

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

**AGREEMENT REGARDING THE IMPROVEMENTS AND ACCEPTANCE OF
ROADS WITHIN GOLDEN ACRES ESTATES SUBDIVISION**

THIS 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 Donald G. Brdecka, hereinafter referred to as "Owner," of Golden Acres Estates, a subdivision within Fort Bend County, Texas, hereinafter referred to as the "Subdivision."

WHEREAS, Owner requested an inspection of the roads within the Subdivision for the purpose of acceptance into the County Road Maintenance System; and

WHEREAS, upon inspection of the roads within the Subdivision, the County determined that the estimated cost of improving the roads within the Subdivision to meet County standards for acceptance into the County Road Maintenance System (hereinafter referred to as the "Road Improvements") would be a total amount of \$76,500.00 for chip coat roads; and

WHEREAS, upon inspection of the drainage and detention facilities, the County determined that the estimated cost of performing the necessary excavation or other related corrections that must be addressed to meet the requirements of the drainage plan in effect at the time the Subdivision's plat received approval (hereinafter referred to as the "Drainage Improvements") would be a total of \$35,923.25 as reflected in the Tejas Dirt Work proposals dated May 18, 2016 and April 18, 2017, both attached hereto as Exhibit "A" and incorporated herein for all purposes; and

WHEREAS, Owner and the County agree the costs for the Road Improvements and the Drainage Improvements (hereinafter, collectively referred to as the "Improvements"), currently estimated at total amount of \$112,423.25, is the responsibility of the Owner; and

WHEREAS, the Owner has agreed to engage a contractor to perform the Drainage Improvements and pay the County for the cost of the Road Improvements, and County has agreed to perform the construction of the Road Improvements; and

WHEREAS, the County has investigated and determined that it would be advantageous and beneficial to the County and its citizens to construct the Road Improvements as provided herein.

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

1. Description of Improvements.

(a) The Road Improvements consist of base and chip coat of the following roads within Golden Acres Estates Subdivision:

- (I) Canvas Back Road;
- (II) Black Mallard Road; and
- (III) Wood Duck Road

(b) The Drainage Improvements consist of the work, as indicated on the site sketch attached as Exhibit "B" and incorporated herein for all purposes.

2. Construction of the Road Improvements. In exchange for payment for costs of materials, County agrees to construct the Road Improvements in accordance with County construction standards to bring the roads to an appropriate level of acceptance into the County Road Maintenance System. County will commence construction within twelve (12) months of completion of the Drainage Improvements.

3. Construction of the Drainage Improvements. Upon execution of this Agreement, Owner shall engage a contractor to complete the Drainage Improvements at Owner's expense. Owner shall ensure the location and elevation of the detention and drainage facilities to be placed or constructed as a part of the Drainage Improvement shall be done so in accordance with the Golden Acres Subdivision Drainage Plan dated May 8, 1985 performed by Kelly R. Kaluza and Associates, Inc.

4. Owner's Payment for Road Improvement Costs. Owner shall make payments to County for the costs associated with constructing the Road Improvements and County shall in its sole discretion, be entitled to use, at any time, all or a portion of the payments in connection with the Road Improvements. Owner shall make such payments in a total amount of \$76,500.00 based on the following payment schedule:

Payment 1 due August 31, 2018	\$26,500.00
Payment 2 due August 31, 2019	\$25,000.00
Payment 3 due August 31, 2020	\$25,000.00

Owner may prepay in whole or part any of the payment. County agrees to cooperate with Owner in its effort to obtain assistance from its surety for satisfaction of this obligation.

5. Acceptance into County Road Maintenance System. Upon the receipt of the final payment by Owner and successful inspection, County shall accept all roads within the Subdivision into the County Road Maintenance System and Owner shall be released and discharged of and from any claims or obligations arising from or related to Subdivision Bond No. USA-1439. Further, County will provide continued maintenance, as with all other roads within said System, including maintenance for adjacent roadside ditches. Maintenance of the any detention pond(s) and all outfall structures will not be included in such acceptance and, shall remain the responsibility of the Owner.

