

ORDINANCE NO. 2003-53

AN ORDINANCE APPROVING THE UTILITY AGREEMENT
BETWEEN GALVESTON COUNTY MUNICIPAL UTILITY
DISTRICT NO. 45 AND THE CITY OF LEAGUE CITY

WHEREAS, the City of League City (the "City"), and Galveston County Municipal Utility District No. 45 (the "District") propose 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 May 27, 2003 meeting, the City Council approved the creation of Municipal Utility District No. 45;

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, and the District in substantially the same form as 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. 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.

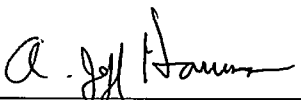
Section 4. All ordinances, resolutions and agreements and parts of ordinances, resolutions and agreements in conflict herewith are hereby repealed to the extent of the conflict only.

APPROVED first reading the 9th day of September, 2003.

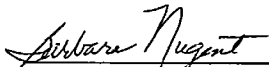
APPROVED second reading the 23rd day of September, 2003.

PASSED AND ADOPTED the 23rd day of September, 2003.

ATTEST:



A. JEFF HARRISON,
Mayor



BARBARA NUGENT,
City Secretary

**UTILITY AGREEMENT
BY AND BETWEEN
GALVESTON COUNTY MUNICIPAL UTILITY DISTRICT NO. 45,
LEAGUE CITY INVESTORS, LTD.,
AND
THE CITY OF LEAGUE CITY, TEXAS**

STATE OF TEXAS §
 §
COUNTY OF GALVESTON §

THIS AGREEMENT (“Agreement”) made and entered into as of the ____ day of _____, 2003 by and between LEAGUE CITY INVESTORS, LTD. (“LEI”), a Texas limited partnership, GALVESTON COUNTY MUNICIPAL UTILITY DISTRICT NO. 45, 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 LEI and Galveston County Municipal Utility District No. 45, as the intent of this Agreement is for LEI to assign all rights and responsibilities to said District. Thus, the representations herein by said Galveston County Municipal Utility District No. 45 at this time represent LEI’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 593.48 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 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 League City Investors, Ltd., 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. 45, 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 Dannenbaum Engineering Corporation.
- (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 has 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 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 and overlapping 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 and overlapping 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 lines 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 and Payment of Park Fee.

The Developer agrees to donate to the City an approximately 11-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 MUD 45 by .5 acres. In addition, the Developer will pay the City a park fee of \$200 per platted lot, which is due at time of final plat.

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.

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 incapacities 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. 45
c/o Allen Boone Humphries LLP
3200 Southwest Freeway, Suite 2600
Houston, TX 77027
Attention: James A. Boone

If to Developer:

League City Investors, Ltd.
108 Bayou Lane
Kemah, Texas 77565
Attention: Sam Boyd

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.

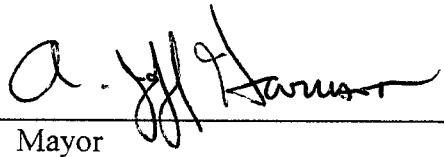
This Agreement shall rescind and replace prior agreements between the District and the City.

Exhibit List:

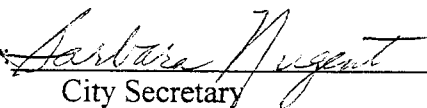
Exhibit A – Metes and Bounds Description of the District

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 3rd day of December 2003.

THE CITY OF LEAGUE CITY, TEXAS

By: 
Mayor

ATTEST:

By: 
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 ___ day of _____ 2003.

LEAGUE CITY INVESTORS, LTD.

By: Sam Boyd
Sam Boyd
President

GALVESTON COUNTY MUNICIPAL UTILITY DISTRICT NO. 45 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. 45, League City Investors, Ltd., 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. 45

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: _____

Exhibit A
Metes and Bounds Description of the District

**GALVESTON COUNTY MUD NO. 45
BEING 593.48 ACRES
OUT OF
the RAFAEL BASQUEZ SURVEY, Abstract 32
and the
RODNEY ANTHONY SURVEY, Abstract 630
CITY OF LEAGUE CITY
GALVESTON COUNTY, TEXAS**

TRACT 1

A survey of a 167.91 acre tract of land located in the RAFAEL BASQUEZ SURVEY, ABSTRACT 32, Galveston County, Texas, being a portion of a 571.97 acre tract described in a deed recorded in Volume 2055, Page 559 of the Galveston County Deed Records and being more particularly described by metes and bounds as follows:

BEARINGS BASED ON TRACT 1 DESCRIBED IN THAT CERTAIN DEED FROM LEAGUE CITY, LLC TO LEAGUE CITY INVESTORS, LTD. RECORDED UNDER FILM CODE NO. 017-25-0583 IN THE OFFICE OF THE COUNTY CLERK OF GALVESTON COUNTY, TEXAS.

BEGINNING at the Northeast corner of the ROBERT HALL SURVEY, ABSTRACT 78, the same being on the most Northerly South line of said BASQUEZ SURVEY, from which a 1 inch iron pipe bears N 37°40'26" E, 0.88 feet;

THENCE S 87°04'07" W (called S 88°58'24" W), along said common survey line a distance of 3914.31 feet to a Texas Department of Transportation monument found for corner on the Southeasterly line of State Highway 96 (Right-of-Way varies - called Parcel 30 in a deed recorded under Film Code No. 013-50-1808 in the Office of the County Clerk of Galveston County), lying in a curve to the left having a central angle of 05°13'20" and a radius of 4038.71 feet;

THENCE along the Southeasterly line of State Highway 96 curving to the left for an arc distance of 368.11 feet (chord bears N 50°14'47" E, 367.98 feet) to a Texas Department of Transportation monument found for the Point of Tangent;

THENCE N 47°38'07" E (called N 49°33'05" E), continuing along the Southeasterly line of State Highway 96 a distance of 369.70 feet to the Point of Curve of a curve to the left having a central angle of 04°48'53" and a radius of 6663.37 feet, from which a fence post bears S 03°03'27" E, 0.77 feet;

THENCE continuing along the Southeasterly line of State Highway 96 curving to the left for an arc distance of 559.94 feet (chord bears N 45°13'40" E, 559.78 feet) to a Texas Department of Transportation monument found for Point of Tangent;

THENCE N 42°49'14" E (called N 44°44'12" E) continuing along the Southeasterly line of State Highway 96 a distance of 668.95 feet to the Point of Curve of a curve to the right having a central angle of 04°48'52" and a radius of 6459.96 feet, from which a Texas Department of Transportation monument bears S 45°48'00" W, 0.28 feet;

THENCE continuing along the Southeasterly line of State Highway 96 curving to the right for an arc distance of 542.82 feet (chord bears N 45°13'41" E, 542.66 feet) to a 1/2 inch iron rod with cap stamped "GeoSurv" set for Point of Tangent;

THENCE N 47°38'07" E, continuing along the Southeasterly line of State Highway 96 a distance of 1788.59 feet (called N 49°33'05" E, 1789.72 feet) to a point for corner lying on the Westerly line of a 1.202 acre tract described in a Lis Pendens Notice recorded under Film Code No. 007-76-1907 in the Office of the County Clerk of Galveston County, from which a 1/2 inch iron rod bears N 21°35'27" W, 0.59 feet;

THENCE S 29°51'25" E (called S 27°55'07" E), along the Westerly line of said 1.202 acre tract and the Westerly line of a 1.629 acre tract described in said Lis Pendens Notice a distance of 2363.20 feet to a 1/2 inch iron rod found for corner;

THENCE N 60°08'35" E (called N 62°04'53" E), along Southeasterly line of said 1.629 acre tract a distance of 177.20 feet to an angle point, from which a 1/2 inch iron rod bears S 11°29'37" E, 0.23 feet;

THENCE N 47°36'42" E (called N 49°33'00" E), continuing along a Southeasterly line of said 1.629 acre tract a distance of 1160.66 feet to an angle point, from which a 1/2 inch iron rod bears S 06°38'06" W, 0.37 feet;

THENCE S 87°23'18" E (called S 85°27'00" E), continuing along Southerly line of said 1.629 acre tract a distance of 331.84 feet to a fence corner found for angle point;

THENCE N 47°36'42" E (called N 49°33'00" E), along a Southeasterly line of said 1.629 acre tract a distance of 814.16 feet to a point for corner on the Southwesterly line of Gum Bayou (120 feet wide - Volume 2771, Page 129 Galveston County Deed Records), from which a 1/2 inch iron rod bears S 11°48'40" E, 0.89 feet;

THENCE S 29°51'25" E (called S 27°55'07" E), along the Southwesterly line of Gum Bayou a distance of 255.12 feet to a point for corner on the Northwesterly line of a called 66.3382 acre tract called Tract B in a deed recorded under Film Code No. 003-77-1030 in the Office of the County Clerk of Galveston County, from which a 1/2 inch iron rod bears S 19°49'35" W, 1.48 feet;

THENCE S 48°40'29" W, along the Northwesterly line of said 66.3382 acre tract a distance of 2505.64 feet (called S 50°36'47" W, 2504.20 feet) to an angle point, from which a 1/2 inch iron rod with cap stamped "HJB" bears N 66°43'11" E, 0.76 feet;

THENCE S 87°02'35" W (called S 88°56'59" W), along a Northerly line of said 66.3382 acre tract a distance of 583.01 feet to a point for corner, from which a 1/2 inch iron rod with cap stamped "HJB" bears N 54°54'12" W, 0.47 feet;

THENCE S 03°02'30" E (called S 01°08'06" E), along a Westerly line of said 66.3382 acre tract a distance of 205.89 feet to the POINT OF BEGINNING and containing 167.91 acres of land.

TRACT 2

A survey of a 114.27 acre tract of land located in the **RAFAEL BASQUEZ SURVEY, ABSTRACT 32**, Galveston County, Texas, being a portion of a 571.97 acre tract described in a deed recorded in Volume 2055, Page 559 of the Galveston County Deed Records and being more particularly described by metes and bounds as follows:

BEARINGS BASED ON TRACT 1 DESCRIBED IN THAT CERTAIN DEED FROM LEAGUE CITY, LLC TO LEAGUE CITY INVESTORS, LTD. RECORDED UNDER FILM CODE NO. 017-25-0583 IN THE OFFICE OF THE COUNTY CLERK OF GALVESTON COUNTY, TEXAS.

COMMENCING at a Texas Department of Transportation monument found on the Southeasterly line of State Highway 96 (Right-of-Way varies - called Parcel 37 in a deed recorded under Film Code No. 013-50-1800 in the Office of the County Clerk of Galveston County) at the Southeast corner of said Parcel 37, lying on the East line of said 571.97 acre tract;

THENCE S 42°25'00" E (called S 40°27' E), along the East line of said 571.97 acre tract a distance of 1301.14 feet to the most Northerly corner and POINT OF BEGINNING of the herein described tract, from which a 1/2 inch iron rod with cap stamped "HJB" bears S 47°35'00" W, 0.41 feet;

THENCE S 42°25'00" E, continuing along the East line of said 571.97 acre tract a distance of 2295.45 feet to a 1/2 inch iron rod stamped "GeoSurv" set for corner on the Southeast line of said 571.97 acre tract, the same being the Southeast line of said BASQUEZ SURVEY and the Northwest line of the RODNEY ANTHONY SURVEY, ABSTRACT 630;

THENCE S 48°30'33" W (called S 50°34' W), along the common line of said BASQUEZ and ANTHONY SURVEYS a distance of 2469.53 feet to a point for corner lying on the Northeast line of Gum Bayou (120 feet wide - Volume 2771, Page 129 Galveston County Deed Records), from which a fence corner bears S 77°26'23" W, 0.88 feet);

THENCE N 29°51'25" W (called N 27°55'07" W), along the Northeast line of Gum Bayou a distance of 1490.49 feet to a 1/2 inch iron rod with cap stamped "GeoSurv" set for angle point;

THENCE N 03°49'59" E, (called N 05°46'17" E) feet along the East line of a 1.742 acre tract described in a Lis Pendens Notice recorded under Film Code No. 007-76-1907 in the Office of the County Clerk of Galveston County a distance of 180.28 feet to a 1/2 inch iron rod with cap stamped "GeoSurv" set for angle point;

THENCE N 29°51'25" W, along a Northeast line of said 1.742 acre tract a distance of 693.94 feet (called N 27°55'07" W, 694.75 feet) to a point for corner on the Southeast line of a called 64.7147 acre tract described in a deed recorded under Film Code No. 003-77-1030 in the Office of the County Clerk of Galveston County, from which a 1/2 inch iron rod with cap stamped "HJB" bears S 47°36'42" W, 0.25 feet;

THENCE N 47°37'20" E (called N 49°33' E) along the Southeast line of said 64.7147 acre tract a distance of 1865.96 feet to the POINT OF BEGINNING and containing 114.27 acres of land.

TRACT 3

A survey of a 54.89 acre tract of land located in the RAFAEL BASQUEZ SURVEY, ABSTRACT 32, Galveston County, Texas, out of a called 64.7147 acre tract called Tract A in a deed recorded under Film Code No. 003-77-1030 in the Office of the County Clerk of Galveston County and being more particularly described by metes and bounds as follows:

BEARINGS BASED ON TRACT 1 DESCRIBED IN THAT CERTAIN DEED FROM LEAGUE CITY, LLC TO LEAGUE CITY INVESTORS, LTD. RECORDED UNDER FILM CODE NO. 017-25-0583 IN THE OFFICE OF THE COUNTY CLERK OF GALVESTON COUNTY, TEXAS.

