to maintain the documents in accordance with its records retention policy. All deliverables, publications, dissemination, and information required as performance of the agreement will require review and approval of TSSWCB. Publications outside of the agreement but based on work done through the agreement would be subject to the sixty (60) day review for confidential information.

19. By signature hereon, SPONSOR certifies that:

All statements and information prepared and submitted in the response to the application submitted pursuant Title 31, Part 17, Chapter 529 that resulted in this Cooperative Agreement are current, complete and accurate.

SPONSOR has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan gratuity, special discount, trip, favor, or service to a public servant in connection with this Agreement. In Addition, "under Section 2155.004, Texas Government Code, SPONSOR certifies that the SPONSOR is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

Under Government Code §669.003, relating to contracting with an executive of a state agency, SPONSOR represents that no person who, in the past four years, served as an executive of the TSSWCB or any other state agency, was involved with or has any interest in this Agreement. If SPONSOR employs or has used the services of a former executive head of TSSWCB or other state agency, then SPONSOR shall provide the following information: Name of former executive, name of state agency, date of separation from state agency, position with SPONSOR, and date of employment with SPONSOR.

SPONSOR agrees that any payments due under this Agreement will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas.

SPONSOR certifies that the responding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that SPONSOR is in compliance with the State of Texas statutes and rules relating to procurement.

THIS AGREEMENT constitutes the entire Agreement by and between the parties for purposes of accomplishing the results and objectives herein contained and any alteration hereof, or addition, or deletion shall be by addendum hereto in writing and executed by both parties. Furthermore, the undersigned contracting parties do hereby certify that, (1) the services specified are necessary and essential for activities that are properly within the statutory functions and programs of the affected agencies of State Government, (2) the proposed arrangements serve the interest of efficient and economical administration of State Government, and (3) the services, supplies of materials contracted for are not required by Section 21 of Article 16 of the Constitution of Texas to be supplied under contract to the lowest responsible bidder.

TSSWCB

SPONSOR

**Texas State Soil and Water  
Conservation Board**

**Lower Brushy Creek WCID**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: Executive Director

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**LOWER BRUSHY CREEK WATERSHED  
SITE 12 RELEASE AGREEMENT**

**I. RECITALS**

1. The United States Department of Agriculture ("USDA") constructed a series of seventeen (17) flood retarding structures in the Lower Brushy Creek Watershed between 1959 and 1972.
2. Lower Brushy Creek Water Control and Improvement District ("District") shall mean the political subdivision of the State of Texas responsible for the operation, maintenance, repair and rehabilitation of those flood retarding structures.
3. Lower Brushy Creek Watershed Site 12 ("Site 12") shall mean the flood retarding structure constructed by the USDA south of County Road 466 and east of County Road 463 in Williamson County, Texas, on or about 1966 and which own the following easements ("Site 12 Easements"):
  - a. Easement granted to the District for Site 12 from Aaron Kreidel recorded in Volume 482, Page 39, Deed Records, Williamson County, Texas, dated October 13, 1965;
  - b. Easement granted to the District for Site 12 from Mollie Samuelson recorded in Volume 479, Page 646, Deed Records, Williamson County, Texas, dated July 2, 1965;
  - c. Easement granted to the District for Site 12 from Carl O. and Wilma Nell Samuelson recorded in Volume 483, Page 33, Deed Records, Williamson County, Texas, dated July 26, 1965;
  - d. Easement granted to the District for Site 12 from Erwin E. Gustafson recorded in Volume 483, Page 35, Deed Records, Williamson County, Texas, dated September 3, 1965; and
  - e. Easement granted to the District for Site 12 from Reuben V. and Helen I. Mathias recorded in Volume 483, Page 37, Deed Records, Williamson County, Texas, dated July 23, 1965.
4. Access Road shall mean a road constructed by the USDA on or about 1966 crossing the Kreidel Site 12 easement.

5. Laverne Purcell ("Purcell"), daughter of Aaron Kreidel, is the current owner of the Kreidel tract and John and Carol Krenek ("Krenek") are the current owners of the adjacent Mollie Samuelson tract.

