#### **ARF-819**

DRAINAGE DISTRICT AGENDA

Date: 07/06/2010

Contract to Convey Property Agreement, City of Sugar Land

**Submitted For:** 

Mark Vogler, Director

RoseAnn Vargas,

Drainage District

Department:

Drainage District

Renewal Agreement/

Yes

Appointment:

**Reviewed by County** 

Yes

**Attorney's Office:** 

Multiple Originals

Yes

<u>Y/N?:</u>

D

## Information

**Submitted By:** 

# **SUMMARY OF ITEM**

Take all appropriate action to approve the Contract to Convey Property between the City of Sugar Land and Fort Bend County Drainage District for acquisition of property for the Ditch "H" Extension Project, said property being approximately 5.957 acres of land, Precinct 4.

# SPECIAL HANDLING

Please return originals to Dwayne Grigar, Drainage District

7-13-10

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## Attachments

Link: Contract to Convey Property, City of Sugar Land

contract also recorded in property records at Co. Clerk

COUNTY JUDGE RECEIVED

JUL 02 2010

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# CONTRACT TO CONVEY PROPERTY (Ditch H Channel Extension Project)

THIS CONTRACT TO CONVEY PROPERTY (Agreement) is entered into between the CITY OF SUGAR LAND, TEXAS (City) and FORT BEND COUNTY DRAINAGE DISTRICT (District).

#### RECITALS

On or about June 7, 2005 the City and the District entered into an interlocal agreement whereby the City and the District each agreed to fund 50% of the engineering costs of the Ditch H Channel Extension Project (the Project). The City and the District anticipate entering into a similar arrangement in an interlocal agreement to fund the construction and associated costs of the Project. On September 19, 2007 the City paid the entire costs to acquire land for the construction phase of the Project from the Fort Bend County Water Control and Improvement District No. 1 (WCID#1).

In 2008 the City and the District entered into a Contract to Convey Property whereby the City agreed to convey the land acquired from WCID#1 to the District in exchange for a \$31, 366 reductions to the City's 50% share of the Project construction costs in the anticipated interlocal agreement. And the Deed Without Warranty (Deed) attached to the Contract to Convey Property further provided that the land acquired from WCID#1 would automatically revert to the City if the District did not enter into a construction contract for the Project by September 30, 2009. The 2008 Contract to Convey Property expired on October 31, 2009.

The Deed is recorded at File No. 2008038152, in the Real Property Records of Fort Bend County, Texas. The City and the District agree that the land has automatically reverted to the City under the terms of the Deed. The City and the District desire to enter into a new Contract to Convey Property and the District desires to re-acquire the land from the City at this time according to the terms of this Agreement.

#### **AGREEMENT**

In consideration of their mutual covenants and agreements, the parties agree as follows:

#### Section 1. Definitions.

Agreement for Project Construction Costs means an agreement between the City and the District whereby each party agrees to pay 50% of the construction costs associated with the Ditch H Channel Extension Project, subject to the offset for the Property acquisition costs identified in this Agreement.

City means the City of Sugar Land, Texas.

*Deed* means the Deed Without Warranty, attached as Exhibit A and incorporated into this Agreement by reference.

District means the Fort Bend County Drainage District.

Environmental Assessment means any study, test or investigation of environmental conditions on, at, under or around the Property for the purpose of determining the suitability of the Property for the County's intended purposes, or for the purpose of conducting any desired or necessary "all appropriate inquiries" investigation under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sec. 9601 et seq.

## Property means:

- (1) 0.659 acres of land, 1.294 acres of land, and 2.087 acres of land located in the Alexander Hodge League, Abstract No. 32 in Fort Bend, County, Texas, as conveyed to the City from the District by Special Warranty Deed filed of record in the Fort Bend County Deed Records at File No. 2007126207 and as described in the Deed from Imperial Sugar Company to the Fort Bend County Water Control and Improvement District Number One recorded in Volume 895, Page 275 of the Fort Bend County Deed Records; and
- (2) 0.702 acres of land, more or less, 0.998 acres of land, more or less, 0.141 acres of land, more or less, and 0.076 acres of land, more or less, located in the Alexander Hodge League, Abstract No. 32, in Fort Bend, County, Texas, as conveyed to the City from the District by Special Warranty Deed filed of record in the Fort Bend County Deed Records at File No. 2007126207 and as described in the Quitclaim Deed from Missouri Pacific Railroad Company to the Fort Bend County Water Control and Improvement District Number One recorded in Volume 2260, Page 1709 of the Fort Bend County Deed Records.

