

AGENDA ITEM 14

**From:** Justine Cherne <jcherne@abhr.com>  
**To:** Justine Cherne <jcherne@abhr.com>, "Ann Werlein" <werleann@co.fort-ben...  
**CC:** "Bill Jameson (billj@wjinterests.com)" <billj@wjinterests.com>, "Mike...  
**Date:** 3/31/2010 6:11 PM  
**Subject:** Fort Bend County Toll Road Authority Agenda Item Request  
**Attachments:** ROEPAgmt.pdf, Exhibit B.pdf

March 31, 2010

Dear Judge and Commissioners:

The Board of Directors of the Authority reviewed the following item at their regular meeting held on March 17, 2010, and makes the following recommendation to Commissioners Court.

1. Approval of Right of Entry and Possession Agreement with Hannover Estates, Ltd. for the right-turn lane improvements project at State Highway 6 for the Fort Bend Parkway, Project A.

A copy of the document is attached for your review. Please place this item for consideration by Commissioners Court on the agenda for the meeting scheduled on April 6, 2010.

As always, if you should have any questions regarding this matter, please don't hesitate to contact any member of the Board of Directors or the Authority's consultants.

Very truly yours,

Richard L. Muller  
Allen Boone Humphries Robinson LLP  
713-860-6415

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4-7-10 copy received

RIGHT OF ENTRY AND POSSESSION AGREEMENT

STATE OF TEXAS                   §  
                                          §  
COUNTY OF FORT BEND       §

WHEREAS, HANNOVER ESTATES, LTD., a Texas limited partnership, (the "Owner") of the 0.1666-acre tract described by metes and bounds in the attached Exhibit A (the "Property"); and

WHEREAS, Fort Bend County Toll Road Authority (the "Authority"), as part of a public project relating to the construction, operation, and maintenance of the Fort Bend Parkway Toll Road is acquiring right-of-way for construction, installation, maintenance, repair, replacement, removal, and operation of toll road facilities and all related appurtenances thereto across, along, under, over and upon the Property; and

WHEREAS, the Authority intends to ensure access to the Fort Bend Parkway Toll Road from the 87.071-acre tract adjacent to the Property, as shown in the attached Exhibit B (the "Adjacent Property"); and

WHEREAS, the Authority and Owner have not been able to agree on the compensation to be paid for the taking of the Property but agree that the Authority has the right to obtain possession of the Property and can begin construction of its project and appurtenances thereto while the terms of a settlement agreement are negotiated and/or a Special Commissioners' hearing can be scheduled; and

WHEREAS, the Authority desires possession of said Property for the purpose of beginning construction of its project; and

WHEREAS, the Owner also desires access to the frontage road of Texas State Highway 6 ("State Highway 6"), which is a TxDOT facility.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that Owner for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration to it in hand paid by the Authority, the receipt and sufficiency of which is hereby acknowledged and confessed, have Granted, Bargained, Sold and Conveyed and by these presents do Grant, Bargain, Sell and Convey unto the Authority the right to enter upon and possess the Property described in said Exhibit A for the purpose of constructing its project.

Further, this Right of Entry and Possession shall extend to the Authority and its contractors, assigns, and/or owners of any utility involved in the project for the

additional purposes of locating utility lines, replacing, repairing, making improvements to and/or maintaining the existing utility lines that lie within the Property, if any.

This Right of Entry and Possession is not revocable.

In consideration of the grant of this right of Entry and Possession, the Authority agrees that it will (i) grant a right of access along the Parkway ramp for a single public or private roadway; (ii) construct the portion of the driveway within the public right-of-way, up to the Property's boundary line as shown in Exhibit B; and (iii) use commercially reasonable efforts to assist Owner in obtaining an access point to the State Highway 6 off-ramp at the location that has the least impact on traffic movement and level of service on the off-ramp and the intersection of the Parkway and State Highway 6, subject to all of the following conditions:

1. Owner conveys Fee Simple Title to the Property to the Authority without compensation.
2. The access point shall be located as shown in the attached Exhibit B.
3. Prior to construction of any roadway accessing the Parkway (the portion of the driveway located within the Property and outside of the public right-of-way, which Owner shall be responsible for constructing), the plans and specifications must be submitted for review and approval by the Authority's consulting engineer. Such approval not to be unreasonably withheld or delayed. The roadway must be built to County Public Road Standards and may not tie-in to the portion of the driveway built by the Authority (see (ii) above) until compliance has been demonstrated to the satisfaction of the Authority.
4. Owner grants for the benefit of the Adjacent Property's owners, a thirty-foot (30') wide access easement from the access point described above to the Adjacent Property's property line, as generally shown at the location in the attached Exhibit B.

If the conditions in the preceding paragraph are not met prior to September 1, 2010, the Authority agrees to negotiate in good faith to acquire the Property for its fair market value. If the parties cannot agree on the fair market value, the Authority will proceed to condemnation in a timely manner.

