ORDINANCE NO. 2003-13

AN ORDINANCE APPROVING GALVESTON COUNTY MUNICIPAL UTILITY DISTRICT NO. 44 AND THE UTILITY AGREEMENT BETWEEN THE CITY OF LEAGUE CITY AND GALVESTON COUNTY MUNICIPAL UTILITY DISTRICT NO. 44 AND THE JOHNSON DEVELOPMENT CORPORATION

WHEREAS, the City of League City (the "City"), Galveston County Municipal Utility District No. 44 (the "District") and the Johnson Development Corporation proposed to enter into a Utility Agreement; and

WHEREAS, the City deems it necessary and proper and in the best interest of the citizens of the City to approve said Agreement; and

WHEREAS, at its February 25, 2003 meeting, the City Council approved the creation of Municipal Utility District No. 44;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEAGUE CITY, TEXAS, as follows:

Section 1. The facts and opinions of the preamble of this Ordinance are true and correct.

Section 2. The City Council of the City of League City hereby approves the Utility Agreement between the City of League City, the District, and the Johnson Development Corporation respectively, attached hereto as Exhibit "A", and incorporated herein by reference, and authorizes the Mayor to execute same and the City Secretary to attest such execution for and on behalf of the City in multiple counterparts.

Section 3. The existence of a functioning municipal utility district including the land subject to the Utility Agreement is essential to the implementation of such agreement; therefore the City hereby grants its consent to the creation of Galveston County Municipal Utility District No. 44 over the land described in Exhibit "B."

Section 4. It is officially found and determined that this meeting of the City Council of the City of League City is open to the public as required by law, and that written notice of the date, and time of the meeting was posted for at least seventy-two hours preceding the time of the meeting at a place convenient to the public at the City Hall as required by law.

Section 5. All ordinances, resolutions and agreements and parts of ordinances, resolutions and agreements in conflict herewith are hereby repealed to the extent of the conflict only.

APPROVED first reading the 25th day of March, 2003.

APPROVED second reading the 8th day of April, 2003.

PASSED AND ADOPTED the 8th day of April, 2003.

A. JEFF HARRISON,
Mayor

ATTEST:

BARBARA NUGENT,
City Secretary

UTILITY AGREEMENT
BY AND BETWEEN
GALVESTON COUNTY MUNICIPAL UTILITY DISTRICT NO. 44,
THE JOHNSON DEVELOPMENT CORPORATION,
AND
THE CITY OF LEAGUE CITY, TEXAS

STATE OF TEXAS §
§
COUNTY OF GALVESTON §

THIS AGREEMENT ("Agreement") made and entered into as of the 8th day of April, 2003 by and between JOHNSON DEVELOPMENT CORPORATION ("Johnson"), a Delaware corporation, GALVESTON COUNTY MUNICIPAL UTILITY DISTRICT NO. 44, a body politic and corporate and governmental agency created and operating under the provisions of Chapters 49 and 54, Texas Water Code, and pursuant to Article XVI, Section 59, Texas Constitution (hereinafter collectively the term "District" shall refer to both Johnson and Galveston County Municipal Utility District No. 44, as the intent of this Agreement is for Johnson to assign all rights and responsibilities to said District. Thus, the representations herein by said Galveston County Municipal Utility District No. 44 at this time represent Johnson's commitment to cause or direct the same to occur); and the CITY OF LEAGUE CITY, TEXAS, a municipal corporation.

W I T N E S S E T H

For and in consideration of the mutual promises, obligations, covenants, and benefits set forth, the District and the City contract and agree as follows:

ARTICLE I

Background and Representations

Section 1.01. Background.

The District is being created for the purpose of furnishing water, sanitary sewer, and drainage services to the area within its boundaries. The District will contain approximately 435 acres of land in Galveston County, Texas. The boundary of the District is described by metes and bounds in Exhibit "A" which is attached hereto and incorporated herein by reference for all purposes. The boundaries between the District and Galveston County Municipal Utility District No. 43 (which Johnson is creating and developing simultaneously with the District) may be altered through annexations and/or exclusions, without further action by the City, so long as the Land annexed or excluded is within the boundaries of either district.

The District will acquire and construct a water distribution system and a sewage collection system to serve the future residents within the District and works and improvements necessary to properly drain the area within its boundaries. The District will make adequate arrangements so that it will have the financial capability to enable it to acquire and construct the needed facilities and to discharge any obligations incurred in acquiring and constructing such facilities.

The City is a municipal corporation and is operating under a Home Rule Charter adopted under the laws of the State of Texas. The City has the power under the laws of the State of Texas to acquire, own, and operate a water and sanitary sewer system and works and improvements necessary for the drainage of the lands in the City. The City also has the authority, pursuant to Article 402.014 *et seq.*, Local Government Code, as amended, to contract with a District organized under the authority of Article XVI, Section 59, of the Constitution of Texas, whereby the District will acquire or construct, for the City water supply or treatment systems, water distribution systems, sanitary sewer collection or treatment systems or works or improvements necessary for the drainage of lands in the City.

The District is entirely within the City's limits. As a result, both the City and the District function in a common orbit and have some common duties and responsibilities to the present and future landowners.

In order to provide a water distribution system, sanitary sewer collection system and works and improvements for the drainage of the portion of the City which lies within the boundaries of the District; in order to assure that the District will have the financial capabilities to extend the services to the present and future landowners within the boundaries of the District; in order to secure the commitment of the District to extend the services without discrimination and on the same basis as extension of services made to all other landowners in the District; and in consideration of the District acquiring and constructing the System, the City is willing to commit and obligate itself to accept title to the System provided herein and to operate and maintain the System as set forth herein.

The District plans to proceed at the earliest possible time, in an expeditious manner, with the acquisition and construction of the necessary water, sanitary sewer, and drainage systems to serve all the land within the District without discrimination and without preference toward any particular landowner or landowners. The District is willing to commit to extend utilities as required by this Agreement.

In order to assure the continuing and orderly development of the land and property within the District, the District and the City desire to enter into this Agreement whereby the District will acquire and/or construct local and general benefit systems, improvements, facilities, equipment, and appliances necessary for a water distribution, sanitary sewer collection, and drainage system, and will purchase, in the form of capital recovery fees, water and wastewater treatment capacities to serve the area within the District, as provided in this Agreement in accordance with all requirements of the City, in order that all of the land and property in the District will be placed in the position ultimately to receive adequate water, sanitary sewer, and drainage services.

Section 1.02. Definitions.

(a) **Approving Bodies**. The term "Approving Bodies" shall mean the City of League City, the Texas Commission on Environmental Quality ("TCEQ"), the Texas Department of Health, and any other federal, state, county, or local agency having jurisdiction.

(b) **Bonds and Bond Date**. The term "Bonds" as used in this Agreement shall mean the District's bonds, notes, or lease obligations payable from ad valorem taxes, which it issues from time to time. The term "Bond Date" shall mean the date of issuance of the issue of Bonds.

(c) **Capital Recovery Fees**. The term "Capital Recovery Fees" shall mean the same as "Capital Recovery Fees" as such term is used in City Ordinance No. 83-41, as amended by City Ordinance No. 85-51, as hereafter amended, or such similar capital recovery fee ordinance then in effect.

(d) **City**. The term "City" shall mean the City of League City, Texas, a municipal corporation and home rule city.

(e) **Construction Funds**. The term "Construction Funds" shall mean money required by this Agreement to be deposited into the Construction Fund to be created pursuant to Section 3.09 of this Agreement.

(f) **Developer**. The term "Developer" is initially Johnson Development Corporation, and thereafter shall be any individual, partnership, corporation, or other entity that develops land for subdivision and resale within the District and/or applies to use General Benefit Facilities within the City.

(g) **District**. The term "District" shall mean Galveston County Municipal Utility District Nos. 44, a body politic and corporate and governmental agency created and operating under the provisions of Chapters 49 and 54, Texas Water Code, as amended, and pursuant to Article XVI, Section 59, of the Texas Constitution and, where appropriate, the Board of Directors thereof.

(h) **District Engineer**. The term "District Engineer" shall mean the independent engineering firm, which may be employed by the District. The District's current Engineer is LJA Engineering & Surveying, Inc.

(i) **Engineering Report**. The term "Engineering Report" shall mean a study, analysis, or report of the District Engineer describing the needed water, sewer, and drainage facilities to serve the area within the District.

(j) **Drainage System**. The term "Drainage System" shall mean the District's Drainage System as it now exists or as it may be acquired, constructed, improved, and extended in the future, including necessary easements, rights-of-way, and sites required for same.

(k) **General Benefit Facilities**. The term "General Benefit Facilities" shall be defined as such term is defined in City Ordinance No. 83-41, as amended by City Ordinance No. 85-51, as hereafter amended, or such similar capital recovery fee ordinance then in effect.

(l) **Local Benefit Facilities**. The term "Local Benefit Facilities" shall be defined as such term is defined in City Ordinance No. 83-41, as amended by City Ordinance No. 85-51, as hereafter amended, or such similar capital recovery fee ordinance then in effect.

(m) **Phase or Proposed Extension**. The term "Phase" or "Proposed Extension" shall mean any part of the System to be acquired or constructed to serve an area that it is economically feasible to serve.

(n) **Sanitary Sewer System**. The term " Sanitary Sewer System" shall mean the District's Sanitary Sewer System as it now exists or as it may be acquired, constructed, improved, and extended in the future, including necessary easements, rights-of-way, and sites required for same.

(o) **Security Interest**. The term "Security Interest" means the interest granted pursuant to Section 6.01 hereof in the System to serve property within the District.

(p) **System**. The term "System" shall mean the Water System, Sanitary Sewer System, and/or Drainage System described in Section 2.01 of this Agreement and/or the water supply and sewage treatment capacities described in Section 6.03 of this Agreement. The System will also include park and recreational facilities so designated by the District .

(q) **Water System**. The term "Water System" shall mean the District's Water System as it now exists or as it may be acquired, constructed, improved, and extended in the future, including necessary easements, rights-of-way, and sites required for same.

Section 1.03. Representations by the District

The District makes the following representations:

a. The District is a body politic and corporate and a governmental agency created and operating under the provisions of Section 49 and 54, Texas Water Code, pursuant to Article XVI, Section 59, Texas Constitution, and are authorized and empowered by the provisions of Chapter 54, Texas Water Code, and Section 402.014 *et seq.*, Local Government Code, as amended, to enter into this Agreement. Upon creation and by action of its Board of Directors, a certified copy of which will be attached hereto and made a part hereof, the President and Secretary of the District shall be duly authorized to execute and deliver a complete acceptance of the terms and conditions of this Agreement.

b. The District has the power and authority to acquire and construct the System and has the power and authority, subject to the approval of the Approving Bodies and its duly qualified electors at an election called for such purposes, to issue and sell unlimited tax bonds to acquire and construct the System to serve the present and future landowners within the District.

c. The District proposes to issue and sell its bonds from time to time, to acquire and construct the System to serve the area within the District, and shall use its best efforts to procure from the appropriate federal, state, county, municipal, and other authorities the necessary permits and approval to issue and sell its bonds and to acquire and construct the System.

d. It is currently contemplated that the System will be acquired and constructed in integral and operational stages sufficient to provide utility service to the area within the District as development proceeds. As the acquisition and construction of each such integral stage of the System is completed and becomes fully operational, the District shall transfer such stage of the System to the City free and clear of all liens except for easements, restrictions, mineral, oil and gas, and mining rights and reservations, zoning laws and defects in title; provided, however, that such easements, restrictions, minerals, oil and gas and mining rights and reservations do not individually or in the aggregate or in combination materially interfere with the operation of the System. The City and the District recognize that, in the event that System components are financed and constructed as described in the first paragraph of Section 4.01, the District cannot acquire the System from the Developer until the Texas Commission on Environmental Quality has approved the purchase and the District have sold its Bonds. As provided herein, the City upon completion of construction and its acceptance of the System has the right and duty to operate and maintain the System. The District agrees to formally convey the System within 30 days from the date of completion and acceptance of the System, or, in the event of a Developer-constructed facility, 30 days after the delivery of its Bonds used to finance purchase thereof. In the event that the District fails to formally convey the System and such failure remains uncorrected after 10 days written notice, the City may, at its option, transfer operation and maintenance responsibility to the District. The formal conveyance to the City shall be subject to the Security Interest retained by the District, more particularly described in Section 6.01 of this Agreement, for the purpose of securing the performance of the City under Section 6.01 of this Agreement. At such time as the principal, interest, and redemption premium, if any, on the District's Bonds issued to acquire and construct the applicable integral stage of the System have been paid or provided for in full, the District shall execute a release of such Security Interest with respect to such integral stage and the City shall own such integral stage of the System free and clear of such Security Interest. All warranties of contractors and subcontractors, if any, and all other rights beneficial to the operation of the System will be transferred by the District to the City. **THE DISTRICT AGREES TO PROTECT, DEFEND, INDEMNIFY AND HOLD THE CITY HARMLESS FROM ANY AND ALL CLAIMS ASSERTED BY CONTRACTORS OR SUBCONTRACTORS (OR EMPLOYEES OF CONTRACTORS OR SUBCONTRACTORS) OF THE DISTRICT WITHOUT REGARD TO CAUSE OR CAUSES AND EXPRESSLY INCLUDING, TO THE EXTENT PERMITTED BY LAW, THE NEGLIGENCE OF THE CITY.**

Section 1.04. Representations of City.