## II. CONTRACTUAL RECITALS AND STATEMENT OF PURPOSE

1. The Access Road was constructed subject to rights and privileges granted to the District under the Kreidel Site 12 Easement.
2. The Access Road requires repair to permit access over and across the Access Road by Purcell and Krenek desires to widen the Access Road to allow ingress and egress to a portion of the Mollie Samuelson tract.
3. Purcell and Krenek acknowledge and agree the Access Road was constructed subject to and remains subject to the Site 12 Easements allowing overflow from Site 12 across the Access Road.
4. Purcell represent she has previously made repairs to the Access Road necessary to allow her use of the Access Road.
5. Purcell acknowledges that she installed a culvert or culverts to support the Access Road for access to her respective property, which culverts were intended to allow the permitted overflow from Site 12.
6. Purcell represent the Access Road has eroded inhibiting Purcell's use of the Access Road, which erosion was permitted by the Site 12 Easements.
7. Purcell and Krenek acknowledge the District does not use the Access Road for District purposes and the Access Road remains subject to the Site 12 Easements.
8. Purcell and Krenek have a need to rebuild and widen the Access Road.
9. Purcell and Krenek acknowledge the Access Road was built and repaired by them without any direction or control by the District and no liability to or against the District will result from Purcell's and Krenek's use, change, or reconstruction of the Access Road.
10. Purcell and Krenek request a \$10,000.00 contribution from the District to repair the Access Road to allow Purcell and Krenek continued use of the Access Road.



11. The District desires to make a \$10,000.00 voluntary contribution to Purcell and Krenek for the Access Road repair on the conditions hereinafter stated and subject to the release and indemnity hereafter stated.
12. The District assumes no liability for the Access Road crossing the District Site 12 Easements.
13. Purcell and Krenek acknowledge no engineering or construction advise is or was given to them by the District and Purcell and Krenek assume all liability resulting from use, reconstruction, and repair of the Access Road.
14. Purcell and Krenek request the District pay \$10,000.00 to Purcell and Krenek for Purcell's and Krenek's use in the Access Road repair which the District has agreed to pay in consideration for the release to District herein after stated.

### **III. PERSONS BOUND BY THE RELEASE AGREEMENT**

1. Purcell and Krenek agree that by execution hereof, the terms of this Release Agreement are binding upon Purcell and Krenek and upon all representatives, heirs, successors and assigns of Purcell and Krenek.
2. Purcell and Krenek represent and warrant that each has approved all the terms, conditions and covenants of this Release Agreement as evidenced by their signatures to the Agreement.

### **IV. WARRANTIES AND REPRESENTATIONS**

1. Purcell and Krenek jointly and severally warrant and represent that they have no awareness of the existence of any actual or potential claim, demand, suit, cause of action, charge or grievance possessed by them or either of them, which is not subject to and fully released by this Release Agreement that concerns or relates in any way, directly or indirectly, to the Access Road, Site 12, the District or resulting from any of the facts stated herein.
2. Purcell and Krenek warrant and represent that they have not assigned, authorized or transferred (in any way, whether directly or indirectly) any claims, demands, suits, causes of action, charges, or grievances of any kind or character, which they or either of them had or may have had prior to and including the Effective Date against the District. Purcell and Krenek neither have nor own any part of any actual or potential claim, demand, suit, cause of action,

charge, or grievance of any kind or character against the District that concerns or relates in any way, directly or indirectly, to the Access Road, Site 12, or the District which are not subject to and released by this Release Agreement.

3. Purcell and Krenek warrant and represent that neither of them sold, assigned, encumbered, or transferred (in any way, whether directly or indirectly) any interest or right conveyed to the District under the terms of this Release Agreement.
4. Purcell and Krenek warrant and represent that they have no awareness of the existence of any actual or potential claim, demand, suit, cause of action, charge or grievance possessed by them which is not subject to and fully released by this Release Agreement.

#### V. CONSIDERATION

1. In consideration of the sum of **TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00)** requested by Purcell and Krenek and paid by the District to them for Purcell and Krenek's use and benefit to allow Purcell and Krenek to repair the Access Road, Purcell and Krenek release the District as stated herein.
2. And in further consideration of the agreements, conditions, representations, warranties, recitals, covenants and statements of intention contained herein, Purcell and Krenek hereby accept the \$10,000.00 payment in full settlement, compromise and release of all claims, known or unknown, arising out of or in connection with Site 12, the Access Road, the District and arising from the facts stated herein.