Nothing in this Right of Entry and Possession is intended to affect the rights or obligations of the parties in the condemnation proceeding filed or to be filed by the Authority to acquire the Property other than to grant to the Authority that right of possession pending litigation to which the Authority would be entitled under Section 21.021 of the Texas Property Code had a Special Commissioners' hearing taken place and the amount awarded been deposited into the Registry of the Court. The date of

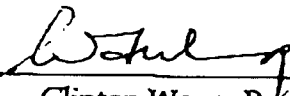
taking for valuation purposes in the condemnation proceeding shall be the date this Temporary Right of Entry and Possession is approved and fully executed. Upon entry of an award of Special Commissioners, the Authority shall deposit the amount of such award into the Registry of the Court at its earliest convenience but in no event later than 45 days following the filing of such award.

TO HAVE AND TO HOLD the possession of the Property described in the said Exhibit A solely for the purposes and subject to the limitations hereinabove set forth.

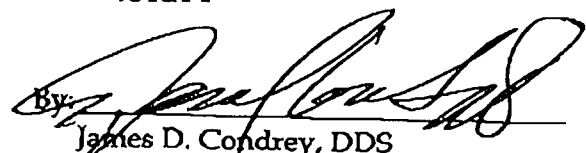
Executed this the 17<sup>th</sup> day of March, 2010.

HANNOVER ESTATES, LTD.,  
a Texas limited partnership

BY: Amvest Corporation, its General  
Partner

By:   
Clinton Wong, President

FORT BEND COUNTY TOLL ROAD  
AUTHORITY

By:   
James D. Condrey, DDS  
Chairman, Board of Directors

ACKNOWLEDGMENTS

STATE OF TEXAS

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COUNTY OF FORT BEND

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On the 15<sup>th</sup> day of March, 2010, before me personally appeared Clinton Wong, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledge to me that he executed the same in his authorized capacity on behalf of HANNOVER ESTATES, LTD., and that by his signature on the instrument, HANNOVER ESTATES, LTD., executed the instrument.

WITNESS my hand and official seal.



Marina R. Lopez  
Notary Public in and for the State of  
Texas

ACKNOWLEDGMENT

STATE OF TEXAS

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COUNTY OF FORT BEND

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On the 12<sup>th</sup> day of March, 2010, before me personally appeared James D. Condrey, DDS, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledge to me that he executed the same in his authorized capacity on behalf of Fort Bend County Toll Road Authority, and that by his signature on the instrument, Fort Bend County Toll Road Authority, executed the instrument.

WITNESS my hand and official seal.



Justine Marie Cherve  
Notary Public in and for the State of  
Texas

**EXHIBIT A**

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County: Fort Bend County  
Highway: Fort Bend Parkway  
Project Limits: From the northeast intersection of State Highway 6 and Fort Bend Parkway to 438 feet south of Trammel-Fresno Road

PARCEL 2

Description of a 0.1666 acre (7,260 square feet) tract of land out of the residue of a called 44.8957 acre tract described in a deed to Hannover Estates, LTD. recorded under Fort Bend County Clerk's File Number 2000099935 of the Official Public Records of Fort Bend County, Texas and located in the Moses Shipman Survey, Abstract 86, Fort Bend County, Texas and more particularly described as follows: Bearings are based on the Texas State Plane Coordinate System, South Central Zone, NAD 83;

COMMENCING at a 5/8 inch iron rod with cap found for the northerly cut-back corner at the northeast intersection of Texas State Highway Number 6 (right-of-way varies) and Fort Bend Parkway (300' right-of-way) recorded under Fort Bend County Clerk's File Number 2002143311 and 2003011895 of the Official Public Records of Fort Bend County, Texas and the beginning of a non-tangent curve to the left;

THENCE, northeasterly, with the east right-of-way line of Fort Bend Parkway and along non-tangent curve to the left having a radius of 5879.60 feet, a central angle of 06 degrees 36 minutes 12 seconds, a chord bearing of North 36 degrees 56 minutes 23 seconds East, a chord distance of 677.24 feet, and an arc length of 677.61 feet to a 5/8-inch iron rod with cap found for the most westerly corner of the herein described tract and being in the east line of called 106.70 acre tract described in deed to Steven T. Cochran, et al recorded in Volume 1889, Page 1529 of the Official Public Records of Fort Bend County, Texas and the common line of the residue of said called 44.8957 acre tract and being the southwest corner and POINT OF BEGINNING of the herein described tract;

THENCE, northeasterly, and continuing along said non-tangent curve to the left having a radius of 5879.60 feet, a central angle of 02 degrees 51 minutes 55 seconds, a chord bearing of North 32 degrees 12 minutes 20 seconds East, a chord distance of 294.01 feet, and an arc length of 294.03 feet to a point for corner;

THENCE North 35 degrees 17 minutes 06 seconds East, with the east right-of-way line of Fort Bend Parkway, a distance of 69.65 feet to a point for corner and the beginning of a non-tangent curve left;

THENCE, northeasterly, with the east right-of-way line of Fort Bend Parkway and along said non-tangent curve to the left having a radius of 260.00 feet, a central angle of 05 degrees 25 minutes 40 seconds, a chord bearing of North 32 degrees 34 minutes 16 seconds East, a chord distance of 24.62 feet, and an arc length of 24.63 feet to a point for corner and the beginning of a compound curve to the left;

