

New Business Item No. 5

5. **CONSIDERATION AND POSSIBLE ACTION – FIRST READING OF ORDINANCE NO. 1456** – AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PEARLAND, TEXAS, CONSENTING TO THE CREATION OF FORT BEND COUNTY ASSISTANCE DISTRICT NO. 5 AND PROVIDING AN AGREEMENT FOR THE DURATION, RATE, AND ALLOCATION OF SALES AND USE TAX; MAKING FINDINGS AND CONTAINING PROVISIONS RELATING TO THE FOREGOING SUBJECT. *Mr. Bill Eisen, City Manager.*

**AGENDA REQUEST
BUSINESS OF THE CITY COUNCIL
CITY OF PEARLAND, TEXAS**

AGENDA OF: October 10, 2011	ITEM NO.: Ordinance No. 1456
DATE SUBMITTED: October 4, 2011	DEPARTMENT OF ORIGIN: Administration
PREPARED BY: Bill Eisen	PRESENTOR: Bill Eisen
REVIEWED BY: Bill Eisen	REVIEW DATE: October 4, 2011
SUBJECT: Fort Bend County Assistance District #5	
EXHIBITS: Ordinance No. 1456; Map of Proposed CAD 5,	
EXPENDITURE REQUIRED: None AMOUNT AVAILABLE: ACCOUNT NO.:	AMOUNT BUDGETED: PROJECT NO.:
ADDITIONAL APPROPRIATION REQUIRED: ACCOUNT NO.: PROJECT NO.:	
To be completed by Department: <input type="checkbox"/> Finance <input type="checkbox"/> Legal <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution	

EXECUTIVE SUMMARY

The proposed Ordinance would consent to the creation of the Fort Bend CAD as discussed in the workshop. If the City Council consents to creation of the CAD, an agreement between the CAD and City will have to be entered into at a later date. The agreement, which would be negotiated by the City and CAD, would include provisions that would limit City annexation of the CAD until any potential CAD bonds are paid off. For your review, the information from the workshop AR is provided below.

Fort Bend County has included approval of the creation of five separate County Assistance Districts (CAD) on the November 8 Ballot. CAD's are special districts that have limited powers to: build or maintain roads; provide law enforcement services; maintain or improve libraries, museums, parks, or other recreation facilities; provide services that benefit public health and welfare including fire fighting services; and promote economic development and tourism.

One of the CAD's (CAD 5) is located in our ETJ along the east side of FM 521, north of the City of Arcola. The FM 521 right-of-way is also included, up to the railroad tracks, just north of Shadow Creek Parkway (see attached map). In order for the CAD to be created within the City of Pearland's ETJ, the City of Pearland must consent. The City of Pearland has been requested to provide its consent prior to the election.

Fort Bend County Commissioner Richard Morrison and others are working on the CAD development process. Commissioner Morrison indicates that the primary use he proposes for CAD 5 is to generate funds to use as a local source of income to facilitate the expansion of FM 521 (i.e., the funds when combined with other sources could be committed to entice TxDOT to move FM 521 up on their schedule). Currently, the widening of this road is not in the Transportation Improvement Plan or even intermediate range planning.

Fort Bend County (FBC) has developed cost estimates for the options to widen FM 521. One option would involve adding additional pavement to the existing roadway, a second would reconstruct the road to a four-lane asphalt facility with open ditches, and a third would widen the road to a four-lane concrete street with curb and gutter. FBC favors the second option which is estimated to cost approximately \$20 million.

The boundaries of proposed CAD 5 have been drawn to include retail businesses that front along FM 521 and that produce sales tax. The proposition for the creation of CAD 5 includes the authority to levy a one percent sales tax. This sales tax will be considered a local sales tax and will be subject to the statewide limit of two percent in combined local sales taxes. Consequently, any area within a city limits has been excluded. One issue that does arise is the need to continue the sales tax revenue stream for the length of time needed to pay off any potential bonds sold to fund FM 521 improvements. As a result, the City would be asked to agree in a separate document (to be considered by the City Council at a later date), not to annex the area until any bonds are repaid. Attorneys at Allen, Boone, Humphries, and Robinson (the attorneys working with Fort Bend County on creation of the CAD's) have indicated it is their view that under current state law, if partial annexation occurs, state law requires that the CAD sales tax located in the annexation area will be automatically reduced to a level that will prevent the 2% cap from being exceeded. Based upon data provided by the Texas Comptroller, current sales tax revenue from businesses located in the CAD is estimated at approximately \$10,000 - \$15,000 per year. This amount is clearly not sufficient to fund the local share of 80 – 20 state/local funding for FM 521. As a result, other sources of funding would be needed at some point to combine with CAD funding to meet local matching requirements. Potential sources would include participation by the City of Pearland and Fort Bend County and CAD 4 which is located west of FM 521. It is our understanding that Fort Bend County anticipates the need to utilize multiple sources of funding to encourage TxDOT to move FM 521 up on their schedule.