6. Disclaimer/Waiver of Damages/Liability. (a) Owner 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 Road Improvements, in whole or in part.

(b) Owner acknowledges and agrees that County shall in no way be liable for any damages, if any, which may be sustained by the Owner, resulting, in whole or in part, directly or indirectly, from County's failure to complete the construction of the Road Improvements by any certain date and/or as set forth in this Agreement.

(c) Owner 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 Road Improvements and/or any other act and/or omission relating, directly or indirectly, to the Road Improvements, 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.

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

**(a) OWNER ACKNOWLEDGES AND AGREES THAT THE PAYMENTS
MADE BY OWNER 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) OWNER 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) OWNER 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.

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

9. Default. In the event Owner fails to comply with any of the provisions of this Agreement within ten (10) business days after 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 Owner and/or Subdivision; and/or

(b) to immediately, without further notice to Owner, cease any and all construction of Improvements; and/or

(c) to seek specific enforcement of this Agreement.

In the event of County's default under this Agreement, Owner will be entitled to seek specific performance and/or any other remedy available to them at law or in equity.

10. 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
ATTN: Road Commissioner
301 Jackson Street
Richmond, Texas 77469

If to Owner, to:

Donald G. Brdecka
2324 Blase Road
Rosenberg, Texas 77471

With a copy to:

David W. Showalter, Attorney at Law
1117 FM 359, Suite 200
Richmond, Texas 77406

- (b) 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.
- (c) 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.
- (d) 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.
- (e) Consideration. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.
- (f) 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.
- (g) 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.
- (h) 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.
- (i) 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.
- (j) 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.
- (k) Sovereign Immunity. The parties agree that County has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

(l) 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.

(m) 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.

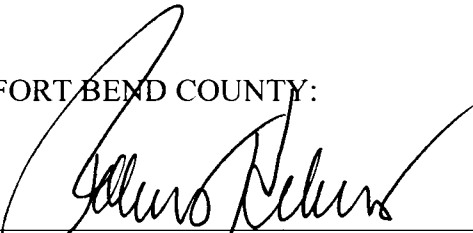
(n) Incorporation of Recitals. The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of County and the Owner and/or its authorized representatives.

(o) Indemnification. The parties agree that the Indemnity provisions set forth in Paragraph 6 herein are conspicuous, and the parties have read and understood the same.

(p) 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:

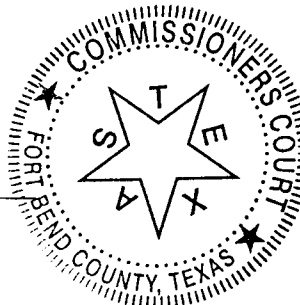

Robert E. Hebert, County Judge

11-7-2017

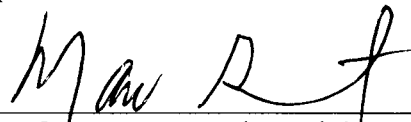
Date

Attest:

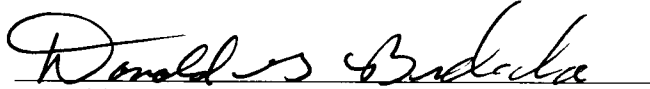

Laura Richard, County Clerk



Approved: COUNTY PROJECT MANAGER


Marc Grant, Fort Bend Road Commissioner

OWNER:


Donald G. Brdecka, Owner

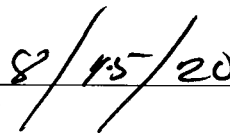

Date

Exhibit A: Tejas Dirt Work Estimates
Exhibit B: Site Sketch – Golden Acres Subdivision

EXHIBIT A



Tracy Gerken

281-633-1611

P.O. Box 301

Needville, TX 77461

tracygerken@ymail.com

Date: April 18, 2017

For: Golden Acres

We at Tejas Dirt Work are pleased to submit our proposal to furnish all labor and materials to complete the services as requested for the project as described below:

Scope of work

**Removing a small pond from the detention pond
Spreading excavated dirt on neighbor's property
Reshape creek bank-detention pond**

Bid for above work:

\$5,090.00

Thank you for the opportunity to bid.