BEGINNING at a Texas Department of Transportation monument found on the Southeasterly line of State Highway 96 (Right-of-Way varies - called Parcel 37 in a deed recorded under Film Code No. 013-50-1800 in the Office of the County Clerk of Galveston County) at the Southeast corner of said Parcel 37, lying on the East line of said 64.7147 acre tract;

THENCE S 42°25'00" E (called S 40°27' E), along the East line of said 64.7147 acre tract a distance of 1301.14 feet to a point for corner, from which a 1/2 inch iron rod with cap stamped "HJB" bears S 47°35'00" W, 0.41 feet;

THENCE S 47°37'20" W (called S 49°33' W), a distance of 1863.96 feet to a point for corner on the Northeast line of Gum Bayou the same being the Northeast line of a 3.381 acre tract described in a Lis Pendens Notice recorded under Film Code No. 007-76-1907 in the Office of the County Clerk of Galveston County, from which a 1/2 inch iron rod with cap stamped "HJB" bears S 47°36'42" W, 0.25 feet;

THENCE N 29°51'25" W, along the Northeast line of said 3.381 acre tract a distance of 106.06 feet (called N 27°55'07" W, 105.25 feet) to a 1/2 inch iron rod with cap stamped "GeoSurv" set for angle point;

THENCE N 32°43'10" W (called N 30°45'52" W) continuing along said 3.381 acre tract a distance of 200.25 feet to a 1/2 inch iron rod with cap stamped "GeoSurv" set for angle point;

THENCE N 29°51'25" W (called N 27°55'07" W), continuing along said 3.381 acre tract a distance of 1241.89 feet to a 1/2 inch iron rod with cap stamped "GeoSurv" set for corner on the Southeasterly line of said Highway 96, lying in a curve to the right having a central angle of 04°38'59" and a radius of 2608.26 feet;

THENCE along the Southeasterly line of State Highway 96 curving to the right an arc distance of 211.67 feet (chord bears N 55°27'14" E, 211.61 feet) to the Point of Tangent, from which a Texas Department of Transportation monument bears S 64°57'37" E, 0.53 feet;

THENCE N 57°46'44" E, (called N 57°49'14" E) continuing along the Southeasterly line of State Highway 96 a distance of 768.43 feet to a 1/2 inch iron rod with cap stamped "GeoSurv" set for the Point of Curve of a curve to the left having a central angle of 10°14'02" and a radius of 2969.15 feet;

THENCE continuing along the Southeasterly line of State Highway 96 curving to the left for an arc distance of 530.33 feet to a 1/2 inch iron rod with cap stamped "GeoSurv" set for the Point of Tangent;

THENCE N 49°18'58" E, continuing along the Southeasterly line of State Highway 96 a distance of 43.67 feet (called N 47°35'12" E, 43.54 feet) to the POINT OF BEGINNING and containing 54.89 acres of land.

TRACT 4

A survey of a 66.58 acre tract of land located in the RAFAEL BASQUEZ SURVEY, ABSTRACT 32, Galveston County, Texas, being the same tract as a called 66.3382 acre tract called Tract B in a deed recorded under Film Code No. 003-77-1030 in the Office of the County Clerk of Galveston County and being more particularly described by metes and bounds as follows:

BEARINGS BASED ON TRACT 1 DESCRIBED IN THAT CERTAIN DEED FROM LEAGUE CITY, LLC TO LEAGUE CITY INVESTORS, LTD. RECORDED UNDER FILM CODE NO. 017-25-0583 IN THE OFFICE OF THE COUNTY CLERK OF GALVESTON COUNTY, TEXAS.

BEGINNING at the Northeast corner of the ROBERT HALL SURVEY, ABSTRACT 78, the same being on the most Northerly South line of said BASQUEZ SURVEY, from which a 1 inch iron pipe bears N 37°40'26" E, 0.88 feet;

THENCE N 03°02'30" W (called N 01°08'06" W), a distance of 205.89 feet to a point for corner, from which a 1/2 inch iron rod with cap stamped "HJB" bears N 54°54'12" W, 0.47 feet;

THENCE N 87°02'35" E (called N 88°56'59" E), a distance of 583.01 feet to an angle point, from which a 1/2 inch iron rod with cap stamped "HJB" bears N 66°43'11" E, 0.76 feet;

THENCE N 48°40'29" E, a distance of 2505.64 (called N 50°36'47" E, 2504.20 feet) to a point for corner on the Southwesterly line of Gum Bayou (120 feet wide - Volume 2771, Page 129 Galveston County Deed Records), from which a 1/2 inch iron rod bears S 19°44'21" W, 1.47 feet;

THENCE S 29°51'25" E (called S 27°55'07" E), along the Southwesterly line of Gum Bayou a distance of 970.36 feet to a 1/2 inch iron rod with cap stamped "GeoSurv" set for corner on a Northwesterly line of the **RODNEY ANTHONY SURVEY, ABSTRACT 630;**

THENCE S 48°30'33" W, along the Northwesterly line of the **ANTHONY SURVEY**, the same being the Southeasterly line of said **BASQUEZ SURVEY** a distance of 16.34 feet to a 1/2 inch iron rod with cap stamped "GeoSurv" set for corner on the Easterly line of a 1.3285 acre tract described in a deed recorded in Volume 2639, Page 112 Galveston County Deed Records;

THENCE N 29°51'25" W (called N 27°55'07" W), along the Easterly line of said 1.3285 acre tract a distance of 246.00 feet to a 1/2 inch iron rod with cap stamped "GeoSurv" set for corner;

THENCE S 60°08'35" W (called S 62°04'53" W), along the Northerly line of said 1.3285 acre tract a distance of 216.00 feet to a 1/2 inch iron rod with cap stamped "GeoSurv" set for corner;

THENCE S 29°51'25" E (called S 27°55'07" E) along the Westerly line of said 1.3285 acre tract a distance of 290.47 feet to a 1/2 inch iron rod with cap stamped "GeoSurv" set for corner on the common line of said **ANTHONY** and **BASQUEZ SURVEYS;**

THENCE S 48°30'33" W, along the common line of said **ANTHONY** and **BASQUEZ SURVEYS** a distance of 2074.48 feet (called S 50°36'47" W, 2098.88 feet) to a 1/2 inch iron rod with cap stamped "GeoSurv" set for angle point, from which a 3 inch iron pipe bears

S 87°10'48" W, 10.70 feet;

THENCE S 87°02'35" W, continuing along the common line of said **ANTHONY** and **BASQUEZ SURVEYS** a distance of 1177.42 feet (called S 88°56'59" W, 1166.26 feet) to a 1/2 inch iron rod with cap stamped "GeoSurv" set for corner on the east line of said **HALL SURVEY;**

THENCE N 03°02'30" E (called N 01°08'06" W) along the common line of said **HALL** and **BASQUEZ SURVEYS** a distance of 544.11 feet to the **POINT OF BEGINNING** and containing 66.58 acres of land.

TRACT 5

All that certain 182.07 acre tract situated in the **RODNEY ANTHONY SURVEY**, Abstract 630, Galveston County, Texas, being a portion of a 801.500 acre tract described as Tract I in a deed recorded under Film Code No. 017-25-0583 and being out of **LEAGUE CITY SEMI-TROPICAL GARDENS**, according to the map or plat recorded in Volume 238, Page 8 said deed and plat recorded in the Office of the County Clerk of Galveston County and being more particularly described by metes and bounds as follows:

BEARINGS BASED ON TRACT 1 DESCRIBED IN THAT CERTAIN DEED FROM LEAGUE CITY, LLC TO LEAGUE CITY INVESTORS, LTD. RECORDED UNDER FILM CODE NO. 017-25-0583 IN THE OFFICE OF THE COUNTY CLERK OF GALVESTON COUNTY, TEXAS.

BEGINNING at a 2 inch iron pipe found in the West line of a 40 foot platted roadway, said point being at the intersection of the West line of said roadway and the projection of the South line of Block 11 of said subdivision;

THENCE N 03°22'28" W, along the West line of said roadway a distance of 263.14 feet to a 1/2 inch iron rod found for angle point;

THENCE N 59°24'03" E, across said 40 foot roadway a distance of 46.36 feet to a 1 inch iron pipe found for angle point, said point being the Southwest corner of Block 10;

THENCE N 87°08'15" E, along the South line of Block 10 a distance of 660.84 feet to a fence post found for corner being the Southeast corner of said Block 10 and the Southwest corner of Block 17;

THENCE N 03°05'35" W, along the East line of Blocks 10 and 9 and the West line of Blocks 17 and 16 a distance of 646.87 feet to a 5/8 inch iron rod found for corner, said point being the Northeast corner of Block 9 and the Southeast corner of Block 8, the Northwest corner of Block 16 and the Southwest corner of Block 15;

THENCE N 87°03'49" E, along the North line of Block 16 and the South line of Block 15 a distance of 658.80 feet to a fence post found for corner, said point being the Northeast corner of Block 16 and the Southeast corner of Block 15;

THENCE N 02°47'32" W, along the East line of Block 15 a distance of 332.74 feet to a "T-post" fence post found for corner, said point being the Northeast corner of Block 15 and the Southeast corner of Block 14;

THENCE S 87°06'17" W, along the North line of Block 15 and the South line of Block 14 a distance of 659.76 feet to a 5/8 inch iron rod found for corner, said point being the Northwest corner of Block 15 and the Southwest corner of Block 14, the Northeast corner of Block 8 and the Southwest corner of Block 7;

THENCE N 02°49'22" W, along the West line of Blocks 14 and 13 and the East line of Blocks 7 and 6 a distance of 645.56 feet to a 5/8 inch iron rod found for corner, said point being the Northwest corner of Block 13 and the Northeast corner of Block 6;

THENCE S 86°14'59" W, along the North line of Block 6 a distance of 99.83 feet to a 5/8 inch iron rod found for corner on the Northwest line of said ANTHONY SURVEY and the Southeast line of the RAFAEL BASQUEZ SURVEY, Abstract 32;

THENCE N 48°30'33" E, along the common line of the ANTHONY and BASQUEZ SURVEYS, the same being the Northwest line of said LEAGUE CITY SEMI-TROPICAL GARDENS a distance of 2201.21 feet to a point for corner on the Southwesterly line of Gum Bayou;

THENCE S 39°25'27" E, along the Southwesterly line of Gum Bayou described in deeds recorded in Volume 2771, Page 85; Volume 2771, Page 89 and Volume 2773, Page 199 all in the Office of the County Clerk of Galveston County a distance of 1677.47 feet to an angle point;

THENCE S 02°57'39" E, along the West line of Gum Bayou a distance of 2330.92 feet to a point for corner on the North line of Block 59 of said LEAGUE CITY SEMI-TROPICAL GARDENS;

THENCE S 87°00'32" W, along the North line of Block 59, the same being the South line of Block 58 a distance of 583.12 feet to a point for corner, said point being the Northwest corner of Block 59;

THENCE S 03°01'28" E, along the West line of Block 59 a distance of 213.01 feet to a point for corner on the North line of FM 646 (120 foot right-of-way);

THENCE S 86°57'26" W, along the North line of FM 646 a distance of 938.09 feet to a concrete monument found for the Point of Curve of a curve to the right having a central angle of 02°10'51" and a radius of 11,481.53 feet;

THENCE continuing along the North line of FM 646 curving to the right for an arc distance of 437.02 feet (chord bears S 88°09'02" W, 437.00 feet) to a 1/2 inch iron pipe found for corner on the east line of the EAST DICKINSON SUBDIVISION recorded in Volume 140, Page 6 in the Office of the County Clerk of Galveston County;

THENCE N 03°01'28" W, along the East line of said EAST DICKINSON SUBDIVISION a distance of 607.14 feet to a 1 1/2 inch iron pipe found for corner, said point being the Southeast corner of Block 18 of said LEAGUE CITY SEMI-TROPICAL GARDENS;

THENCE S 87°02'34" W, along the North line of said EAST DICKINSON SUBDIVISION and the South line of Block 18 and said Block 11 a distance of 1360.61 feet to the POINT OF BEGINNING and containing 182.07 acres of land.

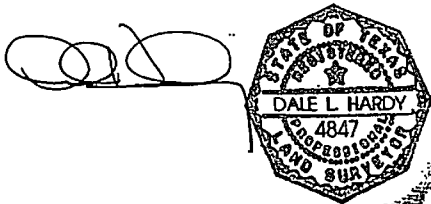
TRACT 6

All that certain 7.76 acre tract situated in the **RODNEY ANTHONY SURVEY**, Abstract 630, Galveston County, Texas, being a portion of a 801.500 acre tract described as Tract I in a deed recorded under Film Code No. 017-25-0583 and being out of **LEAGUE CITY SEMI-TROPICAL GARDENS**, according to the map or plat recorded in Volume 238, Page 8 said deed and plat recorded in the Office of the County Clerk of Galveston County and being more particularly described by metes and bounds as follows:

BEARINGS BASED ON TRACT 1 DESCRIBED IN THAT CERTAIN DEED FROM LEAGUE CITY, LLC TO LEAGUE CITY INVESTORS, LTD. RECORDED UNDER FILM CODE NO. 017-25-0583 IN THE OFFICE OF THE COUNTY CLERK OF GALVESTON COUNTY, TEXAS.