The limited amount of funding from the CAD raises a question that should be addressed by the Council. Is the revenue stream sufficient to justify a commitment to not annex the area for as much as 30 years? It should be noted that it is very likely that the revenue stream will increase as vacant tracts are developed and as existing business sales are likely to increase over time. However, the revenue growth is unpredictable because the type of future businesses in the area is still unknown. Also, as previously noted, the use of CAD sales tax is only one source of revenue proposed to be applied to the FM 521 project.

An item has been placed on the action agenda in the event the Council is ready to take action on October 10. If the City Council does give consent to creation of the CAD, an agreement between the CAD and City will have to be entered into at a later date. This agreement, which would be negotiated by the City and CAD, would include provisions that would limit City annexation of the CAD until any potential CAD bonds are paid off.

Commissioner Morrison and attorneys for Fort Bend County will be present at the workshop to address any questions that the Council may have.

ORDINANCE NO. 1456

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PEARLAND, TEXAS, CONSENTING TO THE CREATION OF FORT BEND COUNTY ASSISTANCE DISTRICT NO. 5 AND PROVIDING AN AGREEMENT FOR THE DURATION, RATE, AND ALLOCATION OF SALES AND USE TAX; MAKING FINDINGS AND CONTAINING PROVISIONS RELATING TO THE FOREGOING SUBJECT.

WHEREAS, the City of Pearland has received a petition pursuant to Local Government Code §42.042, requesting consent of the City to the creation of **FORT BEND COUNTY ASSISTANCE DISTRICT NO. 5** (the “FBCAD NO. 5”) inside the extraterritorial jurisdiction of the City; and

WHEREAS, on September 7, 2011, Fort Bend County, pursuant to Chapter 387, Texas Local Government Code, called an election to create FBCAD No. 5 within Fort Bend County and impose a sales and use tax within FBCAD No. 5’s boundaries; and

WHEREAS, Fort Bend County provided the City with notice of its intention to create FBCAD No. 5 within the City’s extraterritorial jurisdiction in Fort Bend County not later than the 60th day before the date Fort Bend County Commissioners Court ordered the election; and

WHEREAS, the City finds and declares that no portion of the boundaries of FBCAD No. 5 is located within the City’s corporate limits; and

WHEREAS, the City Council find that it is in the best interest of the residents of the City, and particularly those who live in the City’s extraterritorial jurisdiction in FBCAD No. 5, to allow the creation of FBCAD No. 5; now therefore;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PEARLAND, TEXAS:

Section 1. The City of Pearland, Texas, hereby consents to the creation of **FORT BEND COUNTY ASSISTANCE DISTRICT NO. 5**, consisting of land within the

ORDINANCE NO. 1456

extraterritorial jurisdiction of the City in Fort Bend County, as described by metes and bounds in **Exhibit 1**, subject to the terms and conditions set forth below.

Section 2. That the City Council officially finds, determines, recites and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, Tex. Gov't Code Ann., ch. 551; and that this meeting was open to the public as required by law at all times during which this ordinance and the subject matter thereof was discussed, considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

PASSED and APPROVED ON FIRST READING this the _____ day of _____, A. D., 2011.

TOM REID
MAYOR

ATTEST:

YOUNG LORFING, TRMC
CITY SECRETARY

PASSED and APPROVED ON SECOND AND FINAL READING this the _____ day of _____, A. D., 2011.