The City makes the following representations:

a. The City is a home rule city operating under the laws of the State of Texas and is authorized and empowered by Article 402.014 *et seq.*, Local Government Code, as amended to

enter into this Agreement. By Ordinance of the City Council, the Mayor has been duly authorized to execute and deliver this Agreement.

b. The City has the authority to levy, assess, and collect ad valorem taxes on property within the District and to use the taxes collected by it from property within the City, including the area within the District, as provided in this Agreement.

c. The City presently has, or will have the power and authority to obtain the water supply and sanitary sewer treatment facilities necessary to properly serve the System to be acquired and constructed by the District.

d. The City will accept conveyances, as provided for herein, of the completed integral stages of the System, which have been acquired or constructed by the District in accordance with the terms and provisions of this Agreement.

e. The City does not propose to use taxes to be derived from residents of the District to finance, elsewhere in the City, services of the type the District propose to provide and that a rebate of City taxes is not necessary.

ARTICLE II

Description of System

Section 2.01. Description of System.

Preliminary plans and specifications of the System shall be prepared by the District Engineer in accordance with the requirements of the City. The System may include structures or improvements outside the boundaries of the District if reasonably necessary to serve the area within the District. All final plans and specifications for the System shall be submitted to the City for approval. The final plans and specifications for each integral stage of the System shall be prepared in accordance with the standards of the City in effect as of the date of submission thereof to the City for approval.

Section 2.02. Design of the System.

The District shall design the System in accordance with sound engineering principles and in compliance with all requirements of the Approving Bodies. If necessary, the City shall join or cooperate in obtaining necessary permits, provided that all costs of obtaining such permits are paid by the District. If appropriate, such permits shall be in the name of the City.

Section 2.03. Quality of Materials.

Only material satisfactory for the intended purpose and meeting any requirements of the Approving Bodies shall be used by the District.

Section 2.04. Construction.

The District shall construct the System in accordance with the final plans and specifications. All changes of the final plans and specifications shall be submitted to the City for approval. Written approval shall be required for all General Benefit Facilities.

ARTICLE III

Construction of the System

Section 3.01. Policy of Extension.

The District shall construct or extend the System in such stages as is economically feasible. The District shall proceed with the construction or extension of the System in an expeditious manner in such stages as are economically feasible from time to time in order that all of the areas within the District will eventually receive the benefits of water, sanitary sewer, and drainage services. Such extension shall be accomplished by the District in accordance with prudent and sound management principles. Accordingly, the District's duty to proceed with the construction or extension of the System shall be subject to and consistent with existing development trends within the District and surrounding areas, the marketability of developed lots and acreage within the District, the need for expansions to the System to serve areas within the District, the limitations imposed by Section 5.01 and 5.02 hereof, existing economic conditions, and existing conditions in the municipal bond market. When any party hereto determines that it is economically feasible to extend the System, or any part thereof, to a particular area, it shall so notify the other in writing or by the submission of new plats and construction plans. If either the District or the City does not agree with the determination of the other that it is economically feasible to extend the System or any part thereof to a particular area, then it shall so notify the other in writing. Such dispute concerning the economic feasibility shall be resolved by arbitration under Section 9.02. In the event that the decision of the arbitrator or arbitrators favors economic feasibility, the District's obligation to extend the System or any part thereof shall remain limited by Article VI.

Section 3.02. Preparation of Final Plans and Specifications.

When the determination is made that it is economically feasible to construct or extend the System (a "Phase"), the District shall direct the District Engineers to prepare final plans and specifications of the Phase.

Section 3.03. Approval of Final Plans and Specifications.

Before the commencement of construction within the District, the District shall submit to the City all final plans and specifications of each integral stage of the System, or any part thereof, and secure the City's approval thereto. Whenever feasible, plans for interrelated or dependent systems should be submitted at the same time. If the City finds such plans and specifications to be in accordance with the City's standards existing at the time of review of any

proposed plans and specifications, it shall approve the same. The construction of the System shall conform to the approved plans and specifications and to such standards and specifications as may be established from time to time by the City. Without limiting the generality of the foregoing, all water wells, water meters, flushing valves, valves, pipes, and appurtenances thereto installed or used within the District shall conform to the specifications of the City. Without limiting the generality of the foregoing, all water service lines and sewer service lines, lift stations, sewage treatment facilities, and appurtenances thereto installed or used within the District shall comply with the City's standard plans and specifications. The final plans and specifications of the Phase shall be submitted to such Approving Bodies as may require such submission and the District shall use its best efforts to obtain any necessary approvals. After the final plans and specifications have been approved by all Approving Bodies, the District shall be authorized to proceed with construction as provided herein.

Section 3.04. Advertisement for Bids.

Construction contracts shall be let on a competitive bidding basis in accordance with the applicable requirements of Section 49 and 54, Texas Water Code, as amended, or any successor provisions. After preparation of final plans and specifications and their approvals as required by this Agreement, the District shall advertise for or solicit bids (as required) for the construction of the Phase described in the final plans and specifications. All bids shall include evidence of financial condition of the bidders. The City's representatives shall be notified of and invited to attend each pre-bid conference and the bid opening in accordance with the notice provision of Section 9.04 of this Agreement. All bids received by the District shall be reviewed by designated representatives of the District and the designated representatives of the City, and such representatives shall recommend to the District within 20 days, that one of the bids received and submitted by the District on each phase of the construction be accepted or that all bids be rejected. The City and District shall designate from time to time in writing the persons who shall be their designated representatives. In the event of the failure of the City to designate representatives, the Mayor shall review the bids on behalf of the City.

Section 3.05. Re-advertisement for Bids.

The District reserves the right to re-advertise for bids if the first bids are not acceptable to the District.

Section 3.06: Award of Construction Contract; Certain Contract Provisions.

If the District have on deposit Construction Funds in a sum sufficient to pay the construction costs of the proposed work or has reasonable assurance that such funds will be forthcoming, then the District shall enter into a contract or contracts with the contractor or contractors whose bids have been accepted by the District. The District shall award all construction contracts on the basis of the most advantageous bid by a responsible, competent contractor, in accordance with Chapters 49 and 54 of the Texas Water Code, as amended, and the rules of the TCEQ. The District may not award a contract for General Benefit Facilities to a contractor other than the contractor submitting the lowest responsible bid unless such award complies with the statutory requirements regarding the award of public bids and is approved by

the City. Each contract with the District shall comply with Chapters 49 and 54, Texas Water Code, as amended, provide for retainage in accordance with Section 49.273, Texas Water Code, as amended, or any successor provision, require a performance bond and a payment bond in accordance with applicable requirements of Texas Government Code, Ch. 2253, as amended, and/or Texas Property Code, as applicable, require workers' compensation insurance, builders' risk insurance, and public liability insurance in such sums as the District shall determine, and require a covenant and warranty to diligently prosecute the work in a good and workmanlike manner and in accordance with the final plans and specifications.

In addition to any other construction contract provisions, any construction contract for District's facilities shall include: (i) the construction contractor's one year warranty of work performed under the contract, (ii) at a minimum, the insurance coverage required by the City for similar public works contracts, with the City named as an additional insured on such insurance policies, (iii) the contractor's indemnification of the City meeting the express negligence and conspicuousness doctrines and covering all claims by contractors, their employees, subcontractors and their employees, and (iv) the contractor's waiver of its workers compensation carrier's subrogation rights. The District shall provide the City Secretary with the additional insured endorsements.

Section 3.07. The District to Pursue Remedies Against Professional Consultants, Contractors, and Subcontractors and their Sureties.

In the event of the errors or omissions of any professional consultant, or a default of any contractor or any subcontractor under any contract made by it in connection with the Phase or in the event of breach of warranty with respect to any materials, workmanship or performance guarantee, the District will promptly proceed (subject to agreement by the parties to the contrary) either separately or in conjunction with others, to exhaust the remedies of the District against the professional consultant, the contractor or subcontractor responsible for such default, error, or omission, and against each such surety for the performance of such contract. The District agrees to advise the City of the steps it intends to take in connection with any such default, error, or omission. Any amounts recovered by way of damages, refunds, adjustments, or otherwise in connection with the foregoing, after the deduction of the costs and expenses of collection, shall be deposited into the Construction Fund to be used by the District for constructing future extensions of the System.

If the District fails to take action, or if the City deems the action taken by the District was inappropriate, the City may, in its own name, or in the name of the District, prosecute or defend any action or proceeding or take any other action involving any such professional consultant, contractor, subcontractor, or surety that the City deems reasonably necessary and, in such event, the District hereby agrees to cooperate fully with the City and take all action necessary to effect the substitution of the City for the District in any such action or proceeding. Any amounts recovered by way of damages, refunds, adjustments, or otherwise in connection with the foregoing, after the deduction of the costs and expenses of collection, shall be deposited into the Construction Fund to be used by the District for constructing future extensions of the System. If the City brings an unsuccessful action against a professional consultant, contractor,

subcontractor, or surety, the expenses of such action shall be borne equally by the City and District.

Section 3.08. Inspection During Construction.

The City Engineer may request reasonable increases in the frequency and duration of District inspections and the District Engineer shall comply with such requests and shall make reports to the City Engineer as often as the City Engineer shall request and at least weekly, and shall recommend final acceptance of the facilities to the District's Board of Directors when appropriate. The District's Engineer shall file all required documents with the TCEQ. The City's representative and the District's Engineer shall meet as often as the City reasonably requests, and the District's Engineer shall provide such representative the preceding week's daily inspection reports on a weekly basis, and more frequently when requested by the City's representative. If the City Engineer discovers that the construction, the District's inspection or the materials are materially deficient, or not in substantial conformance with the approved plans, specifications, or sound engineering or construction practices, the City Engineer shall notify and consult with the District's Engineer regarding the problem. The District's Engineer shall have a reasonable period of time in which to cure the problem or cause the problem to be cured. If the City Engineer and the District's Engineer are unable to resolve the problem and the District's Engineer is unable to the cure the problem, the City Engineer reserves the right to require the District's Engineer to halt construction until problems are resolved. If it becomes necessary for the City to retain outside professional help to resolve such dispute, and if the cause of the dispute is the fault of the District, its suppliers, consultants or contractors, the District shall reimburse the city for the direct expense of such services to the extent allowed by law, otherwise the City shall bear such expenses.

Section 3.09. Proceeds of District's Bonds.

Proceeds of the District's bonds may be used by the District for the following purposes:

(1) Payment of monies not to exceed the first two years interest on any series of District's bonds. Capitalized interest is allowed only in amounts, which are prudent and necessary to stabilize debt service requirements and District's tax rates.

(2) Payment of accrued interest on any series of bonds from their date to the date of their delivery.

(3) Except as provided in paragraphs (1) and (2) above, proceeds received from the sale of any series of bonds shall be deposited into the Construction Fund as Construction Funds and shall be used solely as provided in this Agreement as it may be amended from time to time.

Section 3.10. Disbursement from Construction Fund.

Monies in the District's Construction Fund shall be used only, as authorized by Chapters 49 and 54, Texas Water Code, as amended, by the rules of the Commission, or by this Agreement, for the following purposes:

(1) Payment for labor, services, materials, and supplies used or furnished in the construction of the System, or any part thereof, all as provided in the final plans and specifications therefore or as provided in Change Orders relating to the System, or any part thereof, that have been approved by the District, the District's Engineers, and the City with regard to payments for General Benefit Facilities, including payment for such labor, services, materials, and supplies used as herein specified whether said improvements are located within or without the District as long as the same is for the benefit of the District, payment for labor, services, materials, and supplies used or furnished to make any and all necessary improvements, extensions, additions, and repairs to the System, and payment for miscellaneous expenses incidental to any of the foregoing items.

(2) Payment of legal and engineering fees and expenses relating to the creation and organization of the District, relating to the construction of the System, or any part thereof, and payment of the premiums on any required surety bond and payment of the premiums of all insurance required to be taken out and maintained during the construction of the System, or any part thereof, if not paid by the contractor pursuant to his contract with the District.

(3) Payment of expenses incurred in seeking to enforce any remedy against any professional consultant, contractor, subcontractor or surety or any claim pursuant to Section 3.07.

(4) Payment of the District's expenses in issuing and selling its Bonds, including legal and fiscal expenses.

(5) Payment for all necessary lands, rights-of-way, easements, sites, equipment, buildings, structures, and facilities related to the System or any part thereof. The quantity of land needed for such site and the particular site selected must be approved by the City. If the City determines that the proposed costs of land are excessive or unreasonable, the District must provide an appraisal of the site selected from an independent appraiser who has been approved by the City. The purchase price of land shall be in accordance with the rules of the Commission, i.e., at the "developers cost" which shall include taxes and carrying costs and shall be approved by the City.

(6) Payment of reasonable administrative and operating expenses incurred during construction of the System or any part thereof.

