

AGENDA

CITY OF PEARLAND ♦ CITY COUNCIL

May 11, 2015

6:30 p.m.

MAYOR
Tom Reid

Keith Ordeneaux
Mayor Pro-Tem
Position No. 4

COUNCIL MEMBERS

Tony Carbone
Position No. 1

Scott Sherman
Position No. 2



Gary Moore
Position No. 3

Greg Hill
Position No. 5

Jon R. Branson
Deputy City Manager

Clay Pearson
City Manager

Trent Epperson
Assistant City Manager

Darrin Coker
City Attorney

Young Lorfing, TRMC
City Secretary

In accordance with the Texas Open Meeting Act the Agenda is posted for public information, at all times, for at least 72 hours preceding the scheduled time of the meeting on the bulletin board located at the front entrance of the City Hall, 3519 Liberty Drive.



RECOGNITION AND AWARDS NOTICE

Mayor Reid will be presenting the following:

A Proclamation proclaiming “The month of May 2015 As Mental Health Month.” To be accepted by Charlotte Selvera on behalf of Counseling Connections for Change.

A Proclamation proclaiming “May 17th thru 23rd As 2015 National Public Works Week.” To be accepted by Michael Leech Assistant Director of Public Works.

A Proclamation proclaiming “May 17th thru 23rd As 2015 Emergency Medical Services Week.” To be accepted by Chief Riley, Deputy Fire Chief Daniel Baum and Fire Department personnel.

Presentation will be held:

**Monday, May 11, 2015
6:15 p.m.
Council Chambers
3519 Liberty Drive
Pearland, Texas 77581**



**CITY COUNCIL AGENDA
CITY OF PEARLAND
REGULAR COUNCIL MEETING
MONDAY, MAY 11, 2015 | 6:30 P.M.
COUNCIL CHAMBERS | PEARLAND CITY HALL | 3519 LIBERTY DRIVE
281.652.1600**

- I. CALL TO ORDER**
- II. INVOCATION AND THE PLEDGE OF ALLEGIANCE TO THE UNITED STATES OF AMERICA FLAG AND TEXAS FLAG**
- III. ROLL CALL:** Mayor Reid, Mayor Pro-Tem Ordeneaux, Councilmembers Carbone, Sherman, Moore, and Hill.

- IV. **CITIZEN COMMENTS:** In order to hear all citizen comments at a reasonable hour, the City Council requests that speakers respect the three-minute time limit for individual comments and the five-minute time limit for an individual speaking on behalf of a group. This is not a question-answer session, however, it is an opportunity to voice your thoughts with City Council.
- V. **PUBLIC HEARING** – Provide public comment on the City of Pearland’s expansions of the Far Northwest Wastewater Treatment Plant (also known as the Refection Bay Water Reclamation Facility) Project (Project) draft Environmental Information Document (EID), and to discuss the EID, which was formulated to best plan, manage, and respond to any environmental impacts that might occur in relation with the proposed Project.

- I. **STAFF REVIEW**
- II. **CITIZEN COMMENTS**
- III. **COUNCIL/STAFF DISCUSSION**
- IV. **ADJOURNMENT**
- VI. **CONSENT AGENDA:**

All items listed under the “Consent Agenda” are considered to be routine and require little or no deliberation by the City Council. These items will be enacted/approved by one motion unless a councilmember requests separate action on an item, in which event the item will be removed from the Consent Agenda and considered by separate action (*VI. matters removed from Consent Agenda*). Approval of the Consent Agenda enacts the items of legislation.

- A. **Consideration and Possible Action – Approval of Minutes:**
 - 1. Minutes of the April 20, 2015, Special Meeting, held at 6:30 p.m.
- B. **Consideration and Possible Action – Resolution No. R2015-76** – A Resolution of the City Council of the City of Pearland, Texas, conveying a surface site easement, in the vicinity of Kingsley Drive and Shadow Creek Ranch Boulevard, to Kinder Morgan Texas Pipeline, LLC, in exchange for fair market value compensation of \$65,355.19.
- C. **Consideration and Possible Action – Resolution No. R2015-66** – A Resolution of the City Council of the City of Pearland, Texas, awarding a service contract for HVAC repair, maintenance and equipment to American Mechanical Service of Houston, LLC for package one (1) and to the Lee Thompson Company for package two (2) in the total estimated amount of \$130,000.00.

- D. **Consideration and Possible Action – Regarding** Excuse the absence of Councilmember Greg Hill from the Regular Council Meeting held on April 27, 2015.