TOM REID
MAYOR

ORDINANCE NO. 1456

ATTEST:

YOUNG LORFING, TRMC
CITY SECRETARY

APPROVED AS TO FORM:

DARRIN M. COKER
CITY ATTORNEY

EXHIBIT 1

**METES AND BOUNDS OF
FORT BEND COUNTY ASSISTANCE DISTRICT NO. 5**

FT. BEND COUNTY ASSISTANCE DISTRICT NO. 5

BEGINNING at a point in the North county line of Ft. Bend County, Texas, the South county line of Harris County, Texas, and being in the West right-of-way line of the Missouri Pacific Railroad right-of-way that lies Westerly of and adjacent to F.M. 521;

THENCE Southeasterly with said County line to the Easterly right-of-way line of F.M. 521;

THENCE in a Southerly direction with the Easterly right-of-way line of F.M. 521 approximately 13,300-feet to the North line of the M. Escalera Survey, Abstract 169;

THENCE Easterly with the North line of the M. Escalera Survey to the Northwest corner of the Golden Highway Property Subdivision;

THENCE Southerly with the West line to the Golden Highway Property Subdivision to the North line of the Fresno Dome Addition;

THENCE Westerly with the North line of the Fresno Dome Addition to the Northwest corner of same;

THENCE Southerly with the West line of the Fresno Dome Addition to the North line of the Malvern Out Lots;

THENCE Westerly with the North line of the Malvern Out Lots to the Northwest corner of same;

THENCE Southerly with the West line of the Malvern Out Lots to the South line of Willow Street;

THENCE Westerly with the South line of Willow Street 520-feet to a property line to the South;

THENCE Southerly with a property line approximately 112-feet to the termination of same;

THENCE Southerly approximately 130-feet parallel to the East line of F.M. 521 approximately 400-feet to a property line to the South;

Page Two

FBCAD #5

THENCE Southerly with said property line to the North line of Dallas Street of the Fresno as recorded in Slide No. 00021A of the Fort Bend County Map Records;

THENCE Westerly with the North line of Dallas Street to the East line of Cleveland Avenue;

THENCE Southerly with the East line of Cleveland Street to the South line of Palmetto Street;

THENCE Westerly with the South line of Palmetto Street to the common rear line of Lots 405 and 424 of Magnolia Place and Fresno as recorded in Slide No. 00021B of the Fort Bend County Map Records;

THENCE Southerly with the common rear lot lines extended to the North line of Jasmine Street;

THENCE Easterly with the North line of Jasmine Street to the centerline of Mustang Bayou;

THENCE Southwesterly with the centerline of Mustang Bayou to the Easterly right-of-way line of F.M. 521;

THENCE Southerly with the Easterly right-of-way line of F.M. 521 to a property line approximately 190-feet South of Palm Street;

THENCE Easterly with said property line approximately 305-feet to a property line heading Southerly;

THENCE Southerly with said property line approximately 600-feet to a property line heading Westerly;

THENCE Westerly with said property line approximately 145-feet to a property line heading Southerly;

THENCE Southerly with said property line to the North line of Sycamore Street;

THENCE Westerly with the North line of Sycamore Street to the Easterly right-of-way line of F.M. 521;

Page Three
FBCAD #5

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THENCE Easterly with the South line of the Arcola Fresno Cemetery to the East line of Maribill Estates;

THENCE Southerly with the East line of Maribill Estates to the South line of Ladonia Avenue;

THENCE Southeasterly with the South line of Ladonia Avenue to the West line of Teague Street;

THENCE Southerly with the West line of Teague Street to the North line of Fresno Teleview Terrace Subdivision;

THENCE Westerly with the North line of Fresno Teleview Terrace Subdivision to the Northwest corner of same;

THENCE Southerly with the West line of the Fresno Teleview Terrace Subdivision to the Southwest corner of same;

THENCE Easterly with the South line of the Fresno Teleview Terrace Subdivision approximately 592-feet to a property line to the South;

THENCE Southerly along said property line to the South approximately 750-feet to a property line to the East;

THENCE Easterly along said property line to the East approximately 260-feet to a property line to the South;

THENCE Southerly along said property line to the South to the North line of Post Road;

THENCE Westerly along the North line of Post Road approximately 786-feet to a property line to the North;

THENCE Northerly along said property line to the North approximately 310-feet to a property line to the West;

THENCE Westerly along said property to the West to the Easterly right-of-way line of F.M. 521;

Page Four

FBCAD #5

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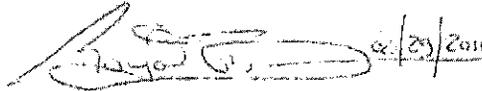
THENCE Westerly with the extension of the North line of Post Road across F.M. 521 to the West right-of-way line of the Missouri Pacific Railroad right-of-way that lies Westerly of and adjacent to F.M. 521;

THENCE Northerly with the West right-of-way line of the Missouri Pacific Railroad right-of-way to the PLACE OF BEGINNING.

