

**INTERLOCAL DEVELOPMENT AGREEMENT FOR THE DEDICATION, FUNDING,
AND CONSTRUCTION OF RIGHT-OF-WAY**

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

This Interlocal Development Agreement (“Agreement”) is made and entered into by and between FORT BEND COUNTY, TEXAS (the “County”), a political subdivision of the state of Texas, and FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 265 (the “District”), a special district established under the laws of the state of Texas. County and District may be collectively referred to as the “Parties” and each individually a “Party.”

WHEREAS, this Agreement is entered into pursuant to Chapter 791 of the Texas Government Code, the Interlocal Cooperation Act (the “Act”), which authorizes local governments to contract with one another to provide governmental functions, mutual aid, and services under the terms of the Act; and

WHEREAS, the Parties are each a local governmental entity and are authorized under the Act to provide certain governmental functions, including, but not limited to the provision of road and drainage improvements; and

WHEREAS, Holly Ridge Development Company, LLC, or its permitted successors and assigns (the “Developer”), is planning to develop or has developed a Single Family Residential development located within the jurisdictional boundaries of the District in Fort Bend County known as the Holly Ridge development (the “Development”); and

WHEREAS, Panhandle Path is a public road classified as a local road; and

WHEREAS, Developer has dedicated the right-of-way for Panhandle Path within the Holly Ridge Development in Fort Bend County, Texas; and

WHEREAS, County desires that the District construct 28-ft wide roadway from STA 1+39 to 2+85 as further provided in this Agreement; and

WHEREAS, the County and District anticipate that the right-of-way that is the subject of this Agreement will be accepted into the County Road Maintenance System upon compliance with County’s standards and procedures; and

WHEREAS, pursuant to Chapter 49 of the Texas Water Code, the District has the authority to finance, develop, and maintain roadway facilities within its jurisdictional boundaries; and

WHEREAS, for the benefit of County and District, and in order to provide for economic development and mobility within the County, and in and around the Development, the Parties desire to enter into this Agreement.

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

1. **Purpose.** The purpose of this Agreement is to set forth the terms and conditions pursuant to which a portion of 50' right of way on Panhandle Path will be designed and constructed as provided in "Exhibit A" attached hereto and incorporated by reference herein (the "Project").
2. **Incorporation of Recitals.** The representations, covenants, and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into this Agreement.
3. **Project Scope.**
 - (a) The Project shall be facilitated, managed, and administered by District, at District's sole cost and expense including any payments arising under any contracts entered into for the design, evaluation, and/or construction of the Project; all costs incurred in connection with engineering and consulting fees, obtaining governmental approvals, certificates, and permits, and location and/or relocation of utilities. Such costs and expenses shall also include any reimbursement to Developer for any costs described above advanced to or on behalf of the District, provided that District has entered into an agreement with Developer for repayment of all funds advanced on its behalf ("Developer Advance").
 - (b) District shall design and construct the Project in accordance with the plans and specifications provided in Exhibit A attached hereto. The Parties acknowledge and agree that the attached plans and specifications represent the general requirements for the Project to facilitate the completion of the Project as of the Effective Date of the Agreement. If material adjustments to the plans and specifications are required after the Effective Date in order to facilitate the completion of the Project, such material adjustments shall be made by approval of the County Engineer.
 - (c) All construction plans for the Project shall be designed and submitted to County as follows:
 - (1) District shall select the design engineer and design all aspects of the Project in accordance with County standards and regulations.

- (2) District shall submit the design and construction plans for the Project to the County for review and approval, which approval shall not be unreasonably withheld, conditioned or delayed.
 - (3) District understands and agrees that construction of the Project shall not proceed without the express written approval of the County Engineer and receipt of the County's Notice to Proceed as provided in Section 3(e) of this Agreement.
 - (d) District shall acquire or has acquired the necessary right-of-way for the Project at no cost to County. District shall, at its sole cost and expense, obtain and keep in effect all licenses, permits, or other governmental authorizations required by law for the Project.
 - (e) District shall commence construction of the Project, as provided herein, within twelve (12) months of receipt of County's written Notice to Proceed, which shall be issued subsequent to the recordation of the adjacent subdivision plat.
4. **Financing of the Project.** District may fund the Project through a Developer Advance or from current revenues available to the District.
5. **Inspection of the Project.** County shall have the right to inspect the progress of the Project from time to time as it deems necessary in order to confirm the conformance of the Project with the approved design plans and terms and conditions of this Agreement.
6. **Completion of the Project.** Completion of the Project shall include a final inspection and completion of any punch list and closeout items. District shall have the right to participate in the final inspection of the Project. Any deficiencies noted by County shall be brought to the attention of District and shall be promptly addressed and corrected by District. The Project shall be deemed complete upon certification as such by the County Engineer by issuing a construction completion letter ("Completion of the Project"), which such certification shall not unreasonably be withheld, conditioned or delayed.
7. **Insurance Requirements.** District will require its Contractor's insurance policies to name County, in addition to District, as additional insured on all policies except for Worker's Compensation and Professional Liability. Any such insurance policies shall include at least the following minimum coverage:
- (a) Workers Compensation in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.
 - (b) Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and

products/completed operations arising out of the business operations of the policyholder.