BEGINNING at the intersection of the East line of Caroline Street (60 foot right-of-way) with the South line of FM 646 (120 foot right-of-way), being the Northwest corner of the herein described tract and lying in a curve to the left having a central angle of $00^{\circ}21'45''$ and a radius of 11,601.53 feet;
THENCE along the South line of of FM 646 curving to the left for an arc distance of 73.39 feet (chord bears $N 87^{\circ}14'29'' E$, 73.39 feet) to a concrete monument found for Point of Tangent;
THENCE $N 86^{\circ}57'26'' E$, continuing along the South line of FM 646 a distance of 938.27 feet to a point for corner on the West line of Block 60;
THENCE $S 03^{\circ}01'28'' E$, along the West line of Block 60 a distance of 334.36 feet to a point for corner, said point being the Southwest corner of Block 60 and the Northwest corner of Block 61;
THENCE $S 87^{\circ}00'32'' W$, along the South line of Blocks 44 and 30 and the North line of Blocks 45 and 31 a distance of 1011.90 feet to a square iron rod found for corner on the East line of said Caroline Street;
THENCE $N 02^{\circ}59'03'' W$, along the East line of Caroline Street a distance of 333.81 feet to the **POINT OF BEGINNING** and containing 7.76 acres of land.

NOTE: THIS DOCUMENT WAS PREPARED UNDER 22 TAC 663.21; 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 INTERESTS IMPLIED OR ESTABLISHED BY THE CREATION OR RECONFIGURATION OF THE BOUNDARY OF THE POLITICAL SUBDIVISION FOR WHICH IT WAS PREPARED.



MAY 12, 2003
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

PAGE 7 OF 7

ORDINANCE NO. 2006-17

AN ORDINANCE AMENDING ORDINANCE NO. 2003-53
APPROVING FIRST AMENDMENT TO THE UTILITY
AGREEMENT BY AND BETWEEN GALVESTON COUNTY
MUNICIPAL UTILITY DISTRICT NO. 45, LEAGUE CITY
INVESTORS, LTD. AND THE CITY OF LEAGUE CITY, TX

WHEREAS, by Ordinance No. 2003-53, the City of League City, Texas approved a Utility Agreement by and between Galveston County Municipal Utility District No. 45 (the "District"), League City Investors, Ltd. 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 area within the District comprising 593.48 acres, more or less, in Galveston County, Texas; and

WHEREAS, by Resolution No. 2006-09, City Council of the City of League City, Texas has granted its consent to the annexation by the District of an additional 256.382 acres of land, more or less, as described in the Petitions for Consent to Annex Land Into Galveston County Municipal Utility District No. 45; and

WHEREAS, the City and District wish to approve a First Amendment to the Utility Agreement in order to clarify that the terms and conditions of the Agreement shall also apply to the additional 256.382 acres being annexed by the District;

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.

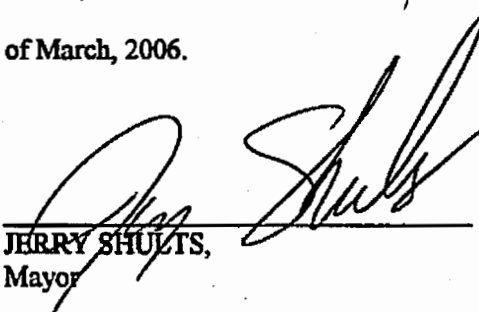
Section 2. That the Mayor is authorized to execute the First Amendment to Utility Agreement by and between Galveston County Municipal Utility District No. 45 (the "District"), League City Investors, Ltd. and the City of League City, Texas as shown in substantially the same form as Exhibit "A."

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 9th day of March, 2006.

PASSED second reading the 28th day of March, 2006.

PASSED AND ADOPTED the 28th day of March, 2006.


JERRY SHULTS,
Mayor

ATTEST:

Barbara J. Long

BARBARA LONG,
City Secretary

**FIRST AMENDMENT TO
UTILITY AGREEMENT
BY AND BETWEEN
GALVESTON COUNTY MUNICIPAL UTILITY DISTRICT NO. 45,
LEAGUE CITY INVESTORS, LTD.,
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. 45, League City Investors, Ltd., and the City of League City, Texas (the "Agreement") made and entered into as of the 28th day of March, 2006 by and between GALVESTON COUNTY MUNICIPAL UTILITY DISTRICT NO. 45, 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"), LEAGUE CITY INVESTORS, LTD. and the CITY OF LEAGUE CITY, TEXAS, a municipal corporation (the "City").

WITNESSETH

WHEREAS, the District, the City and the League City Investors, Ltd., 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 593.48 acres and the Agreement does not provide a mechanism to annex land to the District; and

WHEREAS, the District seeks to annex 256.382 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.

A G R E E M E N T

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

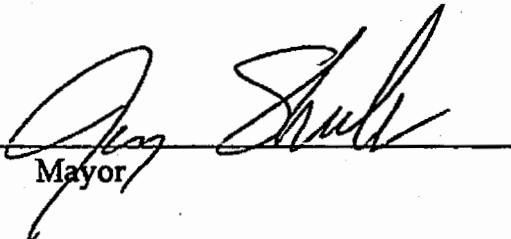
Section 1. Except as provided in Section 2 hereof, the description of the "District" in Section 1.01 of the Agreement and the definition of "District" in Section 1.02 shall include the Annexation Tract for all purposes under the Agreement. All benefits, terms and conditions provided for the District 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, it being understood by the parties that the Developer's prior dedication of an approximately 11-acre site and payment of a \$200 per platted lot fee to the City shall serve only to satisfy its park dedication requirements as they pertain to the 593.48 acres comprising the District's initial boundaries.

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.

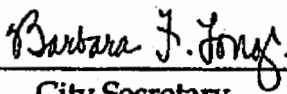
IN WITNESS WHEREOF, the parties hereto have executed this Amendment in multiple copies, each of which shall be deemed to be an original, this the ~~28th~~ day of March 2006.

THE CITY OF LEAGUE CITY, TEXAS

By: _____

Mayor

ATTEST:

By: _____

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 28 day of March 2006.

LEAGUE CITY INVESTORS, LTD.

By: Sam Boyd
Sam Boyd
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 22 day of August 2006.

UTILITY

GALVESTON COUNTY MUNICIPAL

DISTRICT NO. 45

By: Cheryl Leonard
Name: Cheryl Leonard
Title: PRESIDENT

ATTEST:

By: [Signature]
Name: Kevin Moore
Title: Assistant Secretary

Exhibit A
Metes and Bounds Description of the Annexation Tract

EXHIBIT A

**TRACT 2 - 166.23 ACRE TRACT
TO BE ANNEXED INTO M.U.D. 45**

All that certain 166.23 acre tract of land located in the **JOHN MILES SURVEY, ABSTRACT 55**, the **SAMUEL HINTON SURVEY, ABSTRACT 89**, the **RODNEY ANTHONY SURVEY, ABSTRACT 630** and the **EDWARD PAYNE SURVEY, ABSTRACT 164**, Galveston County, Texas, being a 92.86 acre tract described in a deed recorded under Galveston County Clerk File No. 2004057294, a 70.87 acre tract of land described in a deed recorded under Galveston County Clerk File No. 2004057293 and a 2.50 acre tract of land described in a deed recorded under Galveston County Clerk File No. 2005001316, also being out of **LEAGUE CITY SEMI-TROPICAL GARDENS**, according to the map or plat recorded in Volume 238, Page 8 and out of Blocks 26, 27 and 28 **CLIFTON LAND AND PRODUCTION COMPANY SUBDIVISION**, according to the map or plat recorded in Volume 254, Page 4, all deeds and maps recorded in the Office of the County Clerk of Galveston County and being more particularly described by metes and bounds as follows:

BEARING STRUCTURE IS BASED ON AN 801.500 ACRE TRACT DESCRIBED AS TRACT 1 IN A DEED RECORDED UNDER FILM CODE NO. 017-25-0583 IN THE OFFICE OF THE COUNTY CLERK OF GALVESTON COUNTY.

BEGINNING at an iron rod with cap stamped "D.L. Hardy" found at the East corner of said **ANTHONY SURVEY**, the same being the South corner of the **S.G. McCLENNY SURVEY, ABSTRACT 154**, lying on the Northwesterly line of said **PAYNE SURVEY**, the same being the Northwesterly line of said **CLIFTON LAND AND PRODUCTION COMPANY SUBDIVISION** and being the East corner of said **LEAGUE CITY SEMI-TROPICAL GARDENS**;

THENCE S 50°01'31" W, along the Southeasterly line of said **ANTHONY SURVEY** and said **LEAGUE CITY SEMI-TROPICAL GARDENS** and the Northwesterly line of said **PAYNE SURVEY** and said **CLIFTON LAND AND PRODUCTION COMPANY SUBDIVISION**, a distance of 1828.44 feet to a point for corner;

THENCE S 29°30'48" E, parallel to and 140 feet Easterly of the West line of Blocks 26, 27 and 28, **CLIFTON LAND AND PRODUCTION COMPANY SUBDIVISION**, passing at 47.36 feet an iron rod with cap stamped "GeoSurv" and continuing for a total distance of 837.31 feet to an iron rod with cap stamped "GeoSurv" found for angle point;

THENCE S 74° 30'48" E, a distance of 14.14 feet to an iron rod with cap stamped "GeoSurv" found for corner on the Northerly line of FM 646;

THENCE S 60°13'23" W, along the Northerly line of FM 646, a distance of 150.00 feet to a 1/2 inch iron pipe found at the intersection of the Northerly line of FM 646 with the Westerly line of said Block 28, the same being the Easterly line of a 30 foot roadway (not open);

THENCE N 15°29'12" E, a distance of 14.14 feet to an iron rod with cap stamped "GeoSurv" found for angle point;

THENCE N 29°30'48" W, parallel to and 10 feet Easterly of the Westerly line of Blocks 28, 27 and 26, passing at 767.00 feet an iron rod with cap stamped "GeoSurv" and continuing for a total distance of 814.00 feet to a point for corner on the Northwesterly line of said **PAYNE SURVEY** and the **CLIFTON LAND AND PRODUCTION COMPANY SUBDIVISION**, the same being the Southeasterly line of said **ANTHONY SURVEY** and **LEAGUE CITY SEMI-TROPICAL GARDENS**;

THENCE S 50°01'31" W, along the Southeasterly line of said ANTHONY SURVEY and LEAGUE CITY SEMI-TROPICAL GARDENS, the same being the Northwesterly line of said PAYNE SURVEY and the CLIFTON LAND AND PRODUCTION COMPANY SUBDIVISION, a distance of 1254.06 feet to an iron rod with cap stamped "GeoSurv" found for corner;

THENCE N 02°57'39" W, passing at 133.39 feet the Southwest corner of Lot 171, LEAGUE CITY SEMI-TROPICAL GARDENS and continuing along the East line of a 30 foot wide road (not open), the same being the West line of Lots 171, 170, 169, 168, 167, 166, 165 and 164, LEAGUE CITY SEMI-TROPICAL GARDENS, passing at 3239.78 feet the Northeasterly line of said ANTHONY SURVEY and LEAGUE CITY SEMI-TROPICAL GARDENS, the same being the Southwesterly line of said HINTON SURVEY, passing at 3418.32 feet the Northwesterly line of said HINTON SURVEY, the same being the Southeasterly line of said MILES SURVEY and continuing for a total distance of 3918.89 feet to an iron rod with cap stamped "GeoSurv" found for corner;

THENCE N 49°45'31" E, a distance of 1886.73 feet to an iron rod with cap stamped "GeoSurv" found for corner on the Southwesterly line of a 300 foot wide Houston Lighting and Power right-of-way;

THENCE S 29°05'29" E, along the Southwesterly line of said Houston Lighting and Power right-of-way, passing at 405.96 feet the Southeasterly line of said MILES SURVEY, the same being the Northwesterly line of said HINTON SURVEY and continuing for a total distance of 1642.64 feet to an iron rod with cap stamped "GeoSurv" found for corner;

THENCE S 49°45'31" W, a distance of 1514.64 feet to an iron rod with cap stamped "GeoSurv" found for corner on the Northeasterly line of said ANTHONY SURVEY and LEAGUE CITY SEMI-TROPICAL GARDENS, the same being the Southwesterly line of said HINTON SURVEY;

THENCE S 63°44'29" E, along the Southwesterly line of said HINTON SURVEY, the same being the Northeasterly line of said ANTHONY SURVEY and LEAGUE CITY SEMI-TROPICAL GARDENS, a distance of 707.48 feet to an iron rod with cap stamped "D.L. Hardy" found for angle point at the South corner of said HINTON SURVEY, the same being the West corner of said McCLENNY SURVEY;

THENCE S 68°50'49" E, along the Southwesterly line of said McCLENNY SURVEY, the same being the Northeasterly line of said ANTHONY SURVEY and LEAGUE CITY SEMI-TROPICAL GARDENS, a distance of 446.98 feet to an iron rod with cap stamped "D.L. Hardy" found for angle point;

THENCE S 71°23'49" E, continuing along the common line of the McCLENNY SURVEY, the ANTHONY SURVEY and LEAGUE CITY SEMI-TROPICAL GARDENS, a distance of 561.24 feet to the POINT OF BEGINNING and containing 166.23 acres of land.

NOTE: THIS DOCUMENT HAS BEEN PREPARED UNDER 22 TAC § 663.23; 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 INTERESTS IMPLIED OR ESTABLISHED BY THE CREATION OR RECONFIGURATION OF THE BOUNDARY OF THE POLITICAL SUBDIVISION FOR WHICH IT HAS BEEN PREPARED.

