

V.

Consideration and action with respect to contracts for the construction of Avery Ranch Boulevard.

Joe England addressed the court.

Moved: **Commissioner Boatright**

Seconded: **Commissioner Limmer**

Motion: To approve contracts for the construction of Avery Ranch Boulevard with the exclusion of any change orders or cost overruns associated with these contracts.

Vote: **4 – 0. Commissioner Hays was absent from the dais.**

< Attachment >

PROFESSIONAL SERVICES AGREEMENT

ENGINEER:
Cook - Steinman & Associates, Inc.
3018 North Lamar, Suite 200
Austin, Texas 78705

CLIENT:
Avery Ranch Owners Committee
c/o Mr. Robert D. Wunsch
2414 Exposition Blvd., Suite D100
Austin, Texas 78705

PROJECT NAME : Avery Ranch Boulevard – Far West Extension
REAL PROPERTY DESCRIPTION : Avery Ranch PUD

- I. Client agrees to employ Engineer on the terms and conditions set forth in this Professional Services Agreement (the "Agreement").
- II. Services to be Performed by Engineer: Engineer agrees to perform Basic Services and Additional Services in conformance with the following descriptions, definitions, terms and conditions:
 - A. Basic Services shall be defined as those services specifically described in the "Scope of Services" as set forth in the attached letter proposal (the "Proposal") dated August 28, 2001, from Engineer to Mr. Robert D. Wunsch.
 - B. Additional Services: Work specifically identified in the Proposal as "Additional Services" or all work performed by Engineer not specifically described in the Proposal shall constitute Additional Services. Also, other services not customarily furnished in accordance with generally accepted engineering practice in the Travis County, Texas area.
- III. Compensation of Engineer: Client agrees to pay Engineer for the above described services in accordance with the following descriptions, definitions, terms and conditions.
 - A. Basic Services: Compensation will be a lump sum amount of \$74,000, and an estimated hourly amount of \$52,500 as set forth in the "Schedule of Fees" in the Proposal. Reproduction and reimbursable costs will be invoiced at cost + 10%. Estimated hourly amounts will be billed at Engineer's Standard Hourly Rates in effect at the time of invoice as set forth in B.1. below.
 - B. Additional Services: Unless otherwise agreed upon in writing, compensation for "Additional Services" will be charged based on the actual hours expended by Engineer's personnel and billed at Engineer's Standard Hourly Rates in effect at the time of invoice plus Reimbursable Expenses, both defined as follows:
 1. Standard Hourly Rates are defined as the rates established from time to time by Engineer for its personnel and rate charged based on salaries paid to Engineer's personnel plus payroll burden (Social Security contributions, Federal and State unemployment taxes, Workers' Compensation, health and retirement benefits, incentive pay, sick leave, vacation and holiday pay applicable thereto) and a factor for overhead and profit.
 2. Reimbursable Expenses are defined as any and all expenses incurred by Engineer in connection with Additional Services and shall be charged at Cost + 10%.
- IV. Suspension of Work and Additional Compensation: Engineer understands that Client may require Engineer to temporarily suspend work. Client understands that the suspension of work by Engineer will cause Engineer to incur additional costs to resume work, whether on Basic or Additional Services, and Client agrees to reimburse Engineer for such additional costs.
- V. Payment of Invoices: Engineer will invoice Client monthly for amounts earned under this Agreement. Client agrees to promptly pay Engineer at his office in Travis County, Texas, the full amount of each such invoice upon receipt. Receipt of invoices shall be presumed and Client shall be deemed to be in default if payment is not made within thirty calendar days of the date of the invoice. Client agrees to pay as interest an additional charge of one-and-one-half (1.5) percent per month, or the highest rate allowed by law, whichever is less, on all invoiced amounts not paid within 30 calendar days of the date of the invoice. Interest shall begin to accrue, on a monthly compounding basis, beginning one month following the date of the invoice and shall continue until such time that all amounts due are paid. Payment thereafter shall first be applied to accrued interest and then to the unpaid principal. Interest on unpaid invoices shall not exceed the maximum amount of nonusurious interest allowed by law on these unpaid invoices. Any interest in excess of this maximum amount shall be credited to unpaid invoices, or, if they have been paid, refunded.
In the event legal action is necessary to enforce the provisions of this paragraph, the Engineer shall be entitled to collect from the Client any judgment or settlement sums due, reasonable attorney's fees, court costs and expenses incurred by Engineer in connection therewith and, in addition the reasonable value of the Engineer's time and expenses spent in connection with such collection action, computed at Engineer's prevailing fee schedule and expense policies.
- VI. Contractual Lien to Secure Payment: Client grants to Engineer a contractual lien in addition to all constitutional, statutory and equitable liens that may exist, on the above-described real property and all improvements thereon to secure payment for all debts owed, now or in the future, to Engineer by Client including those arising as a result of Engineer's

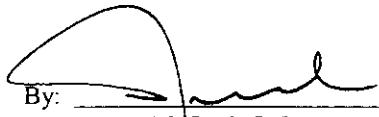
services provided in accordance with this or any other Agreement between Client and Engineer. Client grants Engineer the authority and right to file a copy of this Agreement in the Deed Records of the County or Counties where the above project is located to give notice of Engineer's lien rights.