VII. MATTERS REMOVED FROM CONSENT AGENDA

VIII. NEW BUSINESS:

1. **Consideration and Possible Action – Resolution No. R2015-75** – A Resolution of the City Council of the City of Pearland, Texas, authorizing the City Manager or his designee to enter into a Sub-Grantee Agreement with Brazoria County for use of the Coastal Impact Program (CIAP) funds and authorizing the City Manager to execute the Agreement.
2. **Consideration and Possible Action – Resolution No. R2015-77** – A Resolution of the City Council of the City of Pearland, Texas, renewing a unit supply contract for landscape maintenance services (medians, right of ways and City facilities) with Maldonado Nursery Landscaping, Inc., in the estimated amount of \$577,130.00.
3. **Consideration and Possible Action – Resolution No. R2015-74** – A Resolution of the City Council of the City of Pearland, Texas, awarding unit cost bids for street and sidewalk maintenance to Brooks Concrete, Inc. and Precise Services, Inc., in the estimated amount of \$800,000.00.
4. **Consideration and Possible Action – Resolution No. R2015-79** – A Resolution of the City Council of the City of Pearland, Texas, authorizing an Oil and Gas Drilling Permit for Denbury Onshore in the vicinity of SH35 and Hastings Oil Field.
5. **Consideration and Possible Action – Resolution No. R2015-64** – A Resolution of the City Council of the City of Pearland, Texas, authorizing the City Manager or his designee to enter into an Interlocal Agreement with Brazoria County Tax Assessor-Collector implementation of a Scofflaw Program in accordance with Chapter 702 of the Texas Transportation Code.
6. **Consideration and Possible Action – First Reading of Ordinance No. 1513** – An Ordinance of the City Council of the City of Pearland, Texas, providing for collection of Scofflaw Fees pursuant to Texas Transportation Code Section 702.
7. **Consideration and Possible Action – Resolution No. R2015-82** – A Resolution of the City Council of the City of Pearland, Texas, authorizing the City Manager or his designee to enter into an Interlocal Agreement with Brookside Village for emergency medical services.

OTHER BUSINESS:

EXECUTIVE SESSION UNDER TEXAS GOVERNMENT CODE

1. **SECTION 551.087** - Regarding consultations with City Attorney – Regarding economic development negotiations.
2. **SECTION 551.074 – Personnel Matters** – The appointment of a new department head position.

NEW BUSINESS CONTINUED:

8. **Consideration and Possible Action – Resolution No. R2015-78** – A Resolution of the City Council of the City of Pearland, Texas, authorizing the City Manager or his designee to enter into Purchase Agreements with the Pearland Independent School District (“PISD”) and American Commercial Contractor, LLC., for the transfer of real property located near the intersection of SH35 and Bailey Road.
9. **Consideration and Possible Action** – Regarding the ratification of the City Manager’s appointment of a new department head position.

IX. MAYOR/COUNCIL ISSUES FOR FUTURE CITY COUNCIL AGENDAS

X. ADJOURNMENT

This site is accessible to disabled individuals. For special assistance, please call Young Lorfing at 281.652.1840 prior to the meeting so that appropriate arrangements can be made.

All agenda supporting documents are available at pearlandtx.gov

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

AGENDA OF: May 11, 2015	ITEM NO.: Public Hearing
DATE SUBMITTED: April 29, 2015	DEPT. OF ORIGIN: Eng. & Capital Projects
PREPARED BY: Andrea Brinkley	PRESENTOR: Skipper Jones
REVIEWED BY: Trent Epperson	REVIEW DATE: May 4, 2015
SUBJECT: Public Hearing for Far Northwest Wastewater Treatment Plant Environmental Impact Document	
EXHIBITS: A – Public Hearing Notices, B – Draft Environmental Impact Document, C – Location Map	
FUNDING: <input type="checkbox"/> Grant <input type="checkbox"/> Developer/Other <input type="checkbox"/> Cash <input type="checkbox"/> Bonds To Be Sold <input type="checkbox"/> Bonds- Sold <input type="checkbox"/> L/P – Sold <input type="checkbox"/> L/P – To Be Sold	
EXPENDITURE REQUIRED: AMOUNT AVAILABLE: ACCOUNT NO.: ADDITIONAL APPROPRIATION REQUIRED: ACCOUNT NO.: PROJECT NO.:	AMOUNT BUDGETED: PROJECT NO.:
To be completed by Department: <div style="display: flex; justify-content: space-around;"> Finance Legal Ordinance Resolution </div>	

RECOMMENDED ACTION

Conduct a Public Hearing on the Far Northwest Wastewater Treatment Plant (Reflection Bay Water Reclamation Facility) Expansion draft Environmental Impact Document (EID).

EXECUTIVE SUMMARY

BACKGROUND

City Council approved the submission of a Texas Water Development Board (TWDB) funding assistance application for the expansion of the Far Northwest Wastewater Treatment Plant (Reflection Bay Water Reclamation Facility) in the amount of \$55,000,000, on January 26, 2015. The draft Environmental Impact Document (EID) is a requirement for this funding source and was created to best plan, manage and respond to any environmental impacts that may occur in relation to the proposed facility expansion project.

The expansion allows the facility to continue to provide adequate wastewater treatment capacity through two (2) facility expansions. The first expansion will increase the wastewater treatment capacity to 3.0 MGD in the interim, and 6.0 MGD in the final phase.

SCOPE OF CONTRACT/AGREEMENT

The EID was drafted to meet the requirements of Texas Administrative Code, Chapter 371 (30 TAC §371) of the Texas Water Development Board's rules for projects financed through the Clean Water State Revolving Fund (CWSRF) which satisfies the requirements of the National Environmental Policy Act (NEPA). The EID was developed in conjunction with the City of Pearland's application for funding assistance from the TWDB and outlines potential environmental impacts and alternatives considered.

The project is part of the FY 2015 Capital Improvement Program and seeks financing in the amount of \$55,000,000 from the TWDB CWSRF program through the Loan Fiscal Year Intended Use Plan. Through this Public Hearing, the City of Pearland is seeking public input about the EID prior to its final review by designated regulatory agencies and adoption by the TWDB. The City of Pearland is holding the community hearing to allow a forum for the public to provide discussion and comment on the proposed Project.

BID AND AWARD

N/A

SCHEDULE

The Design of the Far Northwest Wastewater Treatment Plant (Reflection Bay Water Reclamation Facility) Expansion is anticipated to be complete by November 2015. The project bidding time duration will be two (2) months, followed by contract approval and construction is anticipated to have a twenty-four (24) month duration, completing at the end of 2017.