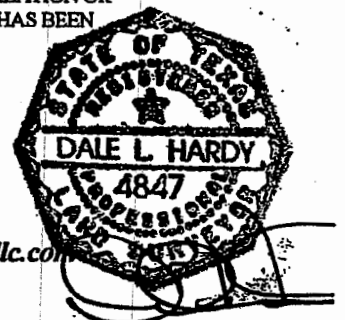
**PREPARED
May 23, 2005
BY**

**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

PAGE 2 OF 2

mud45-2.doc



**TRACT 4 - 26.65 ACRES
TO BE ANNEXED INTO M.U.D. 45**

All that certain 26.65 acre tract of land located in the **W.G. BANKS SURVEY, ABSTRACT 36**, Galveston County, Texas, being the same property described at Tract III and Tract V in a deed from League City, LLC to League City Investors, Ltd. recorded under Film Code No. 017-25-0583 in the Office of the County Clerk of Galveston County and being more particularly described by metes and bounds as follows:

BEARING STRUCTURE IS BASED ON AN 801.500 ACRE TRACT DESCRIBED AS TRACT 1 IN A DEED RECORDED UNDER FILM CODE NO. 017-25-0583 IN THE OFFICE OF THE COUNTY CLERK OF GALVESTON COUNTY, TEXAS.

COMMENCING at the Northwest corner of said **W.G. BANKS SURVEY**;
THENCE S 02°46'25" E, along the West line of the **BANKS SURVEY** a distance of 390.70 feet to a fence post found on the South line of FM 646 (120 foot right-of-way) for the Northwest corner and **POINT OF BEGINNING** of the herein described tract;
THENCE N 87°04'48" E, along the South line of FM 646 a distance of 1449.96 feet to a 1/2 inch iron rod found for corner;
THENCE S 03°05'02" E, a distance of 855.58 feet to an iron rod with cap stamped "D.L. Hardy" found for corner;
THENCE N 88°30'29" W, a distance of 1458.63 feet to an iron rod with cap stamped "D.L. Hardy" found for corner on the West line of said **BANKS SURVEY**;
THENCE N 02°46'25" W, along the West line of said **BANKS SURVEY** a distance of 743.37 feet to the **POINT OF BEGINNING** and containing 26.65 acres of land.



NOTE

THIS DOCUMENT HAS BEEN PREPARED UNDER 22 TAC § 663.23; 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 INTERESTS IMPLIED OR ESTABLISHED BY THE CREATION OR RECONFIGURATION OF THE BOUNDARY OF THE POLITICAL SUBDIVISION FOR WHICH IT HAS BEEN PREPARED.

PREPARED
June 9, 2005
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

**TRACT 1 - 35.00 ACRES
TO BE ANNEXED INTO M.U.D. 45**

All that certain 35.00 acre tract of land located in the **SAMUEL HINTON SURVEY, ABSTRACT 89** and the **S.G. McCLENNY SURVEY, ABSTRACT 154**, Galveston County, Texas, being a portion of an 86.6235 acre tract described in a deed recorded under Film Code No. 017-34-1376 in the Office of the County Clerk of Galveston County and being more particularly described by metes and bounds as follows:

BEARING STRUCTURE IS BASED ON AN 801.500 ACRE TRACT DESCRIBED AS TRACT 1 IN A DEED RECORDED UNDER FILM CODE NO. 017-25-0583 IN THE OFFICE OF THE COUNTY CLERK OF GALVESTON COUNTY, TEXAS.

BEGINNING at an iron rod with cap stamped "D.L. Hardy" found at the East corner of the **RODNEY ANTHONY SURVEY, ABSTRACT 630**, the same being the South corner of said **McCLENNY SURVEY**, lying on the Northwesterly line of the **ED PAYNE, SURVEY, ABSTRACT 164**, and being the East corner of **LEAGUE CITY SEMI-TROPICAL GARDENS**, according to the map or plat recorded in Volume 238, Page 8 in the Office of the County Clerk of Galveston County;

THENCE N 71°23'49" W, along the Southwesterly line of said **McCLENNY SURVEY**, the same being the Northeasterly line of said **LEAGUE CITY SEMI-TROPICAL GARDENS**, a distance of 561.24 feet to an iron rod with cap stamped "D.L. Hardy" found for angle point;

THENCE N 68°50'49" W, continuing along the common line of said **McCLENNY SURVEY** and **LEAGUE CITY SEMI-TROPICAL GARDENS**, a distance of 446.98 feet to an iron rod with cap stamped "D.L. Hardy" found for angle point, being the West corner of said **McCLENNY SURVEY** and the South corner of said **HINTON SURVEY**;

THENCE N 63°44'29" W, along the Southwesterly line of said **HINTON SURVEY** and the Northeasterly line of said **LEAGUE CITY SEMI-TROPICAL GARDENS**, a distance of 707.48 feet to an iron rod with cap stamped "GeoSurv" found for corner;

THENCE N 49°45'31" E, a distance of 1514.64 feet to an iron rod with cap stamped "GeoSurv" found for corner on the Southwesterly line of a 300 foot wide Houston Lighting and Power right-of-way;

THENCE S 29°05'29" E, along the Southwesterly line of said 300 foot wide Houston Lighting and Power right-of-way, passing at 661.28 feet the South line of said **HINTON SURVEY**, the same being the North line of said **McCLENNY SURVEY** and continuing for a total distance of 1352.82 feet to an iron rod with cap stamped "GeoSurv" found for corner on the Southeasterly line of said **McCLENNY SURVEY**, the same being the Northwesterly line of said **PAYNE SURVEY**;

THENCE S 50°01'31" W, along the common line of said **McCLENNY** and **PAYNE SURVEYS**, a distance of 427.88 feet to the **POINT OF BEGINNING** and containing 35.00 acres of land.

NOTE

THIS DOCUMENT HAS BEEN PREPARED UNDER 22 TAC § 663.23. IT 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 INTERESTS IMPLIED OR ESTABLISHED BY THE CREATION OR RECONFIGURATION OF THE BOUNDARY OF THE POLITICAL SUBDIVISION FOR WHICH IT HAS BEEN PREPARED



PREPARED
May 23, 2005
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

PAGE 2 OF 2

LEGAL DESCRIPTION

Being Tract 10 of League City Semi-Tropical Gardens, a subdivision in the Rodney Anthony Survey in Galveston County, Texas, according to the map thereof of record in Volume 238, Page 8, of the Map Records of the County Clerk of Galveston County, Texas, and being more particularly described by metes and bounds as follows

BEGINNING at a Tx DOT Highway Department monument (brass disc set in concrete) marking PC Station 212-37 60, as per Highway Department right-of-way maps, lying in the north right-of-way line of F M No 646 (based on a 120 foot wide right-of-way) at its intersection with the east line of a 25 foot wide unimproved right-of-way line,

THENCE, in an easterly direction with the north line of said F M No 646 and the beginning of a curve to the right with a central angle of 03 degrees 28 minutes, 49 seconds and a radius of 11,519.16 feet and chord bearing and distance of North 88 degrees 47 minutes 15 seconds East - 699.60 feet, an arc length of 699.71 feet to an established point (from which a 1/2" Iron rod bears South 37 degrees 06 minutes 43 seconds West - 1.21 feet) marking its intersection with the east line of a 40 foot wide unimproved right-of-way,

THENCE, North 03 degrees 03 minutes 32 seconds West along the east line of said 40 foot wide unimproved right-of-way and the west line of the Paul and Geraldine Hopkins Tract as recorded in G C C F No 9028574 at a distance of 504.48 feet (deed called 504.50 feet) passing the northwest corner and also being the southwest corner of Tract 11 of said League City Semi-Tropical Gardens in all a total distance of 748.48 feet to a 5/8 inch iron rod with cap set marking the southwest corner of said Tract 10 and also being the **POINT OF BEGINNING**,

THENCE North 03 degrees 03 minutes 32 seconds West continuing along the said east line of said 40' foot wide unimproved right-of-way and the west line of said Tract 10 a distance of 313.00 feet to a 5/8 inch iron rod with cap set marking the northwest corner of the herein described tract,

THENCE North 86 degrees 59 minutes 31 seconds East along the common line of Tract 9 and Tract 10 a distance of 660.00 feet to a 5/8 inch iron rod with cap set marking the northeast corner of the herein described tract,

THENCE South 03 degrees 03 minutes 32 seconds East along the common line of Tract 10 and Tract 17 a distance of 313.00 feet to a 5/8 inch iron rod with cap set lying in the north line of a 40 foot wide unimproved right-of-way and also being the south line of said Tract 10 marking the southeast corner of the herein described tract,

THENCE South 86 degrees 59 minutes 31 seconds West along the south line of said Tract 10 and the north line of said 40 foot wide unimproved right-of-way a distance of 560.00 feet to the **POINT OF BEGINNING** and containing 4.742 acres (206,580 square feet) of land more or less.

**TRACT 3 - 23.76 ACRE TRACT
TO BE ANNEXED INTO M.U.D. 45**

All that certain 23.76 acre tract of land located in the **JOHN MILES SURVEY, ABSTRACT 55**, Galveston County, Texas, being the same property described in a deed recorded in Volume 1553, Page 589 in the Office of the County Clerk of Galveston County and being more particularly described by metes and bounds as follows:

BEARING STRUCTURE IS BASED ON AN 801.500 ACRE TRACT DESCRIBED AS TRACT 1 IN A DEED RECORDED UNDER FILM CODE NO. 017-25-0583 IN THE OFFICE OF THE COUNTY CLERK OF GALVESTON COUNTY.

COMMENCING at a 1/2 inch iron rod found marking the South corner of said **MILES SURVEY**, lying on the Northeasterly line of the **RODNEY ANTHONY SURVEY, ABSTRACT 630**;

THENCE N 58°44'29" W, along the Southwesterly line of said **MILES SURVEY** and the Northeasterly line of said **ANTHONY SURVEY**, a distance of 420.00 feet to an iron rod with cap stamped "GeoSurv" found marking the South corner and **POINT OF BEGINNING** of the herein described tract;

THENCE N 58°44'29" W, continuing along the common survey line, a distance of 420.00 feet to a 5/8 inch iron rod with cap stamped "GeoSurv" set for corner;

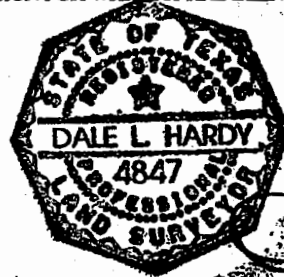
THENCE N 49°45'31" E, parallel to the Southeasterly line of said **MILES SURVEY**, a distance of 2704.90 feet to a point for corner on the Westerly line of a 300 foot wide Houston Lighting and Power right-of-way, from which a 5/8 inch iron rod bears S 08°12' E, 1.95 feet;

THENCE S 29°05'29" E, along the Westerly line of said 300 foot wide Houston Lighting and Power right-of-way, a distance of 405.96 feet to an iron rod with cap stamped "GeoSurv" found for corner;

THENCE S 49°45'31" W, parallel to the Southeasterly line of said **MILES SURVEY**, a distance of 2493.13 feet to the **POINT OF BEGINNING** and containing 23.76 acres of land.

NOTE: THIS DOCUMENT HAS BEEN PREPARED UNDER 22 TAC § 663.23; 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 INTERESTS IMPLIED OR ESTABLISHED BY THE CREATION OR RECONFIGURATION OF THE BOUNDARY OF THE POLITICAL SUBDIVISION FOR WHICH IT HAS BEEN PREPARED.

PREPARED
May 23, 2005
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@geosurville.com

ORDINANCE NO. 2006-96

AN ORDINANCE AMENDING ORDINANCE NO. 2003-53
APPROVING SECOND AMENDMENT TO THE UTILITY
AGREEMENT BY AND BETWEEN GALVESTON COUNTY
MUNICIPAL UTILITY DISTRICT NO. 45, LEAGUE CITY
INVESTORS, LTD. AND THE CITY OF LEAGUE CITY, TX

WHEREAS, by Ordinance No. 2003-53, the City of League City, Texas approved a Utility Agreement by and between Galveston County Municipal Utility District No. 45 (the "District"), League City Investors, Ltd. 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 area within the District comprising 593.48 acres, more or less, in Galveston County, Texas; and

WHEREAS, by Resolution No. 2006-09, City Council of the City of League City, Texas has granted its consent to the annexation by the District of an additional 256.382 acres of land, more or less, as described in the Petition for Consent to Annex Land Into Galveston County Municipal Utility District No. 45; and

WHEREAS, by Resolution No. 2006- 43, City Council of the City of League City, Texas has granted its consent to the annexation by the District of an additional 65.44 acres of land, more or less, as described in the Petition for Consent to Annex Land Into Galveston County Municipal Utility District No. 45; and

WHEREAS, the City and District wish to approve a Second Amendment to the Utility Agreement in order to clarify that the terms and conditions of the Agreement shall also apply to the additional 65.44 acres being annexed by the District;

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.

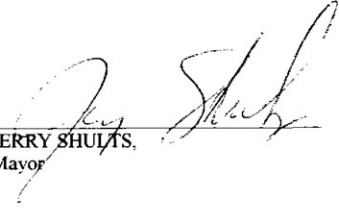
Section 2. That the Mayor is authorized to execute the Second Amendment to Utility Agreement by and between Galveston County Municipal Utility District No. 45 (the "District"), League City Investors, Ltd. and the City of League City, Texas as shown in substantially the same form as Exhibit "A."