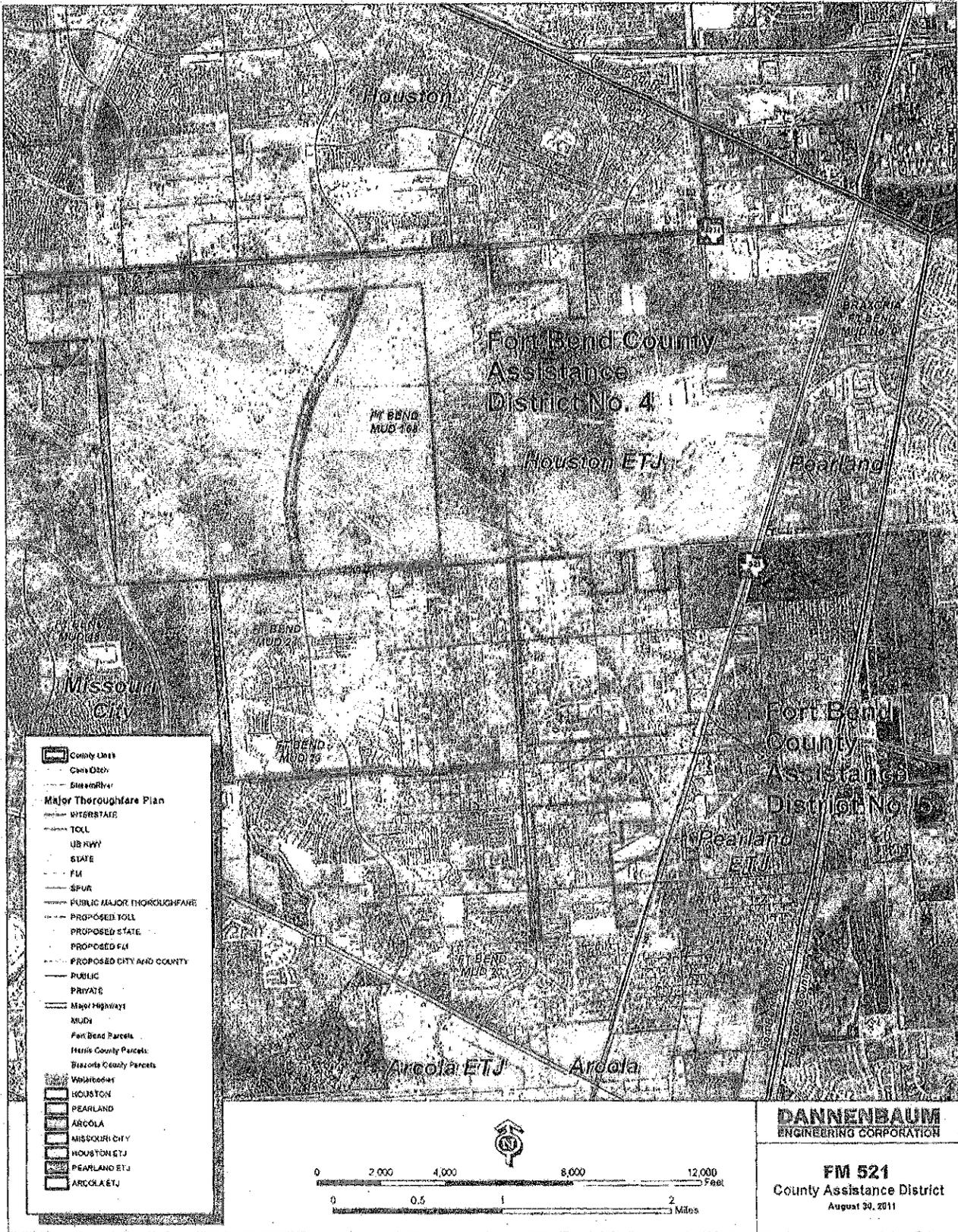
This document was prepared under 22 TAC 663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political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