(7) Payment to acquire the System, or any part thereof, as contemplated by Article IV of this Agreement, including a sum which may be allowed by the TCEQ as the cost of money to any third party constructing the System, or any part thereof, pursuant to Article IV of this Agreement.

(8) Payment of such other fees, expenses, and items as may be approved by the District and the City with respect to General Benefit Facilities.

Except for payments under paragraphs 5 and 8 hereinabove and with regard to payments made under this Section, if a disbursement has received the approval of the TCEQ and the District, the approval of the City shall not be required, provided such disbursement is in accordance with this Agreement.

Section 3.11. Authorization for Withdrawals from Construction Funds.

No money shall be withdrawn from the District's Construction Funds except by check, warrant, or voucher executed by three members of the Board of Directors of the District and accompanied by a certificate from the Board of Directors certifying, as follows: (1) that none of the items for which payment is proposed to be made has formed the basis for any payment heretofore made from the Construction Funds; (2) that such item for which payment is proposed to be made is or was necessary in connection with the construction of the System, or any part thereof; and, (3) if Construction Funds are transferred to the Operating Fund such payment constitutes a transfer from Construction to Operations necessary for the administration of the District. No construction funds shall be used by the District except as is authorized by Chapters 49 and 54, Texas Water Code, as amended, by the rules of the Commission, and by this Agreement.

Section 3.12. Investment of Construction Funds.

Pending their use, the Construction Funds may be invested and reinvested as determined by the District in direct or fully guaranteed obligations of the United States of America or its agencies or the obligations of political subdivisions rated "A" or better by Moody's Investors Service, Inc. All investments of the District shall comply with the Public Funds Investment Act and the District's duly adopted Investment Policy. The District shall invest the Construction Funds so that it preserves its capital and liquidity and the maximum earnings and profits thereon can be obtained, provided that such investment does not cause the Bonds to become arbitrage bonds within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended. Earnings and profits from investing Construction Funds shall be deemed to be Construction Funds and shall be deposited into the Construction Funds. Nothing herein shall preclude the District from complying with the terms and conditions of its Bond Order or Resolution nor prohibit the District from making investments in accordance with the requirements of law.

Section 3.13. Surplus Construction Funds.

Surplus Construction Funds, if any, shall be used for future extension of the System pursuant to this Agreement or for such other purpose as approved by the TCEQ.

Section 3.14. Construction Audit.

The District shall have the construction costs of the System or any part thereof audited in accordance with the rules of the Texas Commission on Environmental Quality and the requirements of law. The District shall file with the City a copy of the Developer Reimbursement Audit and each annual audit. All District records, except as otherwise provided

by law, shall be public records and shall be made available to the City during normal business hours.

ARTICLE IV

Construction by Third Parties and Acquisition by the District

Section 4.01. Construction by Third Parties.

The rules and regulations of the TCEQ allow, under certain circumstances, the construction of water, sanitary sewer, and drainage facilities by a "Developer" of property within a district for subsequent sale to the District. These rules as presently adopted would allow a Developer of property in the District to construct the System in stages and sell the same to the District. Any such third party must construct the System, or portion thereof, in accordance with the final plans and specifications approved by the City and in accordance with the provisions of this Agreement insofar as the same may be applicable. Without limiting the generality of the foregoing, any third party constructing facilities for sale to the District must comply with the applicable provisions of Article III of this Agreement.

Under the provisions of 30 Texas Administrative Code, Section 293.47, a third party is required to contribute 30 percent of construction costs as defined therein. It is, however, the policy of the City to encourage reasonable tax rates and bond issuance practices that foster the prudent issuance of bonds and the long-term commitment of the Developer to achieve the development goals and economic feasibility projected in a particular bond issue. The City will allow those districts legally entitled to 100 percent reimbursement (30 TAC 293.47) to include such reimbursement in bond issues provided the costs qualify as permissible expenditures under the provisions of Section 3.10 of this Agreement and comply with the rules of the Commission including the "Economic Feasibility" requirements as set forth herein and defined in 30 Texas Administrative Code 293.59 and is judged economically feasible in accordance with the process outlined in Paragraph (h) of this Section and based upon an evaluation of the criteria in Paragraphs (a) through (g) of this Section. The District hereby covenants and warrants that it will undertake the following to insure the economic feasibility of its bond issues:

(a) Each ending debt service balance (cumulative balance) as shown in the District's cash flow analysis will be not less than 25 percent of the following year's debt service requirements.

(b) All underground facilities to be financed with the proceeds from a proposed bond issue shall be at least 95 percent substantially completed as certified by the District Engineer.

(c) All street and road construction to provide access to areas provided with utilities to be financed with bond proceed shall be 95 percent substantially completed as certified by the District Engineer.

(d) For the District's first Bond issue, at least 25 percent of the projected value of homes, buildings, and/or other improvements shown on the District's tax rate calculation shall be completed prior to advertising the sale of Bonds.

(e) For second and subsequent Bond issues, the District shall have homes, buildings, or other improvements equal to 75 percent of the value of homes, buildings, or other improvements used in the projected tax rate calculations contained in all prior Bond issues. This value can be located in areas developed from prior Bond issues or a combination of prior Bond issue areas, proposed Bond issue areas, or future Bond issue areas.

(f) For any Bond issue, the combined projected debt service tax rate, as defined in 30 TAC 293.59 referenced above, shall not exceed $1.50.

(g) For each Bond sale, the District shall demonstrate that, at final buildout, the District's net direct debt as a percentage of current and estimated certified assessed value will not exceed the greater of eight and one-half percent (8½%) or the City's then existing ratio of net direct debt as a percentage of current and estimated certified assessed value. If the District issues or proposes to issue bonds to finance park and recreational facilities, then for each Bond sale, the District shall demonstrate that, at final buildout, the District's net direct debt as a percentage of current and estimated certified assessed value will not exceed the greater of ten and one-half percent (10½%) or the City's then existing ratio of net direct debt as a percentage of current and estimated certified assessed value.

(h) The District, as required in Section 5.02, will obtain the City's approval prior to the advertisement and sale of Bonds. Whenever the District request such approval, the District will provide the City with a copy of the Engineering Report and will certify to the City that the District has complied with the above listed requirements. The City's approval process shall include all of the matters listed herein to the extent that they reasonably relate to judging the economic feasibility of each Bond issue.

The District may acquire a partially completed System or partially completed part of such System and complete the same in accordance with the provisions of Article III of this Agreement; provided, however, that nothing therein shall require the City to accept or maintain the System, or any part thereof, until the same has been completed and accepted by the City in accordance with the provisions of this Agreement.

Section 4.02. Contract with Third Party.

In acquiring the System, or any part thereof, which has been constructed, in whole or in part, by a third party, the District may acquire such System, or part thereof, on such terms and conditions from such third party as the TCEQ shall allow or require and the parties hereto shall agree. Although the District may contract to acquire the System, or a part thereof, from a third party, it shall not issue Bonds for such purpose if it would contravene the limitations imposed in Section 5.02 of this Agreement and if it does not have the concurrence of the City Council.

ARTICLE V

Obligations to Extend the System

Section 5.01. Obligations of District.

The District shall construct and extend the System in stages to serve the future users in the District so ultimately all the landowners within the District will be in a position to receive services from the System. To this extent the District shall have a legal as well as moral obligation to the City to extend the System. Notwithstanding the foregoing, however, the District's obligation is subject to the provisions of Section 3.01 hereof. Furthermore, the District shall not be obligated to extend the System into an area if any of the following conditions exist:

(1) The City is in default under the provisions of this Agreement.

(2) The ratio of the District's bonded indebtedness to its assessed valuation after the issuance of the Bonds requested for the Phase based on 100 percent of the appraised value as set by the Galveston Central Appraisal District exceeds:

(a) 20 percent during the first 24 months after the Bond date;

(b) 15 percent during the 24 months following the expiration of the initial 24 month period; and

(c) 10 percent thereafter.

(3) The ratio of the District's bonded indebtedness in connection with extending service to an area, to the projected assessed valuation of property in such area at full development, as estimated by the District's Engineers at 100 percent of the appraised value as set by the Galveston Central Appraisal District, is more than 10 percent.

(4) The District is unable to sell its Bonds pursuant to the provisions of this Agreement.

(5) The Attorney General of the State of Texas refuses to approve the District's Bonds, if such approval is required.

(6) If the District's projected tax rate exceeds or would exceed the rate of $1.25 per $100 assessed valuation of taxable property assessed at 100 percent of fair market value.

Section 5.02. Limitation on District's Bond Indebtedness and Covenant to Sell Bonds.

The District will issue and sell its Bonds for the purpose of acquiring and constructing the System as permitted herein; provided, however, the District shall not issue and sell its Bonds, Notes, or enter into lease obligations payable from ad valorem taxes if the ratio of the District's indebtedness to its assessed valuation at the time of issuance or sale based on 100 percent of the appraised value as set by the Galveston Central Appraisal District exceeds: (a) 25 percent during

the first 24 months after the Bond Date; and (b) 15 percent thereafter. For purposes of computing the limitation hereunder, the most current certificate of value issued by the Galveston Central Appraisal District shall control. On January 1 of each year and at such other times as the parties may agree, the assessed valuation shall be estimated by the Galveston Central Appraisal District for the purpose of computing the limitation hereunder with the consent of the Board of Directors of the District and the City Council of the City. After the assessed valuation is finalized in any year by Galveston Central Appraisal District, such assessed valuation shall control for purposes of making the computations hereunder, unless the parties otherwise agree. The only debt to be considered in making the computation under Section 5.01 and this Section 5.02 is that debt occasioned by the issuance of Bonds as defined herein which consists of Bonds, Notes, and Lease Obligations payable directly from ad valorem taxes and no other debt of the District shall be considered in making the calculations hereunder. The terms and conditions of the Bonds which the District shall sell from time to time for the purpose of constructing the System shall be reviewed and approved by the City Council. The District's Bonds shall expressly provide that the District shall reserve, at a minimum, the right to redeem said Bonds on any interest payment date subsequent to the 10th anniversary of the date of issuance or on any date thereafter without premium. Bonds (other than refunding bonds and bonds sold to a federal or state agency) shall only be sold after the taking of public bids therefore, and no Bonds shall be sold for less than 97 percent of par provided the net effective interest rate on Bonds so sold, taking into account any discount or premium as well as the interest rate borne by such Bonds, shall not exceed two percent above the highest average interest rate reported by the *Daily Buyer* in its weekly "20 Bond Index" during the 30-day period next preceding: (1) the date notice of the sale of the Bonds is given; or (2) the date of sale of the Bonds, whichever is greater. Bonds may be advertised or sold by the District only with the prior approval of the City Council. The Bonds of the District shall be sold to the lowest and best bidder after the District have advertised for and solicited bids. All Bonds of the District shall be approved by the Attorney General of the State of Texas.

Section 5.03. Grants.

The City shall reasonably cooperate with the District and any third parties in any application to obtain any governmental grants for the acquisition and construction of the System. Unless otherwise agreed, the costs of applying for a governmental grant shall be borne by the District and, furthermore, the District shall bear all direct and indirect expenses related to all grant applications and studies.

ARTICLE VI

Ownership and Operation
Miscellaneous Covenants With Respect to System

Section 6.01. Ownership by City.

As the acquisition and construction of each integral stage of the System are completed and each integral stage of the System becomes operations, the District shall convey the same to

the City, reserving, however, a Security Interest therein for the purpose of securing the performance of the City under this Agreement. Performance shall include, but not be limited to, (1) providing the adequate maintenance and operation of the System; (2) providing the water and wastewater treatment capacity resulting from water and wastewater Capital Recovery Fees; (3) providing reasonable and timely review and approval as required herein, and (4) maintaining the water distribution and wastewater collection line capacity as constructed by the District. At such time as the principal of and interest on the District's Bonds issued to acquire and construct the System, and redemption premium, if any, have been paid or provided for, the District shall execute a release of such Security Interest and the City shall own the System free and clear of such Security Interest.

Section 6.02. Operation by City.

As construction of each integral stage of the System is completed, representatives of the City shall inspect the same and, if the City finds that the same has been completed in accordance with the final plans and specifications, or any modifications thereof, and in accordance with all applicable laws, rules, and regulations, the City will accept the same whereupon such portion of the System shall be operated and maintained by the City at its sole expense as provided herein. Such acceptance shall be subject to (i) the District providing the City with the District Engineer's Certificate of Substantial Completion and the Affidavit of Bills Paid; (ii) the District providing the City with one reproducible Mylar polyester film print of the "as-built" drawings for each constructed Phase; and (iii) the District providing the City with any manuals or other material relating to the proper operation of the System. Prior to acceptance by the City, the City may require a final joint inspection of the System by the City representatives, the District Engineer, the Contractor, and the Approving Bodies. The City shall not be responsible for the cost of any repair of the System identified by the City as in need of repair prior to the City's acceptance. Thereafter, the City shall formally accept the System and such acceptance shall operate to transfer to the City all bond and warranties of the Contractor and subcontractor. The City may accept temporary facilities under certain circumstances satisfactory to the City. Before such temporary facilities may be put in place, written agreements containing the criteria under which the temporary facilities will be removed must be executed by the City and the District. Nothing herein shall be deemed to require the City to accept or maintain any portion or part of the System that is not functionally integrated and operational (e.g., sewer lines not connected to an operating sewage treatment plant or paving not complete), until the City deems the System is operating in an acceptable manner. In the event the System has not been completed in accordance with the final plans and specifications, the City will advise the District in what manner said System does not comply and the District shall correct the same, whereupon the City shall again inspect the System and accept the same if the defects have been corrected. During the term of this Agreement, the City will operate the System or portions thereof which the City has accepted and provide service to all users within the District without discrimination consistent with current City service policy. The City's obligation to provide water supply to the System and treatment of sewage collected in the System shall be subject to the water supply and sewage treatment capacity paid for by the District by the payment of water and wastewater Capital Recovery Fees, subject to the rules, policies and ordinances of the City and the capacity of the System. The City agrees to reserve the capacities constructed by or paid for by the District to serve persons within the District.