POLICY/GOAL CONSIDERATION

The project is in keeping with the Council Strategic Objectives of Sustainable Infrastructure and Fiscal Responsibility.

CURRENT AND FUTURE CIP FUNDING /FINANCIAL IMPACTS/DEBT SERVICE

City Council approved the submission of a TWDB funding assistance application for the facility expansion in the amount of \$55,000,000 on January 26, 2015. There are no additional financial aspects stemming from this request.

NOTICE OF PUBLIC HEARING

On Monday, May 11, 2015, at 6:30 p.m., the City of Pearland will conduct a public hearing to provide public comment on the City's expansions of the Refection Bay Water Reclamation Facility Project (Project) draft Environmental Information Document (EID), at the Pearland City Hall, 3519 Liberty Drive, Pearland, Texas 77581. The purpose of the hearing will be to discuss the EID, which was formulated to best plan, manage, and respond to any environmental impacts that might occur in relation with the proposed Project.

The City of Pearland has authorized the proposed Project to continue to provide adequate wastewater treatment capacity through two plant expansions of the Refection Bay Water Reclamation Facility. Overall wastewater treatment capacity will increase to 3.0 MGD in the interim phase and to 6.0 MGD in the final phase, while further planning for future wastewater treatment expansion needs.

The EID was drafted to meet the requirements of Title 30 of the Texas Administrative Code, Chapter 371 (30 TAC §371) of the Texas Water Development Board's rules for projects financed through the Clean Water State Revolving Fund (CWSRF) which satisfies the requirements of the National Environmental Policy Act (NEPA). The EID was developed in conjunction with the City of Pearland and the Texas Water Development Board (TWDB) application for funding assistance, and outlines potential environmental impacts and alternatives considered.

The proposed Project seeks financing for \$55,000,000 from the TWDB CWSRF program through the Loan Fiscal Year Intended Use Plan. The City of Pearland does not anticipate any utility rate increases due to the construction of the proposed Reflection Bay WRF project. The City of Pearland is seeking public input about the EID prior to its final review by designated regulatory agencies and adoption by the TWDB. The City of Pearland is holding the community hearing to allow a forum for the public to provide discussion and comment on the proposed Project.

One of the purposes of this hearing is to discuss the potential environmental impacts of the project and alternatives considered. A copy of the draft EID is available for public review at the City Secretary's Office. Written comments may be addressed to Eric Wilson, Public Works Director, City of Pearland, 3501 E. Orange Street., Pearland, Texas 77581.

AVISO DE AUDIENCIA PÚBLICA

El lunes, 11 de mayo, 2015, a las 6:30 p.m., la ciudad de Pearland, realizará una audiencia pública para proporcionar comentarios públicos del proyecto de la ciudad sobre el Documento de Información Ambiental (Environmental Information Document) (EID) de las expansiones del Proyecto de Recuperación de Agua Refection Bay (Proyecto) (Refection Bay Water Reclamation Facility Project) (Project) en el Ayuntamiento (City Hall) de Pearland, 3519 Liberty Drive, Pearland, Texas 77581. El propósito de la audiencia será para discutir sobre el EID, que fue formulado para mejor planificar, gestionar y responder a cualquier de los impactos ambientales que pudieran ocurrir en relación con el Proyecto propuesto.

La ciudad de Pearland ha autorizado el Proyecto propuesto para continuar proporcionando la capacidad de tratamiento de aguas residuales adecuado a través de dos expansiones de planta de la Instalación de Recuperación de Agua Refection Bay (Refection Bay Water Reclamation Facility). En general aumentará capacidad de tratamiento de aguas residuales a 3.0 MGD en la fase provisional y a 6.0 MGD en la fase final, mientras planeamiento adicional de la necesidad para expansión de tratamiento de aguas residuales en el futuro.

El EID fue elaborado para satisfacer los requisitos del Título 30 del Código Administrativo de Texas, Capítulo 371 (30 TAC §371) de las reglas de la Junta de Desarrollo del Agua de Texas (Texas Water Development Board) para proyectos financiados por el Fondo Rotatorio de Agua Limpia del Estado (Clean Water State Revolving Fund) (CWSRF) que satisface los requisitos de la Ley de Política Ambiental Nacional (National Environmental Policy Act) (NEPA). El EID fue desarrollado en conjunto con la ciudad de Pearland y la Junta de Desarrollo del Agua de Texas (Texas Water Development Board) (TWDB) para asistencia de aplicación de financiación y describe los impactos ambientales potenciales y alternativas consideradas.

El Proyecto propuesto busca financiamiento por \$55,000,000 del programa TWDB CWSRF a través del Préstamo Año Fiscal Previsto Plan de Uso (Loan Fiscal Year Intended Use Plan). La ciudad de Pearland no anticipa un aumento de la tasa de utilidad debido a la construcción del propuesto proyecto de Reflection Bay WRF. La ciudad de Pearland está buscando comentarios del público sobre el EID antes de su examen final por agencias reguladoras designadas y adopción por el TWDB. La ciudad de Pearland celebrará la audiencia en la comunidad para permitir un foro para el público para proporcionar discusión y comentario sobre el Proyecto propuesto.

Uno de los propósitos de esta audiencia es para hablar sobre los posibles impactos ambientales del proyecto y alternativas consideradas. Una copia del borrador del EID está disponible para revisión por el público en la Secretaria de la Ciudad. Comentarios por escrito pueden dirigirse a Eric Wilson, Director of Public Works, City of Pearland, 3501 E. Orange Street., Pearland, Texas 77581.