DANNENBAUM ENGINEERING CORPORATION
Consulting Engineers

9130-87 (revised)
August 29, 2011



8/29/2011



- County Unit
- City/OTC
- Stream/River
- Major Thoroughfare Plan**
- INTERSTATE
- TOLL
- US HWY
- STATE
- FM
- SPUR
- PUBLIC MAJOR THOROUGHFARE
- PROPOSED TOLL
- PROPOSED STATE
- PROPOSED FM
- PROPOSED CITY AND COUNTY
- PUBLIC
- PRIVATE
- Major Highway
- MUDs
- Fort Bend Parcels
- Harris County Parcels
- Brazoria County Parcels
- Waterbody
- HOUSTON
- PEARLAND
- ARCOLA
- MISSOURI CITY
- HOUSTON ETJ
- PEARLAND ETJ
- ARCOLA ETJ



DANNENBAUM
ENGINEERING CORPORATION

FM 521
County Assistance District
August 30, 2011

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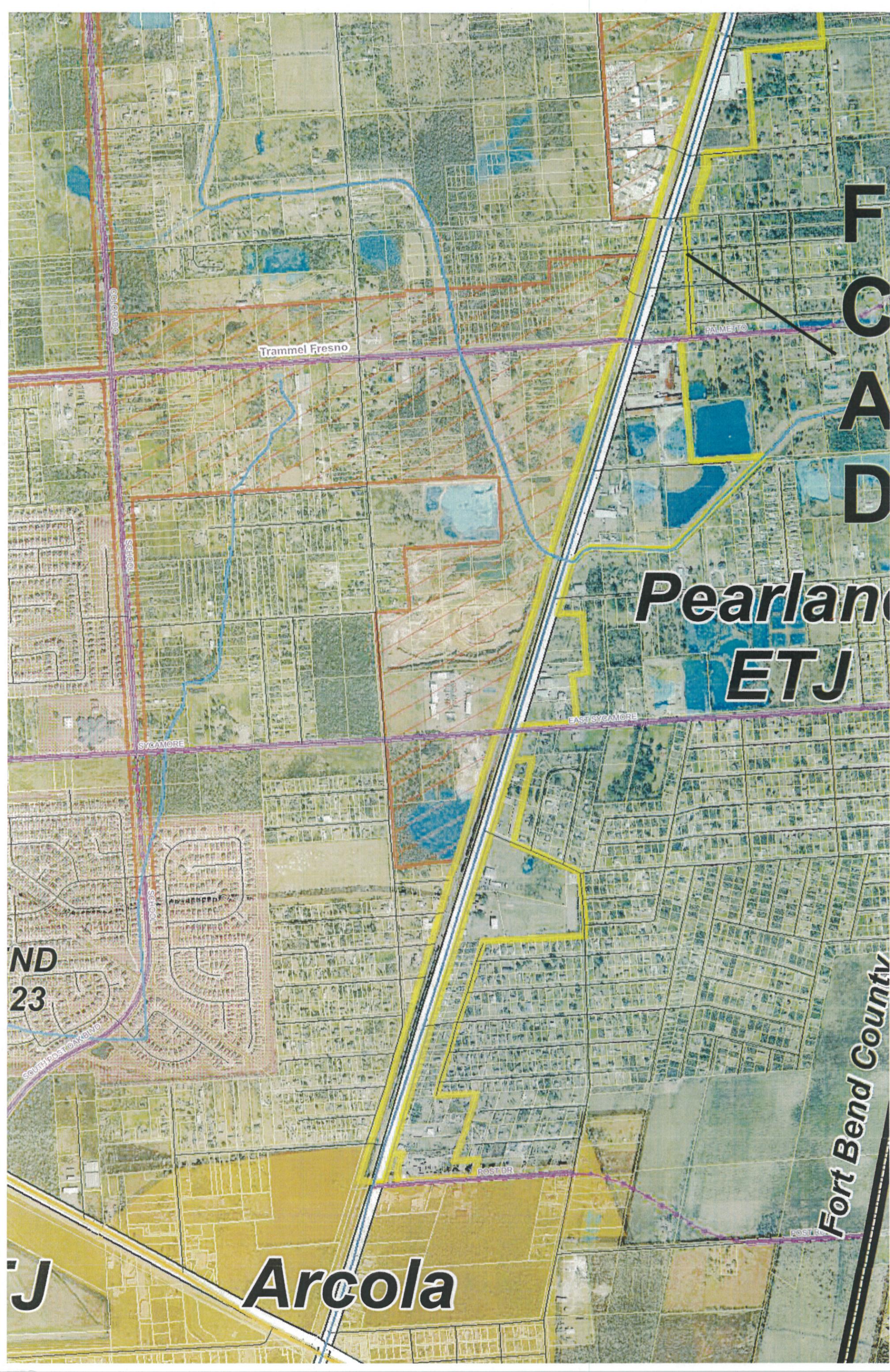
**BRAZORIA
FT BEND
MUD No. 01**