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 10th day of October, 2006.

PASSED second reading the 24th day of October, 2006.

PASSED AND ADOPTED the 24th day of October, 2006.



JERRY SHULTS,
Mayor

ATTEST:


BARBARA F. LONG,
City Secretary

**SECOND AMENDMENT TO
UTILITY AGREEMENT
BY AND BETWEEN
GALVESTON COUNTY MUNICIPAL UTILITY DISTRICT NO. 45,
LEAGUE CITY INVESTORS, LTD.,
AND
THE CITY OF LEAGUE CITY, TEXAS**

STATE OF TEXAS §
 §
COUNTY OF GALVESTON §

THIS SECOND AMENDMENT ("Amendment") to the Utility Agreement By and Between Galveston County Municipal Utility District No. 45, League City Investors, Ltd., and the City of League City, Texas (the "Agreement") made and entered into as of the 24 day of October, 2006 by and between GALVESTON COUNTY MUNICIPAL UTILITY DISTRICT NO. 45, 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"), LEAGUE CITY INVESTORS, LTD. 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 the League City Investors, Ltd., have previously entered into the Agreement, as amended; 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, as amended, contemplated that the District is 849.862 acres and the Agreement does not provide a mechanism to annex land to the District; and

WHEREAS, the District seeks to annex 65.44 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.

A G R E E M E N T

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, as amended. 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, it being understood by the parties that the Developer's prior dedication of an approximately 11-acre site and payment of a \$200 per platted lot fee to the City shall serve only to satisfy its park dedication requirements as they pertain to the 593.48 acres comprising the District's initial boundaries.

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.

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 14 day of October 2006.

THE CITY OF LEAGUE CITY, TEXAS

By: Rich Allen, P.E.
Assistant City Manager

ATTEST:

By: Barbara J. Long
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 24 day of October 2006.

LEAGUE CITY INVESTORS, LTD.

By: Sam Boyd
Sam Boyd
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 24 day of October 2006.

UTILITY

GALVESTON COUNTY MUNICIPAL

DISTRICT NO. 45

By: Tedd Okrowski
Name: TEDD OKROWSKI
Title: PRESIDENT

ATTEST:

By: Joe T. Choate
Name: JOE T. CHOATE
Title: Secretary

SECOND ANNEXATION
TO
GALVESTON COUNTY M.U.D. #45
CITY OF LEAGUE CITY
GALVESTON COUNTY, TEXAS

TRACT 1

All that certain 2.53 acre tract of land out of and a part of that certain tract or parcel of land conveyed by Mark A. Foster to Sam P. Boyd, by instrument of record under Clerk's File Number 2005051839 in the Official Public Records of Real Property of Galveston County, Texas, said tract being situated in Lot 6 of HALLS ADDITION TO NICHOLSTONE, a Subdivision in Galveston County, according to the map or plat recorded in Volume 215, Page 414, of the Deed Records 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 LISTED ARE BASED ON SURFACE COORDINATES AND DISTANCES SHOWN HEREON ARE SURFACE DISTANCE. ALL DISTANCES SHOWN HEREON MAY BE CONVERTED TO GRID BY MULTIPLYING BY A SCALE FACTOR OF 0.999867458.

BEGINNING at the Northeast corner of the ROBERT HALL SURVEY, Abstract 78, the same being on the most Northerly South line of the RAFAEL BASQUEZ SURVEY, Abstract 32, said point being at the East line of a 25 foot wide roadway (not open), and from which a 1 inch iron pipe bears N 37°40'26" E, 0.88 feet;
THENCE S 03°02'30" E, along the East line of said ROBERT HALL SURVEY, the East line of said 25 foot wide roadway, and the South line of said RAFAEL BASQUEZ SURVEY, a distance of 199.32 feet to a 5/8 inch iron rod with cap stamped 'GeoSurv' set for corner;
THENCE S 86°59'54" W, a distance of 551.25 feet to a 5/8 inch iron rod with cap stamped 'GeoSurv' set for corner, said point being at the West line of said Lot 6;
THENCE N 03°00'06" W, along the West line of said Lot 6, a distance of 200.00 feet to a 5/8 inch iron rod with cap stamped 'GeoSurv' set for the Northwest corner of said Lot 6, said point being at the North line of said ROBERT HALL SURVEY and the most Northerly South line of said RAFAEL BASQUEZ SURVEY;
THENCE N 87°04'07" E, along the North line of said ROBERT HALL SURVEY and the most Northerly South line of said RAFAEL BASQUEZ SURVEY, a distance of 551.12 feet to the POINT OF BEGINNING and containing a calculated area of 2.53 acres of land.

EXHIBIT 'A'

TRACT 1

NOTE: THESE PROPERTY DESCRIPTIONS HAVE BEEN PREPARED UNDER TAC 663.21; DO NOT REFLECT THE RESULTS OF AN ON THE GROUND SURVEY, AND ARE NOT INTENDED TO BE USED TO CONVEY TITLE OR ESTABLISH INTERESTS IN REAL PROPERTY EXCEPT THOSE RIGHTS OR INTERESTS IMPLIED OR ESTABLISHED BY THE CREATION OR RECONFIGURATION OF THE BOUNDARY OF THE POLITICAL SUBDIVISION FOR WHICH THEY HAVE BEEN PREPARED.



PREPARED
JUNE 30, 2006
AMENDED AUGUST 19, 2006
AMENDED AUGUST 19, 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

SECOND ANNEXATION
TO
GALVESTON COUNTY M.U.D. #45
CITY OF LEAGUE CITY
GALVESTON COUNTY, TEXAS

TRACT 2

All that certain 25.54 acre tract of land, situated in the **RODNEY ANTHONY SURVEY**, Abstract 630, Galveston County, Texas, being Tracts 6, 7, 8, 9 and 15 of **LEAGUE CITY SEMI-TROPICAL GARDENS**, a Subdivision in Galveston County, according to the map or plat recorded in Volume 238, Page 8, being the same property described in deeds recorded under Galveston County Clerk File Nos. 8207415 and 8214070, said map and deeds recorded in the Office of the County Clerk of Galveston County, Texas, together with the Westerly adjoining 40 foot wide roadway (not open), said 25.54 acre tract 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 LISTED ARE BASED ON SURFACE COORDINATES AND DISTANCES SHOWN HEREON ARE SURFACE DISTANCE. ALL DISTANCES SHOWN HEREON MAY BE CONVERTED TO GRID BY MULTIPLYING BY A SCALE FACTOR OF 0.999867458.

COMMENCING at the Northeast corner of the **ROBERT HALL SURVEY**, Abstract 78, the same being on the most Northerly South line of the **RAFAEL BASQUEZ SURVEY**, Abstract 32, from which a 1 inch iron pipe bears N 37°40'26" E, 0.88 feet; THENCE S 03°02'30" E, along the East line of said **ROBERT HALL SURVEY** and the South line of said **RAFAEL BASQUEZ SURVEY**, a distance of 544.11 feet to a 5/8 inch iron rod with cap stamped 'GeoSurv' set for corner, said point being the Northwest corner of said **RODNEY ANTHONY SURVEY** and of said **LEAGUE CITY SEMI-TROPICAL GARDENS**; THENCE N 87°02'35" E, along the common line of the **ANTHONY** and **BASQUEZ SURVEYS**, the same being the Northwest line of said **LEAGUE CITY SEMI-TROPICAL GARDENS**, a distance of 660.00 feet to an 1 inch iron pipe found for the **POINT OF BEGINNING** of the herein described tract of land, said point also being the Northeast corner of Block 1 of said **LEAGUE CITY SEMI-TROPICAL GARDENS**, said point being at the West line of said 40 foot wide roadway; THENCE N 87°02'35" E, along the North line of Block 6, **LEAGUE CITY SEMI-TROPICAL GARDENS** and the **ANTHONY SURVEY**, the same being the South line of said **BASQUEZ SURVEY**, a distance of 517.42 feet to a 5/8 inch iron rod with cap stamped 'GeoSurv' set for angle point to the left and from which point a found 3 inch iron pipe bears S 87°10'48" W, 10.70 feet;

EXHIBIT 'A'
TRACT 2

THENCE N 48°30'33" E, continuing along the Northerly line of Block 6, **LEAGUE CITY SEMI-TROPICAL GARDENS** and the **ANTHONY SURVEY** and the Southerly line of the **BASQUEZ SURVEY**, a distance of 107.34 feet to a 5/8 inch iron rod found for angle point to the right, said point also being at the South line of a 40 foot wide roadway (not open);
THENCE N 86°14'59" E, along the North line of Block 6 and the South line of said 40 foot wide roadway, a distance of 99.83 feet to a 5/8 inch iron rod found marking the Northeast corner of said Block 6, the same being the Northwest corner of Block 13;
THENCE S 02°49'22" E, along the East line of Blocks 6 and 7, the same being the West line of Blocks 13 and 14, a distance of 645.56 feet to a 5/8 inch iron rod found for the Southeast corner of Block 7, the same being the common corner of Blocks 7, 8, 14 and 15;
THENCE N 87°06'17" E, along the North line of Block 15, the same being the South line of Block 14, a distance of 659.76 feet to a "T-post" fence post found for the Northeast corner of Block 15, the same being the Southeast corner of Block 14, lying on the West line of a 40 foot wide roadway (not open);
THENCE S 02°47'32" E, along the East line of Block 15, the same being the West line of said 40 foot wide roadway, a distance of 332.74 feet to a fence post found marking the Southeast corner of Block 15, the same being the Northeast corner of Block 16;
THENCE S 87°03'49" W, along the South line of Block 15, the same being the North line of Block 16, a distance of 658.80 feet to a 5/8 inch iron rod found for the Southwest corner of Block 15, the same being the common corner of Blocks 8, 9, 15 and 16;
THENCE S 03°05'35" E, along the East line of Block 9, the same being the West line of Block 16, a distance of 332.73 feet to a 5/8 inch iron rod with cap stamped 'GeoSurv' set for the Southeast corner of Block 9, the same being the common corner of Blocks 9, 10, 16 and 17, and from which a found 1/2 inch iron rod bears S 55°34'55" W, 0.76 feet;
THENCE S 87°02'21" W, along the South line of Block 9, the same being the North line of Block 10, a distance of 660.11 feet to a 5/8 inch iron rod with cap stamped 'GeoSurv' set for corner, said point being the Southwest corner of said Block 9, the Northwest corner of said Block 10, and being at the East line of a 40 foot wide roadway (not open);
THENCE S 02°57'39" E, along the West line of said Block 10 and the East line of said 40 foot wide roadway (not open), a distance of 313.00 feet to an 1 inch iron pipe found for corner;
THENCE S 59°24'03" W, a distance of 46.36 feet to a point for Southwest corner of the herein described tract of land, said point being the Southeast corner of Block 5 of said **LEAGUE CITY SEMI-TROPICAL GARDENS**, at the East line West line of said 40 foot wide roadway (not open), and from which a found 1/2 inch iron rod bears S 59°24'03" W, 0.75 feet;
THENCE N 02°57'25" W, along the East line of Blocks 5, 4, 3, 2 and 1, the same being the West line of said 40 foot wide roadway, a distance of 1577.45 feet to the **POINT OF BEGINNING** and containing a calculated area of 25.54 acres of land.

EXHIBIT 'A'
TRACT 2

NOTE: THESE PROPERTY DESCRIPTIONS HAVE BEEN PREPARED UNDER TAC 653.23; DO NOT REFLECT THE RESULTS OF AN ON THE GROUND SURVEY, AND; ARE NOT INTENDED TO BE USED TO CONVEY TITLE OR ESTABLISH INTERESTS IN REAL PROPERTY EXCEPT THOSE RIGHTS OR INTERESTS IMPLIED OR ESTABLISHED BY THE CREATION OR RECONFIGURATION OF THE BOUNDARY OF THE POLITICAL SUBDIVISION FOR WHICH THEY HAVE BEEN PREPARED.



PREPARED
JUNE 30, 2006
AMENDED AUGUST 10, 2006
AMENDED AUGUST 19, 2006
BY

DALE L. HARDY / GEOSURV, LLC
REGISTERED PROFESSIONAL LAND SURVEYORS
P.O. BOX 246, LEAGUE CITY, TEXAS 77574
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SECOND ANNEXATION
TO
GALVESTON COUNTY M.U.D. #45
CITY OF LEAGUE CITY
GALVESTON COUNTY, TEXAS

TRACT 3

All that certain 37.37 acre tract of land situated in the JOHN MILES SURVEY, Abstract No. 153, Galveston County, Texas, said 37.37 acres 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 LISTED ARE BASED ON SURFACE COORDINATES AND DISTANCES SHOWN HEREON ARE SURFACE DISTANCE. ALL DISTANCES SHOWN HEREON MAY BE CONVERTED TO GRID BY MULTIPLYING BY A SCALE FACTOR OF 0.999867458.