- (c) Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
- (d) District may require insurance in excess of the amount of coverage set out above, as it deems necessary. In such cases, County shall remain an additional insured.
- (e) District shall provide County with proof of insurance required under this section within thirty (30) days of District's award of a construction contract for the Project.

8. **Conveyance and Acceptance of the Project.** District understands and agrees that upon Completion of the Project, District shall be solely responsible for the maintenance and/or repair of the Project, if and until County accepts the Project into the County Road Maintenance System as provided in this Agreement and in accordance with the County regulations. District warrants, covenants, and agrees that County shall have no responsibility or obligation for the maintenance and/or repair of the Project until County agrees to accept and maintain the same.

9. **Non-Standard Improvements and Materials.**

- (a) The terms of this Section are applicable to District's construction and installation of any Non-Standard Improvements and Materials (as hereinafter defined) that are wholly or partially located in the Project. "Non Standard Improvements and Materials" shall mean any and all improvements and materials located within the rights-of-way within the Project, or part(s) thereof, that are not part of County's standard and routine right-of-way maintenance including, but not limited to: storm sewers and associated outfalls, detention ponds, sidewalks, sidewalk ramps, trails, monument signs, landscaping, trees, irrigation, masonry entrances, lamp posts, pavers, decorative bridge rails, manholes, decorative concrete, aesthetic and architectural enhancements to bridges or abutments, and other above-surface and below-surface structures or improvements.
- (b) Notwithstanding County's acceptance of the Project into the County Road Maintenance System and conveyance of the same, District understands and agrees that District shall remain solely responsible for the repair, replacement, and maintenance of any Non-Standard Improvements and Materials. District warrants, covenants and agrees that County shall have no responsibility for the repair, replacement, or maintenance of the Non-Standard Improvements and Materials. Prior to the commencement of any maintenance or repair obligations hereunder, District shall comply with any and all applicable permitting rules that

may be required by the Fort Bend County Engineer's Office for such maintenance and repair work.

- (c) After acceptance into the County Road Maintenance System and Conveyance of the same, and in the event County may find it necessary to make roadway improvements within any portion of the Project occupied by any Non-Standard Improvements and Materials, County shall notify District, and District shall be solely responsible for the cost of removal or relocation of any such Non-Standard Improvements and Materials, or responsible for the additional cost of repair required by such installation instead of the County's standard required materials within the time prescribed by County.
 - (d) After acceptance into the County Road Maintenance System and Conveyance of the same, should County, based upon generally accepted traffic engineering principals, determine that any of the Non-Standard Improvements and Materials (or parts thereof), constitute an unusual threat to public road traffic, then County shall notify District and District shall immediately, and at District's sole cost and expense, remove the respective Non-Standard Improvements and Materials (or part(s) thereof) within the time prescribed by County.
10. **Term and Termination.** The Term of this Agreement shall begin upon the Effective Date and shall continue in effect until the Project is accepted into the County Road Maintenance System in accordance with Section 8 of this Agreement. Upon such acceptance, this Agreement shall terminate.
11. **Dispute Resolution.** The Parties agree to cooperate in good faith in all activities and actions relating to this Agreement. If a dispute should arise in connection with this Agreement, the Parties agree to first attempt to resolve such disputes by negotiating in good faith. If after 30 days from the time that either Party first notified the other party of a dispute in writing, the Parties are unable to resolve a dispute after engaging in good faith negotiations, then such dispute shall be either mediated and/or litigated and resolved in a court of appropriate jurisdiction in Fort Bend County, Texas.
12. **Force Majeure.** In the event either Party is rendered unable, wholly or in part, by Force Majeure to carry out any of its obligations under this Agreement, then, within a reasonable time after the occurrence of such event, but no later than ten (10) calendar days after, the Party whose obligations are so affected (the "Affected Party") thereby shall notify the other in writing stating the nature of the event and the anticipated duration. The Affected Party's obligations under this Agreement shall be suspended during the continuance of any delay or inability caused by the event, but for no longer period. The Affected Party shall further endeavor to remove or overcome such delay or inability as soon as is reasonably possible.

