

THE STATE OF TEXAS           §  
   §  
   §  
 COUNTY OF FORT BEND       §

**DEVELOPMENT AGREEMENT**  
 (BELLAIRE FROM FM 1464 TO CHICKORY WOODS LANE)

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into by and between Fort Bend County, Texas (hereinafter referred to as "the County"), a body politic acting herein by and through its Commissioners' Court, NEC 1464 Bellaire, LLC, a Texas limited liability company and SEC 1464 Bellaire, LLC, a Texas limited liability company (together, hereinafter referred to as "Gordon").

WHEREAS, Bellaire Boulevard ("Bellaire") is a public road maintained by the County that currently adjoins land owned by Gordon; and

WHEREAS, County proposes to construct Bellaire approximately 1,000 linear feet from just east of FM 1464 to Chickory Woods Lane (the "Project"); and

WHEREAS, Gordon proposes to develop its property adjoining to Bellaire (the "Gordon Property"); and

WHEREAS, County and Gordon agree that Gordon Property will substantially benefit from the construction of the Project; and

WHEREAS, County and Gordon agree to jointly participate in the construction of the Project under the terms agreed to herein; and

WHEREAS, County has investigated and determined that it would be advantageous and beneficial to County and its citizens to participate in the construction of the Project, as provided herein; and

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, County and Gordon agree as follows:

1.     Description of Project. The Project consists of the construction of approximately 1,000 linear feet of Bellaire from just east of FM 1464 to Chickory Woods Lane, as described on Exhibit A attached hereto and incorporated herein for all purposes.
2.     Gordon's Responsibilities. Gordon hereby agrees to perform the following:
  - (a) Construct or cause the construction of Bellaire from just east of FM 1464 for approximately 555 linear feet as shown on Exhibit A as "Developer Construction Limits";

(b) Reimburse the County for Project costs for a total amount of \$318,287.37, as described on Exhibit B attached hereto and incorporated herein for all purposes, and allocated as follows:

- i. \$246,780.00 for engineering and construction costs for the remaining 445 linear feet of Bellaire from the eastern boundary of Developer Construction Limits to Chickory Woods Lane as shown on Exhibit A as "Fort Bend County Construction Limits"; and
- ii. \$71,507.37 for the relocation and/or adjustment of the existing NETCO pipeline crossing Bellaire in accordance with the Scope of Work and Estimate of Cost of the Work attached as Exhibit C and incorporated herein for all purposes.

(c) Gordon shall make such reimbursement, in accordance with 2(b) above, plus interest calculated at two percent (2%) annual interest rate, compounded monthly on any amounts owed, which is the same effective rate paid by the County for the Project funds, upon the earlier of the following event:

- i. Incrementally, as any part of the Gordon Property adjoining the Project as shown on Exhibit A, is submitted to County's Commissioners Court for plat approval, with such percentages based on a pro ration of the limits of the Project; or
- ii. By the expiration of three (3) years from the date of completion and initial acceptance of the Project.

d) Notwithstanding any provisions to the contrary in this Agreement, Gordon does not have any obligation to perform the work or pay the reimbursement described above unless and until the County has completed the work described in Section 3. below.

3. County's Responsibilities. The County hereby agrees to perform the following:

(a) Construction of the Project within the Fort Bend County Construction Limits as shown in Exhibit A; and

(b) Coordinate with NETCO for relocation and/or adjustment of existing pipeline crossing Bellaire in accordance with Exhibit C; however, County shall not be liable for any of the costs of such relocation and/or adjustment.

4. Disclaimer/Waiver of Damages/Liability.

(a) Gordon acknowledges and agrees that County is not providing any guarantee, representation and/or warranty, and County hereby disclaims any guarantee, representation and/or warranty, of any work performed by County, or their agents, employees, representatives, contractors, subcontractors and/or designees, in connection with the construction of the Project, in whole or in part.

(b) Gordon acknowledges and agrees that County shall in no way be liable for any damages, if any, which may be sustained by the Gordon and/or Gordon Property, resulting,

in whole or in part, directly or indirectly, from County's failure to complete the construction of the Project by any certain date and/or as set forth in this Agreement.