**Section 2. Sale of Property.** The City will grant, sell and convey to the District fee title to the Property in substantially the form of the Deed, which reserves unto Grantor an easement for the purpose of constructing, reconstructing installing, repairing, relocating, operating, and maintaining one or more lines, pipes, conduits, and related facilities for the collection and conveyance of water under, over, and across the Property as described in Exhibit A to the Deed.

Section 3. Purchase Price. The purchase price is \$62,732.00, to be paid as provided in this paragraph. The City and the District each agree to pay 50% of the Property cost if by September 30, 2014, the District enters into a construction contract for the Project and the City and the District execute an Agreement for Project Construction Costs. In that event, the City's 50% share of the Project construction costs will be reduced by \$31,366.00. If, however, the District does not enter into a construction contract for the Project by September 30, 2014, the Property will automatically revert to the City without any further action being taken as provided in the Deed. And the parties will file in the Fort Bend County Deed Records an instrument reflecting that the Property has automatically reverted to the City; provided, however, that failure to file the instrument will not alter the automatic reversion of the Property to Grantor.

## Section 4. Inspection.

- (a) The District, its employees, officers and contractors may enter the Property to conduct inspections, an environmental assessment and a current boundary survey (plat and field note description) (Survey).
- (b) The City will cooperate with the District and deliver copies of any reports or studies it may possess concerning the Property or its condition.

## Section 5. Title Commitment and Survey.

- (a) Upon execution of this Agreement, the District may obtain, at its cost, a commitment for title insurance (the Title Commitment) for the Property and current Survey.
- (b) If the District decides to obtain the Title Commitment, the District will have 30 days from the receipt of the Title Commitment, Survey, and related documents to specify to the City in writing those items that the District finds objectionable.
- (c) If the District objects to any item set forth on the Title Commitment or the Survey, the City will use reasonable efforts to cure the matters before Closing but will have no obligation to expend any sums to do so.
- (d) From and after Closing, all federal, state and local environmental regulatory requirements and all liabilities related to environmental conditions of the Property will be the sole responsibility of the District.

## Section 6. Closing.

- (a) The Closing of the sale of the Property by the City to the District (Closing) will occur on or before May 31, 2010 unless agreed otherwise by the parties. The Closing will occur at a place agreed upon by the parties.
- (b) At the Closing, the City will deliver or cause to be delivered to the District the signed Deed.
- (c) If a Title Company is involved with the Closing, the District will pay its share of the closing costs.
- (d) The District and the City will provide any documents as may be reasonably necessary and appropriate to complete the Closing of the transaction contemplated herein.
- (e) Upon completion of the Closing, the City will deliver to the District possession of the Property, free and clear of all tenancies of every kind and parties in possession.
- (f) The District will pay for the cost of:

- (1) Preparing and recording the Deed;
- (2) Services incurred by the District in performing any environmental study and related tests and investigations;
- (3) The Title Company's escrow fee, the Title Commitment, and the Title Policy, if applicable; and
- (4) The Survey(s).

Section 7. Notices. Any notice required to be given must be in writing and will be served (i) by depositing same in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested; (ii) by delivering the same to such party or agent of such party, in person or by commercial courier; or (iii) by facsimile or by depositing the same into the custody of a nationally recognized overnight delivery service such as Federal Express Corporation, addressed to the party to be notified. For purposes of notice, the addresses of the parties will be as follows:

If to the District, to: Robert E. Hebert, Chairman

Fort Bend County Drainage District

301 Jackson Street Richmond, TX 77469

If to the City, to: City Manager

> City of Sugar Land P. O. Box 110

Sugar Land, TX 77487-0110

From time to time either party may designate another address by giving the other party at least ten (10) days advance notice of such change of address.

**Section 8. Remedies.** If the County terminates this Agreement in accordance with a provision of this Agreement providing for termination by the District, then neither party hereto has any further rights, duties or obligations hereunder.

#### Section 9. Miscellaneous.

(a) Entire Agreement. This Agreement is the entire agreement between the City and District concerning the sale of the Property and supersedes all prior agreements and understandings and no modification hereof or subsequent agreement relative to the subject matter hereof is binding on either party unless reduced to writing and signed by the party to be bound.

- (b) Severability. If a court rules that any part of this Agreement is invalid or unlawful, the remainder of the Agreement remains binding on the parties.
- (c) Venue. The parties hereto waive the right to be sued elsewhere and agree and consent to the jurisdiction of any court of competent jurisdiction located in Fort Bend County, Texas.
- (d) Representations. The City represents that it has no current actual knowledge of any condition, including any environmental contamination of the Property that would materially adversely affect its use by the District.