County: Fort Bend County  
Highway: Fort Bend Parkway  
Project Limits: From the northeast intersection of State Highway 6 and Fort Bend Parkway to 438 feet south of Trammel-Fresno Road


THENCE, northeasterly, with the east right-of-way line of Fort Bend Parkway and along said non-tangent curve to the left having a radius of 5886.60 feet, a central angle of 01 degrees 50 minutes 07 seconds, a chord bearing of North 28 degrees 56 minutes 23 seconds East, a chord distance of 188.55 feet, and an arc length of 188.56 feet to a 5/8-inch iron rod with cap marked Carter & Burgess set for corner,

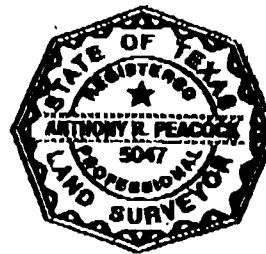
THENCE South 26 degrees 56 minutes 00 seconds West, departing the east right-of-way line of Fort Bend Parkway, a distance of 186.42 feet to a 5/8-inch iron rod with cap marked Carter & Burgess set for corner and the beginning of a non-tangent curve to the right;

THENCE, southwesterly, along said non-tangent curve to the right having a radius of 5893.87 feet, a central angle of 04 degrees 05 minutes 39 seconds, a chord bearing of South 30 degrees 43 minutes 53 seconds West, a chord distance of 421.06 feet, and an arc length of 421.16 feet to a 5/8-inch iron rod with cap marked Carter & Burgess set for corner and being in the east line of the residue of said called 106.70 acre tract and the common line of the residue of said called 44.8957 acre tract;

THENCE North 02 degrees 49 minutes 41 seconds West, with the east line of the residue of said called 106.70 acre tract and the common line of the residue of said called 44.8957 acre tract, a distance of 36.79 feet to the POINT OF BEGINNING and containing 0.1666 of one acre (7,260 square feet) of land.

A survey exhibit map accompanies this description.

  
Anthony R. Peacock  
Registered Professional Land Surveyor  
Texas Registration No. 5047



Carter & Burgess, Inc.  
713-869-7900, Job No.  
CB032729.010 (030581.001)



# MOSES SHIPMAN SURVEY

ABSTRACT 86

PARCEL NO. 2

FROM STA. 803+63.41 TO STA. 809+53.75  
REQUIRED

0.1666 ACRES (7,260 SQ. FT.)



EXIST. FORT BEND PARKWAY  
(300' RIGHT-OF-WAY)  
F.B.C.C.F. NO. 2002143311  
AND 2003011895

R=5886.60  
L=188.56  
Tan=94.29  
Δ=1°50'07"  
N28°56'23"E  
188.55

R=260.00  
L=24.63  
Tan=12.32  
Δ=5°25'40"  
N32°34'16"E  
24.62

N35°17'08"E  
89.65'

R=5879.60  
L=294.03  
Tan=147.05  
Δ=2°51'33"  
N32°12'20"E  
294.01

R=5893.87  
L=421.16  
Tan=210.66  
Δ=4°05'39"  
S30°43'53"W  
421.06

R=5879.60  
L=877.61  
Tan=338.18  
Δ=6°36'12"  
N36°58'23"E  
877.24

P.O.B.  
FOUND 5/8"  
IRON ROD  
WITH CAP

N02°49'41"W  
38.79'

P.O.C.  
FOUND 5/8"  
IRON ROD  
WITH CAP

RESIDUE OF  
106.70 ACRES  
STEVEN T. COCHRAN,  
VOL. 1889, PAGE 1529  
F.B.C.C.F. NO. 2000099935

EXIST. ROW LINE  
PROP. ROW LINE  
PROPERTY LINE  
ORIGINAL SUBDIVISION  
COUNTY LINE  
CONTROL OF ACCESS LINE  
SURVEY LINE  
FENCE  
CITY LIMITS  
RAILROAD  
STRUCTURE

PARCEL NUMBER  
SIR = SET 3/4" IRON ROD WITH CAP  
MARKED "CARTER & BURGESS"

RESIDUE OF A  
CALL 44.8957 ACRES  
HANNOVER ESTATES, LTD  
F.B.C.C.F. NO. 2000099935

NOTE:  
BEARINGS AND COORDINATES SHOWN ARE BASED ON  
THE TEXAS STATE PLANE COORDINATE SYSTEM  
SOUTH CENTRAL ZONE (NAD 83). ALL DISTANCES  
AND COORDINATES SHOWN ARE SURFACE AND MAY BE  
CONVERTED TO GRID BY MULTIPLYING BY A SCALE  
FACTOR OF 0.999870.

A LEGAL DESCRIPTION ACCOMPANIES THIS PLAT.

**JE JACOBS**  
65 W. 11th Street, Suite 100  
Hannover, TX 77007-5423  
(713) 888-7800

DRAWN BY: DDO	EXHIBIT MAP	COUNTY FORT BEND
CHECKED BY: ARP	FORT BEND PARKWAY	DATE OF SURVEY 07-12-08
	PROJECT NO. 030581.010 03034723.010	

**EXHIBIT B**

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