(c) Gordon hereby releases County, its officers, agents, representatives and employees, from and against, and waives any and all rights to, any and all claims and/or demands for damages (personal or property), injury (including death), or otherwise, it/they may have with regard to the construction and/or completion of the Project and/or any other act and/or omission relating, directly or indirectly, to the Project, in whole or in part, as provided in this Agreement, except to the extent any such claims arise due to, or damages are caused by, solely and directly, the negligence or willful misconduct of County or its authorized officers, agents, representatives or employees

**5. PARTIES' ACKNOWLEDGEMENT OF COUNTY'S COMPLIANCE WITH FEDERAL AND STATE CONSTITUTIONS, STATUTES AND CASE LAW AND FEDERAL, STATE AND LOCAL ORDINANCES, RULES AND REGULATIONS/GORDON'S WAIVER AND RELEASE OF CLAIMS FOR OBLIGATIONS IMPOSED BY THIS AGREEMENT.**

**(a) GORDON ACKNOWLEDGES AND AGREES THAT THE CONTRIBUTION MADE BY GORDON TO COUNTY, IN WHOLE OR IN PART, DOES NOT CONSTITUTE A:**

- (I) TAKING UNDER THE TEXAS OR UNITED STATES CONSTITUTION;**
- (II) VIOLATION OF THE TEXAS TRANSPORTATION CODE, AS IT EXISTS OR MAY BE AMENDED;**
- (III) NUISANCE; AND/OR**
- (IV) CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST COUNTY FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION.**

**(b) GORDON RELEASES COUNTY FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED ON EXCESSIVE OR ILLEGAL EXACTIONS ARISING OUT OF OR RELATED TO THIS AGREEMENT.**

**(c) GORDON WAIVES ANY CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST COUNTY FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION ARISING OUT OF OR RELATED TO THIS AGREEMENT.**

**(d) THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

6. Limitations of Agreement. The parties hereto acknowledge this Agreement is limited to the Project only. Further, this Agreement does not waive or limit any of the obligations of Gordon to County under any other order whether now existing or in the future arising.

7. Default. In the event Gordon fails to comply with any of the provisions of this Agreement within sixty (60) business days after Gordon's receipt of written notice thereof from County, County shall have the following remedies in addition to County's other rights and remedies, at law or in equity:

(a) to file this instrument in the Real Property Records of Fort Bend County as a lien and/or encumbrance against Gordon and/or the Gordon Property; and/or

(b) to refuse to accept any portion of any public improvements on the Gordon Property and/or associated with the development of the Gordon Property; and/or

(c) to refuse to finally accept the Gordon Property and/or any portion thereof; and/or

(d) to seek specific enforcement of this Agreement.

In the event of County's default under this Agreement, Gordon will be entitled to seek any remedy available to them at law or in equity.

8. Miscellaneous.

(a) Notice. Any notice required to be sent under this Agreement must be in writing and may be served by depositing same in the United States Mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:

If to County, to:

Fort Bend County Engineering  
Attention: County Engineer  
301 Jackson Street  
Richmond, Texas 77469

With a copy to:

Fort Bend County  
Attention: County Judge  
401 Jackson Street  
Richmond, Texas 77469

If to Gordon, to:

NEC 1464 Bellaire, LLC and SEC 1464 Bellaire, LLC  
Attention: Matthew Gordon  
4900 Woodway Drive, Suite 1125  
Houston, Texas 77056

(b) Assignment. This Agreement is not assignable by Gordon without the prior written consent of County, which consent shall not be unreasonably withheld.

(c) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, as allowed.

(d) Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto.

(e) Venue. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Fort Bend County, Texas.

(f) Consideration. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

(g) Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original if properly executed.

(h) Authority to Execute. The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

(i) Savings/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 thereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(j) Representations. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

(k) Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

(l) Sovereign Immunity. The parties agree that County has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

(m) No Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.