Section 6.03. Water Supply and Sewage Treatment.

As a part of the operation of the System or portions thereof which have been accepted by the City, the City shall supply, in such quantities as the District have paid for (or is entitled to by City Ordinance or Agreement), to the District all of its requirements of potable water of such quality and in such quantity and at such pressure as may be required by the TCEQ or the Fire Insurance Commission and subject to the rated capacity of the water supply fines constructed by the District as may be agreed upon by the parties and subject to the availability of water supplied to the City by the City of Houston and other sources. Water from the City's existing water supply system shall be delivered to the System at a point to be agreed upon by the District and the City. The City may use water and wastewater capacities in the System paid for by the District to serve other City customers outside of the District, so long as the City protects and makes available to customers within the District the capacities that the District has within the System. The parties anticipate that the City will, as development occurs within the District and other areas, make the necessary modifications and enlargements to the City's water supply and wastewater treatment facilities in order that it will have sufficient capacity to supply such development. To enable the City to effectively manage water and wastewater treatment capacity needs, the District shall provide to the City by December 31 of each year during the term of this Agreement, a written projection of new improvements and System Phases to be connected to the City's facilities during the next year and to provide such other information as the City may reasonably require to evaluate its future water supply and wastewater treatment capacity needs. However, it is within the City's discretion to determine if and when the City may expand such facilities.

Section 6.04. Rates.

The City shall fix such rates and charges for customers of the System as the City, in its sole discretion, determines is necessary; provided that the rates and charges for services afforded by the System will be equal and uniform to those charged other similar users within the City. All revenue from the System shall belong exclusively to the City.

Section 6.05. Connection Charges.

The City may impose a charge for connection to the System at a rate to be determined from time to time by the City, provided the charge is equal to the sums charged other City users for comparable connection. The Connection charge shall belong exclusively to the City.

Section 6.06. Special Conditions.

The District and the City both recognize that the District is a "City Service District" and that the City may impose special conditions on the operation, financing, and management of the District. The District and the City agree as follows:

1. This Agreement requires no rebate of City taxes to the District based upon the City's representation in Section 1.04 (e).

2. Bond issues shall include 70 percent or 100 percent reimbursement as provided by TCEQ rules and regulations.

3. Bonds shall be issued in series with a minimum limit on each series of Bonds being $2,500,000.

4. The parties agree that economic and development factors may change significantly over the duration of this Agreement. Accordingly, the parties agree that in the event of unforeseen significant changes, they will, upon request of one of the parties, engage in bona fide negotiations to amend the Agreement to respond to changed circumstances which are beyond the control of any of the parties. This provision shall not be construed as imposing on any of the parties an obligation, per se, to amend the Contract.

5. The final maturity of all Bonds issued shall not exceed 30 years from the date of the initial series of Bonds.

6. The District shall establish an office, either inside or outside the District, within the corporate limits of the City of League City, Texas and all District meetings shall be held at a District office inside the City and shall comply with Section 49.062 of the Texas Water Code, as amended.

7. The District shall, as specified herein, obtain the City's approval prior to advertising the sale of its Bonds. Whenever possible, the District's sale of bonds be scheduled so as not to conflict with a City sale of Bonds.

8. The District meetings shall be open to the public and City personnel shall be able to attend any and all meetings. The District agree to provide to the City for informational purposes or for posting at City Hall or elsewhere, as deemed appropriate by the City, copies of all notices of meetings of the Board. Such notices shall be furnished by the District to the City sufficiently in advance of such meeting as may be necessary to permit posting thereof by the City for the time required by law for notices of public meetings of the Board.

9. The District, within 10 days after its creation by the TCEQ, shall post signs at two entrances to the District notifying the public that it is a municipal utility district regulated by the TCEQ. The Developer shall use its best efforts to insure that all homebuilders provide prospective purchasers with the notices required by Section 49.452 of the Texas Water Code, as amended.

10. Refunding Bonds may be issued, as herein provided, but said Bonds shall not extend the final maturity of the Bonds being refunded. The City may grant a waiver of this requirement in its sole discretion.

11. The District will exercise reasonable control over consultant fees to insure that said fees and charges are competitive and reasonable.

12. All Bonds issued by the District shall meet the debt to assessed valuation ratios as defined in Section 4.01(g) of this Agreement.

13. The City and the District agree that the District, in order to complete full development, will issue Bonds in series and that the District will not be dissolved until development is substantially complete.

Section 6.07. Ad Valorem Tax by District.

The parties to this Agreement recognize that the District, in order to pay the principal and interest on its Bonds and establish and maintain the interest and sinking fund and reserve fund required by the District's Bond Order or Resolution authorizing the issuance of its Bonds and that it will be necessary for the District to levy an ad valorem tax for such purposes. The parties further recognize that the District may levy a maintenance tax as authorized by the Texas Water Code, as amended.

Section 6.09. Limit of City's Liability.

Unless the City abolishes the District and assumes the assets and liabilities of the District, the Bonds or any other obligations of the District shall never become an obligation of the City. The City's obligations under this Agreement shall not extend beyond its obligation to operate and maintain the System and make water and sewer capacity and services available to the District.

Section 6.10. Maintenance of the System.

Subject to the limitations, if any, which may be provided by law and after acceptance of each integral stage of the System, the City shall at all times maintain the System, or cause the same to be maintained, in good condition and working order and will operate the same, or cause the same to be operated, in an efficient and economical manner at a reasonable cost and in accordance with sound business principles. Each party hereto will comply with all contractual provisions and agreements entered into by it and with all the valid rules, regulations, directions, or orders by any governmental, administrative, or judicial body promulgating same. If either party violates any such rule, regulation, direction or order, it shall be solely responsible for any fine, penalty, or sanction imposed on it.

Section 6.11 Information Filing

In addition to the information the District is required to file of record by the Texas Water Code, the District shall annually deliver to each property owner within the District, as reflected on its most recent certified tax roll, written notice of the existence of the District and its right to assess taxes in addition to those assessed by the City. Such notice shall also contain a reference to this Utility Agreement, the consent ordinance or consent resolution and this provision. Such notice shall include select financial information relating to the District, including the current tax rate, the initial principal amount of all bonds issued by the District, the remaining amount of authorized but un-issued bonds, and the balance sheet from the District's most recent audit. Such

notice shall advise the property owner that such documents are available for inspection during regular business hours in the District's office.

ARTICLE VII

Default Provisions

Section 7.01. Default and Remedies in Event of Default.

Default shall mean the failure by either party to comply with the terms and conditions of this Agreement. Provided, however, that upon creation of the District, a default by one District shall not be a default by the non-defaulting District.

In addition to all the rights and remedies provided by the laws of the State of Texas, because of the peculiar damage each party hereto might suffer by virtue of a breach by the other party, each party shall be entitled to the equitable remedy of specific performance or mandamus.

Section 7.02. Interruption of Services.

As part of the consideration for this Agreement, and in the mutual interest of maintaining amicable relations between governmental entities operating within the same sphere, the District waives the right to sue the City for damages for claims arising from interruption of services.

ARTICLE VIII

Developer Provisions

Section 8.01. Donation of Site.

The Developer agrees to donate to the City an approximately 28.7-acre site, at a time and location to be mutually agreed upon by the City and the Developer, for recreational or public amenity purposes that are consistent with and conducive to surrounding residential uses and as further described in this Section. The parties agree that acceptable recreational or public amenity uses shall include a natatorium, a senior center, a community center, schools, a library, a fire station, park land, ball fields, play grounds and open space. The parties will use reasonable efforts to plan the site to utilize shared parking facilities, athletic facilities, access drives, etc. Although the site plan and building plans for any facilities to be constructed on the site will be subject to the reasonable review of the Developer for aesthetic consistency with the surrounding development, any building shall be a masonry structure not to exceed 35 feet in height, with a building and paving setback from residential land of at least 50 feet. With the donation of this site the Developer will be deemed to have exceeded the City's park dedication requirement for all the property in Galveston County MUDs 43 and 44 by 8.4 acres.

Section 8.02. Developer Indemnity.

THE DEVELOPER AGREES TO PROTECT, DEFEND, INDEMNIFY AND HOLD THE CITY HARMLESS FROM ANY AND ALL CLAIMS (OTHER THAN CLAIMS FOR BREACH OF THIS AGREEMENT) ASSERTED BY THE DEVELOPER AGAINST THE CITY IN CONNECTION WITH SUBJECT MATTER OF THIS AGREEMENT WITHOUT REGARD TO CAUSES OR THE BASIS FOR SUCH CLAIMS, EXPRESSLY INCLUDING THE NEGLIGENCE OF THE CITY.

Section 8.03. City Legal Fees.

The Developer agrees to pay the City's reasonable legal fees incurred in connection with the negotiation and drafting of this agreement.

ARTICLE IX

Miscellaneous Provisions

Section 9.01. General Benefit/Oversized Facilities.

In conjunction with the District's design and construction of the System, as described in Article III, the City may determine, from time to time, that certain facilities should be sized to serve areas outside the District, as well as areas within the District or the City may determine that the District should construct certain water, sewer, or drainage facilities outside the District to serve areas both inside and outside the District (in either case, facilities sized to serve areas outside the District shall be called "Oversized Facilities" or "General Benefit Facilities"). Subject to the terms and conditions of this Section 3.03, the District hereby agree that, in conjunction with the District's design and construction of the System as set out in this Agreement, the District shall cooperate with the City to include the Oversized Facilities as required by the City. The City, in turn, hereby agrees that as between the District and the City, the City shall fund its share of the Construction Costs of the Oversized Facilities. In order to carry out the design and construction of the Oversized Facilities, the City and the District agree to enter a development agreement providing for the terms and conditions of the Oversized Facilities. If the Oversized Facilities are designed and constructed by the District as part of the design and construction of its System (collectively, the Oversized Facilities and the System, the "Project"), the Construction Costs of the Oversized Facilities shall be determined in accordance with TCEQ rules and regulations so the Project Construction Costs will be shared by the City and the District on the basis of benefits received which are generally the design capacities in the Project for the City and the District respectively. The District and the City may, subject to TCEQ rules, elect to agree upon Capital Recovery Fee Credits in lieu of the payment of Construction Costs by the City.

Section 9.02. Arbitration.

Any controversy, dispute, or claim arising out of or relating to this Agreement, or any breach thereof, shall be settled by binding arbitration in accordance with the Texas Arbitration Act. No arbitrator shall have the jurisdiction or authorize to add to, take from nullify, or modify any of the terms of this Agreement, either directly or indirectly under the guise of interpretation.

The arbitrator shall be bound by the facts and evidence submitted to him in the hearing and may not go beyond the terms of this Agreement as herein expressly set forth, and no arbitrator shall have the power to base any award on any alleged practices or oral understandings not incorporated herein. Any award rendered in arbitration proceedings under this Agreement shall be subject to judicial review at the instance of either party for the purpose of determining whether the arbitrator exceeded his power as herein limited, and neither party shall be deemed to have waived its right to such review by proceeding to arbitration without compulsion of a judicial decree. Within his power as herein limited, the arbitrator may enter an award based upon any remedy available to the parties as provided in Section 9.01 of this Agreement. Judgment upon the award may be entered in any court having jurisdiction thereof. Any such arbitration proceeding shall be held at the principal offices of the City, or such other place in Galveston County as is designated by the City. Each party represents that this Agreement was concluded upon the advice of counsel below. The provisions of this section are subject to and shall not be considered as attempting to exclude the jurisdiction of the Texas Commission on Environmental Quality or any other governmental regulatory authority to arbitrate or settle disputes, hold hearings, or enter orders relating to the subject matter of this Agreement.

Prior to arbitration, the parties hereto agree to present all matters in dispute to the City Council in open session in an attempt to informally resolve disagreements hereunder. Each party hereto shall be provided copies of all relevant documents concerning matters at issue as well as copies of all documents filed with the Commission and the State Attorney General.

Section 9.03. Force Majeure.