For purposes of this Agreement, Force Majeure includes, but is not limited to: acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States of America or the State of Texas or any civil or military authority other than a Party to this Agreement, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, severe storms, floods, washouts, drought, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, and any other incapacities of any Party, similar to those enumerated, which are not within the control of the Party claiming such inability, which such Party could not have avoided by the reasonable exercise of due diligence and care.

13. **Notice.** Any and all notices required or permitted under this Agreement shall be in writing and shall be properly addressed and sent via personal delivery, US first class postage prepaid, registered or certified mail, return receipt requested, Federal Express, Express Mail, or other overnight delivery service as follows:

If to County: Fort Bend County Engineering Department
Attn: County Engineer
301 Jackson St., 4th Floor
Richmond, Texas 77469

And

Fort Bend County, Texas
Attn: County Judge
401 Jackson St, 1st Floor
Richmond, Texas 77469

If to District: Fort Bend County Municipal Utility District 265
Attn: David Oliver
Allen Boone Humphries Robinson, LLP
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027

Within five (5) business days of the Effective Date of this Agreement, each Party to this Agreement shall designate in writing to the other Party one person and one alternate person to be that Party's designated spokesperson for communications between the Parties.

14. **District's Assurances.** District shall take all reasonable actions to ensure that the Project is constructed in a good and workmanlike manner with all reasonable diligence. District warrants, covenants, and agrees that the Project shall be constructed in accordance with the then current County standards and regulations. District further warrants, covenants, and agrees that all materials used for the Project will be of equal or greater strength and

suitability as the then current standards for County roads contained in County's standard requirements and regulations.

15. **Entire Agreement and Modification.** This Agreement constitutes the entire Agreement between the Parties and supersedes any and all previous agreements, written or oral, pertaining to the subject matter of this Agreement. This Agreement may only be amended or modified by written agreement executed by both Parties. **IT IS ACKNOWLEDGED BY DISTRICT THAT NO OFFICER, AGENT EMPLOYEE, OR REPRESENTATIVE OF COUNTY HAS ANY AUTHORITY TO CHANGE THE TERMS OF THIS AGREEMENT OR ANY ATTACHED EXHIBITS HERETO UNLESS EXPRESSLY AUTHORIZED BY THE FORT BEND COUNTY COMMISSIONERS COURT.**
16. **No Waiver of Immunity.** Neither the execution of this Agreement nor any other conduct of either Party to this Agreement shall be considered a waiver or surrender of its governmental powers or immunity under the Texas Constitution or the laws of the State of Texas.
17. **Payments from Current Revenues.** Each Party represents and warrants to the other that each party paying for the performance of governmental functions or services hereunder must make those payments from current revenues available to the paying party.
18. **Benefit.** This Agreement shall be for the sole and exclusive benefit of County and District and shall not be construed to confer any benefit or right upon any other party.
19. **Applicable Law and Venue.** This Agreement shall be construed according to the laws of the state of Texas. Venue for any claim arising out of or relating to the subject matter of this Agreement shall lie in a court of competent jurisdiction of Fort Bend County, Texas.
20. **Assignment.** District may not assign its rights, duties, or obligations hereunder, without the prior written consent of County, which consent shall not be unreasonably withheld, conditioned or delayed. Upon assignment of the Agreement by District, the assignee shall become fully responsible for all obligations of District under this Agreement.
21. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
22. **Effective Date.** The Effective Date of this Agreement shall be the date this Agreement is signed by the last Party hereto.
23. **Captions.** The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of the Agreement.

24. **Electronic and Digital Signatures.** The Parties to this Agreement agree that any electronic and/or digital signatures of the Parties included in this Agreement are intended to authenticate this writing and shall have the same force and effect as the use of manual signatures.
25. **Multiple Counterparts.** This Agreement may be executed in multiple counterparts, each having equal force and effect of an original.
26. **Human Trafficking. BY ACCEPTANCE OF THIS AGREEMENT, DISTRICT ACKNOWLEDGES THAT FORT BEND COUNTY, TEXAS IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.**
27. **Authorization.** This Agreement shall become binding and effective only after it has been authorized and approved by the governing bodies of each Party, as evidenced by the signature of the appropriate authority. Each Party further represents that, by execution of this Agreement, it has been duly authorized by its governing body or other appropriate authority from whom such Party is legally bound to obtain authorization.