(n) Attorneys' Fees. In any legal proceeding brought to enforce the terms of this Agreement, the prevailing party may recover its reasonable and necessary attorneys' fees from the non-prevailing party as permitted by Section 271.159 of the Texas Local Government Code, as it exists or may be amended.

(o) Incorporation of Recitals. The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of County and the Gordon and/or its authorized representatives.

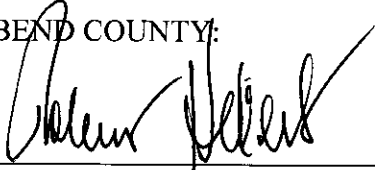
(p) Gordon's Warranties/Representations. All warranties, representations and covenants made by Gordon in this Agreement or in any certificate or other instrument delivered by Gordon to County under this Agreement shall be considered to have been relied upon by County and will survive the satisfaction of any fees and/or payments made under this Agreement, regardless of any investigation made by County or on County's behalf.

(q) Indemnification. The parties agree that the Indemnity provisions set forth in Paragraphs 4 and 5 herein are conspicuous, and the parties have read and understood the same.

(r) Waiver. Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the date executd by County.

FORT BEND COUNTY:



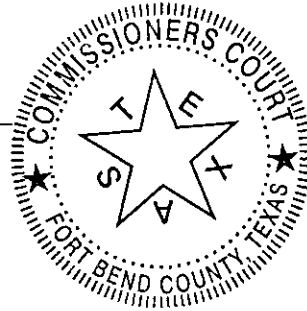
Robert E. Hebert, County Judge

April 12, 2016  
Date

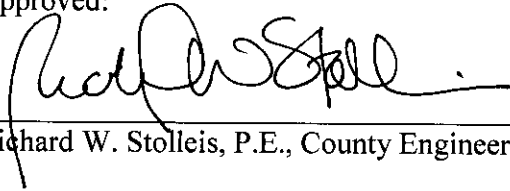
Attest:



Laura Richard, County Clerk



Approved:



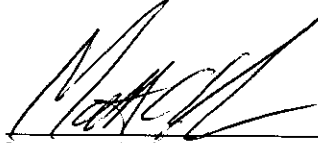
Richard W. Stolleis, P.E., County Engineer

Approved as to legal form:



Marcus D. Spencer, First Assistant County Attorney

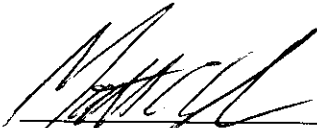
NEC 1464 Bellaire, LLC,  
a Texas limited liability company