**CITY OF PEARLAND
ENVIRONMENTAL INFORMATION
DOCUMENT (EID)**

Prepared for:
THE CITY OF PEARLAND

by: CDM Smith, Inc.

January 2015

February 2015



Table of Contents

Section 1 Description of the Problem	1-1
1.1 Purpose and Need for the Proposed Project	1-1
1.2 Map of the Current Facilities Planning Area.....	1-2
Section 2 Environmental Setting	2-1
2.1 Existing Environment.....	2-1
2.1.1 Geological Elements.....	2-1
2.1.2 Hydrological Elements	2-2
2.1.3 Floodplains and Wetlands	2-3
2.1.4 Coastal Zones	2-4
2.1.5 Climatic Elements	2-8
2.1.6 Biological Elements.....	2-9
2.1.7 Cultural Resources	2-11
2.1.8 Economic Conditions.....	2-11
2.1.9 Land Use.....	2-13
2.1.10 Site Assessment	2-13
2.1.11 Other Programs and Projects.....	2-14
2.2 Future Environment Without a Project.....	2-14
Section 3 Alternatives to the Proposed Action	3-1
3.1 Alternative Solutions to the Water Quality Problems.....	3-1
3.1.1 Alternative Wastewater Development and Management Techniques	3-2
3.1.2 Flow and Waste Reduction Measures.....	3-3
3.1.3 Alternative Locations, Capacities, and Construction Staging.....	3-3
3.1.4 Alternative Methods of Sludge or Other Project Waste Disposal.....	3-5
3.2 Reasons for Rejecting or Accepting Alternatives	3-5
3.3 Floodplain Policy/Wetland Management Notice	3-5
Section 4 Project Description.....	4-1
4.1 Project Description	4-1
4.1.1 Treatment Process Proposed	4-3
4.1.2 Anticipated Parameters and Other Operational Requirements.....	4-5
4.1.3 List of Project Elements and Funding Sources	4-7
4.1.4 Existing Treatment Facilities.....	4-7
4.1.5 Special Project Elements	4-7
4.1.6 Land Required.....	4-8
4.1.7 Method of Sludge or other Project Waste Disposal and Disposal site.....	4-8
4.2 Proposed Linework.....	4-9
4.3 Maps of all Proposed Project Elements	4-9
4.4 Total Estimated Project Costs and Financing Sources.....	4-9
Section 5 Environmental Impacts of Proposed Project.....	5-1
5.1 Primary Impacts.....	5-1
5.1.1 Short-Term Impacts	5-1
5.1.2 Long-Term Impacts.....	5-2
5.2 Secondary Impacts.....	5-3
5.2.1 Impacts of Future Development on Land Use.....	5-3
5.2.2 Effects on Air Quality.....	5-3

5.2.3 Relate Population and Land Use Effects.....	5-3
5.2.4 Effects on Public Services	5-3
5.2.5 Economic Impacts	5-4
5.2.6 Conformance or Conflict with Land Use Planning.....	5-4
5.2.7 Impacts of Development on Environmentally Sensitive Areas.....	5-4
Section 6 Adverse Impacts Which Cannot Be Avoided Should the Project Be Implemented	6-1
Section 7 Relationship between Local Short-Term Uses of Man’s Environment and Maintenance and Enhancement of Long-Term Productivity	7-1
Section 8 Irreversible and Irretrievable Commitment of Resources to the Proposed Project.....	8-1
Section 9 Public Participation and Coordination	9-1
9.1 Discussion.....	9-1
9.2 Public Hearing	9-1
9.2.1 Advertisement	9-1
9.2.2 Hearing notice.....	9-1
9.2.3 Public Availability of EID.....	9-1
9.2.4 Hearing Format	9-1
9.2.5 Hearing Record.....	9-2
9.3 Coordination of Review.....	9-2
9.3.1 Circulation of EID	9-2
9.3.2 Notice of the Public Hearing and Availability	9-2
9.3.3 Documentation	9-2
Section 10 References	10-1

List of Figures

Figure 1-1 Project Vicinity.....	1-3
Figure 1-2 Project Location Map	1-4
Figure 1-3 Project Location with Aerial Imagery	1-5
Figure 2-1 Soils Map.....	2-2
Figure 2-2 Water Resources Map.....	2-5
Figure 2-4 Wetland Map.....	2-7
Figure 2-5 Windrose for Houston, TX from 1984 to 1992	2-8
Figure 2-6 American Peregrine Falcon	2-9
Figure 2-7 Interior Least Tern.....	2-9
Figure 2-8 Census Tract Map.....	2-12
Figure 2-9 Land Cover Map.....	2-15
Figure 2-10 Hazardous Facilities Near Project Area.....	2-16
Figure 4-1 City of Pearland Reflection Bay WRF	4-2
Figure 4-2 Service Area and Location of the Reflection Bay WRF	4-12

List of Tables

Table 2-1 Endangered Species in Brazoria County.....	2-10
Table 2-2 Demographic Profile of the Project Area.....	2-11
Table 2-3 Income Information in the Project Area.....	2-11
Table 2-4 Population Projections in the Project Area.....	2-13
Table 4-1 Population Data for Pearland and Brazoria County.....	4-1
Table 4-2 Reflection Bay WRF Annual Average Effluent Flows.....	4-7
Table 4-3 Summary of Costs for Proposed Expansions to 6 MGD.....	4-9
Table 4-4 Summary of Construction Costs for 1.0 MGD Package Plant.....	4-8
Table 4-5 Summary of Design Costs for 1.0 MGD Package Plant.....	4-9