In the event either party is rendered unable, wholly or in part, by force majeure, to carry out any of its obligations under this Agreement, it is agreed that on such party's giving notice and full particulars of such force majeure in writing or by telegraph to the other party as soon as possible after the occurrence of the cause relied upon, then the obligations of the party giving such notice, to the extent it is being affected by force majeure and to the extent that the due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided, but for no longer period. Such cause shall as far as possible be remedied with all reasonable dispatch.

The term "force majeure" as used herein shall include, but not be limited to, acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, war, blockages, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of governments and people, explosions, breakage or damage to machinery or pipelines, and any other inabilities of either party whether similar to those enumerated or otherwise, and not within the control of the party claiming such inability, which by exercise of due diligence and care such party could not have avoided.

Section 9.04. Approval.

Whenever this Agreement requires or permits approval or consent to be hereafter given by either party, such approval or consent shall be evidenced by resolution adopted by the governing body of the party by an appropriate certificate executed by a person, firm, or entity

previously authorized to determine and give such approval or consent on behalf of the governing body. The parties agree that no such approval or consent shall be unreasonably withheld.

Section 9.05. Address and Notices.

Unless otherwise provided in this Agreement, any notice, communication, request, reply, or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made, or accepted by either party to the other must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party, or by prepaid telegraph, when appropriate, addressed to the party to be notified. Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated in this Agreement, from and after the expiration of three days after it is so deposited.

Notice given in any other manner shall be effective only if and when received by the party to be notified. However, in the event of service interruption or hazardous conditions, neither party will delay remedial action pending the receipt of formal Notice. For the purposes of Notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to the City:
Mayor
City Hall
300 West Walker
League City, TX 77573

If to the District:
Galveston County Municipal
Utility District No. 44
c/o Vinson & Elkins, L.L.P.
1001 Fannin, Suite 2300
Houston, TX 77002
Attention: Joe B. Allen

If to Developer:
Johnson Development Corp.
5005 Woodway
Houston, Texas 77056
Attention: Larry D. Johnson

The parties shall have the right from time to time and any time to change their respective addresses and each shall have the right to specify as its address any other address in Galveston or Harris County, Texas, at least 15 days written Notice to the other party.

Section 9.06. Assignability.

Except as provided in Section 1.03a hereof, this Agreement shall bind and benefit the respective parties and their legal successors, but shall not otherwise be assignable, in whole or in part, by either party without first obtaining written consent of the other.

Section 9.07. Regulatory Agencies.

This Agreement shall be subject to all present and future valid laws, orders, rules, and regulations of the United States of America, the State of Texas, and of any regulatory body having jurisdiction.

Section 9.08. No Additional Waiver Implied.

The failure of either party hereto to insist, in any one or more instances, upon performance of any of the terms, covenants, or conditions of this Agreement, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant, or condition by the other party hereto, but the obligation of such other party with respect to such future performance shall continue in full force and effect.

Section 9.09. Captions.

The captions appearing at the first of each numbered Section in this Agreement are inserted and included solely for convenience and shall never be considered or given any effect in construing this Agreement, or any provision hereof, or in connection with the duties, obligations, or liabilities of the respective parties hereto or in ascertaining intent, if any question of intent should arise.

Section 9.10.. Severability.

The provisions of this Agreement are severable, and if any provisions or part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement of other persons or circumstances shall not be affected thereby.

Section 9.11. Merger.

This Agreement embodies the entire understanding between the parties and there are no prior effective representations, warranties, or agreements between the parties except as set forth in the City ordinances consenting to the creation of the District.

Section 9.12. Construction of Agreement.

The parties agree that this Agreement shall not be construed in favor of or against either party on the basis that the party did or did not author this Agreement.

Section 9.13. Term.

This Agreement shall be in force and effect from the date of execution hereof for a term of 40 years unless otherwise previously terminated pursuant to some term or condition of this Agreement or dissolution of the District.

Section 9.14. Prior Agreements.

This Agreement shall rescind and replace prior agreements between the District and the City.

Exhibit List:
Exhibit A – Metes and Bounds Description of the District
IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of which shall be deemed to be an original, this the 10th day of APRIL 2003.

THE CITY OF LEAGUE CITY, TEXAS

By: A. Jeff Harrison
Mayor

ATTEST:

By: Barbara Hugent
City Secretary

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of which shall be deemed to be an original, this the 21st day of April 2003.

JOHNSON DEVELOPMENT CORPORATION

By: Larry D. Johnson

Larry D. Johnson
President

GALVESTON COUNTY MUNICIPAL UTILITY DISTRICT NO. 44 hereby affirms that it has been created over the land described in Exhibit "A" to the terms of the Utility Agreement by And Between Galveston County Municipal Utility District No. 44, Johnson Development Corp., and the City of League City, Texas (the "Agreement"), and further hereby agrees to be bound by the terms of the Agreement.

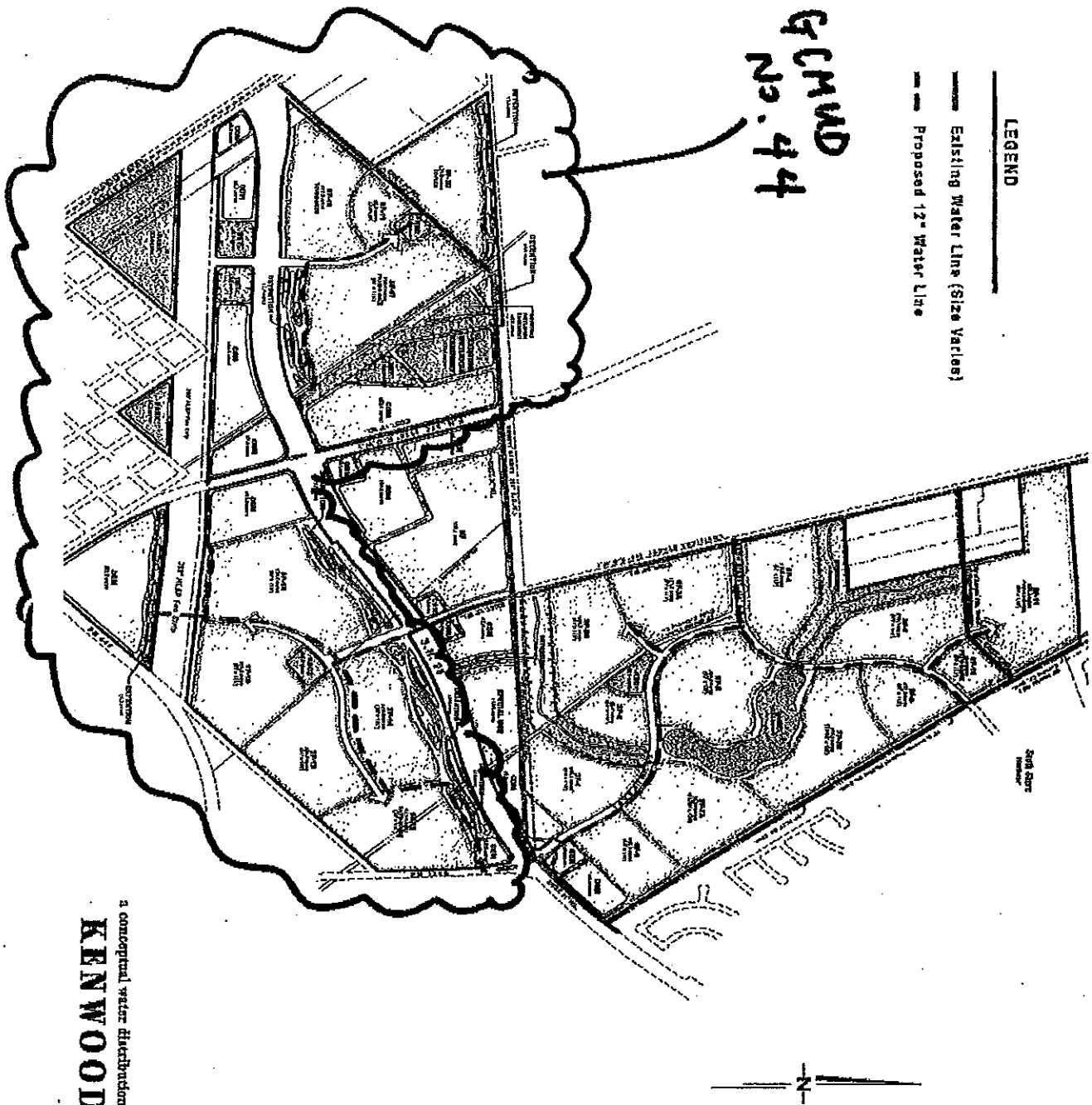
GALVESTON COUNTY MUNICIPAL UTILITY DISTRICT NO. 44

By: _____
Name: Keith Marshall
Title: President

ATTEST:

By: _____
Name: Claudette Olkowski
Title: Secretary

Exhibit A
Metes and Bounds Description of the District



a conceptual water distribution plan for

KENWOOD

January 9, 2003
Job No. 1726-2000-021

DESCRIPTION OF
435.429 ACRES
GALVESTON COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 44

Being 435.429 acres of land out of Dickinson Additions "A" and "B" as recorded in Volume 155, Page 10, Galveston County Deed Records (G.C.D.R.), and situated in the Perry and Austin Lower League, Abstract 19, City of League City, Galveston County, Texas; said 435.429 acres being more particularly described in six parts by metes and bounds as follows (all bearings referenced to the Texas State Plane Coordinate System, South Central Zone, NAD83 and based on right-of-way maps of State Highway 96);

PART ONE (158.432 ACRES)

BEGINNING at the northeasterly end of a cutback line at the intersection of the northerly right-of-way line of State Highway 96 (width varies as described in File Number 9826233, Galveston County Official Public Records (G.C.O.P.R.)) and the westerly right-of-way line of F. M. 270 (120 feet wide as described in File Number 9826232, G.C.O.P.R.);

Thence, with said cutback line, South 26° 27'05" West, 72.29 feet to a point for corner in the northerly right-of-way line of said State Highway 96;

Thence, along the northerly right-of-way line of said State Highway 96, the following nine (9) courses:

1) South 71° 27' 09" West, 649.22 feet to a point for corner;

2) South 41° 08' 38" East, 17.57 feet to the beginning of a curve;

3) 940.14 feet along the arc of said non-tangent curve to the right having a radius of 2,739.49 feet, a central angle of 19° 39' 46", and a chord that bears South 81° 56' 42" West, 935.54 feet to a point for corner;

4) South 87° 54' 02" West, 147.98 feet to a point for corner;

5) North 88° 13' 25" West, 820.21 feet to a point for corner;

6) South 85° 13' 20" West, 131.36 feet to a point for corner;

7) North 88° 13' 25" West, 608.89 feet to a point for corner;

8) North 80° 35' 43" West, 237.38 feet to the beginning of a curve;

9) 730.75 feet along the arc of said tangent curve to the left having a radius of 2,048.47 feet, a central angle of 20° 26' 21", and a chord that bears South 89° 11' 06" West, 726.89 feet to a point for corner in the southeasterly right-of-way line of First Street (70 feet wide as described in Volume 155, Page 10, G.C.D.R.);

Thence, along said southeasterly right-of-way line of First Street, North 48° 49' 18" East, 1,174.86 feet to a point for corner at the intersection with the northeasterly right-of-way line of Ohio Avenue (70 feet wide);

Thence, with the northeasterly right-of-way line of said Ohio Avenue, North 41° 08' 19" West, 1,432.30 feet to a point for corner at the intersection with the original southerly right-of-way line of Hewitt Road (40 feet wide as shown on plat of League City Division "D" (unrecorded);

Thence, with the original southerly right-of-way line of said Hewitt Road, North 87° 07' 01" East, 2,774.01 feet to a point for corner;

Thence, South 12° 23' 09" East, 81.10 feet to a point for corner in the new southerly right-of-way line of Hewitt Road (80 feet wide as described in Volume 2603, Page 528, G.C.D.R.);

Thence, along the said new southerly right-of-way line of Hewitt Road, North 87° 07' 01" East, 914.55 feet to the northwesterly end of a cutback line at the intersection with the westerly right-of-way line of aforementioned F. M. 270;

Thence, with said cutback line, South 55° 42' 37" East, 79.69 feet to a point for corner in the westerly right-of-way line of said F. M. 270;

Thence, with the westerly right-of-way line of said F. M. 270, South 18° 32' 46" East, 1,639.63 feet to the POINT OF BEGINNING and containing 158.432 acres of land in Part One.