By: Matthew Gordon, Vice President

Date: 3/31/16

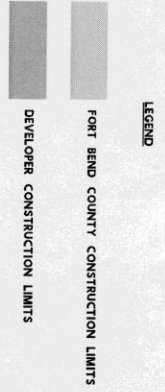
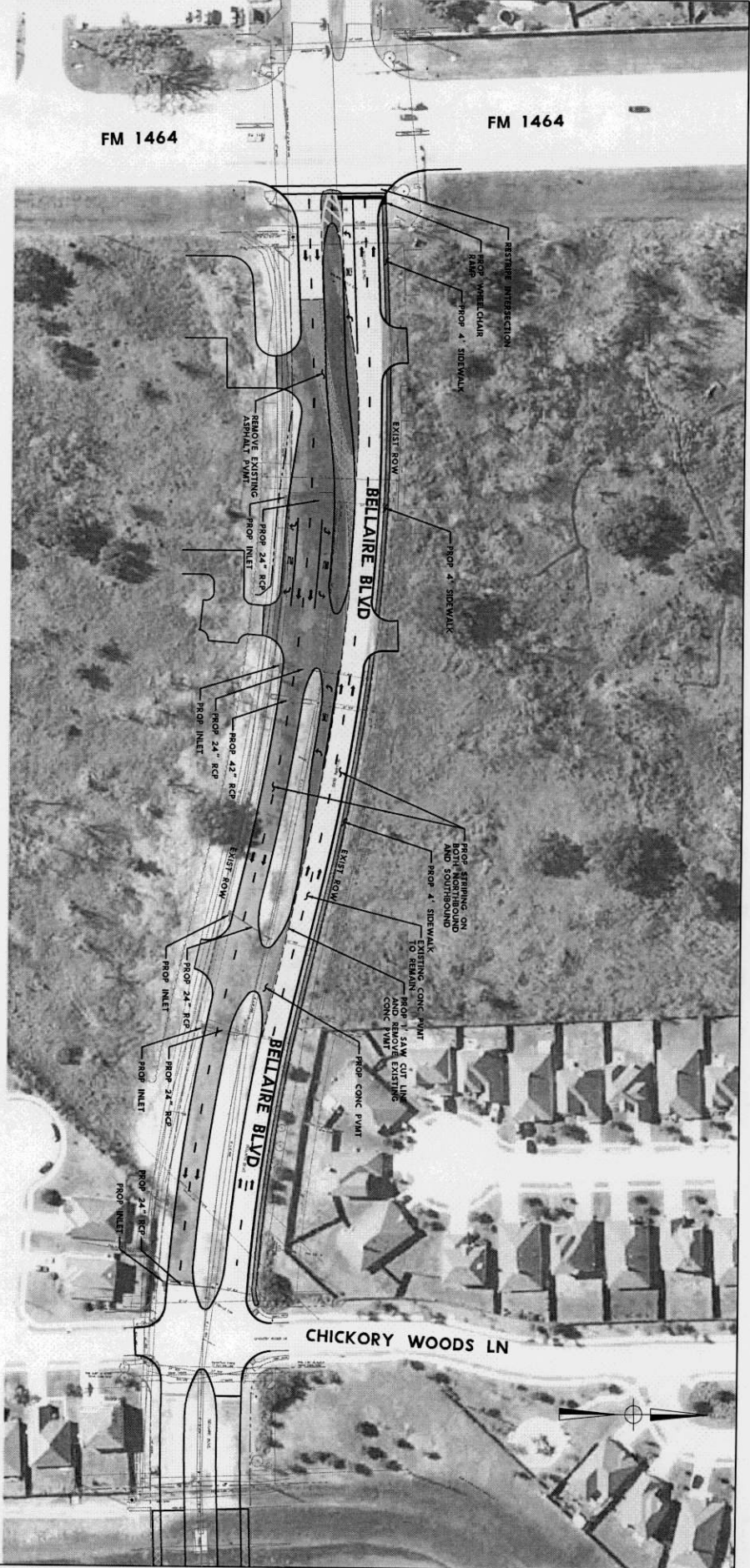
SEC 1464 Bellaire, LLC,  
a Texas limited liability company



By: Matthew Gordon, Vice President

Date: 3/31/16

# EXHIBIT A



0 100' 200'  
 SCALE

**Klotz associates**  
 1160 Day Avenue, Suite 500  
 Houston, TX 77057  
 713.863.3237  
 houston@klotzassociates.com  
 Metro RE Form Reg. # 1-308