{Execution Page Follows}

FORT BEND COUNTY, TEXAS


KP George, County Judge

Date

ATTEST:

Laura Richard, County Clerk

APPROVED:



J. Stacy Slawinski, P.E.,
County Engineer

**FORT BEND COUNTY
MUNICIPAL UTILITY DISTRICT NO. 265**



Name – Signature

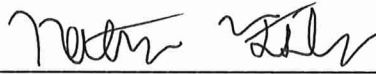
Cameron Brown

Name - Printed Name

President

Title

ATTEST:



Name – Signature

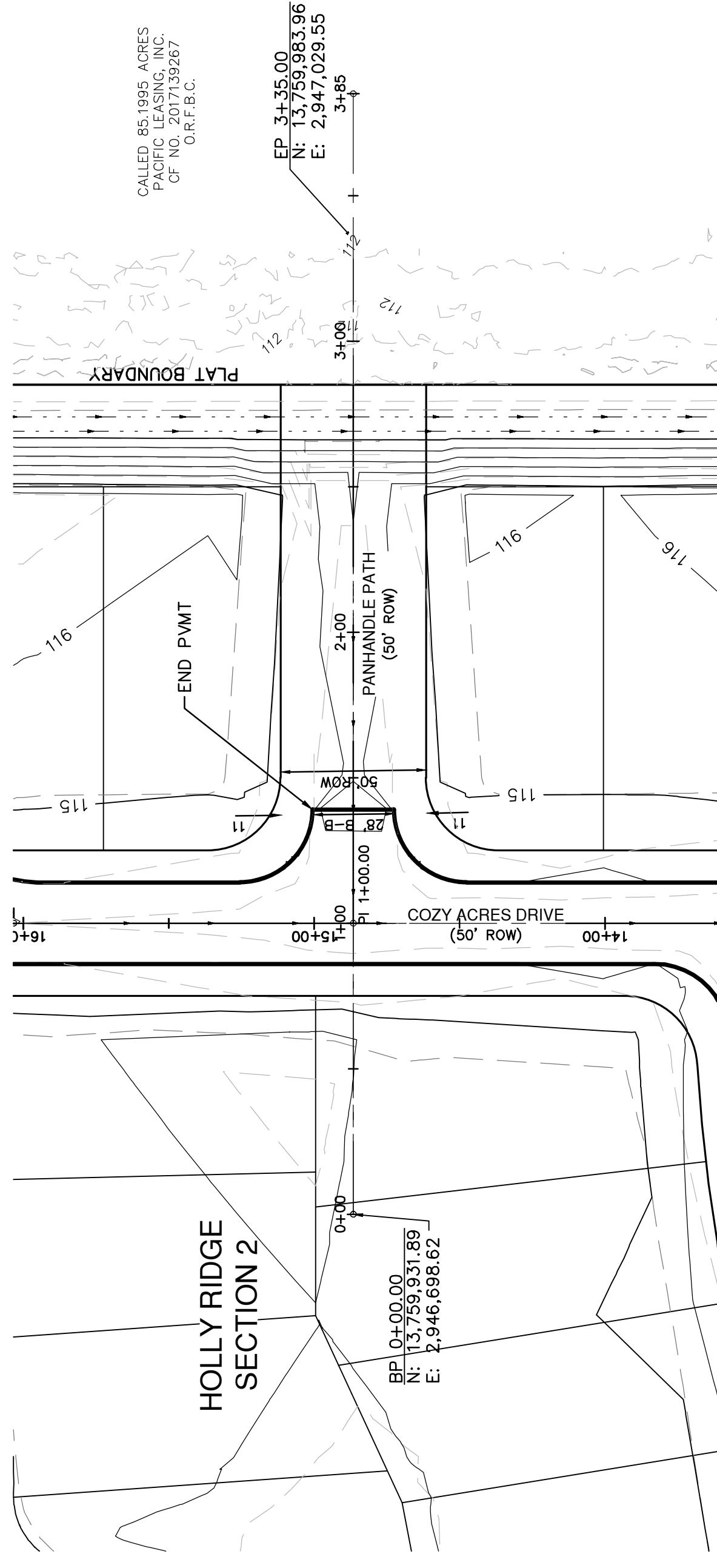
Nathan Fiskman

Name – Printed

Secretary

Title

Exhibit A



SCOPE OF WORK:
 50' ROW
 STREET NAME: PANHANDLE PATH
 DIMENSIONS: 146 LF (STA 1+39 THRU 2+85); 28' WIDE B-B
 ROAD CLASSIFICATION: LOCAL ROAD