Section 10. Term and Effective Date. The date of execution of this Agreement by the latter of City or District is the Effective Date of this Agreement. This Agreement begins on the Effective Date and ends on October 31, 2014.

CITY OF SUGAR LAND, TEXAS	FORT BEND COUNTY DRAINAGE DISTRICT
By: Allen Bogard, City Manager	By: Robert E. Hebert, Chairman
Date: 06-04-2010	Date: 7-6-2010
ATTEST:  Glenda Gundermann, City Secretary  (SEAL)	Name: Signer Wilson Title: County Clerk
Reviewed for Legal Compliance:	

Lugaria A Cam-

Attachments: Exhibit A – Deed Without Warranty

#### Exhibit A

#### **DEED WITHOUT WARRANTY**

**Background:** On or about June 7, 2005 the City and the District entered into an interlocal agreement whereby the City and the District each agreed to fund 50% of the engineering costs of the Ditch H Channel Extension Project (the Project). The City and the District anticipate entering into a similar arrangement in an interlocal agreement to fund the construction and associated costs of the Project. On September 19, 2007 the City paid the entire costs to acquire land for the construction phase of the Project from the Fort Bend County Water Control and Improvement District No. 1 (WCID#1).

In 2008 the City and the District entered into a Contract to Convey Property whereby the City agreed to convey the land acquired from WCID#1 to the District in exchange for a \$31, 366 reduction to the City's 50% share of the Project construction costs in the anticipated interlocal agreement. The Contract to Convey Property and the attached Deed Without Warranty (Original Deed) attached thereto further provided that the land acquired from WCID#1 would automatically revert to the City if the District did not enter into a construction contract for the Project by September 30, 2009. The Contract to Convey Property expired on October 31, 2009.

The Deed is recorded at File No. 2008038152, in the Real Property Records of Fort Bend County, Texas. The City and the District agree that the land has automatically reverted to the City under the terms of the Original Deed because the District did not enter into a construction contract for the Project by September 30, 2009. But, the District desires to re-acquire the Property from the City and the City desires to re-convey the Property at this time according to the terms of this new Deed Without Warranty, subject to the City's reservation of a water line for itself.

7-6- ,2010 Date:

City of Sugar Land, Texas Grantor:

P.O. Box 110

Sugar Land, Texas 77487-0110

Att: City Manager

Grantee: Fort Bend County Drainage District

> 301 Jackson Street Richmond, Texas 77469 Att: Chairman of Board

**Consideration**: Ten dollars (\$10.00) and other valuable consideration.

**Property:** (1) 0.659 acres of land, 1.294 acres of land, and 2.087 acres of land located in the Alexander Hodge League, Abstract No. 32 in Fort Bend, County, Texas, as conveyed to the City from the District by Special Warranty Deed filed of record in the Fort Bend County Deed Records at File No. 2007126207 and as described in the Deed from Imperial Sugar Company to the Fort Bend County Water Control and Improvement District Number One recorded in Volume 895, Page 275 of the Fort Bend County Deed Records; and

(2) 0.702 acres of land, more or less, 0.998 acres of land, more or less, 0.141 acres of land, more or less, and 0.076 acres of land, more or less, located in the Alexander Hodge League, Abstract No. 32, in Fort Bend, County, Texas, as conveyed to the City from the District by Special Warranty Deed filed of record in the Fort Bend County Deed Records at File No. 2007126207 and as described in the Quitclaim Deed from Missouri Pacific Railroad Company to the Fort Bend County Water Control and Improvement District Number One recorded in Volume 2260, Page 1709 of the Fort Bend County Deed Records.

**Possibility of Reverter**: If, by September 30, 2014, the Grantee does not enter into a construction contract for the Project, the Property will automatically revert to the Grantor, its successors or assigns without any further action being taken. If the Property reverts to Grantor, the Grantee and Grantor will jointly file an instrument in the Fort Bend County Real Property Records to document the reversion of the Property to the Grantor. Failure to file the joint instrument, however, will not alter the automatic reversion of the Property to Grantor if Grantee does not enter into a construction contract for the Project by September 30, 2014.