**Belleaire Blvd Extension**

**Belleaire Proposed Improvements  
 FM 1464 to Chickory Woods Ln**

PROJECT: **1**  
 SCALE: **AS SHOWN**  
 DATE: \_\_\_\_\_

# EXHIBIT B

BELLAIRE BLVD EXTENSION PRELIMINARY COST ESTIMATE SECTION DESIGNED AND CONSTRUCTED BY FORT BEND COUNTY					PRELIMINARY	
					DO NOT USE FOR PERMITTING, BIDDING, OR CONSTRUCTION. AN ESCALATION / INFLATION FACTOR OF 10% SHOULD BE ADDED FOR EACH ANTICIPATED YEAR BETWEEN THE LETTING DATE AND ACTUAL CONSTRUCTION.	
					2/19/2016	
ITEM NO.	DESCRIPTION	ENGLISH UNIT	ESTIMATED QUANTITY	PRICE PER UNIT	AMOUNT	
1	CONCRETE PAVEMENT (10IN)	SY	1,637	\$75	\$122,790	
2	LIME TREATMENT (EXISTING MATERIAL)	SY	1,857	\$3	\$5,570	
3	LIME (6%)	TON	25	\$145	\$3,640	
4	REMOVE CONCRETE/ASPHALT PAVEMENT	SY	24	\$5	\$120	
5	CONCRETE CURB	LF	970	\$3	\$2,910	
6	4' SIDEWALK	SY	200	\$50	\$10,000	
7	WHEELCHAIR RAMP	EA	0	\$2,000	\$0	
8	STORM PIPE 42" RCP	LF	0	\$150	\$0	
9	STORM PIPE 24" RCP	LF	130	\$80	\$10,400	
10	STORM INLETS	EA	3	\$2,500	\$7,500	
11	EARTHWORK	LS	1	\$5,000	\$5,000	
12	TRAFFIC CONTROL	LS	1	\$3,000	\$3,000	
13	PAVEMENT MARKINGS (ALL SIZES)	LF	220	\$2	\$440	
14	PAVEMENT MARKINGS (WORDS & ARROWS)	LF	0	\$150	\$0	
15	MOBILIZATION (10%)	LS	1	\$17,137	\$17,140	
16	CONTINGENCY (10%)	LS	1	\$17,137	\$17,140	
CONSTRUCTION TOTAL					\$205,650	
ENGINEERING (20%)					\$41,130	
ROW ACQUISITION					\$0	
NETCO PIPELINE RELOCATION					\$71,507.37	
<b>TOTAL COSTS</b>					<b>\$ 318,287.37</b>	

# EXHIBIT C

Fort Bend County Project 13202  
Bellaire Blvd crossing NETCO Pipeline  
NETCO Project: NETCO 110  
Scope of Work

This work requires the replacement of approximately 80 feet of NETCO's Pipeline's 14 inch diameter pipeline with heavier duty pipe in order to comply with pipeline design criteria of 49 CFR Sec. 192.111 in regard to Bellaire Blvd construction between Station 11+50 and 12+50. After purging the line of natural gas, the existing pipe in the proposed EB ROW will be exposed by open trench, then severed near the south ROW of the planned EB Bellaire Blvd and just short of the concrete pipeline bridge near the south curb of the existing WB lane of Bellaire Blvd. Exact locations will be described in the "as built" engineering drawings to be prepared by Weisser Engineering. The severed section of old pipe (0.250" WT) will be removed from the site. The replacement pipe will be 14" OD x 0.375" WT, Gr. X42, with mill applied 12-14 mils of fusion bonded epoxy (FBE) coating. Approximately two 40 foot sections will be strung on site and assembled by certified welders. In accordance with best practices, it may be necessary to increase the length of replaced pipe by as much as 10 feet depending on the proximity of the first existing weld in remaining pipe. New welds will be X-rayed. The 80 foot assembled new pipe section will be hydrostatically tested to not less than 1,127 psig for not less than eight hours. Deadweight pressure readings will be recorded. All welds will be sand blasted, coated and jeepled prior to installation. The assembled pipe will be tied in to the existing pipeline on each end and backfilled using stabilization sand. After cleanup and backfill, cathodic test stations and markers will be installed.