PANHANDLE PATH

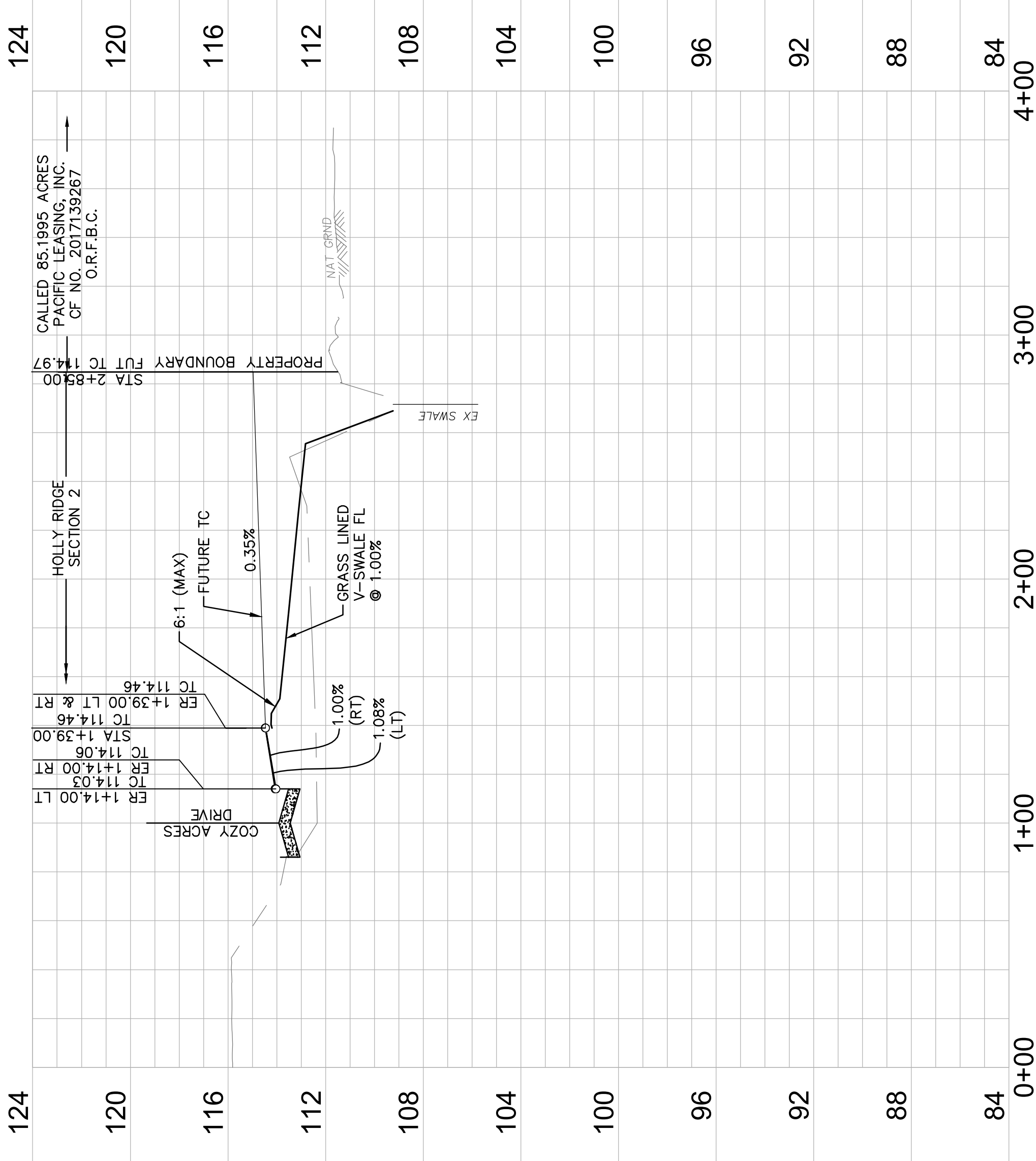
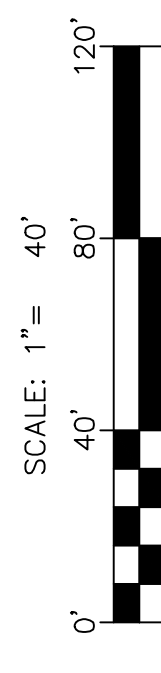
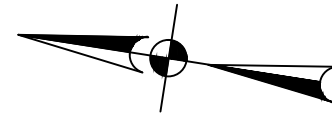


EXHIBIT "A"
 HOLLY RIDGE
 SECTION 2
 PROPOSED STUB
 STREET



PAPE-DAWSON
 2107 CITYWEST BLVD, 3RD FLR | HOUSTON, TX 77042 | 713.423.2400
 TEXAS ENGINEERING FIRM #470 | TEXAS SURVEYING FIRM #10028800