#### **Reservations from and Exceptions to Conveyance:**

- (1) Easements, rights-of-way, and prescriptive rights, whether of record or not and all presently recorded instruments, other than liens and conveyances, that affect the Property.
- (2) The Grantor reserves unto itself an easement for the purpose of constructing, reconstructing installing, repairing, relocating, operating, and maintaining one or more lines, pipes, conduits, and related facilities for the collection and conveyance of water under, over, and across the Property, as described in Exhibit A, which is incorporated into this Deed by reference (Water Line Easement).

**Conditions:** Grantee will not construct, install or place any bridges, buildings, sidewalks, fences, or other permanent structures within the Easement or otherwise interfere with the City's use of the Water Line Easement, without the prior written consent of the City.

Subject to the Conditions and Reservations from and Exceptions to Conveyance, the Grantor grants, sells, and conveys to Grantee the Property, without:

- (1) express or implied warranty,
- (2) all warranties that might arise by common law; and
- (3) the warranties in Sec 5.023 of the Texas Property Code (or its successors), which are specifically excluded.

CITY OF SUGAR LAND	GRANTOR Fort Bend County Drainage District
Allen Bogard, City Manager	By: Robert E. Hebert, Chairman
ATTEST:  Genda Gundermann, City Secretary	
Reviewed for Legal Compliance:	
Rugenia A Cans	
STATE OF TEXAS	
COUNTY OF FORT BEND	
This instrument was acknowledged before m., 2010, by Allen Boga	day of as City Manager for the City of Sugar
Land.	1 2
	Shad Handren
Notary Public, State of Texas	Mass y mass mon
Notary's name (printed):	da Gunder Public Villa
Notary's commission expires:	State of Text
CITY/DRAINAGE DISTRICT CONTRACT	11-16-20

# STATE OF TEXAS COUNTY OF FORT BEND

This instrument was acknowledged be	efore me on the day of
Bend County Drainage District.	ert E. Hebert as Chairman of the Board of the Fort
Notary Public, State of Texas	D'neal Krisch
Notary's name (printed):	
	D'neal Krisch
Notary's commission expires: 11 3	

# AFTER RECORDING RETURN TO:

City of Sugar Land City Secretary's Office P.O. Box 110 Sugar Land, TX 77487-0110



# Exhibit\_A

County:

Fort Bend

Project:

Sugar Land SW 0801

Description:

Surface Water Conversion Transmission Line

Route:

A-2

# Property Description for Parcel 028-029

Being a 9,021 square foot parcel of land, located in Fort Bend County, Texas, situated in the Alexander Hodge League, Abstract No. 32, and being out of a called 3.87 acre (calculated) tract conveyed to Fort Bend County Drainage District, in the deed dated April 9, 2008 and recorded in Fort Bend County Clerk's File No. 2008038152, of the Official Public Records of Real Property in Fort Bend County, Texas, said 3.87 acre being all of a called 0.702 acre tract, all of a called 0.141 acre tract, all of a called 0.076 acre tract, all of a called 1.294 acre tract, all of a called 0.998 acre tract, and all of a called 0.659 acre tract, each being described separately in said Fort Bend County Clerk's File No. 2008038152, said 9,021 square foot parcel of land being more particularly described as follows:

BEGINNING (N=13,790,297.91, E= 3,033,224.03) at a 5/8-inch iron set in the east right-of-way line of State Highway No. 6 (width varies) as dedicated in Vol. 1821, Pg. 978, of the Deed Records of Fort Bend County, Texas, for the northwest corner of said 3.87 acre tract, being also the northwest corner of said 0.141 acre tract, being also the southwest corner of that certain Tract "F", called 497.696 acres, conveyed to Cherokee Sugar Land, L.P., as to a 50% interest, in the deed dated July 13, 2007 and recorded in Fort Bend County Clerk's File No. 2007088840, of the Official Public Records of Real Property in Fort Bend County, Texas and conveyed to the State of Texas Permanent School Fund, as to a 50% interest, in the deed dated December 22, 2002 and recorded in Fort Bend County Clerk's File No. 2003023371 and 2008070584, of the Official Public Records of Real Property in Fort Bend County, Texas, being also the southwest corner of that certain tract called 377.3757 acre Tract 3A, Part 2, State of Texas Department of Transportation Partition Plat, as recorded in Sl. 1832/B, 1833/A&B of the Plat Records of Fort Bend County, Texas, being also the northwest corner of herein described 9,021 square foot parcel, from which a found 5/8-inch iron rod bears \$74°40'47"E, 3.97 feet; thence as follows:

- 1.) THENCE South 84°12'58" East (called S84°26'16"E and S82°07'10"E) along the south line of said 497.696 acre Tract "F", being also the south line of said 377.3757 acre Tract 3A, Part 2, and the north line of said 3.87 acre tract and said 0.141 acre tract, a distance of 16.16 feet to the northeast corner of the herein described parcel;
- 2.) THENCE South 02°18'46" East along a line that is parallel with and 16 feet east of the east

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right-of-way line of said State Highway No. 6, a distance of 74.45 feet to an angle point;

- 3.) THENCE South 26°41'47" East across said 3.87 acre tract, a distance of 113.07 feet to an angle point;
- 4.) THENCE North 84°08'08" East across said 3.87 acre tract, a distance of 261.14 feet to a 5/8-inch iron rod set at an intersect with the east line of said 3.87 acre tract, being also the west line of that certain Tract "A", called 77.812 acres, conveyed to Cherokee Sugar Land, L.P., recorded in Fort Bend County Clerk's File No. 2007084091, of the Official Public Records of Real Property in Fort Bend County, Texas, for the northeast corner of the herein described parcel;
- 5.) THENCE South 05°51'52" East (called S03°22'50"E) along the east line of said 3.87 acre tract and the west line of that said 77.812 acre tract, a distance of 20.00 feet to a 5/8-inch iron rod set for the southeast corner of the herein described parcel;
- 6.) THENCE South 84°08'08" West, across said 3.87 acre tract, a distance of 274.93 feet to a 5/8-inch iron rod set at an intersect with the east line of that certain 20 foot wide Houston Pipeline Company easement described in Fort Bend County Clerk's File No. 2000001860, of the Official Public Records of Real Property in Fort Bend County, Texas, for the southwest corner of the herein described parcel;
- 7.) THENCE North 26°41'47" West, across said 3.87 acre tract, along the easterly line of said 20 foot wide Houston Pipeline Company easement, a distance of 121.49 feet to a 5/8-inch iron rod set at an intersect with the west line of said 3.87 acre tract, being the east right-of-way line of said State Highway No. 6, for an angle point in the west line of the herein described parcel;
- 8.) THENCE North 02°18'46" West (called N00°01'45"E), along the west line of said 3.87 acre tract and the east right-of-way line of said State Highway No. 6, a distance of 89.88 feet to the **POINT OF BEGINNING** and containing 9,021 square feet (0.2071 acres) of land.

All bearings and coordinates are based on the Texas Coordinate System, South Central Zone, North American 1983 Datum, 2001 Adjustment. All coordinates and distances are surface and may be converted to grid by dividing by a combined scale factor of 1.00013.

This property description is prepared in conjunction with a parcel plat of equal date.

I, Randy S. McClendon, a Registered Professional Land Surveyor, hereby certify that the property