Appendices

Appendix A	Public Hearing Presentation
Appendix B	Public Hearing Record Documents

Acronyms

AADF	Annual average daily flow
AQCR	Air Quality Control Region
BEG	Bureau of Economic Geology
BMP	best management practice
BOD5	5-Day biochemical oxygen demand
CAA	Clean Air Act
CCN	Certificate of Convenience and Necessity
cfu	colony forming units
CGP	Construction General Permit
CWSRF	Clean Water State Revolving Fund
DO	dissolved oxygen
EID	Environmental Information Document
EO	Executive Order
EPA	U.S. Environmental Protection Agency
FEMA	Federal Emergency Management Agency
FIRM	flood insurance rate maps
GLO	Texas General Land Office
GPCD	gallons per capita daily
HVAC	heating, ventilation, and air conditioning
MGD	million gallons per day
NAAQS	National Ambient Air Quality Standards
NOI	Notice of Intent
PER	Preliminary Engineering Report
PLC	Programmable Logic Controller
ppm	parts per million

Acronyms

MCC	Motor Control Center
mg/L	milligrams per liter
NEPA	National Environmental Policy Act
NH ₃ -N	ammonia nitrogen
NRCS	Natural Resources Conservation Service
SBR	sequencing batch reactor
SWP3	storm water pollution prevention plan
TARL	Texas Archaeological Research Laboratory
TCEQ	Texas Commission on Environmental Quality
THC	Texas Historical Commission
TMDL	Total Maximum Daily Load
TAC	Texas Administrative Code
TPDES	Texas Pollutant Discharge Elimination System
TPWD	Texas Parks and Wildlife Department
TSS	total suspended solids
TWDB	Texas Water Development Board
U.S.C.	United States Code
USDA	U.S. Department of Agriculture
USFWS	U.S. Fish and Wildlife Service
UV	ultraviolet
WAS	waste activated sludge
WWTP	wastewater treatment plant
VFD	Variable Flown Drive

Section 1

Description of the Problem

1.1 Purpose and Need for the Proposed Project

The City of Pearland is situated south of Clear Creek, which forms the boundary between Harris and Brazoria counties in the Gulf Coastal region of Texas (see **Figure 1-1**). The City of Pearland's Reflection Bay Water Reclamation Facility (WRF) is about 13 miles southwest of downtown Houston and 40 miles northwest of Galveston. Major roadways that serve the City of Pearland include Texas South Freeway 288, Texas Sam Houston Beltway 8, and Texas Highway 36. The proposed project site is a 13-acre tract of land located in the City of Pearland immediately south of Clear Creek, approximately 1.2 miles west of Texas South Freeway 288 and 1.4 miles south of the Texas Sam Houston Beltway 8 in northwestern Brazoria County (see **Figure 1-2**). The project is proposed on an already developed tract which houses the existing City of Pearland Reflection Bay WRF (see **Figure 1-3**). The Reflection Bay WRF street address is 1818 Reflection Bay Drive Pearland, Texas 77584.

The Reflection Bay WRF serves portions of the north-central and northwestern areas of the City of Pearland's sanitary collection service area. The purpose of the proposed project is to provide adequate wastewater treatment capacity by more than doubling the facility's current capacity in a phased process from its present 2.0 million gallons per day (MGD) to 5.0 MGD in the interim phase and ultimately expand to 6.0 MGD in the final phase of the project. The Reflection Bay WRF service area will expand to include the City's current Southdown WWTP service area, which will contribute a permitted capacity of 1.0 MGD to the Far Northwest plant, and the Southdown WWTP will be decommissioned. The Reflection Bay WRF is a critical component of the City's sanitary services that will provide wastewater treatment service to a significant portion of the City's wastewater customers.

CDM Smith produced a Preliminary Engineering Report (PER) for the City which includes detailed descriptions of all proposed upgrades to the Reflection Bay WRF and analyses to support the proposed designs. Projected wastewater flows and organic loads for the year 2030 were used to determine the size of treatment facilities needed to provide adequate wastewater services to residents of the City of Pearland. For this analysis, CDM Smith reviewed and compared population projections from the Texas Water Development Board (TWDB) and historical population growth rates (estimated based on the number of sewer connections added each year) for the City of Pearland. A projected 2030 population of 411,387 was estimated by TWDB for Brazoria County, and the City of Pearland population is expected to increase to 125,231 (TWDB, 2013). The Reflection Bay WRF is currently operating at a capacity of 90% or more with a permitted capacity of 2.0 MGD. CDM Smith analyzed wastewater flow data from the City and found that the overall per capita wastewater generation rate (including all WWTPs in the City) was approximately 100 gallons per capita daily (GPCD).

The existing phase (2.0 MGD) of the WWTP includes a complete mix activated sludge plant, designed with single nitrification criteria. Wastewater flows through an influent lift station with an automatic fine screen and then goes to the 4 sequencing batch reactors (SBRs) for biological treatment and settling. Fine bubble air diffuser systems are utilized for aeration, and floating decanters remove supernatant. Positive displacement blowers supply air to the SBR basins. Supernatant flows to an automatic backwash sand filter, then through an ultraviolet (UV) light disinfection system. Flow is

then metered and discharged to a drainage ditch that flows north to Clear Creek (also referred to as Clear Creek above Tidal, Segment 1201) via Outfall 001.

Each SBR basin has a dedicated submersible non-clog sludge pump. After settling, sludge is pumped to the two aerobic digesters. Positive displacement blowers supply air to the digesters. From the digesters, sludge is transferred to a centrifuge via the sludge pumping station. Dewatered sludge is discharged into a dumpster. Sludge is transported offsite to a TCEQ-registered landfill.