PART TWO (41.000 ACRES)

BEGINNING at a point for corner at the intersection of the northerly line of that certain called 8.654 acre tract of land conveyed to Community Service Company and recorded in Volume 2093, Page 215, G.C.D.R. and the westerly right-of-way line of F. M. 270 (120 feet wide as described in File Number 9826232 of the Galveston County Official Public Records (G.C.O.P.R);

Thence, with the northerly line of said 8.654 acres, North 88° 25' 37" West, 3,640.80 feet to the northwest corner of said 8.654 acres;

Thence, with the southwesterly line of said 8.654 acres, South 41° 08' 51" East, 81.67 feet to a point for corner in the northerly line of that certain called 16.001 acre tract (Second Tract) conveyed to Houston Lighting and Power Company and recorded in Volume 1673, Page 519, G.C.D.R.;

Thence, with the northerly line of said 16.001 acres, North 88° 25' 37" West, 626.13 feet to a point for corner in the northeasterly right-of-way line of Dickinson Avenue (70 feet wide as shown on plat of Dickinson Addition "A" as recorded in Volume 155, Page 10, G.C.D.R.);

Thence, with the northeasterly right-of-way line of said Dickinson Avenue, North 41° 08' 51" West, 336.70 feet to a point for corner at the intersection with the southerly right-of-way line of aforementioned State Highway 96 (variable width as described in File Number 9826233, G.C.O.P.R.);

Thence, with the southerly right-of-way line of said State Highway 96, the following twelve (12) courses:

1) North 48° 53' 25" East, 37.65 feet to a point for corner;

2) North 67° 01' 20" East, 135.72 feet to the beginning of a curve;

3) 230.23 feet along the arc of said curve to the right having a radius of 740.34 feet, a central angle of 17° 49' 05", and a chord that bears North 76° 52' 56" East, 229.31 feet to a point for corner;

4) North 84° 52' 58" East, 285.96 feet to a point for corner;

5) South 88° 13' 25" East, 746.33 feet to a point for corner;

6) South 84° 31' 29" East, 130.77 feet to a point for corner;

7) South 88° 13' 25" East, 820.21 feet to a point for corner;

8) South 84° 20' 46" East, 147.98 feet to the beginning of a curve;

9) 1,064.85 feet along the arc of said tangent curve to the left having a radius of 3,001.96 feet, a central angle of 20° 19' 26", and a chord that bears North 81° 36' 52" East, 1,059.28 feet to a point for corner;

10) North 71° 27' 00" East, 81.47 feet to a point for corner;

11) North 61° 31' 12" East, 115.96 feet to a point for corner;

12) North 71° 27' 09" East, 329.28 feet to the northwesterly end of a cutback curve at the intersection with the westerly right-of-way line of aforementioned F. M. 270;

Thence, 225.57 feet along the arc of said tangent cutback curve to the right having a radius of 143.60 feet, a central angle of 90° 00' 04", and a chord that bears South 60° 57' 42" East, 203.08 feet to a point for corner in the westerly right-of-way line of said F. M. 270;

Thence, with the westerly right-of-way line of said F. M. 270, South 18° 32' 46" East, 665.25 feet to the POINT OF BEGINNING and containing 41.000 acres of land in Part Two.

PART THREE (180.579 ACRES)

BEGINNING at a point for corner at the intersection of the northerly line of that certain called 8.654 acre tract of land conveyed to Community Service Company as recorded in Volume 2093, Page 215, G.C.D.R. and the easterly right-of-way line of F. M. 270 (120 feet wide as described in File Number 9826232 of the Galveston County Official Public Records (G.C.O.P.R) and in a curve;

Thence, with the easterly right-of-way line of said F. M. 270, the following two (2) courses:

1) 22.35 feet along the arc of said non-tangent curve to the right having a radius of 2,804.79 feet, a central angle of 00° 27' 24", and a chord that bears North 18° 46' 28" West, 22.35 feet to a point for corner;

2) North 18° 32' 46" West, 755.39 feet to the southwesterly end of a cutback line at the intersection with the southerly right-of-way line of State Highway 96 (variable width as described in File Number 9826233, G.C.O.P.R.);

Thence, along said cutback line, North 26° 27' 08" East, 63.67 feet to a point for corner in the southerly right-of-way line of said State Highway 96;

Thence, with the southerly right-of-way line of said State Highway 96, the following ten (10) courses:

1) North 71° 27' 06" East, 263.70 feet to the beginning of a curve;

2) 624.81 feet along the arc of said tangent curve to the left having a radius of 3,018.37 feet, a central angle of 11° 51' 37", and a chord that bears North 65° 31' 22" East, 623.69 feet to a point for corner;

3) North 59° 35' 33" East, 49.21 feet to a point for corner;

4) North 30° 24' 27" West, 39.22 feet to a point for corner;

5) North 59° 35' 33" East, 360.89 feet to a point for corner;

6) North 30° 24' 27" West, 6.71 feet to a point for corner;

7) North 59° 35' 33" East, 592.88 feet to the beginning of a curve;

8) 1,407.16 feet along the arc of said tangent curve to the right having a radius of 4,819.54 feet, a central angle of 16° 43' 43", and a chord that bears North 67° 57' 24" East, 1,402.17 feet to a point for corner;

9) North 76° 19' 15" East, 543.70 feet to the beginning of a curve;

10) 1,237.27 feet along the arc of said tangent curve to the left having a radius of 4,038.71 feet, a central angle of 17° 33' 10", and a chord that bears North 67° 32' 40" East, 1,232.44 feet to the northwesterly end of a cutback line at the intersection with the westerly right-of-way line of F. M. 1266 (variable width);

Thence, along said cutback line, South 71° 06' 42" East, 84.48 feet to a point for corner in the westerly right-of-way line of said F. M. 1266 and at the beginning of a curve;

Thence, along the westerly right-of-way line of said F. M. 1266, the following three (3) courses:

1) 289.32 feet along the arc of said non-tangent curve to the right having a radius of 934.25 feet, a central angle of 17° 44' 36", and a chord that bears South 11° 40' 32" East, 288.16 feet to a point for corner;

2) North 87° 01' 56" East, 9.40 feet to a point for corner;

3) South 02° 58' 39" East, 912.50 feet to a point for corner in the northwesterly right-of-way line of an abandoned 70 foot wide road as shown on plat of Dickinson Addition "B" as recorded in Volume 155, Page 10, G.C.D.R.;

Thence, along said northwesterly right-of-way line, South 48° 51' 38" West, 2,704.50 feet to a point for corner at the intersection with the northerly line of aforementioned 8.654 acres;

Thence, along the northerly line of said 8.654 acres, the following two (2) courses:

1) North 84° 56' 17" West, 1,966.06 feet to a point for corner;

2) North 88° 25' 37" West, 607.33 feet to the POINT OF BEGINNING and containing 180.579 acres in Part Three.

PART FOUR (26.711 ACRES)

BEGINNING at the easterly end of a cutback line at the intersection of the northwesterly right-of-way line of F. M. 646 (120 feet wide) and the northeasterly right-of-way line of F. M. 270 (120 feet wide);

Thence, along said cutback line, North 86° 10' 06" West, 70.76 feet to a point for corner in the northeasterly right-of-way line of said F. M. 270;

Thence, along the northeasterly right-of-way line of said F. M. 270, the following two (2) courses:

1) North 41° 11' 09" West, 721.85 feet to the beginning of a curve;

2) 689.59 feet along the arc of said tangent curve to the right having a radius of 2,804.79 feet, a central angle of 14° 05' 12", and a chord that bears North 34° 08' 33" West, 687.85 feet to a point for corner in the southerly line of that certain called 25.733 acre tract of land (called First Tract) conveyed to Houston Lighting and Power Company as recorded in Volume 1673, Page 519, G.C.D.R.;

Thence, along the southerly line of said 25.733 acres, the following two (2) courses:

1) South 88° 25' 37" East, 431.38 feet to a point for corner;

2) South 84° 56' 17" East, 1,609.88 feet to a point for corner in the northwesterly right-of-way line of said F. M. 646;

Thence, along the northwesterly right-of-way line of said F. M. 646, South 48° 51' 38" West, 1,464.35 feet to the POINT OF BEGINNING and containing 26.711 acres in Part Four

PART FIVE (23.412 ACRES)

BEGINNING at the intersection of the northeasterly right-of-way line of Nichols Avenue (70 feet wide) and the northwesterly right-of-way line of Hickory (Eighth) Street (not open, 70 feet wide) as shown on aforementioned plat of Dickinson Addition "A";

Thence, along the northeasterly right-of-way line of said Nichols Avenue, North 41° 08' 51" West, 1,372.41 feet to a point for corner at the intersection with the southerly line of that certain called 16.001 acre tract (Second Tract) conveyed to Houston Lighting and Power Company and recorded in Volume 1673, Page 519, G.C.D.R.;

Thence, along the southerly line of said 16.001 acres, South 88° 25' 37" East, 2,022.94 feet to a point for corner in the northwesterly right-of-way line of said Hickory Street;

Thence, along the northwesterly right-of-way line of said Hickory Street, South 48° 51' 09" West, 1,486.20 feet to the POINT OF BEGINNING and containing 23.412 acres in Part Five.

PART SIX (5.295 ACRES)

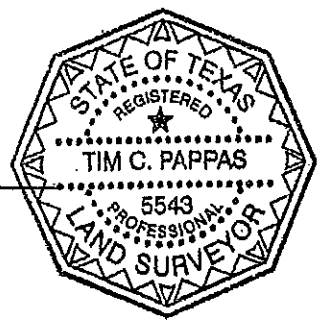
BEGINNING at the intersection of the northeasterly right-of-way line of Maryland Avenue (not open, 70 feet wide) with the northwesterly right-of-way line of Olive (Eleventh) Street (not open, 70 feet wide) as shown on the aforementioned plat of Dickinson Addition "A";

Thence, along the northeasterly right-of-way line of said Maryland Avenue, North 41° 12' 18" West, 653.08 feet to a point for corner at the intersection with the southerly line of that certain called 16.001 acre tract (Second Tract) conveyed to Houston Lighting and Power Company and recorded in Volume 1673, Page 519, G.C.D.R.;

Thence, along the southerly line of said 16.001 acres, South 88° 25' 37" East, 962.34 feet to a point for corner in the northwesterly right-of-way line of said Olive Street;

Thence, along the northwesterly right-of-way line of said Olive Street, South 48° 50' 11" West, 706.35 feet to the POINT OF BEGINNING and containing 5.295 acres in Part Six and containing a total area of 435.429 acres.

This document was prepared under 22 TAC § 663.21, and does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interest implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.



LJA Engineering & Surveying, Inc.

Tim C. Pappas
Registered Professional Land Surveyor
Texas Registration Number 5543

```
Prepared by:
Routine: Area Summary  Coord File KENWOOD.CRD   1/10/03  8:26:52
Input Scale Factor: 1.000000    Output Scale Factor: 1.000000
```

alv MUD 44

t.No.	Angle-Right	Bearing	Distance	Pt.No.
6		N 87ø07'01"E	2774.01452	501
01	260ø29'50"	S 12ø23'09"E	81.10105	500
00	99ø30'10"	N 87ø07'01"E	914.54850	88
8	217ø10'22"	S 55ø42'37"E	79.69000	89
9	217ø09'51"	S 18ø32'46"E	1639.63000	90
0	224ø59'51"	S 26ø27'05"W	72.29000	91
1	225ø00'04"	S 71ø27'09"W	649.21506	92
2	67ø24'13"	S 41ø08'38"E	17.57179	93

CURVE DEF: Arc — CURVE DIR: CW
RAD: 2739.48762 LEN: 940.14155 TAN: 474.73926 CEN. ANG: 19ø39'46"
CHORD: 935.53484 MO: 40.23104 EXT: 40.83067 DEGREE: 2ø05'29"
SEG: 25128.77792 TRI: 1262624.28580 SEC: 1287753.06372

3	23ø15'28"	N 17ø53'10"W	2739.48762	70
0	19ø39'46"	S 01ø46'36"W	2739.49157	94
3	303ø05'20"	S 81ø56'42"W	935.53551	94
4	185ø57'19"	S 87ø54'02"W	147.97974	95
5	183ø52'34"	N 88ø13'25"W	820.21000	96
6	173ø26'44"	S 85ø13'20"W	131.35612	97
7	186ø33'16"	N 88ø13'25"W	608.89001	98
8	187ø37'42"	N 80ø35'43"W	237.37999	99

CURVE DEF: Arc — CURVE DIR: CCW
RAD: 2048.47000 LEN: 730.75365 TAN: 369.30151 CEN. ANG: 20ø26'21"
CHORD: 726.88507 MO: 32.49905 EXT: 33.02296 DEGREE: 2ø47'49"
SEG: 15773.87315 TRI: 732689.58674 SEC: 748463.45989

9	89ø59'59"	S 09ø24'16"W	2048.47000	100
00	339ø33'39"	N 11ø02'05"W	2048.47000	502
9	169ø46'48"	S 89ø11'06"W	726.88507	502
02	319ø38'12"	N 48ø49'18"E	1174.86408	503
03	90ø02'23"	N 41ø08'19"W	1432.30000	86

erimeter: 12451.93605 Accum.Perimeter: 12451.93605

q. Feet: 6901279.17904 Acres: 158.43157
ccum. - Sq. Feet: 6901279.17904 Acres: 158.43157

art Two

t.No.	Angle-Right	Bearing	Distance	Pt.No.
4		N 88ø25'37"W	3640.79594	83
3	47ø16'46"	S 41ø08'51"E	81.67001	82
2	312ø43'14"	N 88ø25'37"W	626.13001	81
1	227ø16'46"	N 41ø08'51"W	336.70240	80
t.No.	Angle-Right	Bearing	Distance	Pt.No.
0	270ø02'16"	N 48ø53'25"E	37.64906	79
9	198ø07'55"	N 67ø01'20"E	135.72000	78

