

# HARRIS COUNTY FLOOD CONTROL DISTRICT

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IN THE COUNTY CIVIL COURT

**VS.**

AT LAW NO. 2 OF

**H. BEN TAUB, KITCHCO REALTY,  
LTD., METCO REALTY, LTD., AND  
TEXAN LAND AND CATTLE II, LTD.**

HARRIS COUNTY, TEXAS

## FINAL JUDGMENT

BE IT REMEMBERED that on this day came on to be heard the above-entitled and numbered cause, and came Harris County Flood Control District (the “District”), as Plaintiff, and H. Ben Taub, KitchCo Realty, Ltd., MetCo Realty, Ltd., and Texan Land and Cattle II, Ltd. (“Defendants”), as Defendants, and all announced ready for trial.

I.

Prior to the commencement of the trial of this cause, Defendants admitted and stipulated in open Court that the District has the right to recover and condemn a 42.741 acre tract of land, more or less, that is the subject of this condemnation case, the size of which was proven at trial by a signed and sealed survey admitted in evidence with no objection. However, in the District's Condemnation Petition, it provides for a slightly larger tract, being 42.8203 acres, more or less. The Defendants have agreed and stipulated that for purposes of this Judgment that the condemned property may be described as a 42.8203 acre tract, more or less, which is more particularly described in Exhibit "A", attached hereto and referred to herein as the "Property". Further, the Parties agreed and stipulated that all prior steps to condemn were duly, legally and timely performed; that all legal prerequisites for the trial of this cause were duly complied with; that this Court has jurisdiction to grant the District the relief it is requesting in its Petition; and that the only issue remaining in this cause to be tried by this Court was the amount of just compensation due Defendants as a result of the condemnation of the Property.

(1) The District seeks to acquire the fee simple title in and to the Property for the location, alignment, construction, operation and maintenance of the public project known as the Deer Park Detention Basin (the “Project”), save and except the oil, gas, sulphur and other minerals in, under, and below the surface of the Property, which the District agrees may be extracted and removed by directional drilling, mining, or other means so long as District’s use of the Property is not unreasonably disturbed, and the facilities located on the Property, and the function for which they are intended to serve, are not interfered with, obstructed, or endangered in any way. The condemnation of the Property is for a public use.

(2) An Award of \$9,000,000.00 was made by the Special Commissioners in this case as the compensation due Defendants for the taking of the Property, and on July 28, 2010, the amount of the Award was deposited by the District in the Court's Registry, thus establishing the "date of taking" for purposes of determining just compensation at trial. This amount was withdrawn from the Court's registry by the Defendants before trial.

(3) On September 4, 2014, this case came on for trial and a qualified jury of six persons was properly empanelled and duly sworn to serve in this case. The Defendants and the District presented their evidence regarding the compensation issue for the market value of the Property taken as of July 28, 2010, after which the parties rested and argued their respective positions to the jury. One compensation question was submitted to the jury in accordance with the evidence and the law applicable thereto, which read as follows:

**JURY QUESTION NO. 1**

What do you find from a preponderance of the evidence was the market value of the Property Owner's 42.741 acre (1,861,798 square feet) property as of July 28, 2010?

On September 23, 2014, in response to Jury Question No. 1, the jury returned a verdict of \$11,636,238.00 as the total amount of compensation to which Defendants are entitled, measured by the market value of the Property taken by the District as of the "date of taking." On Defendants' motion, the verdict was accepted by the Court and duly filed and entered among the records of the Court. The jury's verdict exceeds the Special Commissioners' Award by \$2,636,238.00.

(4) The Court is of the opinion that judgment should be entered on the jury's verdict, and that Defendants recover from the District the amount of such verdict, costs of court, pre-judgment interest at the rate of 5.0% per annum from July 28, 2010 through the date of judgment on the \$2,636,238.00 amount, and post-judgment interest at 5% per annum, compounded annually, thereafter on the entire balance provided in this Judgment that remains unpaid.

(5) The amount of pre-judgment interest to which Defendants are entitled from July 28, 2010 to October 21, 2014, is \$557,945.85, and \$361.13 per day thereafter if judgment is entered after October 21, 2014.

(6) After accounting for pre-judgment interest, Defendants are entitled to compensation in the amount of \$12,194,183.85 as of October 21, 2014, plus costs of court, and \$361.13 per day thereafter if Judgment is not entered on October 21, 2014.

(7) The District is entitled to a \$9,000,000.00 credit on the judgment for the amount of the Special Commissioners' Award the District deposited previously in the Court's Registry for Defendants' use and benefit and that the Defendants have withdrawn, leaving a balance owed

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to Defendants of \$3,194,183.85, plus court costs, as of October 21, 2014, and \$361.13 per day thereafter if Judgment is not entered on October 21, 2014. The remaining balance owed shall be paid by the District directly and jointly to the Defendants and their attorneys of record, and **not** by deposit in the Court's Registry.