Construction of the 1.0 million gallon per day (MGD) emergency services package wastewater treatment plant expansion to the Reflection Bay Water Reclamation Facility (RB WRF) for the City of Pearland is being managed by CDM Constructors Inc. (CCI). The Design-Builder CCI shall provide for the City of Pearland a 1.0 MGD package wastewater treatment plant designed to meet current discharge permit limit standards, integrate with the existing plant facilities, and be compatible with the future expansion currently under final design.

This Environmental Information Document (EID) identifies the proposed action of upgrading the Reflection Bay WRF and discusses potential historic and environmental impacts of implementing the proposed action. The expansions and plant improvements proposed here are subject to funding under the TWDB Clean Water State Revolving Fund (CWSRF) Loan Program. During Phase 1, which would increase capacity to 5.0 MGD, 1 aerobic digester, 1 additional SBR and 2 disk filters would be constructed and the existing UV disinfection basin would be reconfigured. One additional SBR, the sixth, would be constructed during the Final Phase, which would increase capacity to 6.0 MGD.

1.2 Map of the Current Facilities Planning Area

The proposed project area is located in Pearland, Texas approximately 6,335 feet west of Texas South Freeway 288 and 7,390 feet south of the Texas Sam Houston Beltway 8 in northwestern Brazoria County, just south of the Clear Creek. The project area is further defined as being 1,000 feet north of McHard Road and approximately 1.25 miles west of the McHard Road at Texas South Freeway 288 intersection. **Figure 1-1** illustrates the location of the proposed Reflection Bay WRF project area and its overall site vicinity.

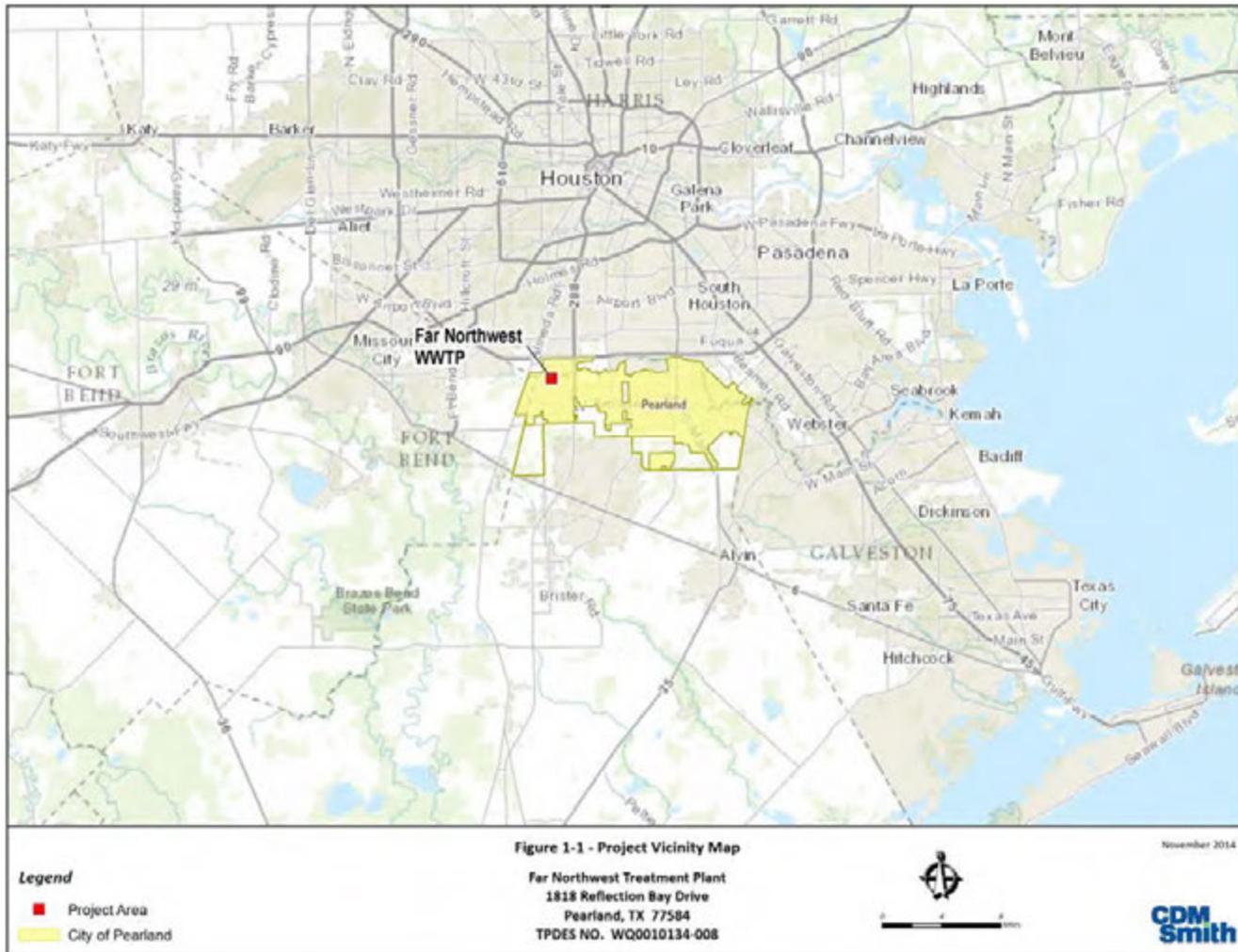


Figure 1-1 Project Vicinity



Figure 1-2 Project Location Map



Figure 1-3 Project Location with Aerial Imagery

Section 2

Environmental Setting

2.1 Existing Environment

The City of Pearland is situated in northern Brazoria County, just south of Clear Creek which forms the boundary with Harris County. The Reflection Bay WRF, one of two WWTPs that serve the City's north and northwest population, is located in the northwestern portion of the City. The proposed project area is located within the existing Reflection Bay WRF site. Aerial photography of the project area is presented in **Figure 1-3**.

