

THE STATE OF TEXAS §
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 §
 COUNTY OF FORT BEND §

DEVELOPMENT AGREEMENT

(BELLAIRE BOULEVARD – EAST OF PARKWAY LAKES LANE TO LAKEHEAD 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 and Ace Manor Property Management I, Ltd., a Texas limited partnership (together, hereinafter referred to as “Ace”).

WHEREAS, Bellaire Boulevard (“Bellaire”) is a public road maintained by the County that, a portion of which, currently adjoins land owned by Ace (the “Ace Property”); and

WHEREAS, with regard to the Ace Property, Ace is the successor in title and interest of The District at Parkway Lakes, Ltd. (“District”); and

WHEREAS, Parkway Lakes Development, Inc. (“Parkway”), an affiliate of District, committed to construct, or cause to be constructed, portions of Bellaire, including the approximately 10,352.52 linear feet of Bellaire from just east of Parkway Lakes Lane to Lakehead Lane (the “Subject Bellaire Segment”) for Fort Bend County’s acceptance of existing Peek Road and Bellaire into its roadway maintenance system pursuant to terms of that certain letter dated May 16, 2009 from Parkway addressed to the Honorable Andy Meyers, Fort Bend County Commissioner, Precinct 3 (the “Parkway Letter Agreement”); and

WHEREAS, the Commissioners Court of Fort Bend County approved the Parkway Letter Agreement and ordered the acceptance of existing Peek Road and Bellaire pursuant to the Parkway Letter Agreement on May 26, 2009; and

WHEREAS, as of the date of this Agreement, Parkway has failed to meet its obligations under the Parkway Letter Agreement; and

WHEREAS, County has now proposed to complete the construction of the Subject Bellaire Segment under the Fort Bend County 2013 Mobility Bond Program – Bellaire Boulevard – Project Nos. 13302, 13303 and 13304 (the “Project”); and

WHEREAS, Ace proposes to develop the Ace Property, as the successor in title and interest of the District; and

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

WHEREAS, Ace, as the successor in title and interest to the District, has been burdened with Parkway's obligations arising under the Parkway Letter Agreement because Parkway failed to perform said obligations; and

WHEREAS, County and Ace 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 Ace agree as follows:

1. Description of Project. The Project consists of the construction of approximately 10,352.52 linear feet of Bellaire from just east of Parkway Lakes Lane to Lakehead Lane, as described on Exhibit A attached hereto and incorporated herein for all purposes.

2. Construction of the Project. In exchange for a contribution to the costs to complete the construction of the Project, County agrees to complete the construction of the Project in accordance with County design and construction standards.

3. Ace's Total Contribution. Simultaneously, upon the final execution of this Agreement, Ace will pay to County \$75,670.98 as its Total Contribution to the Project in accordance with the preceding Section 2., as a pro rata portion of the construction costs as described in Exhibit A. Ace's Total Contribution will be available to the County for the construction costs associated with the Project, and County shall, in its sole discretion, be entitled to use, at any time, all or a portion of Ace's Total Contribution in connection with the construction of the Project.

4. Disclaimer/Waiver of Damages/Liability.

(a) Ace 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) Ace acknowledges and agrees that County shall in no way be liable for any damages, if any, which may be sustained by the Ace and/or Ace 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) Ace 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/ACE'S WAIVER AND RELEASE OF CLAIMS FOR OBLIGATIONS IMPOSED BY THIS AGREEMENT.

(a) ACE ACKNOWLEDGES AND AGREES THAT THE CONTRIBUTION MADE BY ACE 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) ACE 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) ACE 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 Ace to County under any other order whether now existing or in the future arising.

7. Default. In the event Ace fails to comply with any of the provisions of this Agreement within sixty (60) business days after Ace'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 Ace and/or the Ace Property; and/or

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

(c) to refuse to finally accept the Ace 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, Ace 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 Ace, to:

Ace Manor Property Management I, Ltd.
Attention: Jeremy Moss, Broker
15701 Northwest Freeway
Houston, Texas 77040

(b) Assignment. This Agreement is not assignable by Ace 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 Ace and/or its authorized representatives.