BEGINNING at a 5/8 inch iron rod with cap stamped 'GeoSurv' found marking the most Westerly corner of said MILES SURVEY and the most Westerly corner of a tract of land conveyed by Earl V. Snyder to Mearl L. Jones by instrument recorded under Film Code Number 009-64-2701, G.C.D.R., same being the most Southerly corner of the NATHAN FULLER SURVEY, ABSTRACT No. 67, same being a point in the Northeast line of WHISPERING LAKES RANCH, SECTION TWO, PHASE II, according to the map or plat thereof recorded at Plat Record 2005A, Map Number 91, Galveston County Map Records (G.C.M.R.); THENCE N 49°44'55" E, along the Southeast line of said FULLER SURVEY, at 786.17 feet passing a 5/8 inch iron rod with cap stamped 'GeoSurv' set marking the most Northerly corner of said Snyder to Jones tract, from which a 1/2 inch iron rod found bears N 05°55' W, 0.74 feet, said point being the most Westerly corner of a tract of land conveyed by Charles F. Manis to Mearl L. Jones by instrument recorded under Film Code Number 007-04-2268, G.C.D.R. and continuing for a total distance of 1548.63 feet to a 5/8 inch iron rod with cap stamped 'GeoSurv' set marking the most Northerly corner of the both herein described tract and said Manis to Jones tract, and from which a 1/2 inch iron rod found bears N 89°37' E, 1.24 feet; THENCE S 40°14'29" E, along the Northeast line of said Manis to Jones tract, a distance of 664.87 feet to a 1/2 inch iron rod found marking the most Easterly corner of said Manis to Jones tract, said point being at the Northwest line of a tract of land, called Tract II, conveyed by C.L. Gordy, et al, to Mearl L. Jones by instrument recorded under Film Code Number 010-27-2341, G.C.D.R.; THENCE N 49°45'31" E, along the Northwest line of said Tract II, a distance of 383.36 feet to an 1/2 inch iron rod with cap found for the most Northerly corner of said Tract II;

EXHIBIT 'A'
TRACT 3

THENCE S 40°14'29" E, along the Northeast corner of said Tract II, a distance of 409.56 feet to an 1/2 inch iron rod found for the most Easterly corner of both the herein described tract end of said Tract II and being at the Northerly line of that certain tract or parcel of land conveyed to Sam F. Boyd by instrument of record at Clerks' File Number 2005054897, G.C.D.R., the same being the North line of existing MUD #45;

THENCE S 49°45'31" W, along and with the existing North line of said MUD #45, at 547.00 feet passing the most Southerly corner of said Tract II, same being the most Easterly corner a tract of land conveyed by Joseph M. Agruso to Mearl L. Jones by instrument recorded under Film Code Number 011-42-0546, G.C.D.R., and from which a found 1/2 inch iron rod bears S 30°47' W, 0.37 feet; at 1094.00 feet passing a 5/8 inch iron rod with cap stamped 'GeoSurv' set for the most Southerly corner of said Agruso to Jones tract, same being the most Easterly tract of a tract of land, called Tract I, conveyed by C.L. Gordy, et al, to Mearl L. Jones by instrument recorded under Film Code Number 010-27-2341, G.C.D.R., and from which a found 1/2 inch iron rod bears N 74°27' W, 0.81 feet; and continuing for a total distance of 1572.58 feet to a 5/8 inch iron rod with cap stamped 'GeoSurv' set for the Southeast corner of said Tract I, said point being at the Northeast line of said WHISPERING LAKES RANCH, SECTION TWO, PHASE II;

THENCE N 58°44'29" W, along the Northeast line of said WHISPERING LAKES RANCH, SECTION TWO, PHASE II, at 419.90 feet passing a 5/8 inch iron rod with cap stamped 'GeoSurv' set for the most Southerly corner of said Tract I, same being the Southeast corner of said Snyder to Jones tract, and continuing for a total distance of 1122.70 feet to the POINT OF BEGINNING and containing a calculated area of 37.37 acres of land.

NOTE: THESE PROPERTY DESCRIPTIONS HAVE BEEN PREPARED UNDER TAC 662.23; DO NOT REFLECT THE RESULTS OF AN ON THE GROUND SURVEY, AND; ARE NOT INTENDED TO BE USED TO CONVEY TITLE OR ESTABLISH INTERESTS IN REAL PROPERTY EXCEPT THOSE RIGHTS OR INTERESTS IMPLIED OR ESTABLISHED BY THE CREATION OR RECONFIGURATION OF THE BOUNDARY OF THE POLITICAL SUBDIVISION FOR WHICH THEY HAVE BEEN PREPARED.

PREPARED
JUNE 30, 2006
AMENDED AUGUST 10, 2006
AMENDED AUGUST 19, 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: dlhardy@geosurvlc.com



City of League City, TX

300 West Walker
League City TX 77673

Text File

File Number: 11-0202

13A.

Introduced: 4/20/2011

Current Status: First Reading

Version: 1

Matter Type: Agenda Item

Title

Consider and take action on an ordinance amending Ordinance No. 2003-53 approving the Third Amendment to the Utility Agreement by and between Galveston County Municipal Utility District No. 45, League City Investors, Ltd. and the City of League City, Texas (Assistant City Manager, Public Works)

Staff recommends approval.

Background:

In an effort to resolve pending litigation by and between Ernest Randall, Hidden Lakes Investments, Sam Boyd, Galveston County MUD No. 45 and others involving that certain lake known as the "Gun Range Lake," the parties recently entered into a Settlement Agreement whereby, among other things, the MUD will modify its outfall structure east of the lake in order to restore lake levels to 12 feet and Hidden Lakes will convey its interest in the lake to Mr. Randall. Although the City is not a party to the lawsuit, there are certain components in the Settlement Agreement that are contingent on the City's approval of the MUD's Master Drainage Plan and control of developed flows from adjacent properties into the lake. The MUD has requested that these additional conditions be incorporated into an amendment to the existing Utility Agreement for MUD No. 45.

FUNDING

☒ NOT APPLICABLE

☐ Funds are available from Account # _____

☐ Requires Budget Amendment to transfer from Account # _____ to Account # _____

Ordinance No. 2011-22



ALLEN BOONE HUMPHRIES ROBINSON LLP

ATTORNEYS AT LAW

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

Direct Line: (713) 860-6424
Direct Fax: (713) 860-6624

lsotirake@abhr.com

Linda F. Sotirake
Legal Assistant

August 26, 2011

Ms. Dale Pearson
City of League City
Public Works Adm.
300 W. Walker Street
League City, TX 77573

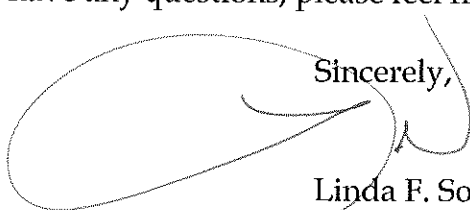
Re: Galveston County Municipal Utility District No. 45 (the "District")

Dear Ms. Pearson:

Enclosed please find three (3) originals of the executed Third Amendment to Utility Agreement. Following execution, please forward one (1) original Amendment to me for the District's files.

Should you have any questions, please feel free to call me at (713) 860-6424.

Sincerely,

A handwritten signature in black ink, appearing to read 'Linda F. Sotirake', with a large, loopy initial 'L'.

Linda F. Sotirake
Legal Assistant

Enclosures

Ordinance No. 2011-22
Exhibit "A"

**THIRD AMENDMENT TO
UTILITY AGREEMENT
BY AND BETWEEN
GALVESTON COUNTY MUNICIPAL UTILITY DISTRICT NO. 45,
AND
THE CITY OF LEAGUE CITY, TEXAS**

STATE OF TEXAS §
 §
COUNTY OF GALVESTON §

THIS THIRD AMENDMENT ("Amendment") to the Utility Agreement By and Between Galveston County Municipal Utility District No. 45, League City Investors, Ltd., and the City of League City, Texas (the "Agreement") made and entered into as of the 10th day of May, 2011 by and between GALVESTON COUNTY MUNICIPAL UTILITY DISTRICT NO. 45, 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"), and the CITY OF LEAGUE CITY, TEXAS, a municipal corporation (the "City").

WITNESSETH

WHEREAS, the District and the City have previously entered into the Agreement, as amended; 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, the City and the District are willing to amend the Agreement to establish certain Drainage requirements for the District and all landowners whose land might drain into the District's drainage system.

WHEREAS, the District, a third-party defendant in a lawsuit entitled *Ernest Randall v. BG Group, LLC, et al.*, Cause No. 2008-08CV0354 in the 122nd Judicial District Court of Galveston County (the "Suit");

WHEREAS, the Suit seeks, among other things, to require modifications to the District's drainage facilities;

WHEREAS, the parties to the Suit have reached a settlement agreement conditioned upon the District's modification of its Drainage facilities and upon the District having certain agreements with the City and the landowners of property that drain or potentially could drain into the District's drainage system;

WHEREAS, these agreements regarding future drainage are critical to the District's development of a Master Drainage Plan to provide for the orderly development within the District, planning of future improvements and to protect the lives and property of residents of the City and the District;

A G R E E M E N T

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. The City hereby approves the District's Master Drainage Plan as attached hereto as **Exhibit A**, including the identification of the future drainage and detention improvements necessary for the full build-out of the land in the District contained therein. The District's Master Drainage Plan shall be deemed to include that certain "Sequence of Construction" dated April 11, 2011 as an addendum thereto, which shall serve to define the sequence of drainage improvements to be implemented by the District by reference to phase completion.

Section 2. The City Council hereby orders and directs the City's Engineer and all other officers and employees of the City to take all action necessary to evidence approval of the plans and specifications for South Shore Boulevard, Phase 3; Improvements to Existing Lake at Hidden Lakes, and sections 3, 4 and 5 of Hidden Lakes in the District.

Section 3. The City will not impose on the District any drainage or detention requirements not contained in the Master Drainage Plan unless there is a major change to the land plan assumptions in the Master Drainage Plan. "Major Change" would be limited to change in land use (not density) of more than 10% of the total acreage in the District.

Section 4. The City will not permit any developed flows from any adjacent land owner into the Shared Lake, which Shared Lake is shown on **Exhibit B**, except the developed flows currently resulting from the present condition of the 88-acre Randall tract shown in the Master Drainage Plan. All future developed flows from any properties into the Shared Lake will be detained "off-lake" and discharged into the lake at undeveloped rates. The City will require all appropriate storm water quality

management facilities be installed at a point in the system upstream of the discharge point into the Shared Lake.

Section 5. As part of any site development plan for any property that could potentially discharge into the Shared Lake, the City will provide the District's engineer 60 days notice to review and comment upon both the Drainage Master Plan and the site development plans. Such review will be limited to the confirmation of i) the extent of the drainage area, ii) the adequacy of the off-lake detention ponds to detain 100% of the developed flows, and iii) the storm water management and storm water quality facilities are appropriate and consistent with the City's standards and practice for similar facilities. If the District's Engineer believes these requirements are not being met, the plans will be submitted to a third party engineer mutually agreed upon by the landowners' engineer and the District's engineer, from the following list: Pate Engineers, Jacobs, LJA Engineering and Surveying, or RG Miller, Inc.

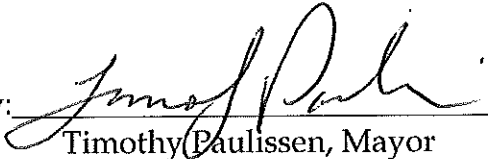
Section 6. The City will take all appropriate measures to ensure that no hazardous substance is discharged into the Shared Lake.

Section 7. 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.

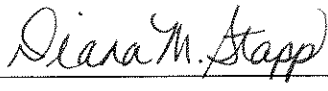
Section 8. By execution hereof, League City Investors, Ltd. acknowledges this amendment to the Utility Agreement.

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 2nd day of September 2011.

THE CITY OF LEAGUE CITY, TEXAS

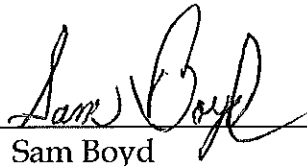
By: 
Timothy Paulissen, Mayor

ATTEST:

By: 
Diana Stapp, 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 18th day of August 2011.

LEAGUE CITY INVESTORS, LTD.

By: 
Sam Boyd
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 18th day of August 2011.