2.1.1 Geological Elements

Brazoria County lies within the Gulf Coast Plain region and the Coastal Prairies subregion. The Gulf Coast Plain physiographic province extends from the shoreline of the Gulf of Mexico to the Balcones Fault Zone which generally extends along Interstate Highway 35 in central Texas. The Gulf Coast Plain region is comprised of fine sands, silts, and clays and is underlain by deltaic sands and muds (Bureau of Economic Geology [BEG], 1996).

The Coastal Prairies subregion has an elevation that ranges from 0 to 300 feet above sea level and is generally level to gently sloping upward to the west. This subregion is mostly comprised of layered deltaic sands, silts, and clays that are relatively young and erode easily (BEG, 1996).

In areas down dip to the southeast, the geologic units are buried under increasingly thick sequences of Tertiary sediments that are influenced by major structural fault zones and salt domes of the Texas Gulf Coastal Plain and that contain increasing thicknesses of shales. These depositional units have been further modified by subsurface structural elements that developed during the Tertiary period and include the development of syndepositional normal faults (also referred to as "growth faults") and modified by salt tectonism that formed the salt domes. The Wilcox fault zone in southeastern Brazoria County was the first growth fault system that developed parallel to the present-day coastline.

2.1.1.1 Soils

According to the U.S. Department of Agriculture (USDA), soils in the project area are defined as Gulf Coast Prairie soil (2008). **Figure 2-1** shows the full soils survey for the proposed project area within Brazoria County, Texas. The two main soil types in the proposed project area are the Bernard-Edna Complex (soil unit 8, as shown in **Figure 2-1**) and the Lake Charles Clay, 0 to 1 percent slopes (soil unit 24).

The Bernard-Edna Complex is composed of 60 percent Bernard clay loam, 20 percent of Edna fine sandy loam, silty clay, and clay (Crenwelge, 1981; USDA, 2014). This unit is a somewhat poorly drained hydric soil unit, which means they may support wetlands. This complex is generally non-saline and has slopes of 0 to 1 percent (USDA, 2014).

The Lake Charles Clay is a moderately well drained and hydric soil, which means they may support wetlands. This is a deep unit (over 80 inches to bedrock) made up of primarily grayish and brownish clay. The unit is usually level, with slopes ranging from 0 to 1 percent.