**NETCO 110 Bellaire Blvd**  
 Bellaire Blvd at Chickory Woods Ln  
**Job Cost Analysis**

NETCO Project # 110 a/o 03.17.16  
 VB #247

<u>Item</u>	<u>Description</u>	<u>Quantity</u>	<u>Unit cost</u>	<u>Total</u>
<b><u>MATERIALS</u></b>				
Pipe , 14"OD, .375 WT, X-42, DRL, FBE 14/16 mils		80 ft	\$65.68 /ft	\$5,254.40
Backfill Material, stabilization sand		1 lot	\$500.00 ea	\$500.00
Coating supplies, Polyken Pipeline Liquid Adhesive #1027 & Polyken Black Tape		1 lot	\$100.00 ea	\$100.00
Cathodic Test Stations, Pipeline Markers and Signs, In Ground (Surface) Test Stations & Pipeline Markers		1 lot	\$200.00	\$200.00
Sod, Fertilizer, Cleanup Etc		1 lot	\$100.00	\$100.00
			<b>Subtotal</b>	<u>\$6,154.40</u>
			Tax @8.25%	\$507.74
			<b>TOTAL Materials</b>	<u>\$6,662.14</u>
<b><u>CONSTRUCTION COSTS (Labor)</u></b>				
Right of Way Services and Legal Costs		Norm Winter		\$500.00
Engineering and Project Operations & Management for design, field mgmt, inspection, survey and eng. Drawings		H& H Diversified Services		\$4,550.00
		Fowler Energy Company		\$7,600.00
		Weisser Engineering Company		\$3,350.00
Pipeline Construction Contractor Cost		Beaver Pipeline Construction Co.		\$21,863.00
			<b>TOTAL Field Cost</b>	\$44,525.14
<b><u>NETCO OVERHEAD CHARGE</u></b>			46%	\$20,481.56
			<b><u>SUBTOTAL</u></b>	\$65,006.70
<b><u>CONTINGENCY</u></b>			10%	\$6,500.67
			<b><u>TOTAL ESTIMATED JOB COST</u></b>	<b>\$71,507.37</b>



JUNCTION

JB-2)

MH A4-1 BELLAIRE BLVD.