Tracy Gerken



Tracy Gerken

281-633-1611

P.O. Box 301

Needville, TX 77461

tracygerken@ymail.com

Date: May 18, 2016

For: Golden Acres

We at Tejas Dirt Work are pleased to submit our proposal to furnish all labor and materials to complete the services as requested for the project as described below:

Scope of work:

	Unit	Cost
Detention pond excavation And spread on lots 6,613.30 CY	\$2.50	\$16,533.25
1 - 18 ft X18" HDPE 3 - 42 ft X 18" HDPE Installed with stabilized sand		\$11,300.00
Labor re-grading 1500 ft of Drainage ditch		\$ 3,000.00
Bid for above work:		\$30,833.25

This proposal does not include the following:

No material testing

No concrete work

No surveying

No dewatering

No permits

This bid is valid for Thirty(30) days.

We thank you for the opportunity to bid your request and look forward to doing business with you. Should you have and questions regarding this proposal, please call Tracy Gerken at (281)633-1611.

Respectfully submitted,

Accepted

Tracy Gerken
Tejas Dirt work

Authorized signature for
customer name

Date

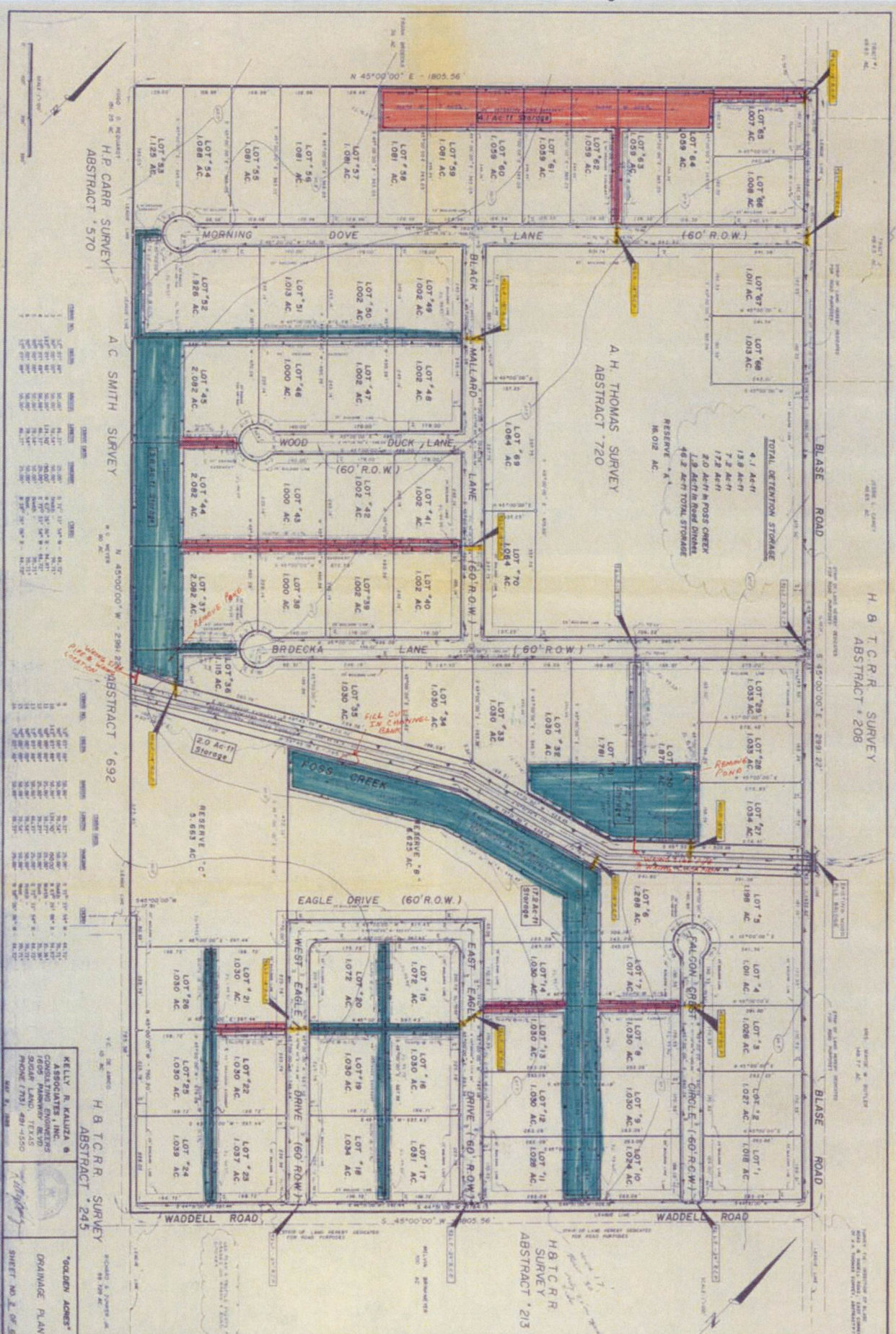
Typed/Printed Name &Title

Date

Signed contractual proposal must be returned prior to startup of proposed and accepted scope of work.

EXHIBIT B

C&D
EXCAVATION DONE
CAVATION NOT
GRADE
PES NOT INSTALLED



KELLY R. KALUA
ASSOCIATES, INC.
CONSULTING ENGINEERS
2808 LAND, TEXAS
PHONE (713) 481-1550
MAP 8, 1988

"GOLDEN JONES"
DRAINAGE PLAN
SHEET NO. 2 OF 2

LEGEND

- **Pink** = detention ponds/ditches that have not been excavated
- **Green** = detention ponds/ditches that have been excavated, but not to the correct elevation.
Should be excavated to elevations indicated in red ink
- **Yellow** = pipes to be installed
- **Red Ink** = Corrections to be made as indicated

TEXAS ETHICS COMMISSION

[Home \(/TECCertInt/pages/filer/landing.jsf\)](#)

[Profile \(/TECCertInt/pages/profile/profileMaintenancePage.jsf\)](#)

[Certificates \(/TECCertInt/pages/filer/certInfoListPage.jsf\)](#)

[Messages \(../filer/messages.jsf\)](#)

Certificate of Interested Parties - Submitted

Submitted on Tue Aug 15 13:59:40 CDT 2017