(8) All costs of Court incurred herein shall be taxed against the District, which costs, as they pertain only to Defendants, shall be paid by the District directly and jointly to Defendants and their attorneys of record upon filing a Bill of Costs with the Clerk. Any other costs of court should be paid into the Court's registry. The Defendants' costs of Court should be submitted in a cost bill to the clerk of Court within thirty days of the filing of this Judgment. The District shall pay all court costs to Defendants within thirty (30) days of the filing of a Bill of Costs with the Court, and if not paid, interest on the Bill of Costs shall accrue at 5% per annum, compounded annually, from the date of this Final Judgment until paid in full.

*Handwritten: JLM*  
(9) The ~~County~~<sup>District</sup> shall pay post-judgment interest to Defendants on the \$3,194,183.85 balance owed Defendants, or such other amount as provided in this Final Judgment if entered after October 21, 2014, at the rate of 5.0% per annum, compounded annually, from the date of this Judgment until paid in full directly and jointly to the Defendants and their attorneys of record as provided herein.

(10) Upon payment of the Judgment, along with all pre- and post-judgment interest and costs of court, the District shall have and recover from Defendants fee simple title in and to the Property for the purposes for which it was condemned, save and except the minerals as previously provided herein.

### III.

Based on the foregoing, it is:

NOTED FOR THE COURT

ORDERED that the District have and recover from H. Ben Taub, KitchCo Realty, Ltd., MetCo Realty, Ltd., and Texan Land and Cattle II, Ltd. fee simple title in and to the Property situated in Harris County, Texas, as more particularly described in Exhibit "A" attached hereto and incorporated herein for those purposes stated in the District's Condemnation Petition, save and except the oil, gas, sulphur, and other minerals which can be removed from the Property, so long as it is done by directional drilling or other means from property located outside the boundaries of the Property, and the District's use of the Property is not interfered with, obstructed, endangered in any way and, accordingly, the Court does hereby vest fee title in the Property to the District, subject to the exception above, upon satisfaction of this Judgment;

ORDERED that Defendants have and recover from the District \$11,636,238.00 for the Property condemned, plus all pre-judgment and post-judgment interest as provided herein, plus costs of court, for which let execution issue if not timely paid;

ORDERED that the District is entitled to a \$9,000,000.00 credit on the judgment amount for monies previously deposited in the Court's Registry for the benefit of Defendants, leaving an unpaid balance owed to Defendants of \$3,194,183.85 for the Property, which includes \$557,945.85 in pre-judgment interest at the rate of 5% per annum from July 28, 2010 to October 21, 2014, or such additional amount of \$361.18 per day, plus interest, if Judgment is entered after October 21, 2014;

ORDERED that post-judgment interest shall accrue on all unpaid amounts as provided in this Judgment at the rate of 5% per annum, compounded annually, until paid in full;

ORDERED that the amount of \$3,194,183.85 (or such additional amount as provided above), plus costs of court and post-judgment interest, shall be paid by the District directly and jointly to Defendants and their attorneys of record, VINSON & ELKINS LLP, by delivery of a

check or warrant, plus Defendants' court costs referenced above, to H. Dixon Montague, VINSON & ELKINS LLP, 1001 Fannin Street, Suite 2500, Houston, Texas 77002-6760, no later than thirty (30) days after entry of this Final Judgment, and until paid directly as provided herein, this judgment shall not be satisfied and interest shall continue to run on any unpaid amounts at the rate of 5% per annum, compounded annually, until paid in full;

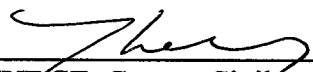
ORDERED that upon payment by the District of the Judgment amount provided herein, including all costs of court, and all pre- and post-judgment interest, the County shall stand released and discharged of its constitutional obligation to pay just compensation to Defendants for the Property acquired in this condemnation proceeding, and shall be vested with fee simple title to the Property condemned, as described in Exhibit "A", attached hereto and incorporated herein;


ORDERED that all costs of Court be and the same are hereby adjudged against the District, and shall be paid in the manner provided above;

ORDERED that all relief not expressly granted herein is denied. This is a final judgment.

OCT 21 2014

SIGNED this the \_\_\_\_ day of October, 2014.

  
\_\_\_\_\_  
JUDGE, County Civil court at Law No. 2  
Harris County, Texas

  
\_\_\_\_\_  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

2014 OCT 21 PM 1:36

FILED

APPROVED AS TO FORM AND SUBSTANCE  
AND FOR ENTRY:

VINCE RYAN, HARRIS COUNTY ATTORNEY

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Cedric Loeb  
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**ATTORNEYS FOR PLAINTIFF,  
HARRIS COUNTY FLOOD CONTROL  
DISTRICT**

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**ATTORNEYS FOR DEFENDANTS,  
H. BEN TAUB, KITCHCO REALTY,  
LTD., METCO REALTY, LTD., AND  
TEXAN LAND AND CATTLE II, LTD.**

**LEGAL DESCRIPTION**  
**42.8203-ACRE TRACT OF LAND**

Description of a 42.8203-acre (1865252.83 sq. ft.) tract of land located in the George M. Patrick Survey, Abstract 624, being out of that called 103.607 acre tract as recorded in Harris County Clerk's File No's. E473223-25(Tr-1), K729814, X657282, P024315(Tr-1), S262009(Tr-1), U342242(Tr-1), Texas and being more particularly described by metes and bounds as follows: all bearings are based on the Texas State Plane Coordinate System South Central Zone.