December, 2009 Parcel 028-029 Page 3 of 5 Pages

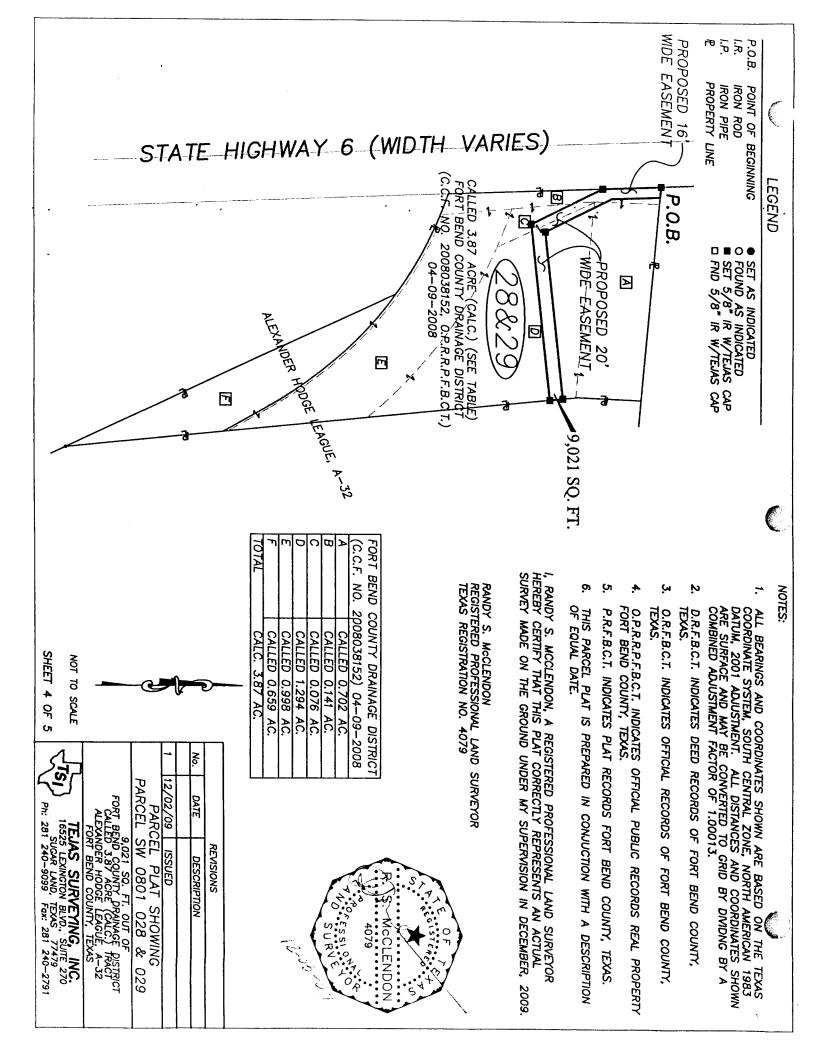
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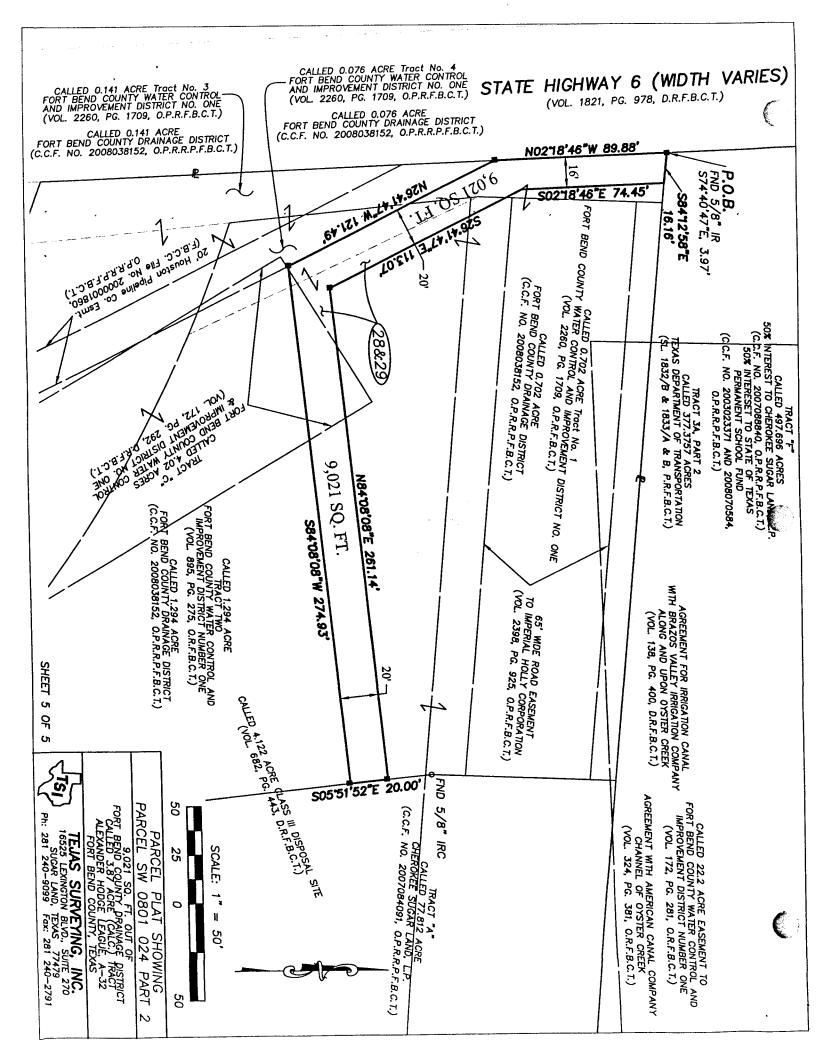
description hereon and the accompanying plat of even date represent an actual survey made on the ground under my supervision.

Randy S. McClendon, R.P.L.S. Texas Registration No. 4079

TEJAS SURVEYING, INC. 16525 Lexington Blvd., Suite 270 Sugar Land, Texas 77479 Ph: (281) 240-9099







# FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

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Aline Milson 2010 Jul 13 10:59 AM

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CDC \$0.00

Dianne Wilson COUNTY CLERK FT BEND COUNTY TEXAS