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Pearland

Broadway





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C
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**Pearlman
ETJ**

Trammel Fresno

PALMETTO

TOOCHES

TOOCHES

SYCAMORE

EAST SYCAMORE

TOOCHES

ROST DR

POST RD

ND
23

SOUTH POST OAK BLVD

Fort Bend County

Arcola

J



ROY L. CORDES, JR.
County Attorney

COUNTY ATTORNEY
Fort Bend County, Texas

RECEIVED
CITY OF PEARLAND
CITY SECRETARY'S OFFICE
2011 SEP 15 AM 10:56

(281) 341-4555
Fax (281) 341-4557

September 14, 2011

City Council, City of Pearland
Attn: Young Lorfing, City Secretary
3519 Liberty Drive, Suite 262
Pearland, Texas 77581

Via Certified Mail

Re: Consent to the Creation of Proposed County Assistance District

Dear City Council:

Please find enclosed the Petition for Consent to the City of Pearland for Fort Bend County Assistance District No. 5.

Should you have any questions or concerns, please do not hesitate to contact me at 281-341-4555 or marcus.spencer@co.fort-bend.tx.us.

Sincerely,

A handwritten signature in cursive script that reads "Marcus D. Spencer".

Marcus D. Spencer
Assistant County Attorney

cc: Bill Eisen, City Manager

Enclosure

SCANNED

SEP 16 2011

CITY SECRETARY
OFFICE

PETITION FOR CONSENT TO THE CREATION
OF FORT BEND COUNTY ASSISTANCE DISTRICT NO. 5

TO THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF PEARLAND, TEXAS:

Fort Bend County (herein the "Petitioner"), acting pursuant to the provisions of Chapters 42 and 387, Texas Local Government Code, respectfully petitions the City Council of the City of Pearland, Texas, for its written consent to the creation of a county assistance district within Fort Bend County and would show the following:

I.

The name of the proposed District shall be FORT BEND COUNTY ASSISTANCE DISTRICT NO. 5 ("FBCAD No. 5" or the "District").

II.

FBCAD No. 5 shall be created and organized under the terms and provisions of Chapter 387, Texas Local Government Code, together with all amendments and additions thereto. On September 7, 2011, Fort Bend County, pursuant to Chapter 387, Texas Local Government Code, called an election to create FBCAD No. 5 within Fort Bend County and impose a sales and use tax within FBCAD No. 5's boundaries. Fort Bend County provided the City with notice of its intention to create FBCAD No. 5 within the City's extraterritorial jurisdiction in Fort Bend County not later than the 60th day before the date Fort Bend County Commissioners Court ordered the election.

III.

FBCAD No. 5 shall contain an area of land situated in Fort Bend County, Texas, as described by metes and bounds in Exhibit A, which is attached hereto and incorporated herein for all purposes (the "Land"). The Land is within the extraterritorial jurisdiction of the City of Pearland, Texas (the "City"). The Petitioner intends for the metes and bounds in the attached Exhibit A to form a closure and for FBCAD No. 5 to be located solely in the current limits of the extraterritorial jurisdiction of the City of Pearland and in those areas of the County in which the current sales and use tax imposed by political subdivisions is one percent or less. To the extent that a mistake is made in the metes and bounds such that the boundaries of FBCAD No. 5 extend into a municipality's corporate limits or the current extraterritorial jurisdiction of another municipality, or extend into an area in which less than one percent of sales and use tax is currently available, that portion of the boundaries shall be deemed to be excluded from FBCAD No. 5. A mistake made in the metes and bounds in the attached Exhibit A does not affect FBCAD No. 5's: (1) organization, existence, or validity;

(2) right to issue or enter into any type of obligation for the purposes for which FBCAD No. 5 is created or to pay the principal of and interest on such an obligation; (3) right to impose a sales and use tax; or (4) legality or operation.

IV.