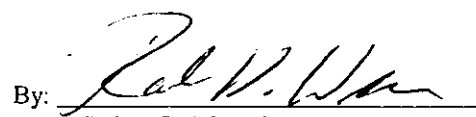
- VII. No Reuse of Engineer's Work Products: All documents, including Drawings and Specifications, prepared by Engineer pursuant to this Agreement, are instruments of service in respect of the Project. No one other than Client is entitled to rely on such documents without the previous written consent of Engineer. They are not intended or represented to be suitable for reuse by Client or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by Engineer for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to Engineer and Client shall indemnify and hold harmless Engineer from all claims, damages, losses and expenses including attorney's fees arising out of or resulting therefrom. Any such verification or adaptation will entitle Engineer to further compensation as an Additional Service.
- VIII. Termination: This Agreement may be terminated by Engineer or Client in accordance with the following terms:
- A. This Agreement may be terminated without cause at any time prior to completion of Engineer's services either by Client or by Engineer, upon seven (7) days' written notice to the other at the address of record set out above. Such termination shall release Engineer from any further obligation to provide Basic or Additional Services to Client on this Agreement, but all obligations of Client shall continue.
 - B. Client understands that Engineer's ability to work is predicated upon its ability to collect payment of invoices when due. If Client does not make timely payment of invoices related to this Agreement or any other contract in which Client has retained the services of Engineer, then Client authorizes Engineer, at its sole discretion, to terminate this Agreement and any other contract in which Client has retained the services of Engineer upon seven (7) days' notice to Client at its address of record set out above. Such termination shall release Engineer from any further obligation to provide Basic or Additional Services to Client on this Agreement and any other contract in which Client has retained the services of Engineer, but all obligations of Client shall continue.
 - C. Client waives any and all claims it has against Engineer arising out of termination of this Agreement by Engineer. Client agrees that Engineer has no duty to perform further services for Client if Client has not timely paid all amounts due Engineer for previous services on this or any other Agreement. Client waives any and all claims, causes of action, or damages that it has or may have against Engineer for failure to perform further services under this or any other Agreement when Engineer has not been timely paid for previous services under this or any other Agreement with Client. Client agrees to indemnify and hold Engineer harmless for any and all claims made against Engineer by any person, firm, or corporation arising out of termination of this or any other Agreement between Engineer and Client.
 - D. On termination, either by Client or Engineer, Client shall pay Engineer all unpaid sums listed above as compensation for Basic Services and all unpaid sums for any Additional Services that have been performed by Engineer.
- IX. Limitation of Liability: To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of the Engineer and Engineer's Consultants, to Client and anyone claiming by through or under Client, for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or this Agreement from any causes, including but not limited to negligence, professional errors or omissions, or warranties expressed or implied, of Engineer or Engineer's Consultants, shall not exceed \$100,000 or the total compensation received by Engineer, whichever is less.
- X. Binding Agreement: Client, for himself and partners, if any, and Engineer, for itself, each binds himself or itself and its successors, executors, administrators and assigns to the other party to this Agreement and to partners, successors, executors, administrators and assigns of such other party in respect to all covenants of this Agreement. Neither Client nor Engineer shall assign, sublet, or transfer his interest in this Agreement without the written consent of the other. Nothing herein shall be construed as giving any rights or benefits hereunder to anyone other than Client and Engineer. Client's representative signing below warrants that he has full authority to bind Client to this Agreement and further warrants that Client has an ownership interest in the real property that is part of the Project. Client's representative signing below agrees to indemnify, save, and hold Engineer harmless for any and all claims, causes of action, and damages that may arise against Engineer if the representations contained in this Paragraph X are not correct.
- XI. Acceptance of Agreement: If this Agreement is not executed by Client within 30 days of the date tendered, it shall become invalid unless: (1) Engineer extends the time in writing; or (2) Client orally authorizes engineer to proceed with the work, in which event the terms of the oral authorization shall be presumed to include all the terms of this agreement. Engineer's performance of work under the oral authorization shall be in reliance on the inclusion of all the terms of this Agreement in the oral authorization.
- XII. Modifications: No one has authority to make variations in, or additions to, the terms of this Agreement on behalf of Engineer other than one of its officers, and then only in writing signed by him.