Unique Certificate Identifier: 2017-249990

[Home](#)

[Print](#)

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.

Donald G. Brdecka, Owner of Golden Acres Estates
Rosenberg, TX United States

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.

GA-3708
Agreement for Road Improvements

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

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

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

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

Donald G. Brdecka, Owner of Golden Acres Estates

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.

GA-3708: Description is: Agreement for Road Improvements

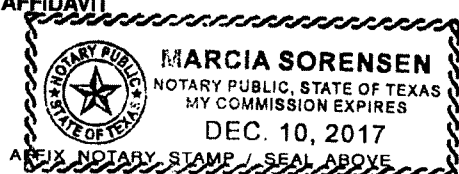
Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary

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.



Donald G. Brdecka

Signature of authorized agent of contracting business entity

Sworn to and subscribed before me, by the said Donald G. Brdecka, this the 15th day of August, 20 17, to certify which, witness my hand and seal of office.

Marcia Sorensen
Signature of officer administering oath

Marcia Sorensen
Printed name of officer administering oath

Notary
Title of officer administering oath

ADD ADDITIONAL PAGES AS NECESSARY

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

Certificate Number:
2017-249990

Date Filed:
08/15/2017

Date Acknowledged:

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

Donald G. Brdecka, Owner of Golden Acres Estates
Rosenberg, TX United States

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.

GA-3708
Agreement for Road Improvements

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

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

Certificate Number:
2017-249990

Date Filed:
08/15/2017

Date Acknowledged:
11/07/2017

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

Donald G. Brdecka, Owner of Golden Acres Estates
Rosenberg, TX United States

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.

GA-3708
Agreement for Road Improvements

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