

104



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

DEVELOPMENT AGREEMENT
(CHIMNEY ROCK – FM 2234 TO ROSA PARKS ELEMENTARY)

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 Cloverleaf Ranch, LLC, a Texas limited liability company (together, hereinafter referred to as “Cloverleaf”).

WHEREAS, Chimney Rock Road (“Chimney Rock”) is a public road maintained by the County that, a portion of which, is located near land owned by Cloverleaf; and

WHEREAS, County proposes to complete the construction of an alignment shift to the west to include land adjoining the property owned by Cloverleaf, under the Fort Bend County 2013 Mobility Bond Program – Chimney Rock from FM 2234 to Rosa Parks Elementary – Project No. 13203 (the “Project”); and

WHEREAS, Cloverleaf proposes to develop its land adjoining Chimney Rock (the “Cloverleaf Property”); and

WHEREAS, County and Cloverleaf agree to jointly participate in paying a portion of the costs 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 completion of the Project, as provided herein; and

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

1. Description of Project. The Project consists of the construction of 11,600 feet of half-boulevard, concrete roadway with curb and gutter, and bridges at American Canal and Mustang Bayou. Cloverleaf requested a shift in the originally proposed alignment to the west as shown in Exhibit A, which resulted in additional design costs, as described on Exhibit B, both attached hereto and incorporated herein for all purposes.

2. Construction of the Project. In exchange for the contribution to additional design costs as described in Section 2 herein, County agrees to complete the construction of the Project, as modified, in accordance with County design and construction standards.

3. Cloverleaf’s Total Contribution. Simultaneously, upon the final execution of this Agreement, Cloverleaf will make a one-time cash payment to County of \$10,750.00 as its Total

Contribution to the Project in accordance with the preceding Section 2. to cover additional design costs as described in Exhibit A. Cloverleaf's Total Contribution will be available to the County for the costs associated with the Project, and County shall, in its sole discretion, be entitled to use, at any time, all or a portion of Cloverleaf's Total Contribution in connection with the completion of the Project.

4. Disclaimer/Waiver of Damages/Liability.

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

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

7. Default. In the event Cloverleaf fails to comply with any of the provisions of this Agreement within sixty (60) business days after Cloverleaf'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 Cloverleaf and/or the Cloverleaf Property; and/or
- (b) to refuse to accept any portion of any public improvements on the Cloverleaf Property and/or associated with the development of the Cloverleaf Property; and/or
- (c) to refuse to finally accept the Cloverleaf 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, Cloverleaf 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 Cloverleaf, to:

Cloverleaf Ranch, LLC
Attention: Mark Inman, Manager
4008 Louetta Road, No. 354
Spring, Texas 77388

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

(p) Cloverleaf's Warranties/Representations. All warranties, representations and covenants made by Cloverleaf in this Agreement or in any certificate or other instrument delivered by Cloverleaf 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.

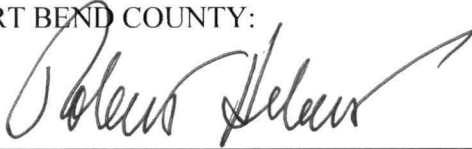
(q) Indemnification. The parties agree that the Indemnity provisions set forth in Paragraphs 4 and 5 herein are conspicuous, and the parties have read and understood the same.

(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

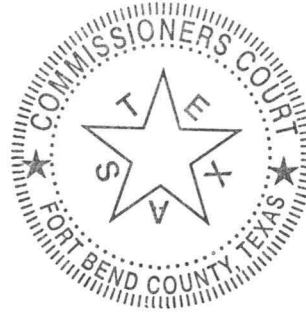
9-6-2016

Date

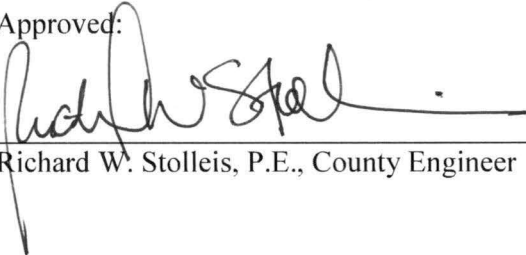
Attest:



Laura Richard, County Clerk

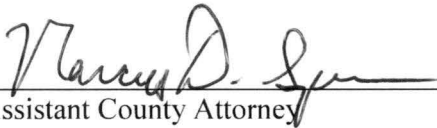


Approved:



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

Approved as to legal form:



Assistant County Attorney

Cloverleaf Ranch, LLC,
a Texas limited liability company



By: Susan Inman, Manager

Date:

8/18/2016

EXHIBIT A

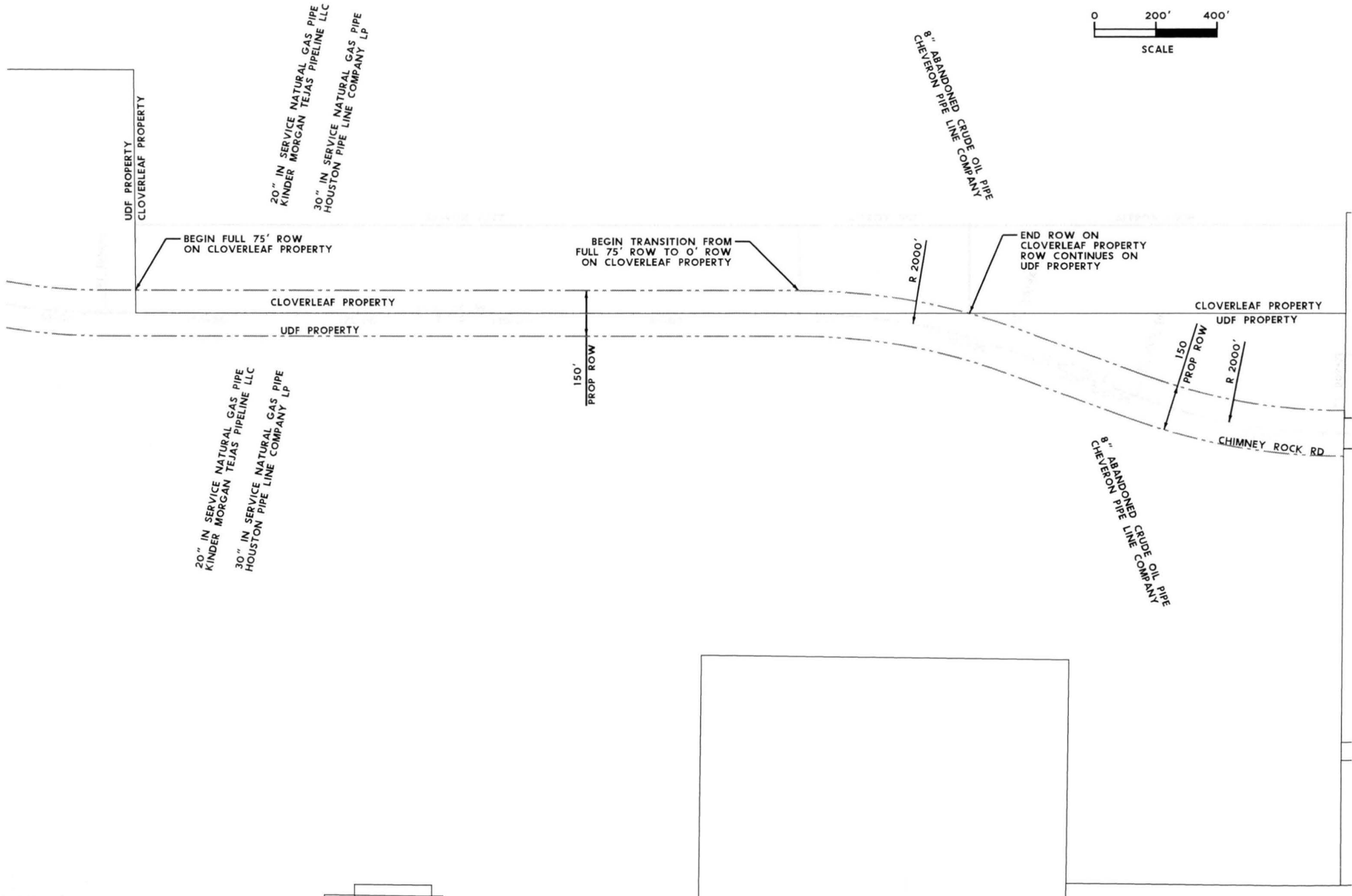
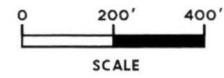


EXHIBIT B

Chimney Rock Road from FM2234 to Rosa Parks Elementary School

Fort Bend Mobility Bond 2013; Project Number 13203

Engineering Services to Adjust Alignment to Cloverleaf Property

TASK DESCRIPTION	Principal	Project Manager	Senior Engineer	Sen. Hyd. Engineer or Structural Engineer	Design Engineer	Senior Designer/	CADD Operator Technician	QA/QC Review	Clerical	Total Labor Hours & Costs
ITEM A (SUB CONSULTANT SERVICES)										
TOPOGRAPHIC SURVEYING										
TOPOGRAPHIC SURVEY (COST PLUS 10 PERCENT)										\$ 8,000.00
TOTAL ITEM A										\$ 8,800.00
ITEM B (ENGINEERING SERVICES)										
ALIGNMENT & ROW ADJUSTMENT										
ADJUST ALIGNMENT AND ROW		2			4	4				
IMPACT ANALYSIS REVISIONS		1			4					
HOURS SUB-TOTALS	0	3	0	0	8	4	0	0	0	15
LABOR RATE PER HOUR	\$85.00	\$70.00	\$60.00	\$50.00	\$35.00	\$40.00	\$33.00	\$60.00	\$20.00	
DIRECT LABOR COSTS	\$0.00	\$210.00	\$0.00	\$0.00	\$280.00	\$160.00	\$0.00	\$0.00	\$0.00	\$ 650.00
JOB MULTIPLIER	3	3	3	3	3	3	3	3	3	
TOTAL LABOR COSTS	\$0.00	\$630.00	\$0.00	\$0.00	\$840.00	\$480.00	\$0.00	\$0.00	\$0.00	\$ 1,950.00
TOTAL ITEM B										\$ 1,950.00
PROJECT TOTALS										
SUB CONSULTANTS										\$ 8,800.00
ALIGNMENT & ROW ADJUSTMENT										\$ 1,950.00
TOTAL ALL SERVICES										\$ 10,750.00

RAC

FORT BEND COUNTY CLERK

RETURN ADMIN SERV COORD

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

Laura Richard

Laura Richard, County Clerk
Fort Bend County, Texas

September 08, 2016 03:10:03 PM

FEE: \$0.00 PG1
AGREEMNT

2016099651