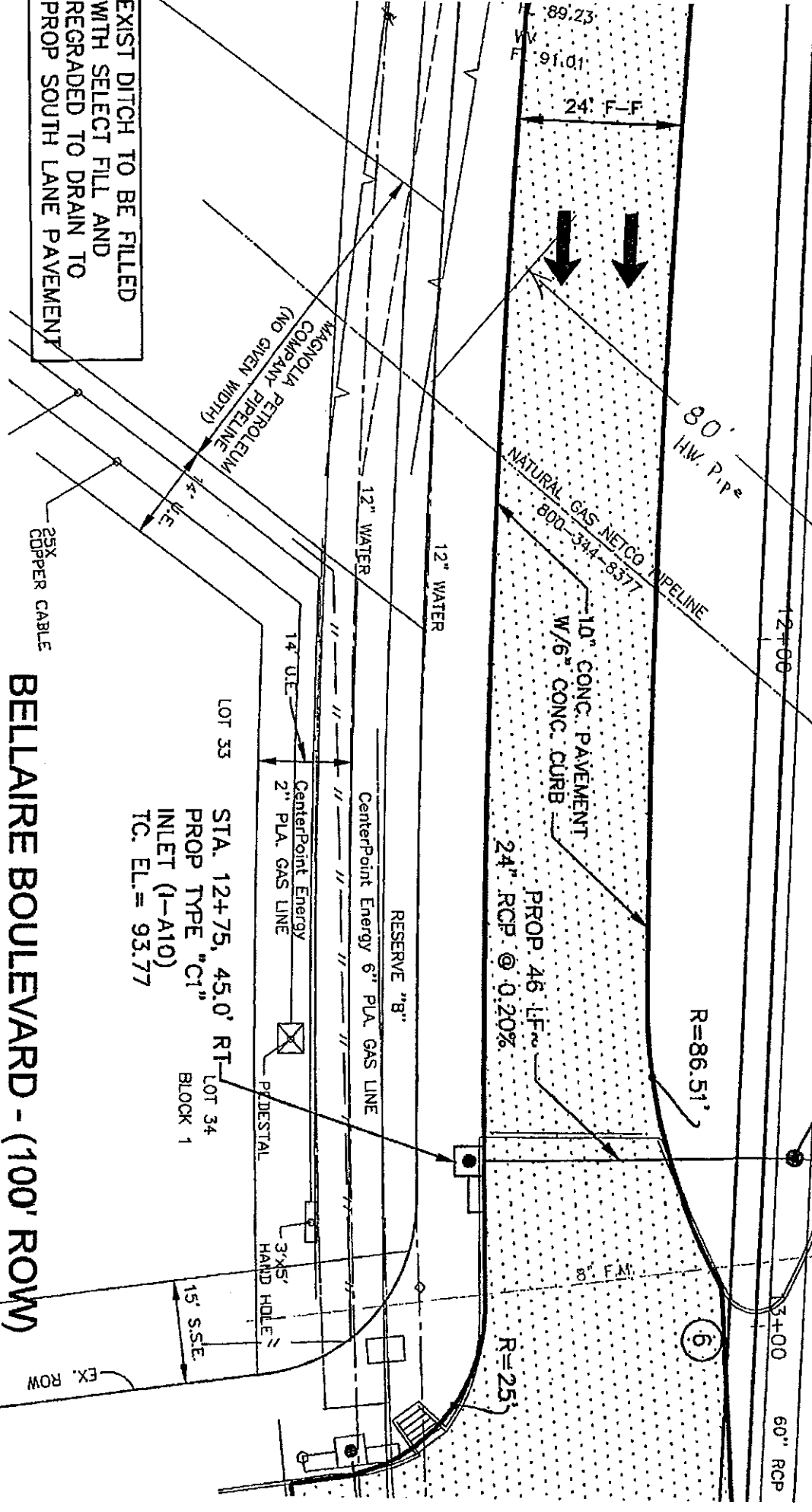
STA. 13+84.10, 4' BEGIN CONCRETE

60" RCP

EXIST MH. (A5)

24" RCP

60" RCP



24' F-F

80' H.W. P.P.e

NATURAL GAS NETCO PIPELINE  
800-344-8371

10" CONC. PAVEMENT  
W/6" CONC. CURB

PROP. 46' L.F. @ 0.20%

R=86.51'

R=25'

RESERVE "8"

CenterPoint Energy 6" PLA GAS LINE

CenterPoint Energy 2" PLA GAS LINE

MAGNOLIA PETROLEUM  
COMBANY PIPELINE  
(NO GIVEN WIDTH)

12" WATER

12" WATER

14" U.E.

LOT 33

STA. 12+75, 45.0' RT  
PROP TYPE "C1"  
INLET (1-A10)  
TC. EL. = 93.77

LOT 34  
BLOCK 1

PEDESTAL

3'-X-5' HAND HOLE

15' S.S.E.

25X COPPER CABLE

EXIST DITCH TO BE FILLED  
WITH SELECT FILL AND  
REGRADED TO DRAIN TO  
PROP SOUTH LANE PAVEMENT

BELLAIRE BOULEVARD - (100' ROW)

EX. ROW

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**OFFICE USE ONLY  
CERTIFICATION OF FILING**

**1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

SEC 1464 Bellaire LLC  
Houston, TX United States

Certificate Number:  
2016-33794

Date Filed:  
03/31/2016

**2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**

Fort Bend County

Date Acknowledged:

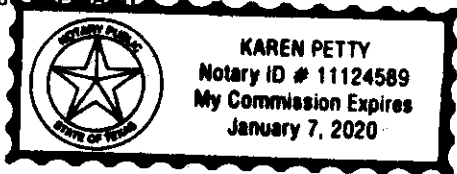
**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the goods or services to be provided under the contract.**

13202  
Agreement for Developer Contribution to Bellaire Blvd

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.

**6 AFFIDAVIT**



I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

*[Handwritten Signature]*  
\_\_\_\_\_  
Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Matthew Gordon, this the 1st day of April, 20 16, to certify which, witness my hand and seal of office.

*[Handwritten Signature]*  
\_\_\_\_\_  
Signature of officer administering oath

Karen Petty  
\_\_\_\_\_  
Printed name of officer administering oath

Acct / Asst Prop. Mgr.  
\_\_\_\_\_  
Title of officer administering oath

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

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13202  
 Agreement for Developer Contribution to Bellaire Blvd

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

**5 Check only if there is NO Interested Party.**

**6 AFFIDAVIT** I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

\_\_\_\_\_  
 Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said \_\_\_\_\_, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, to certify which, witness my hand and seal of office.

\_\_\_\_\_  
 Signature of officer administering oath      Printed name of officer administering oath      Title of officer administering oath