Sales and use tax generated within FBCAD No. 5 may be used for the following purposes within the boundaries of FBCAD No. 5: (1) the construction, maintenance, or improvement of roads or highways; (2) the provision of law enforcement and detention services; (3) the maintenance or improvement of libraries, museums, parks, or other recreational facilities; (4) the provision of services that benefit the public health or welfare, including the provision of firefighting and fire prevention services; or (5) the promotion of economic development and tourism.

V.

There is, for the following reasons, a necessity for the above-described work. The area proposed to be within FBCAD No. 5 is urban in nature, is within the growing extraterritorial jurisdiction of the City of Pearland, Texas, and is in close proximity to populous and developed sections of Fort Bend County, Texas. There is an imminent need within the District for the construction, maintenance, and improvement of roads or highways. It is anticipated that State and Federal funds will not be available for these projects and that local funds will be required. The District will provide Fort Bend County with the ability to generate local funds to construct, maintain, and improve roads and highways within the District that will benefit the local area. The welfare and mobility of the present and future inhabitants of the area and of the territories adjacent thereto require the construction, maintenance, and improvement of roads and highways. A public necessity, therefore, exists for the creation of the District, to provide for the construction, maintenance, and improvement of roads and highways. The County's construction of these roads prior to the City's annexation will benefit the City because (i) the City will not be required to expend the funds to construct the roads; and (ii) mobility will be enhanced significantly earlier than it would be if construction were deferred until annexation.

Petitioner, by submission of this Petition, requests the City's consent to the creation of the District and agrees to enter into an agreement with the City governing the duration, rate, and allocation of sales and use taxes imposed by the District.

Petitioner hereby covenants that if the requested consent to the creation of the District is given, Petitioner will adopt and abide by a mutually agreed upon written agreement governing the duration, rate, and allocation of sales and use taxes.

VI.

WHEREFORE, Petitioner prays that this petition be heard and that the City Council duly pass and approve an ordinance or resolution granting the consent to the creation of the District and authorizing the inclusion of the Land described herein within the District.

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RESPECTFULLY SUBMITTED this 7th day of September, 2011.

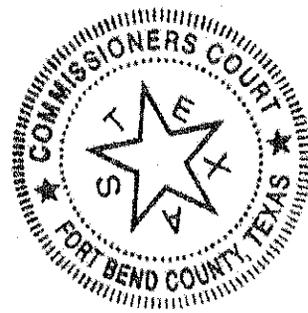
FORT BEND COUNTY, TEXAS

By: *Robert Hebert*
Robert Hebert
County Judge

Date: 9/7/2011

ATTEST:

By: *Dianne Wilson*
Dianne Wilson
County Clerk



APPROVED AS TO FORM:

Robert Hebert
County Attorney

THE STATE OF TEXAS §
§
COUNTY OF FORT BEND §

This instrument was acknowledged before me on September 7, 2011,
by Robert Hebert, County Judge

Ann Werlein
Notary Public, State of Texas

(NOTARY PUBLIC)

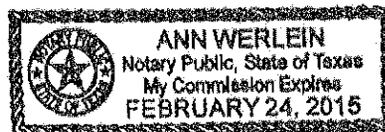


Exhibit A
Metes and Bounds Description of the Land

Petition for CAD 5

FT. BEND COUNTY ASSISTANCE DISTRICT NO. 5

BEGINNING at a point in the North county line of Ft. Bend County, Texas, the South county line of Harris County, Texas, and being in the West right-of-way line of the Missouri Pacific Railroad right-of-way that lies Westerly of and adjacent to F.M. 521;