GALVESTON COUNTY MUNICIPAL
UTILITY DISTRICT NO. 45

By: Jedd Olkowski
Name: JEDD OLKOWSKI
Title: PRESIDENT

ATTEST:

By: Joe T. Choate
Name: JOE T. CHOATE
Title: Secretary

Exhibit A
Hidden Lakes Subdivision Master Drainage Plan

EXHIBIT A

DISTRICT'S MASTER DRAINAGE PLAN

Hidden Lakes Master Drainage Plan

Sequence of Construction

April 11, 2011

Approved
[Signature]
4-12-11

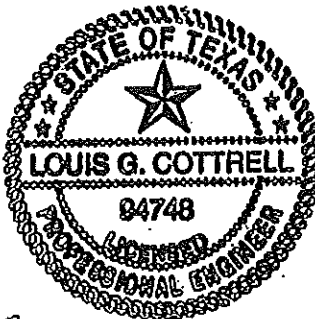
Phase	Project Description
1.1	Randall Lake Overflow Wall - Features 6 foot wide weir at FL=12.00'
1.2	Detention Pond Interconnect Channel (MT-P2P3 to MT-P4) - 20 foot BW, 6:1 SS, FL=8.00'
1.3	Hidden Lakes, Sections 3, 4, and 5, Phases 1 and 2
2.1	MT-P6_2, a portion of MT-P6_1, and outfall to MT-P5
2.2	Hidden Lakes, Sections 6 and 7 (SF-9 and SF-10) east of SSB
3.1	MT-P6_1 - Construct the remainder.
3.2	Gum Bayou Diversion Structure - weir, 60 foot BW, 6:1 SS, FL=10.20'
3.3	Gum Bayou Improvements # 1 - Move Drop Structure upstream to Bay Ridge Box Culvert - add one 42" RCP to existing 8' x 7' RCB - from School Road crossing to diversion excavate 20 foot BW, 5:1 SS on west bank at 0.05% - School Road to Bay Ridge Culvert excavate 12 foot BW, 5:1 SS on east bank at 0.05%
3.4	Gum Bayou Improvements #2 - from d/s of Riley Wood Bridge #1 to d/s of Riley Wood Bridge #2 excavate 12 foot BW, 3:1 SS, at 0.10% in bottom one foot of existing channel
3.5	Hidden Lakes, Sections 8 and 9 (SF-7 and SF-8) east of SSB
4.1	East Fork Detention Pond #1 - Provide 111 ac-ft storage volume - diversion structure with 70 foot BW, 6:1 SS, FL=8.20' - 24" RCP Outfall pipe
4.2	East Fork Detention Pond #2 - Provide 37 ac-ft storage volume - diversion structure with 60 foot BW, 6:1 SS, FL=8.90' - 24" RCP Outfall pipe
4.3	Hidden Lakes Detention System Outlet - Add Weir with 5 foot BW, 6:1 SS, FL=9.00'
4.4	Hidden Lakes, Sections 10 and 11 (SF-5 and SF-6) east of SSB and Commercial Tracts along FM 646

HIDDEN LAKES SUBDIVISION MASTER DRAINAGE PLAN

CITY OF DICKINSON, TEXAS
CITY OF LEAGUE CITY, TEXAS
CITY OF TEXAS CITY, TEXAS

Prepared for:

Galveston County Municipal Utility District No. 45



Louis G. Cottrell
8-27-10

Prepared by:

DANNENBAUM
ENGINEERING CORPORATION
T.B.P.E. FIRM REGISTRATION #302
3100 WEST ALABAMA HOUSTON, TX 77099 (713) 520-9570

*Approved
with control wear
lowest elev. 12.00
and constructed
per AECFD criteria.*

John M. [Signature]
2-18-2011

August 2010

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Section 1

Introduction

1.1 Background

Hidden Lakes is a 480 acre multi-use development in north central Galveston County, which lies within the city limits of League City and the boundaries of Galveston County Municipal Utility District No. 45. It is located on the south side of League City Parkway (State Highway 96) extending south to F.M. 646, and bisected by South Shore Boulevard. The study area includes two non-contiguous commercial tracts located south of F.M. 646. The properties drain to Gum Bayou, which bounds the eastern portion of the property. It is adjacent to and south of the Bay Ridge subdivision. Exhibit 1 is a vicinity map.

Gum Bayou is a tributary to lower Dickinson Bayou. The Gum Bayou watershed covers approximately 7,760 acres (12.12 sq mi) and includes portions of the cities of League City, Texas City, and Dickinson. Within the upper reaches of the Gum Bayou Watershed, several large tracts of land have been developed or are under consideration for development, such as Hidden Lakes. Gum Bayou serves as the drainage outfall for these developments.

1.2 Scope of Work

The scope of DEC's work on this project is as follows:

- Establish target peak flows and water surface elevations on Gum Bayou and its East Fork tributary based on existing conditions and current criteria
- Quantify impacts on flows and water surface elevations as a result of the proposed Hidden Lakes development
- Design a mitigation plan to offset the impacts of Hidden Lakes

1.3 Data Collection

Numerous studies have been done on the Gum Bayou and Dickinson Bayou watersheds. These include the following:

- *Dickinson Bayou Watershed Regional Drainage Plan Phase 1 – Hydraulic Baseline Report*, Walsh Engineering/Dodson & Associates, August 1992
- *Gum Bayou Watershed Update*, Dannenbaum Engineering Corporation (DEC), February 2004
- *Gum Bayou Watershed Update and Proposed Channel Improvements*, DEC, rev. May 2004
- *Gum Bayou Watershed Update and Proposed Channel Improvements*, DEC, rev. November 2004
- *Moody Tract Master Drainage Plan*, 4Site Engineering, January 2005
- *Gum Bayou Watershed Update and Proposed Channel Improvements*, DEC, rev. August 2006
- *Dickinson Bayou Watershed Floodplain Delineation*, JKC & Associates, December 2008

Some of the data from these previous studies were included here.

In 2006, aerial survey of Galveston County was taken to create new LiDAR data, which became available from the Texas Natural Resources Information System (TNRIS) in 2010. Topographic data from this was used as part of the modeling effort of this study.

Section 2 Methodology

2.1 Hydrologic Methodology

Of the reports mentioned in section 1.3, all those from 2006 and before used the U.S. Army Corps of Engineers' (USACE) HEC-1 program to calculate flows. Beginning with Dodson's Dickinson Bayou report, the rainfall data used was the distribution dictated in the manual *Hydrology for Harris County* (USACE, 1988), with the 24-hour total rainfall amount being augmented by two percent as per League City standards. For a 100-year event, the total 24-hour rainfall used in these models was 13.18 inches.

On June 18, 2007, the hydrologic data and models used for the Tropical Storm Allison Recovery Project (TSARP) in Harris County became effective. It was requested by the City of League City that, in conjunction with ongoing work on the City's master drainage plan, that the TSARP data be used for this study. In addition, flow calculations were done using HEC-HMS version 3.4, the newest version of the USACE's program that has superseded HEC-1. 100-year, 24-hour rainfall under TSARP criteria is 13.77 inches.

2.2 Hydraulic Methodology

The Dodson Dickinson Bayou study used the USACE's HEC-2 program to calculate water surface elevations on the main channel and each tributary, including Gum Bayou. In the subsequent reports beginning in 2004, new hydraulic models for Gum Bayou were created using information from 2001 League City LiDAR data and channel section ground survey data, which were input into GIS, and from which was created geometric data for use in HEC-RAS, which has superseded HEC-2. Flows from HEC-1 were input into HEC-RAS, from which the water surface elevations were calculated. This was done in a steady flow analysis.

For this study, in addition to use of the new 2006 LiDAR data, it was decided that peak flows and water surface elevations would be calculated using the unsteady flow analysis capabilities of HEC-RAS. The reason behind this is that using an unsteady flow analysis would both allow for more efficient calculation of all conditions, and make re-calculation of various options less time-consuming.

Version 3.1.3 of HEC-RAS was used in this study.

Section 3 Existing Conditions

3.1 Description

As mentioned in section 1.1, Hidden Lakes is a proposed development to be located within the Gum Bayou watershed. Exhibit 2 is the existing conditions drainage area map as used for this study. There are two primary tributaries of the main channel: areas 38D1, 38D2, and 38E represent the East Fork tributary of Gum Bayou, while area 39 represents the West Fork tributary. The East Fork tributary is studied in more detail here.

Above F.M. 646 is where much of the proposed development will be. For this study, existing developments within the watershed include Bay Ridge subdivision (area 38A2), Mar Bella subdivision (formerly called Reflection Bay—area REFBAY), a K through 12 school complex (area 38A3), and Whispering Lakes subdivision (area 38B). The portions of the areas (MOODY1 and MOODY2) containing the proposed Hidden Lakes subdivision are considered totally undeveloped, with the exception of the 47.17-acre lake to the west.

3.2 Existing Conditions Flow Calculations

Because of the decision to analyze Gum Bayou using an unsteady flow analysis, flow hydrographs needed to be developed for input into the hydraulic model. Using TSARP methods, various parameters were determined in order to calculate the time of concentration (TC) and storage coefficient (R) needed in the Clark unit hydrograph method (see Appendix A). Once known, the TC and R and percent impervious values were input into a HEC-HMS model set up specifically to generate hydrographs for each subarea of Gum Bayou. The Green and Ampt loss method, used in the previous HEC-1 models, was also used in this study, with the same parameter values. The hydrograph peak flows from HEC-HMS can be found in Appendix A.

The rainfall data used in the HEC-HMS model also comes from TSARP. Harris County is divided into three regions, and League City is closest to region 3 (see Appendix D). Hence, the updated rainfall data for region 3, again augmented by two percent for League City, was used.

The generated hydrographs were then input into the HEC-RAS model. Because an unsteady analysis was performed, peak flows at the respective nodes would be calculated in the HEC-RAS environment (see Exhibit 2 for node locations). The hydrographs were input into the respective cross sections on the Gum Bayou main channel and East Fork tributary into which they flow (see Exhibit 4 for cross section locations). Models were created for the 10-year and 100-year events. The calculated existing conditions node flows can be seen in Table 1.1.

3.3 Existing Conditions Water Surface Elevations Calculations

As part of the same run, HEC-RAS also calculated the existing conditions water surface elevations on Gum Bayou and the East Fork. These can be seen in Tables 1.2 and 1.3 for the 10-year and 100-year events; these are the target elevations which can not be exceeded. HEC-RAS results can be found in Appendix A.

3.4 Existing Conditions in Dickinson Bayou

In addition to target conditions on Gum Bayou and the East Fork, it was also decided to show that there will be no flow increase on Dickinson Bayou downstream of the mouth of Gum Bayou as a result of the proposed development. To establish the existing conditions on Dickinson Bayou, the latest hydrologic model of the bayou from the JKC & Associates report was used. This model encompasses many of the tributaries to the bayou, including Gum Bayou. However, some aspects of it are not consistent with that of TSARP. In particular, these three aspects are different: 1) Rainfall data used does not consistently match that for Harris County region 3 with the two-percent augmentation; 2) The rainfall distribution peaks at 12 hours for a 24-hour event, instead of a 16-hour peak; 3) The initial-constant loss method was used as opposed to Green and Ampt.

In order to be consistent with the Gum Bayou modeling, these three aspects were revised in the Dickinson Bayou model to be consistent with TSARP. After these changes were made, the subareas and reaches of Gum Bayou were removed from the Dickinson Bayou model and replaced with a source node, which allows for a user-input hydrograph at that location. The input there is the resultant hydrograph at the mouth of Gum Bayou as calculated in the HEC-RAS model. The Dickinson Bayou HEC-HMS model was run, and the calculated peak flows can be seen in Table 1.1.

Section 4 Proposed Conditions

4.1 Background

The land plan for the proposed Hidden Lakes development can be seen on Exhibit 6. It will consist of two commercial tracts adjacent to the southwest side of State Highway 96; single-family residential lots less than ¼ acre; a series of internal detention lakes and channels (labeled with an MT prefix on Exhibit 6, plus the 47.17-acre Shared Lake), and commercial tracts south of F.M. 646, adjacent to both the Gum Bayou main channel and East Fork tributary. The outfall of the internal detention system has a 5'x6' RCB pipe set at flow line -0.1 foot and an overflow weir with a 5-foot-wide bottom, 6-to-1 side slopes, and flow line at elevation 9 feet.

It is expected that these tracts will be filled to an elevation above that of natural ground. Impacts, therefore, are expected to be as a result of both the fill and increased impervious area.

4.2 Proposed Conditions Flow Calculations

To better represent the drainage patterns of the proposed development, subareas MOODY1 and MOODY2 were divided as shown in Exhibit 3. The resulting subareas will drain into the proposed detention system in the following manner:

- MOODY1A, MOODY1B, MOODY2B, MOODY2C drain to MT-P2P3
- MOODY2D drains to MT-P4
- MOODY2E drains to MT-P6_1
- MOODY2F drains to MT-P6_2
- MOODY2G drains to MT-P5
- MOODY2A drains to the Shared Lake

The Shared Lake is connected to the internal system at MT-P2P3 by two 4'x2' RCB pipes.

As was done in the 2005 report by 4Site Engineering, the peak flows for these subareas (except MOODY2A) were calculated using the runoff curve method from the Harris County Flood Control District's *Policy Criteria and Procedure Manual*. The peak flow for MOODY2A, the subarea draining to the Shared Lake, was calculated using the rational method, as was done in the report *Drainage Analysis for Hidden Lakes/Randall Family Shared Lake* (DEC, June 2008).

With the peak flows known, hydrographs for input into HEC-RAS needed to be generated. In order to use the Clark unit hydrograph method in HEC-HMS, TC and R parameters still needed to be determined for these smaller development areas. Times of concentration (TC) were calculated using the upland method as described in the Texas Department of Transportation's *Hydraulic Design Manual*. The R value was determined iteratively, i.e. it was adjusted by trial-and-error until the calculated peak flow in HEC-HMS matched that determined from the runoff curves or rational method (see Appendix B).

Of the other subareas in the Gum Bayou watershed, only 38C changed from the existing conditions, and only very slightly in acreage. All other subareas remained unchanged.

The proposed conditions HEC-RAS model includes the following items different from existing:

- Obstructions have been added on Gum Bayou from cross section 18769.26 to cross section 12671.33 (set to elevation 15 ft), and on the East Fork from 4553.24 to 3563.86 (set to elevation 14 ft), to represent the proposed fill for the development
- The proposed internal detention system has been added with a series of storage areas, connections, and a lateral outfall structure to Gum Bayou
- A culvert with three 8'x8' RCB pipes has been added between cross sections 18769.26 and 18668.74 for a future road crossing (Lawrence Road)

The proposed conditions development hydrographs generated in HEC-HMS were input into their respective storage area locations in HEC-RAS, as well as the proposed 38C hydrograph replacing that from the existing condition in the same location. The model was run for the 10-year and 100-year events. Calculated peak flows can be seen on Table 1.1. Flow calculations can be found in Appendix B.