CURVE DEF: Arc — CURVE DIR: CW
RAD: 740.34000 LEN: 230.23398 TAN: 116.05381 CEN. ANG: 17ø49'05"
CHORD: 229.30735 MO: 8.93187 EXT: 9.04095 DEGREE: 7ø44'21"
SEG: 1367.08502 TRI: 83858.62865 SEC: 85225.71367

3	270ø57'04"	S 22ø01'36"E	740.34000	77
7	17ø49'05"	N 04ø12'31"W	740.34000	76
3	189ø51'36"	N 76ø52'56"E	229.30735	76
5	188ø00'02"	N 84ø52'58"E	285.96266	75
5	186ø53'37"	S 88ø13'25"E	746.33000	74

74	183ø41'56"	S 84ø31'29"E	130.77000	73
73	176ø18'04"	S 88ø13'25"E	820.21000	72
72	183ø52'39"	S 84ø20'46"E	147.98000	71

CURVE DEF: Arc — CURVE DIR: CCW
RAD: 3001.96000 LEN: 1064.85158 TAN: 538.07967 CEN. ANG: 20ø19'26"
CHORD: 1059.27763 MO: 47.09172 EXT: 47.84222 DEGREE: 1ø54'31"
SEG: 33307.98996 TRI: 1565012.94145 SEC: 1598320.93141

71	86ø07'21"	N 01ø46'35"E	3001.96000	70
70	339ø40'34"	S 18ø32'51"E	3001.96000	102
1	165ø57'38"	N 81ø36'52"E	1059.27763	102
02	169ø50'08"	N 71ø27'00"E	81.47000	69
9	170ø04'12"	N 61ø31'12"E	115.96000	68
8	189ø55'57"	N 71ø27'09"E	329.28000	67

CURVE DEF: Arc — CURVE DIR: CW
RAD: 143.60000 LEN: 225.56914 TAN: 143.60278 CEN. ANG: 90ø00'04"
CHORD: 203.08304 MO: 42.06045 EXT: 59.48304 DEGREE: 39ø53'58"
SEG: 5885.38406 TRI: 10310.48000 SEC: 16195.86406

7	272ø35'07"	S 15ø57'44"E	143.60000	66
6	90ø00'04"	N 74ø02'20"E	143.60000	65
7	227ø35'09"	S 60ø57'42"E	203.08304	65
5	222ø24'56"	S 18ø32'46"E	665.25000	64

erimeter: 9702.53478 Accum.Perimeter: 22154.47083

q. Feet: 1785956.35298 Acres: 40.99992
ccum. - Sq. Feet: 8687235.53202 Acres: 199.43149

art Three

t.No.	Angle-Right	Bearing	Distance	Pt.No.
3		N 18ø32'46"W	755.39000	46
6	224ø59'54"	N 26ø27'08"E	63.67000	47
7	224ø59'58"	N 71ø27'06"E	263.70000	48

CURVE DEF: Arc — CURVE DIR: CCW
RAD: 3018.36979 LEN: 624.80526 TAN: 313.52295 CEN. ANG: 11ø51'37"
CHORD: 623.69034 MO: 16.15248 EXT: 16.23938 DEGREE: 1ø53'54"
SEG: 6719.69924 TRI: 936226.96661 SEC: 942946.66585

3	90ø00'04"	N 18ø32'49"W	3018.36979	30
0	348ø08'23"	S 30ø24'26"E	3018.37014	49
3	174ø04'16"	N 65ø31'22"E	623.69037	49
9	174ø04'11"	N 59ø35'33"E	49.21000	50
0	90ø00'00"	N 30ø24'27"W	39.21999	51
1	270ø00'00"	N 59ø35'33"E	360.89000	52
2	90ø00'00"	N 30ø24'27"W	6.71000	53
3	270ø00'00"	N 59ø35'33"E	592.88000	54

CURVE DEF: Arc — CURVE DIR: CW
RAD: 4819.53986 LEN: 1407.15791 TAN: 708.62004 CEN. ANG: 16ø43'43"
CHORD: 1402.16512 MO: 51.26473 EXT: 51.81589 DEGREE: 1ø11'20"
SEG: 47972.28458 TRI: 3342954.52663 SEC: 3390926.81121

1	270ø00'00"	S 30ø24'27"E	4819.53986	24
1	16ø43'43"	N 13ø40'44"W	4819.54000	55
1	188ø21'51"	N 67ø57'24"E	1402.16514	55
5	188ø21'51"	N 76ø19'15"E	543.70000	56

CURVE DEF: Arc — CURVE DIR: CCW
RAD: 4038.71000 LEN: 1237.27445 TAN: 623.52147 CEN. ANG: 17ø33'10"
CHORD: 1232.44172 MO: 47.28791 EXT: 47.84815 DEGREE: 1ø25'07"
SEG: 38898.78203 TRI: 2459597.55988 SEC: 2498496.34191

```
6          90ø00'00"    N 13ø40'44"W      4038.71000 21
1         342ø26'50"    S 31ø13'54"E      4038.70720 37

6         171ø13'25"    N 67ø32'40"E      1232.44130 37
7         221ø20'38"    S 71ø06'42"E        84.48000 38

 CURVE DEF: Arc                                        CURVE DIR: CW
 RAD: 934.25000     LEN: 289.31815     TAN: 145.82636     CEN. ANG: 17ø44'36"
 CHORD: 288.16345   MO: 11.17713       EXT: 11.31247      DEGREE: 6ø07'58"
 SEG: 2149.80958          TRI: 132997.93316          SEC: 135147.74274

8         320ø33'52"    S 69ø27'10"W      934.25000 39
9          17ø44'36"    N 87ø11'46"E      934.25000 40

8         239ø26'10"    S 11ø40'32"E      288.16345 40
0          98ø42'28"    N 87ø01'56"E        9.39753 41
1         269ø59'25"    S 02ø58'39"E      912.50251 42
2         231ø50'17"    S 48ø51'38"W     2704.50000 43
3         226ø12'05"    N 84ø56'17"W     1966.06000 44
4         176ø30'40"    N 88ø25'37"W      607.33044 45

 CURVE DEF: Arc                                        CURVE DIR: CW
 RAD: 2804.79000    LEN: 22.35462      TAN: 11.17737      CEN. ANG: 0ø27'24"
 CHORD: 22.35456    MO: 0.02227        EXT: 0.02227       DEGREE: 2ø02'34"
 SEG: 0.33191             TRI: 31349.67432          SEC: 31350.00623


5         339ø25'27"    N 70ø59'50"E     2804.79000 101
01          0ø27'24"    S 71ø27'14"W     2804.79000 63

5         249ø39'09"    N 18ø46'28"W       22.35456 63

erimeter: 12540.55086  Accum.Perimeter: 34695.02169

q. Feet: 7866008.42174 Acres: 180.57871
ccum. - Sq. Feet: 16553243.95375 Acres: 380.01019

art Four
t.No.     Angle-Right      Bearing          Distance  Pt.No.
1                       S 88ø25'37"E      431.37616 62
2         183ø29'20"    S 84ø56'17"E     1609.88000 57
7         313ø47'55"    S 48ø51'38"W     1464.34995 58
8         224ø58'16"    N 86ø10'06"W       70.75876 59
9         224ø58'58"    N 41ø11'09"W      721.85000 60

 CURVE DEF: Arc                                        CURVE DIR: CW
 RAD: 2804.79000    LEN: 689.58846     TAN: 346.54163     CEN. ANG: 14ø05'12"
 CHORD: 687.85294   MO: 21.16619       EXT: 21.32713      DEGREE: 2ø02'34"
 SEG: 9713.49834          TRI: 957361.91682          SEC: 967075.41516

0         270ø00'00"    N 48ø48'51"E     2804.79000 101
01         14ø05'12"    S 62ø54'04"W     2804.79000 61

0         187ø02'36"    N 34ø08'33"W      687.85294 61

erimeter: 4987.80334  Accum.Perimeter: 39682.82503

q. Feet: 1163536.63427 Acres: 26.71113
ccum. - Sq. Feet: 17716780.58802 Acres: 406.72132

art 5
t.No.     Angle-Right      Bearing          Distance  Pt.No.
03                      S 88ø25'37"E     2022.94000 104
04        317ø16'46"    S 48ø51'09"W     1486.20001 105
05        270ø00'01"    N 41ø08'50"W     1372.40960 103

erimeter: 4881.54961  Accum.Perimeter: 44564.37464

q. Feet: 1019837.57838 Acres: 23.41225
ccum. - Sq. Feet: 18736618.16640 Acres: 430.13357
```

Part 6

Pt.No.	Angle-Right	Bearing	Distance	Pt.No.
107		S 88ø25'36"E	962.34623	108
108	317ø15'47"	S 48ø50'11"W	706.35000	109
109	269ø57'31"	N 41ø12'18"W	653.08000	107

Perimeter: 2321.77624 Accum.Perimeter: 46886.15088

Sq. Feet: 230651.47044 Acres: 5.29503
Accum. - Sq. Feet: 18967269.63684 Acres: 435.42860

ALLEN BOONE HUMPHRIES ROBINSON LLP

ATTORNEYS AT LAW

PHOENIX TOWER
3200 SOUTHWEST FREEWAY
SUITE 2600
HOUSTON, TEXAS 77027
TEL (713) 860-6400
FAX (713) 860-6401
abhllp.com

Direct Line: (713) 860-6435
Direct Fax: (713) 860-6635

tcastillo@abhllp.com

Tara Castillo
Legal Assistant

August 3, 2005

Ms. Barbara Nugent
City Secretary
City of League City
300 West Walker
League City, TX 77573

Re: Galveston County Municipal Utility District No. 44 (the "District")

Dear Ms. Nugent:

Enclosed please find for the City's records one fully-executed original of the Utility Agreement by and between the District, Johnson Development Corporation, and The City of League City, Texas.

If you have any questions regarding the enclosed, please contact me at the number listed above.

Sincerely,

Tara Castillo

Enclosure

CITY OF LEAGUE CITY
RECEIVED
AUG 05 2005
OFFICE OF
CITY SECRETARY

71172

216 041044-01

ONE HUMPHRIES ROBINSON LLP
ATTORNEYS AT LAW
PHOENIX TOWER
3200 SOUTHWEST FREEWAY
SUITE 2600
HOUSTON, TEXAS 77027

UNITED STATES POSTAGE
02 1A $ 01.93
0004389842 AUG 04 2005
MAILED FROM ZIPCODE 77027

FIRST CLASS MAIL

CITY OF LEAGUE CITY
RECEIVED
AUG 05 2005
OFFICE OF
CITY SECRETARY

Ms. Barbara Nugent
City of League City
300 West Walker
League City, TX 77573

ORDINANCE NO. 2007-11

AN ORDINANCE APPROVING FIRST AMENDMENT TO THE UTILITY AGREEMENT BY AND BETWEEN GALVESTON COUNTY MUNICIPAL UTILITY DISTRICT NO. 44, JOHNSON DEVELOPMENT CORPORATION AND THE CITY OF LEAGUE CITY

WHEREAS, the City of League City, Texas approved a Utility Agreement by and between Galveston County Municipal Utility District No. 44 (the "District"), Johnson Development Corporation and the City of League City, Texas, providing for the terms and conditions regarding construction, acquisition, ownership, operation and maintenance of a waterworks, sanitary sewer and drainage system to serve the area within the District in Galveston County, Texas; and

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEAGUE CITY, TEXAS, as follows:

Section 1. The facts and opinions in the preamble of this ordinance are true and correct.

Section 2. That the Mayor is authorized to execute the First Amendment to Utility Agreement by and between Galveston County Municipal Utility District No. 44 (the "District"), Johnson Development Corporation and the City of League City, Texas as shown in substantially the same form as Exhibit "A."

Section 3. All ordinances and agreements and parts of ordinances and agreements in conflict herewith are hereby repealed to the extent of the conflict only.

PASSED first reading the 23rd day of January, 2007.

PASSED second reading the 13th day of February, 2007.

PASSED AND ADOPTED the 13th day of February, 2007.

JERRY SHULTS,
Mayor

ATTEST:

BARBARA LONG,
City Secretary

FIRST AMENDMENT TO
UTILITY AGREEMENT
BY AND BETWEEN
GALVESTON COUNTY MUNICIPAL UTILITY DISTRICT NO. 44,
JOHNSON DEVELOPMENT CORPORATION,
AND
THE CITY OF LEAGUE CITY, TEXAS

STATE OF TEXAS §
§
COUNTY OF GALVESTON §

THIS FIRST AMENDMENT ("Amendment") to the Utility Agreement By and Between Galveston County Municipal Utility District No. 44, Johnson Development Corporation, and the City of League City, Texas (the "Agreement") made and entered into as of the 13th day of February, 2007 by and between GALVESTON COUNTY MUNICIPAL UTILITY DISTRICT NO. 44, a body politic and corporate and governmental agency created and operating under the provisions of Chapters 49 and 54, Texas Water Code, and pursuant to Article XVI, Section 59, Texas Constitution (the "District"), JOHNSON DEVELOPMENT CORPORATION and the CITY OF LEAGUE CITY, TEXAS, a municipal corporation (the "City").