**COMMENCING** at a ¾-inch iron rod found in the East right-of-way line of Luella Avenue (60' wide) being a cut back corner of a called 8.7267 acre tract as recorded in Harris County Clerk's File No. H315169 and the Northwest corner of a called ninety-five (95) foot wide tract of City of Deer Park as recorded in Harris County Clerk's File No. F748929 and G516629 from which a 1" iron pipe found bears North 49°41'07" West 1.88 feet.

**THENCE** South 46° 27' 54" East a distance of 85.88 feet (call 85.61 & 86.10) along the common line of said called 8.7267 acre tract and of said "95' wide tract" to a ¾-inch iron rod found for a common corner of the said 8.7267 acre tract and of said "95' wide tract";

**THENCE** North 86° 52' 17" East a distance of 580.45 feet (call 580.32) along the common line of said called 8.7267 acre tract and of said "95' wide tract" to a point for corner (N 1382541.1.0777, E 3202597.3973) in the East line of Deer Park Outlot 2-1/2 as recorded in Volume 65, Page 177 Harris County Deed Records for the **POINT OF BEGINNING** an interior corner of the herein described tract, being a four (4) way corner; the Southeast corner of said called 8.7267 acre tract, the Northeast corner of said "95' wide tract" and the Northwest corner of a one hundred forty (140) foot wide drainage channel as recorded in Harris County Clerk's File No. G639672 (Tr-2) from which a found ¾ inch iron rod bears North 09°23'39" West 1.42 feet:

**THENCE** North 03° 00' 58" West along the East line of said called 8.7267 acre tract also being the said East lines of Deer Park Outlot 2-1/2, Outlot 1-1/2 and a fifty (50) foot wide right-of-way as recorded in Volume 65, Page 177 Harris County Deed Records all in the common West line of the herein described tract of land, at a distance of 21.06 feet passing the common corners of said Outlots 2-1/2 and 1-1/2, at a distance of 480.41 passing the common Northeast corner of said Outlot 1-1/2 and of said called 8.7267 acre tract also being the Southwest corner of said "50' wide right-of-way", continue for a total distance of 533.68 feet to a found ¾ inch iron rod for the Northeast corner of said "50' wide right-of-way" and the Northwest corner of the herein described tract of land being in the South line of Southern Pacific Railroad one hundred (100) foot wide tract as recorded in Volume 82, Page 272 Harris County Deed Records;

**Exhibit "A"**



NO. 4-000-4-00

780-91-3526

THENCE South 72° 49' 58" East along the South line of said Southern Pacific Railroad at a distance of 1425.92 feet passing a found 3/4 inch iron rod continue for a total distance of 1427.11 feet to a point for the Northwest corner of a called 35.64 acre tract as recorded in Volume 2335, Pages 72-77 Harris County Deed Records and the Northeast corner of the herein described tract of land;

THENCE South 02° 59' 58" East along the common line of said called 35.64 acre tract and the herein described tract of land a distance of 1275.33 feet to a point for the Southwest corner of said called 35.64 acre tract and the Southeast corner of the herein described tract of land in a North line of said "140' wide drainage channel" from which a found 3/4 inch iron rod bears North 43°25'22" West 2.11 feet;

THENCE South 86° 58' 02" West along the said North line of "140' wide drainage channel" a distance of 1199.11 feet to a point for an interior corner of said "140' wide drainage channel" and the Southwest corner of the herein described tract of land from which a found 3/4 inch iron rod bears North 09°39'28" East 1.52 feet;

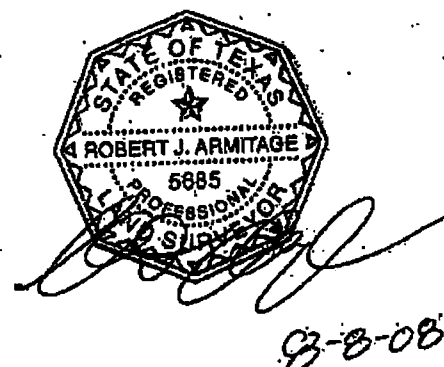
THENCE North 03° 00' 58" West along a East line of said "140' wide drainage channel" a distance of 1234.38 feet to a the most Northerly Northeast corner of said "140' drainage channel" and a interior corner of the herein described tract of land from which a found 3/4 inch iron rod bears North 04°43'33" West 1.37 feet

THENCE South 86° 59' 06" West along the most Northerly North line of said "140' wide drainage channel" a distance of 140.00 feet to the POINT OF BEGINNING containing 42.8203-acre (1865252.83 sq. ft.) of land:

Robert J. Armitage  
Registered Professional Land Surveyor No. 5685  
AMANI ENGINEERING, Inc.  
8313 Southwest Freeway, Ste 350  
Houston, Texas 77074

**RECORDER'S MEMORANDUM:**

At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.



**Exhibit "A"**