4.3 Proposed Conditions Water Surface Elevations Calculations

As with the existing conditions model, HEC-RAS also calculated the proposed conditions water surface elevations on Gum Bayou and the East Fork. These can be seen in Tables 1.2 and 1.3 for the 10-year and 100-year events. HEC-RAS results can be found in Appendix B.

4.4 Comparison with Existing Conditions

The existing and proposed conditions peak flows and water surface elevations are compared on Tables 1.1, 1.2, and 1.3. As can be seen, the 10-year event shows no flow impacts to either the Gum Bayou main channel or downstream in Dickinson Bayou; small 1-cfs impacts are shown on the East Fork tributary. However, from the Lawrence Road culvert all the way upstream on the main channel, there are water surface impacts as high as 0.13 foot; this is an effect of the proposed fill. On the East Fork tributary, however, no impacts occur, both as a result of a lower tailwater from the main channel, and that there are no effects to the East Fork from the development fill.

In the 100-year event, flow impacts as high as 94 cfs are seen on the main channel from just downstream of the confluence with the East Fork tributary all the way to the mouth (though there are no impacts downstream into Dickinson Bayou). Likewise, water surface elevations in that reach are impacted between 0.04 foot and 0.08 foot. Between roughly the detention system outfall and the existing Bay Ridge box culvert, there are impacts due to the proposed fill between 0.02 foot and 0.70 foot. On the East Fork tributary, a small 2-cfs impact is seen at F.M. 646, which is totally dissipated at the main channel confluence. At the confluence, though, the tailwater elevation rises 0.07 foot, simply as a result of the higher tailwater in the main channel, the effects of which propagate to approximately 1,000 feet upstream of the F.M. 646 bridge; some of the impact may also be a result of the proposed fill. From that point on upstream, no impacts are seen.

Because of the impacts described above, primarily on the main channel, a mitigation plan to alleviate these impacts must be devised.

Section 5 Mitigated Conditions

5.1 Background

As can be seen in Tables 1.1, 1.2, and 1.3, the impacts to the Gum Bayou main channel caused by the proposed Hidden Lakes development are focused in two locations: roughly from the East Fork confluence downstream to the mouth, and from the internal detention system outfall upstream to State Highway 96. Ordinances do not allow any increase in water surface elevation in critical locations as a result of development. A mitigation plan needed to be designed to offset these impacts.

5.2 Proposed Mitigation Plan

Two mitigation plans needed to be designed. Currently, the 47.17-acre Shared Lake, located to the west of the large Detention Lake (storage area MT-P2P3), is connected to the Detention Lake by two 4'x2' RCB pipes, and its static water surface elevation is 10 feet. One mitigation plan was designed based on these current conditions (the elevation 10 scenario).

In a pre-developed condition (i.e. assuming no connection), flow from subarea MOODY2A would drain from west to east, to the Shared Lake, which would outfall in the same direction directly to the Gum Bayou main channel. This is considered to be the natural drainage pattern of this area. As requested by the City of League City, this general pattern should not be altered without permission from all involved parties. Under current conditions, there would be flow from the Detention Lake to the Shared Lake. Because of this, a second mitigation plan had to be designed that would not cause any backflow between the lakes. The primary underlying premise of this plan is the raising of the static water surface elevation of the Shared Lake to 12 feet (the elevation 12 scenario).

Of numerous mitigation plans examined for each condition, the ones chosen each involve four parts: a diversion from the main channel of Gum Bayou through the internal detention system; offline detention on the East Fork tributary; rectification of the main channel; and addition of a pipe at the Bay Ridge culvert. All are described in the following sections.

5.2.1 *Gum Bayou Diversion*

In an effort to lower water surface elevations in the portions of Gum Bayou near Hidden Lakes, a diversion structure was designed such that a sufficient amount of flow could be removed from the main channel that would result in elevations that do not exceed those calculated in existing conditions. This structure will be located just downstream of the outfall channel for Mar Bella subdivision; will have a 60-foot bottom width, 6-to-1 side slopes; and have its flow line set at elevation 10.2 feet. It is the same in both mitigation plans. See Exhibits 7 and 8 for diversion details.

5.2.2 *East Fork Detention*

In an effort to mitigate the water surface elevation impacts on the East Fork and downstream of the confluence to the main channel, two offline detention basins were designed to lower flows

from the East Fork into the main channel to remove these impacts. Detention basin number one will be located on a tract of land immediately north of a tributary to the East Fork, and will provide approximately 111 acre-ft of storage. Its structure will have a diversion weir 70 feet wide with 6-to-1 side slopes, and its flow line will be set at elevation 8.2 feet. A 24-inch RCP with flap gate is provided for outflow (see Exhibits 7 and 8).

Detention basin number two will be located on a tract of land on the west bank of the East Fork, approximately 2,000 feet upstream of the main channel confluence. In the elevation 10 scenario, this basin will provide approximately 17 acre-ft of storage; in the elevation 12 scenario, it will provide approximately 37 acre-ft storage. In both scenarios, its structure will have a diversion weir 60 feet wide with 6-to-1 side slopes, and its flow line will be set at elevation 8.9 feet. A 24-inch RCP with flap gate is provided for outflow (see Exhibits 7 and 8).

5.2.3 Channel Rectification/Improvements

An additional aspect considered to lower water surface elevations in Gum Bayou to existing levels was to rectify a portion of the main channel to its previous state and/or improve a section.

In the plans titled *Channel Improvement to Gum Bayou* (LJA, July 1992), the main channel was to have a 12-foot bottom width, with 5-to-1 side slopes, a shelf section just above the bottom, and a grade of 0.05%. Over time, these conditions have changed due to erosion and sediment buildup. The following is proposed: between cross sections 19385.99 (downstream of Bay Ridge culvert) and 18769.45 (Lawrence Road crossing), the main channel be re-graded to a 0.05% slope, having a channel section with a 12-foot bottom, and 5-to-1 side slopes on the east bank (see Exhibit 7); between sections 18769.45 and 17549.89 (diversion location), the main channel be re-graded to a 0.05% slope, having a channel section with a 15-foot bottom, and 5-to-1 side slopes on the west bank (see Exhibit 7). This 15-foot-bottom section is wider than that in the original plans, but was necessary to fully mitigate elevations in the main channel. It is also recommended that the drop structure, currently located in the channel bend, be moved upstream approximately 400 feet (see Exhibit 7 and Appendix C). This is for the elevation 10 scenario.

In the elevation 12 scenario, the 12-foot-bottom portion is the same, but the other portion has a 20-foot bottom, again to lower elevations in the main channel to existing conditions. A second stretch of improvements is also needed for this scenario. In between the two Riley Wood Bridges, the flow line at the downstream end will match that of the low water crossing, and will grade upstream until the flow line at Wood Bridge #1 is matched, giving an overall grade of 0.10%. A small one-foot-deep section will be shaped in the channel bottom, with a 12-foot bottom width and 3-to-1 side slopes (see Exhibit 8 and Appendix D).

5.2.4 Bay Ridge Culvert Addition

During design of the mitigation plans, it was noticed that in the cross sections upstream of the Bay Ridge culvert, small impacts no larger than 0.02 foot were seen. While they are not located in a critical location, it was desired to eliminate these. It was decided that adding a pipe to the existing crossing would be the remedy. However, doing this in the unsteady model caused it to fail. In a different approach, the size of the existing culvert was increased, which did not cause a model failure. An additional eight square feet proved sufficient to mitigate. The next largest standard pipe size with at least that flow area is a 42-inch RCP (9.6 square feet). This size of pipe is recommended to be added to the crossing.

5.2.5 *Raising of Shared Lake Static Water Surface Elevation*

As part of the design of a mitigation plan with no backflow from the Detention Lake to the Shared Lake, the idea of raising the static water surface elevation of the Shared Lake was decided on. This will be accomplished by constructing a wall around the connecting 4'x2' RCB pipes to a height of 14.5 feet. A small opening in the wall will be cut out, to act as an outflow weir for the Shared Lake. This opening will have vertical sides and a bottom width of six (6) feet, with the flow line set at elevation 12 feet.

5.3 *Mitigated Conditions Flow and Water Surface Elevation Calculations*

The proposed mitigation plans as described in the previous sections were implemented into the proposed HEC-RAS model. Flow hydrograph inputs remained the same as from the proposed conditions. The model was run, calculating mitigated conditions flows and elevations. Elevation 10 scenario results can be found in Appendix C, and elevation 12 scenario results can be found in Appendix D.

5.4 *Comparison with Existing Conditions*

5.4.1 *Elevation 10 Scenario*

The existing and mitigated conditions elevation 10 scenario peak flows and water surface elevations are compared on Tables 2.1, 2.2, and 2.3. In the 10-year event, as can be seen, there are no flow or water surface elevation impacts in critical locations on the Gum Bayou main channel or downstream in Dickinson Bayou (the 0.01 and 0.02 upstream of the Bay Ridge culvert are negligible and not in a critical location). There is a 4-cfs impact shown at F.M. 646 on the East Fork, which is considered negligible and dissipates in the lower reach toward the main channel confluence. No water surface elevation impacts are seen on the East Fork.

In the 100-year event, there is an impact between 1 cfs and 3 cfs (considered negligible) from downstream of the East Fork confluence to upstream of the West Fork confluence, which is dissipated beyond the West Fork confluence to the mouth, with no impacts into Dickinson Bayou. There are no impacts to water surface elevations anywhere within the Gum Bayou main channel. No flow or water surface elevation impacts are seen on the East Fork.

With this mitigation plan, development of the Hidden Lakes subdivision will not cause any impact to the Gum Bayou main channel, East Fork tributary, and Dickinson Bayou. Despite this, there will be some flow from the Detention Lake to the Shared Lake, which the City of League City has requested be prevented.

5.4.2 *Elevation 12 Scenario*

The existing and mitigated conditions elevation 12 scenario peak flows and water surface elevations are compared on Tables 3.1, 3.2, and 3.3. In the 10-year event, there are no flow or water surface elevation impacts in critical locations on the Gum Bayou main channel or downstream in Dickinson Bayou (the 0.01 upstream of the Bay Ridge culvert is negligible and not in a critical location). There is a 4-cfs impact shown at F.M. 646 on the East Fork, which is considered negligible and dissipates in the lower reach toward the main channel confluence. No water surface elevation impacts are seen on the East Fork.

In the 100-year event, there is an impact of 57 cfs upstream of the East Fork confluence, which reduces to 16 cfs downstream of it. At the West Fork confluence, all impacts are dissipated to the mouth, with no impacts into Dickinson Bayou. There are no impacts to water surface elevations anywhere within the Gum Bayou main channel. No flow or water surface elevation impacts are seen on the East Fork.

This mitigation plan will also not cause any impact to the Gum Bayou main channel, East Fork tributary, and Dickinson Bayou, and satisfies the City's no backflow request.

Section 6

Conclusions

6.1 General Summary

Hidden Lakes is a proposed multi-use development located within the Cities of League City, Texas City, and Dickinson, and the boundaries of Galveston County Municipal Utility District No. 45. It will be located on the south side of State Highway 96, extending south to F.M. 646, bisected by South Shore Boulevard, and will include two non-contiguous commercial tracts located south of F.M. 646. All proposed properties in this report are within the Gum Bayou watershed, and will drain either to the main channel or the East Fork tributary. Development impacts are expected, and mitigation will be needed.

6.2 Proposed Mitigation Plan

While two mitigation plans were designed, the elevation 12 scenario plan is recommended as per the City of League City's mandate for no backflow from the Detention Lake in Hidden Lakes to the Shared Lake. The plan, as designed in accordance with the Harris County Flood Control District's criteria on 10-year- and 100-year-event release rates, is as follows:

- Construct a diversion structure to divert water from the Gum Bayou main channel into the internal Hidden Lakes detention system. The structure will be a weir with a 60-foot bottom width, 6-to-1 side slopes, and set at a flow line of elevation 10.2 feet
- Rectify/improve the Gum Bayou main channel in three parts
 - from the Bay Ridge culvert to the proposed Lawrence Road culvert, using a section with a 12-foot bottom, a 5-to-1 slope on the east bank, and a grade of 0.05%
 - from the Lawrence Road culvert to the proposed diversion location, using a section with a 20-foot bottom, a 5-to-1 slope on the west bank, and a grade of 0.05%
 - from Riley Wood Bridge #1 to Riley Wood Bridge #2, using a section with the bottom one foot excavated, with a 12-foot bottom, 3-to-1 side slopes, and a grade of 0.10%
- Construct two detention basins on the East Fork tributary.
 - Basin #1 will provide approximately 111 acre-ft of storage, and will have a weir diversion structure with a 70-foot bottom width, 6-to-1 side slopes, set at a flow line of elevation 8.2 feet, with a 24-inch RCP with flap gate for an outlet
 - Basin #2 will provide approximately 37 acre-ft of storage, and will have a weir diversion structure with a 60-foot bottom width, 6-to-1 side slopes, set at a flow line of elevation 8.9 feet, with a 24-inch RCP with flap gate for an outlet
- Add a 42-inch RCP to the existing Bay Ridge culvert
- Move the existing drop structure upstream approximately 400 feet to the Bay Ridge culvert outlet
- Construct a wall around the 4'x2' RCBs connecting the Shared Lake and Detention Lake up to an elevation of 14.5 feet, with a small opening in the wall to act as an outflow weir for the Shared Lake. The opening will be set at a lowest elevation of 12 feet, 6 feet wide with vertical sides.