W I T N E S S E T H

WHEREAS, the District, the City and Johnson Development Corporation have previously entered into the Agreement; and

WHEREAS, the District has accepted the terms and conditions of the Agreement in accordance with Section 1.03(a) of the Agreement; and

WHEREAS, Section 1.01 of the Agreement contemplated that the District is approximately 435 acres, and the Agreement does not provide a mechanism to annex land to the District; and

WHEREAS, the District seeks to annex 1.50 acres, as more particularly described in **Exhibit "A"** hereto (the "Annexation Tract"), to the District and seeks to have the Agreement apply to the Annexation Tract except as provided herein; and

WHEREAS, the City is willing to amend the Agreement to allow the annexation of the Annexation Tract to the District, subject to the terms of this Amendment.

AGREEMENT

For and in consideration of the mutual promises, obligations, covenants, and benefits set forth, the District and the City contract and agree as follows:

Section 1. Except as provided in Section 2 hereof, the description of the "District" in Section 1.01 of the Agreement and the definition of "District" in Section 1.02 shall include the Annexation Tract for all purposes under the Agreement. All benefits, terms and conditions provided for the District in the Agreement shall also apply to the Annexation Tract.

Section 2. For the purposes of Section 8.01 of the Agreement, the development of the Annexation Tract shall be in accordance with Chapter 102, Article II (relating to park and recreational areas) of the City's Code of Ordinances as it exists on the date of this Amendment.

Section 3. Except as provided in this Amendment, the Agreement remains in full force and effect and the terms and conditions of the Agreement have not be modified or amended.

[EXECUTION PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment in multiple copies, each of which shall be deemed to be an original, this the 16th day of April, 2007.

THE CITY OF LEAGUE CITY, TEXAS

By: _____
Mayor

ATTEST:

By: Barbara J. Fons
City Secretary

IN WITNESS WHEREOF, the parties hereto have executed this Amendment in multiple copies, each of which shall be deemed to be an original, this the 21st day of March 2007.

JOHNSON DEVELOPMENT CORPORATION

By: _____
Name: Robert B. Douglas, Jr.
Title: Vice President

IN WITNESS WHEREOF, the parties hereto have executed this Amendment in multiple copies, each of which shall be deemed to be an original, this the 20th day of February, 2007.

GALVESTON COUNTY MUNICIPAL UTILITY DISTRICT NO. 44

By: _____
Name: Keith Marshall
Title: President

ATTEST:

By: _____
Name: Claudette Olkowski
Title: Secretary

EXHIBIT 'A'

MUNICIPAL UTILITY DISTRICT NUMBER 44
ANNEXATION TRACTS

TRACT I

All that certain strip or parcel of land being part of Acorn Avenue, a 70 foot roadway right-of-way as defined by the plat of **DICKINSON**, a Subdivision in Galveston County, Texas, according to the map or plat thereof recorded at Map Volume 155, Map Number 10, said strip or parcel being more particularly described by metes and bounds as follows;

NOTE: ALL BEARINGS ARE LAMBERT GRID BEARINGS AND ALL COORDINATES REFER TO THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE, AS DEFINED BY ARTICLE 21.071 OF THE NATURAL RESOURCES CODE OF THE STATE OF TEXAS (1983 DATUM, 1993 ADJUSTMENT). COORDINATES AND DISTANCES RECITED HEREIN ARE SURFACE . DISTANCES RECITED HEREIN MAY BE CONVERTED TO GRID BY MULTIPLYING BY A SCALE FACTOR OF 0.999867458.

BEGINNING at a 5/8 inch iron rod found for the point of intersection of the Northeasterly line of said Ohio Street with the Northwesterly line of Acorn Avenue, said point further being the most Southerly corner of Lot 11, DICKINSON - ADDITION 'A' (Volume 155, Page 10, GCMR) and having coordinate values of N = 13,751,144.43 and E = 3,217,497.44;
THENCE S 41°08'19" E, along a projection of the Northeasterly line of said Ohio Street, a distance of 70.00 feet to a point for corner, said point being at the Southeasterly line of the original 70 foot Acorn Avenue right-of-way;
THENCE S 48°49'18" W, along the Southeasterly line of the original 70 foot Acorn Avenue right-of-way, a distance of 1156.43 feet to a point for corner, said point being at the intersection of said line with the projection Westerly of the Northerly right-of-way line of Texas State Highway #96;
THENCE S 84°52'02" W, along and with said projection, a distance of 59.48 feet to a 5/8 inch iron rod with cap found for corner and being at the centerline of the original 70 foot roadway right-of-way of Acorn Avenue;
THENCE N 48°49'18" E, along and with said centerline, a distance of 1169.55 feet to a 5/8 inch iron rod with cap found for corner, said point being the point of intersection of said centerline with the centerline of the aforesaid Ohio Street;
THENCE N 41°08'19" W, along and with said centerline, a distance of 35.00 feet to a 5/8 inch iron rod with cap found for corner;
THENCE N 48°49'18" E, a distance of 35.00 feet to the **POINT OF BEGINNING** and containing a calculated area of 0.98 acres (42,542 square feet) of land.

TRACT II

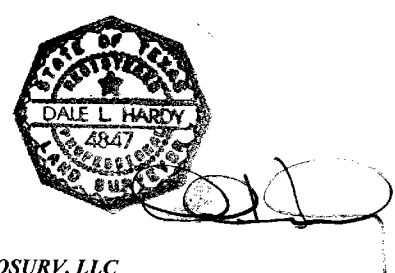
All that certain strip or parcel of land being out of Lots 1 and 3, **DICKINSON ADDITION "B"**, a Subdivision in Galveston County, Texas, according to the map or plat thereof recorded at Map Volume 155, Map Number 10; said strip or parcel and being out of and a part of that certain 80 foot wide parcel conveyed to the City of League City by instrument of record at Volume 2603,

EXHIBIT 'A'
TRACT II

Page 528; all being of record in the Office of the County Clerk of Galveston County, Texas, and being more particularly described by metes and bounds as follows;

NOTE: ALL BEARINGS ARE LAMBERT GRID BEARINGS AND ALL COORDINATES REFER TO THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE, AS DEFINED BY ARTICLE 21.071 OF THE NATURAL RESOURCES CODE OF THE STATE OF TEXAS (1983 DATUM, 1993 ADJUSTMENT). COORDINATES AND DISTANCES RECITED HEREIN ARE SURFACE . DISTANCES RECITED HEREIN MAY BE CONVERTED TO GRID BY MULTIPLYING BY A SCALE FACTOR OF 0.999867458.

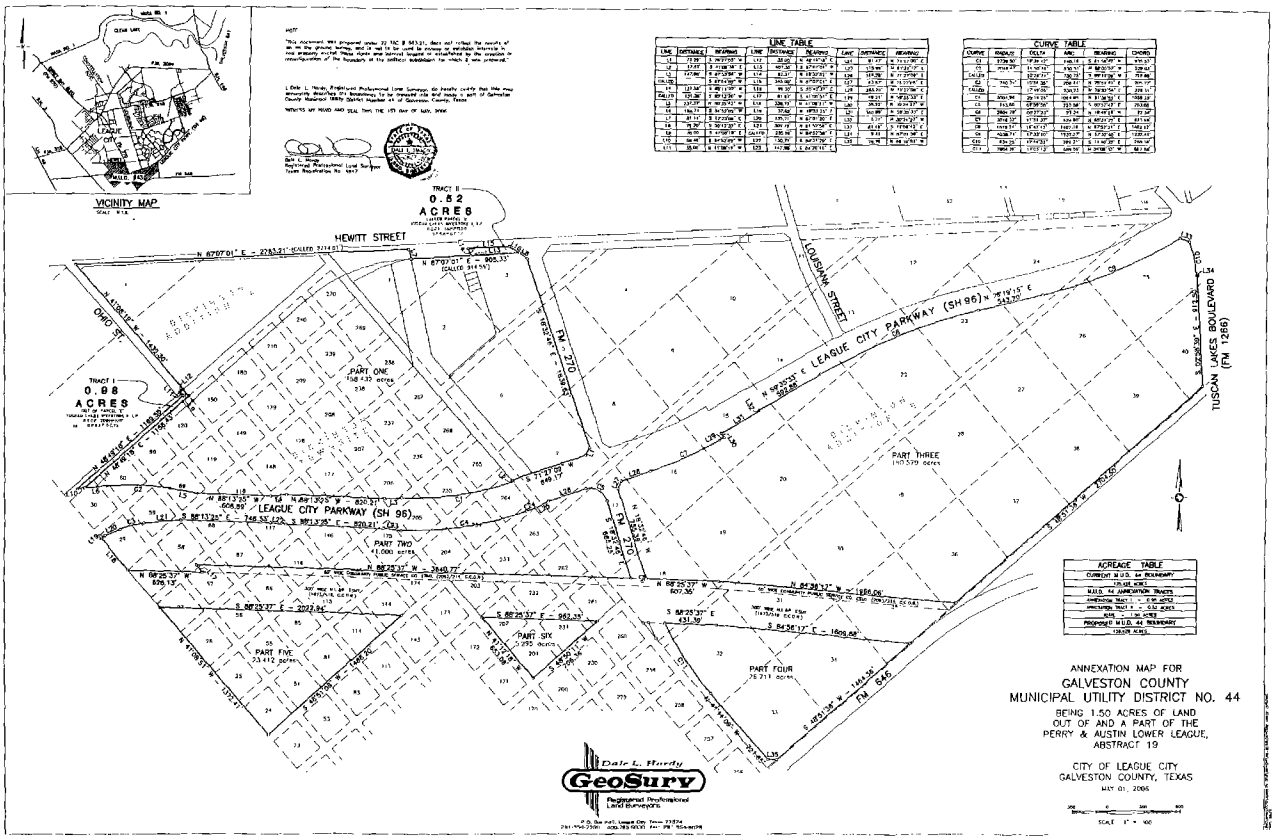
BEGINNING at a 5/8 inch iron rod found for the point of intersection of the South line of Hewitt Street, based on an existing 120 foot original right-of-way with the West line of Texas State F.M. Highway 270, a 120 foot right-of-way, said point having coordinate values of N = 13,752,276.71 and E = 3,220,302.47;
THENCE S 87°07'01" W, along and with the Southerly line of said Hewitt Street (based on a 120 foot right-of-way), a distance of 407.30 feet to a 5/8 inch iron rod with cap found for corner;
THENCE N 18°32'52" W, a distance of 62.31 feet to a 5/8 inch iron rod found for corner;
THENCE N 87°07'01" E, parallel with and 20.00 feet perpendicularly distant from the Southerly line of the original 40 foot Hewitt Street right-of-way, a distance of 345.00 feet to a 5/8 inch iron rod found for corner;
THENCE S 55°42'37" E, a distance of 99.30 feet to the **POINT OF BEGINNING** and containing a calculated area of 0.52 acres (22,569 square feet) of land.



PREPARED
MAY 8, 2006
BY

DALE L. HARDY / GEOSURV, LLC
REGISTERED PROFESSIONAL LAND SURVEYORS
P.O. BOX 246, LEAGUE CITY, TEXAS 77574
PH 281-554-7739 FAX 281-554-6928 E-MAIL dhardy@geosurvllc.com

M44ANNEX.DOC



NOTE

"This document was prepared under 22 TAC § 663.21, does not represent the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared."

I, Dale L. Hardy, Registered Professional Land Surveyor, do hereby certify that this map accurately describes the boundaries to be annexed into and made a part of Galveston County Municipal Utility District No. 44 of Galveston County, Texas.

WITNESS MY HAND AND SEAL THIS 1ST DAY OF MAY, 2006

Dale L. Hardy
Registered Professional Land Surveyor
Texas Registration No. 4667

LINE TABLE

LINE	DISTANCE	BEARING
L1	72.99	S 26°07'05" E
L2	33.87	S 41°08'38" E
L3	127.96	N 67°07'01" E
CALLED		S 67°07'00" W
L4	127.94	S 88°13'25" E
CALLED	127.30	S 88°13'26" E
L5	127.77	S 41°08'38" E
L6	127.77	N 48°51'22" E
L7	134.72	S 41°08'38" E
L8	74.79	S 48°51'22" W
L9	74.79	S 41°08'38" E
L10	66.46	S 41°08'38" E
L11	13.44	S 41°08'38" E
L12	33.87	S 41°08'38" E
L13	127.96	N 67°07'01" E
L14	127.96	N 67°07'01" E
L15	145.09	N 67°07'01" E
L16	99.30	S 22°52'59" E
L17	81.61	S 41°08'38" E
L18	206.12	N 41°08'38" W
L19	37.66	N 48°51'22" E
L20	135.72	S 67°07'01" W
L21	309.19	S 41°08'38" E
L22	235.48	S 84°36'32" W
L23	150.91	S 84°36'32" W
L24	147.88	S 84°36'32" W
L25	147.88	S 84°36'32" W
L26	147.88	S 84°36'32" W
L27	147.88	S 84°36'32" W