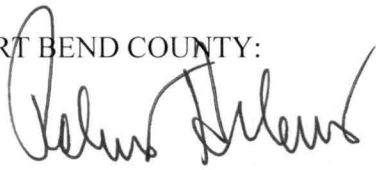
(p) Ace's Warranties/Representations. All warranties, representations and covenants made by Ace in this Agreement or in any certificate or other instrument delivered by Ace to County under this Agreement shall be considered to have been relied upon by County and will survive the satisfaction of any fees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

FORT BEND COUNTY:



Robert E. Hebert, County Judge

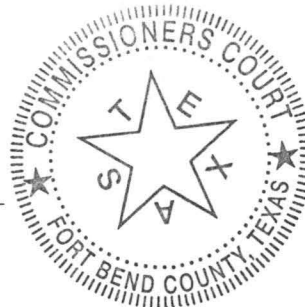
7-26-16

Date

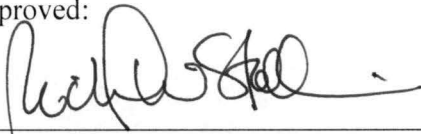
Attest:



Laura Richard, County Clerk

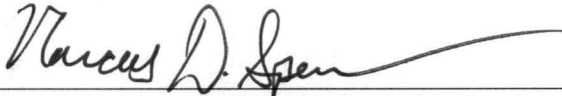


Approved:

A handwritten signature in black ink, appearing to read 'Richard W. Stolleis', written over a horizontal line.

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

Approved as to legal form:

A handwritten signature in black ink, appearing to read 'Marcus D. Spencer', written over a horizontal line.

Marcus D. Spencer, First Assistant County Attorney

Ace Manor Property Management I, Ltd.,
a Texas limited partnership


By: Ali Attayi, General Partner

Date: 7/11/16

EXHIBIT A

Ace Manor Contribution to Bellaire Boulevard

6/9/2016

Project: Bellaire Boulevard (2013 Mobility - 13302, 13303, 13304)
Limit From: East of Parkway Lakes Lane to Lakehead Lane

PROJECT BID ITEMS SUMMARY

SUBTOTAL SECTION A - SITE PREPARATION AND EARTHWORK (Bid Items 1 - 12):	\$140,266.89
SUBTOTAL SECTION B - SUBGRADE & PAVING (Bid Items 13 - 20):	\$1,653,768.71
SUBTOTAL SECTION C - DRAINAGE (Bid Items 21 - 44):	N.A.
SUBTOTAL SECTION D - DETENTION BASIN (Bid Items 45 - 55):	N.A.
SUBTOTAL SECTION E - SIGNING AND PAVEMENT MARKINGS (Bid Items 56 - 67):	\$26,908.93
SUBTOTAL SECTION F - TRAFFIC CONTROL PLAN (Bid Items 68 - 68):	\$15,120.00
SUBTOTAL SECTION G - STORM WATER POLLUTION PREVENTION PLAN (Bid Items 69 - 76):	\$88,471.48
SUBTOTAL SECTION H - EXTRA WORK ITEMS (Bid Items 77 - 80):	\$24,300.00
Total Project Cost	\$1,948,836.01

Total Project Length (2-lanes)	10,352.52 LF
Ace Manor Bellaire Frontage	334.98 LF
Percentage of Total Project	3.24%
Prorated Construction Cost	\$63,059.15
Management, Design, Inspection & Material Testing	+20% \$12,611.83

Total Contribution by Ace Manor	\$75,670.98
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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.

Ace Manor Property Management I, LTD
Houston, TX United States

Certificate Number:
2016-83165

Date Filed:
07/12/2016

Date Acknowledged:

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

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 services, goods, or other property to be provided under the contract.

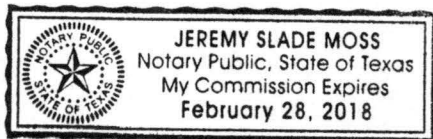
Bellaire 08-02-16
Road Expansion

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Ace Manor Property Management I, LTD	Houston, TX United States		X

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.



Ali A. Attay
Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Ali A Attay, this the 12th day of July, 2016, to certify which, witness my hand and seal of office.

Jeremy S. Moss Jeremy S. Moss Notary
Signature of officer administering oath Printed name of officer administering oath Title of officer administering oath

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.

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Houston, TX United States

Certificate Number:
2016-83165

Date Filed:
07/12/2016

Date Acknowledged:
07/26/2016

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

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 services, goods, or other property to be provided under the contract.

Bellaire 08-02-16
Road Expansion

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Ace Manor Property Management I, LTD	Houston, TX United States		X

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