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FBCAD #5

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FBCAD #5

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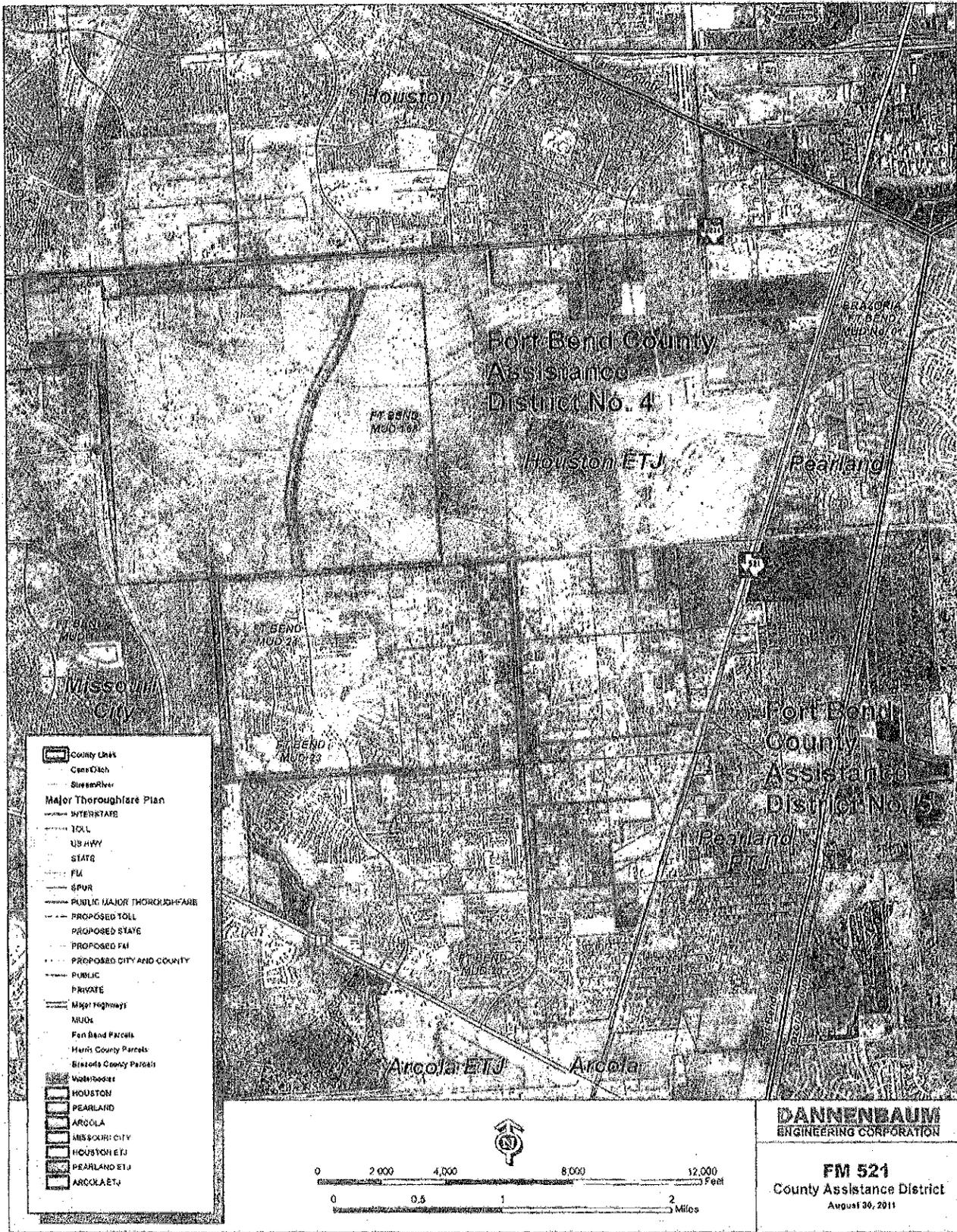
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Consulting Engineers

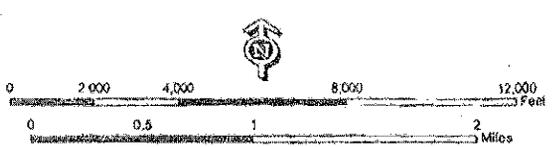
9130-87 (revised)
August 29, 2011



8/29/2011



- County Unit
- Canal/Drainage
- Stream/River
- Major Thoroughfare Plan**
- INTERSTATE
- TOLL
- US HWY
- STATE
- FM
- SPUR
- PUBLIC MAJOR THOROUGHFARE
- PROPOSED TOLL
- PROPOSED STATE
- PROPOSED FM
- PROPOSED CITY AND COUNTY
- PUBLIC
- PRIVATE
- Major Highway
- MUDs
- Fort Bend Parcels
- Harris County Parcels
- Brazoria County Parcels
- Waterbodies
- HOUSTON
- PEARLAND
- ARCOLA
- MISSOURI CITY
- HOUSTON ETJ
- PEARLAND ETJ
- ARCOLA ETJ



DANNENBAUM
ENGINEERING CORPORATION

FM 521
County Assistance District
August 30, 2011

DISCLAIMER: This map was prepared for the purpose of providing information only. It is not intended to be used as a legal document. The user assumes all responsibility for any errors or omissions. The user also assumes all liability for any damages or losses resulting from the use of this map.