- XIII. Client Cooperation: Client agrees to timely provide all information required by Engineer to perform its services so as not to delay such performance. Client further agrees to fully cooperate with Engineer in the performance of this Agreement.
- XIV. Engineer's Reliance on Client and Third Parties: Client agrees that Engineer may rely on the accuracy and validity of all information provided by Client, the work of third parties, and public records, and Engineer is not expected or required by Client to check them.
- XV. Engineer Not Supervisor: Unless specifically stated in the letter proposal defining the Basic Services provided in this Agreement, Engineer has no responsibility or authority for the supervision of any phase of the work at the site of the Project.
- XVI. Mediation: In an effort to resolve any conflicts that arise during the design or construction of the Project, the Client and the Engineer agree that all disputes between them arising out of or relating to this Agreement may be submitted to nonbinding mediation to any one of the following: American Arbitration Association, American Intermediation Service, Americord, Dispute Resolution, Inc., Endispute, or Judicate, unless the parties mutually agree otherwise. Any party hereto may initiate mediation and the parties hereto agree to fully cooperate and participate in good faith to resolve the dispute(s). The request for mediation shall be made within one (1) year of the date the claimant knew or should have known of the existence of the claim, dispute, or other matter. If the request for mediation is not effectuated within one (1) year, the claim, dispute, or other matter shall be forever barred and not mandatory. The cost of mediation shall be shared equally by the parties hereto.
- XVII. Governing Law and Place of Performance: This Agreement shall be construed and enforced in accordance with the laws of Texas. This Agreement is performable by all parties in Travis County, Texas.
- XVIII. Paragraph Titles: Paragraph titles in this Agreement are for general reference only and are not intended to detract from or limit the effect of any language in this Agreement.
- IX. Entire Agreement: This Agreement and the Proposal defining the Basic Services provided in this Agreement contain the entire contract between Client and Engineer.

ENGINEER: Cook - Steinman & Associates, Inc.

CLIENT: Avery Ranch Owner's Committee

By: 
James M. Cook, P.E.
Vice-President

By: 
Robert D. Wunsch
Avery Ranch Owner's Committee

Date: 3/29/01

Date: _____

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approved 3-11-03
John C. Dwyer



Consulting Engineers
Land Planning

COOK, STEINMAN & ASSOCIATES, INC.

3018 North Lamar, Suite 200
Austin, Texas 78705
Tel (512) 454-6777
Fax (512) 454-2999

August 28, 2001

Mr. Robert D. Wunsch
2414 Exposition Blvd.
Suite D100
Austin, Texas 78705

Re: Avery Ranch Boulevard - Far West Extension
Proposal for Engineering and Surveying Services

Dear Mr. Wunsch:

Cook-Steinman & Associates, Inc. (CSA) appreciates the opportunity to submit this proposal to provide the professional engineering and surveying services associated with the referenced project. Based on my understanding of your needs at this time, we propose to provide these services for the following Schedule of Fees:

Schedule of Fees

<u>Description</u>	<u>Estimated Amount</u>	<u>Fee Basis</u>
A. Design Survey	\$10,000.00	Hourly
B1. Roadway Design (approx. 5,800 lf)	\$70,000.00	Lump Sum
B2. Railroad Level Crossing Design and Coordination with Capital Metro	\$12,500.00	Hourly
B3. Water Pollution Abatement Plan	\$4,000.00	Lump Sum
C. COA Development Permit Processing	\$15,000.00	Hourly
D. Construction Administration	\$15,000.00	Hourly
E. <u>Reproduction/Reimbursable Costs</u>	-	Cost + 10%
TOTAL	\$126,500.00	

Notes:

- Design of approximately 5,800 lf of roadway, railroad level crossing and culverts. Any bridge designs will be an additional service.
- Design survey will augment as required, the existing survey provided from the Avery West project.
- A hydro-geologic assessment of the ROW for the WPAP will be at cost.
- Construction administration includes cost estimates, bidding documents, site visits, pay requests, etc.
- Preparation of field notes for easements will be extra.

Your signature below will initiate our start of the project and a Professional Services Agreement will be forthcoming. Should you have any questions, or if we can provide any additional information, please call.

Sincerely,

James M. Cook, P.E.

Accepted by:

Robert D. Wunsch

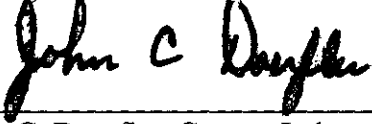
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AS OF JAN 03
131,200

140,000 - 10% = 126,000

THE ROAD DISTRICT MEETING ADJOURNED AT 11:40 A.M. ON TUESDAY, MARCH 11, 2003.

THE FOREGOING MINUTES recorded on Minutes Pages 1 through 190 inclusive, had at a Regular Session of Commissioners' Court of Williamson County, Texas, having been read are hereby approved this 18th day of March, 2003.



John C. Doerfler, County Judge

ATTEST: Nancy E. Rister, Clerk County Court & Ex-officio Clerk,
Commissioners' Court, Williamson County, Texas

By:


Deputy Clerk