#### VI. RELEASE

Purcell and Krenek hereby covenant, agree, and consent to the following:

1. The intent of Purcell and Krenek is that each of them by executing this Release Agreement shall, by reason of such execution, be entirely free of any and all actual or potential claims known or unknown, suits, demands, causes of action, charges or grievances of any kind or character, regardless of the nature or extent of the same, arising out of the Site 12, the Access Road and against the District.
2. Purcell and Krenek hereby fully and finally **RELEASE, ACQUIT, AND FOREVER DISCHARGE** the District (and all of the District's representatives, agents and parties in privity

with the District ), and Purcell and Krenek further covenant not to assert in any manner against persons or entities released hereby, any and all actual or potential, known or unknown claims held by Purcell and Krenek against the District , and/or any suits, demands, causes of action, charges or grievances of any kind or character whatsoever, heretofore or hereafter accruing for or because of any matter done, omitted or suffered to be done by the District , and in any manner (whether directly or indirectly) arising from or related to the matters stated herein.

This Release Agreement shall inure to the benefit of the District, its Directors, representatives, agents, persons, or entities in privity with the District, its successors, and assigns.

#### **VII. INUREMENT**

No payment made or release pursuant to the terms of the Release Agreement, or other consideration given shall be intended to be, nor shall be construed to be, an admission of liability and any and all such liability is expressly denied and shall be conditioned upon Purcell and Krenek their representatives, heirs, successors and assigns.

#### **VIII. SEVERABILITY**

If any one or more of the provisions of this Release Agreement, or the application of any such provision to any person, entity, or set of circumstances, shall be determined to be invalid, unlawful, or unenforceable to any extent at any time, the remainder of this Release Agreement, and the application of such provision to persons, entities, or circumstances other than those as to which it is determined to be invalid, unlawful, or unenforceable, shall not be affected, and shall continue to be enforceable to the fullest extent permitted by law. Any invalid, unlawful, or unenforceable provision hereof shall be reformed to the extent necessary to render it valid, lawful, and enforceable in a manner consistent with the intentions of the parties hereto regarding such provision.

**IX. ENTIRE AGREEMENT OF THE PARTIES**

This Release Agreement constitutes the entire agreement and understanding of Purcell, Krenek, and the District and/or their representatives, with respect to the transactions contemplated hereby, and supersedes all prior agreements, arrangements, and understandings related to the subject matter hereof, including but not limited to, the Access Road. No representations, warranties, recitals, covenants, or statements of intention have been made by, or on behalf of, any party hereto which is not embodied in this Release Agreement or in connection with the transactions stated herein or contemplated hereby, and no party hereto shall be bound by, or liable for, any alleged representation, warranty, recital, covenant, or statement of intention not so set forth. All the terms, provisions, conditions, covenants, warranties, recitals, and statements of intention in this Release Agreement shall be binding upon, inure to the benefit of, and be enforceable by the District.

**X. GOVERNING LAW**

This Release Agreement shall be construed in accordance with the governing laws of the State of Texas. The obligations of the parties are performable, and venue for any legal action arising out of this Release Agreement shall lie in Williamson County, Texas.

**XI. FULL UNDERSTANDING AND AGREEMENT**

EACH RELEASING PERSON, ENTITY, OR PARTY WARRANTS THAT SUCH PARTY HAS READ THIS RELEASE AGREEMENT AND FULLY UNDERSTANDS IT. EACH PARTY WARRANTS THAT SUCH PARTY IS OF LEGAL COMPETENCE AND LEGAL CAPACITY, AND IS FREE, WITHOUT DURESS, TO EXECUTE THIS RELEASE AGREEMENT, AND THAT SUCH PARTY HAS DONE SO OF FREE WILL AND ACCORD, WITHOUT RELIANCE ON ANY REPRESENTATION OF ANY KIND OR CHARACTER NOT EXPRESSLY SET FORTH HEREIN.

**XII. EXECUTION AND EFFECTIVE DATE**

This Release Agreement may be signed in counterparts, and each counterpart shall constitute an original. The parties hereto have executed this Release Agreement, to be effective as of

\_\_\_\_\_, 2020 ("Effective Date")

NAME \_\_\_\_\_

NAME \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ACKNOWLEDGMENTS**

STATE OF TEXAS )

)

COUNTY OF \_\_\_\_\_ )

)

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS )

)

COUNTY OF \_\_\_\_\_ )

)

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_

\_\_\_\_\_  
Notary Public, State of Texas