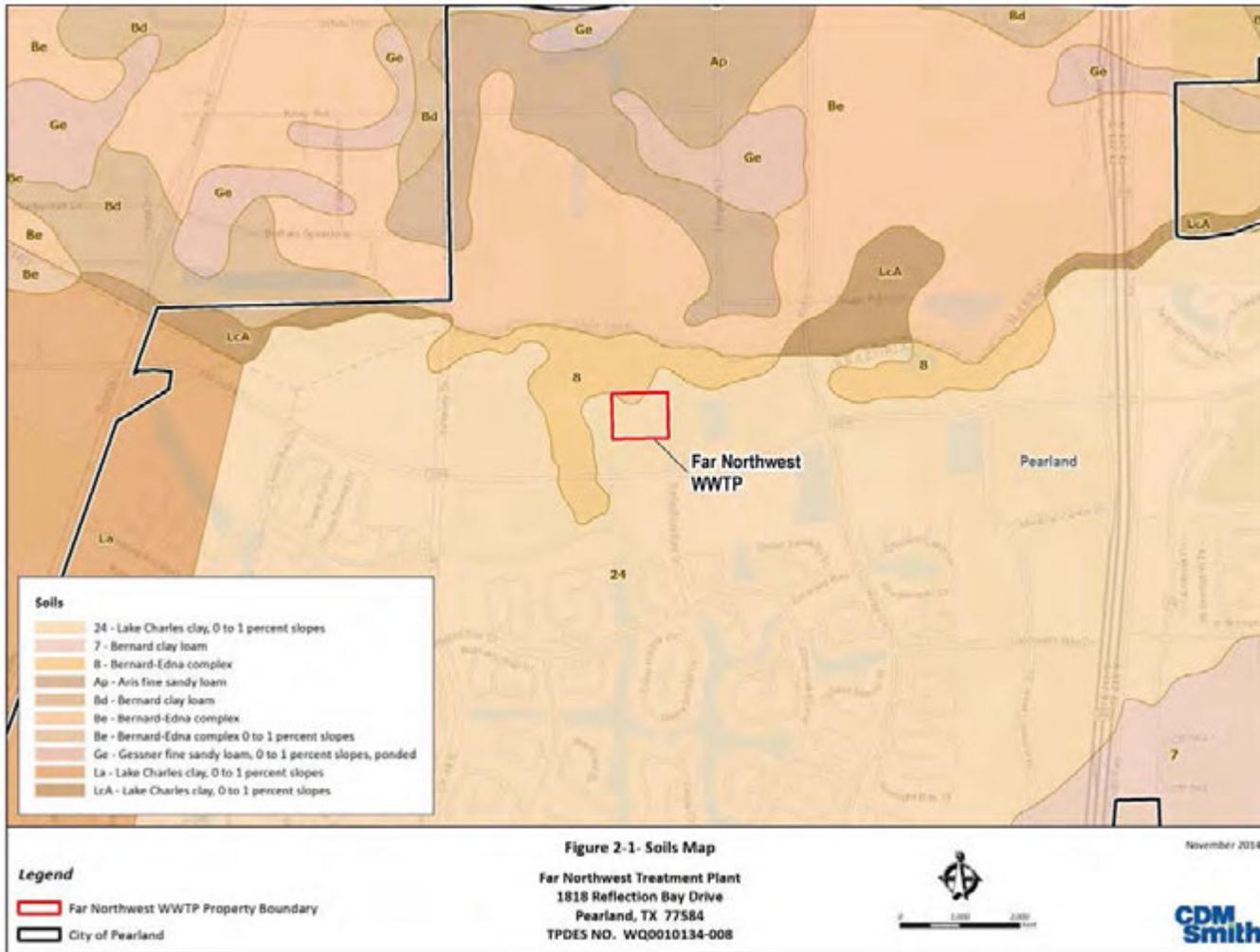


Figure 2-1 Soils Map

2.1.2 Hydrological Elements

The receiving water of the Reflection Bay WRF is Segment No. 1102 of Clear Creek, which is located in Brazoria/Harris County, TX (see **Figure 2-2**). Segment No. 1102 of Clear Creek receives runoff from the Clear Creek watershed. Sections 303(d) and 305(b) of the Clean Water Act (CWA) require all states to identify and characterize waters that do not meet, or are not expected to meet water quality standards (U.S.C. 1313(d) and 1315(b)). The TCEQ is the regulatory agency responsible for compliance with water quality standards in Texas. The TCEQ's 2012 Integrated Report for satisfying CWA Sections 303(d) and 305(b) characterizes the quality of Texas surface waters and identifies those waters that do not meet water quality standards on the 303(d) list; an inventory of the state's impaired waters. Segment 1102 is listed on the 303(d) list for elevated levels of polychlorinated biphenyls (PCBs) in fish tissue (TCEQ, 2012).

Segment 1102 of Clear Creek is subject to 4 Total Maximum Daily Loads (TMDLs) for the following water quality impairments: bacteria, chlordane in fish tissue, dichloroethane in fish and crab tissue, and trichloroethane (TCEQ, 2014a). A TMDL is a scientifically-derived limit for a particular pollutant in a specific water body which quantifies how much of a particular pollutant a water body can absorb and still meet applicable water quality standards. Following the development of TMDLs, Implementation Plans (IP) were developed for each TMDL listed above. These IPs have been approved by the TCEQ and are currently being implemented in an effort to improve water quality and restore Clear Creek for recreational use (TCEQ, 2014a).

In 2009, the Texas Department of State Health Services (TDHS) issued a fish consumption advisory for all fish species in the segment of Clear Creek extending from upstream of Highway 521 to Clear Lake (which includes Segment 1102 which the Reflection Bay WRF discharges into) after finding PCBs at concentrations exceeding health guidelines (2014). In 2010, the TCEQ listed Segment 1102 for PCBs in fish tissue and indicated a TMDL will be developed.

Clear Creek has one existing water right for irrigation water use held in Water Right No. 5364 (TCEQ, 2014b). The underlying aquifer to the City of Pearland and to the Pearland Far NWWWTP is the Gulf Coast Aquifer. This aquifer is actually a conglomerate of several aquifers that parallel the coastline as far south as the Rio Grande Valley. The aquifer's average saturated freshwater thickness is 1,000 feet used for municipal, industrial and irrigation purposes (TWDB, 2014a).

2.1.3 Floodplains and Wetlands

Executive Order (EO) 11988, Floodplain Management, requires federal agencies to take actions to minimize occupancy of and modifications to floodplains. EO 11990, Protection of Wetlands, requires federal agencies to take action to minimize the loss of wetlands. Activities that disturb jurisdictional wetlands require a permit from the U.S. Army Corps of Engineers (USACE) under Section 404 of the CWA of 1977 (33 U.S.C. 1344).

The Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRMs) map floodplain areas and illustrate the extent of the 100-year floodplain within the proposed project area. As shown on **Figure 2-3**, the project area is located within the 100-year floodplain. The proposed project area is mapped on FEMA FIRM panel 48039C0010I dated September 22, 1999. The existing WWTP is located within the 100-year floodplain and all process portions of the plant have been constructed above the FEMA base flood elevation. The floodplain provides natural values such as conveying flood flows, providing wildlife habitat, serving as greenspace and a natural buffer to the creek and floodway. The US Fish and Wildlife Service (USFWS) National Wetlands Inventory (NWI)

maps for the project area indicate that there are no wetlands present within the project area (see **Figure 2-4**) (USFWS, 2014a). The project will not discharge into any of the surrounding wetlands.

2.1.4 Coastal Zones

The Coastal Zone Management Act enables coastal states to designate state coastal zone boundaries and develop coastal management programs to improve protection of sensitive shoreline resources and guide sustainable use of coastal areas. The Texas Coastal Management Program is administered by the Texas General Land Office (GLO). The GLO manages the Texas Coastal Management Program which supports the long-term health of the Texas coast through management of the State's coastal natural resource areas.

The project area is located just outside of the coastal management zone in designated to the east Brazoria County and the tidal segment of Clear Creek (Segment 1101) are located within the zone (GLO, 2014). The City of Pearland lies about 25 miles inland and west of Galveston Bay, and about 50 miles inland and north of the Gulf of Mexico.

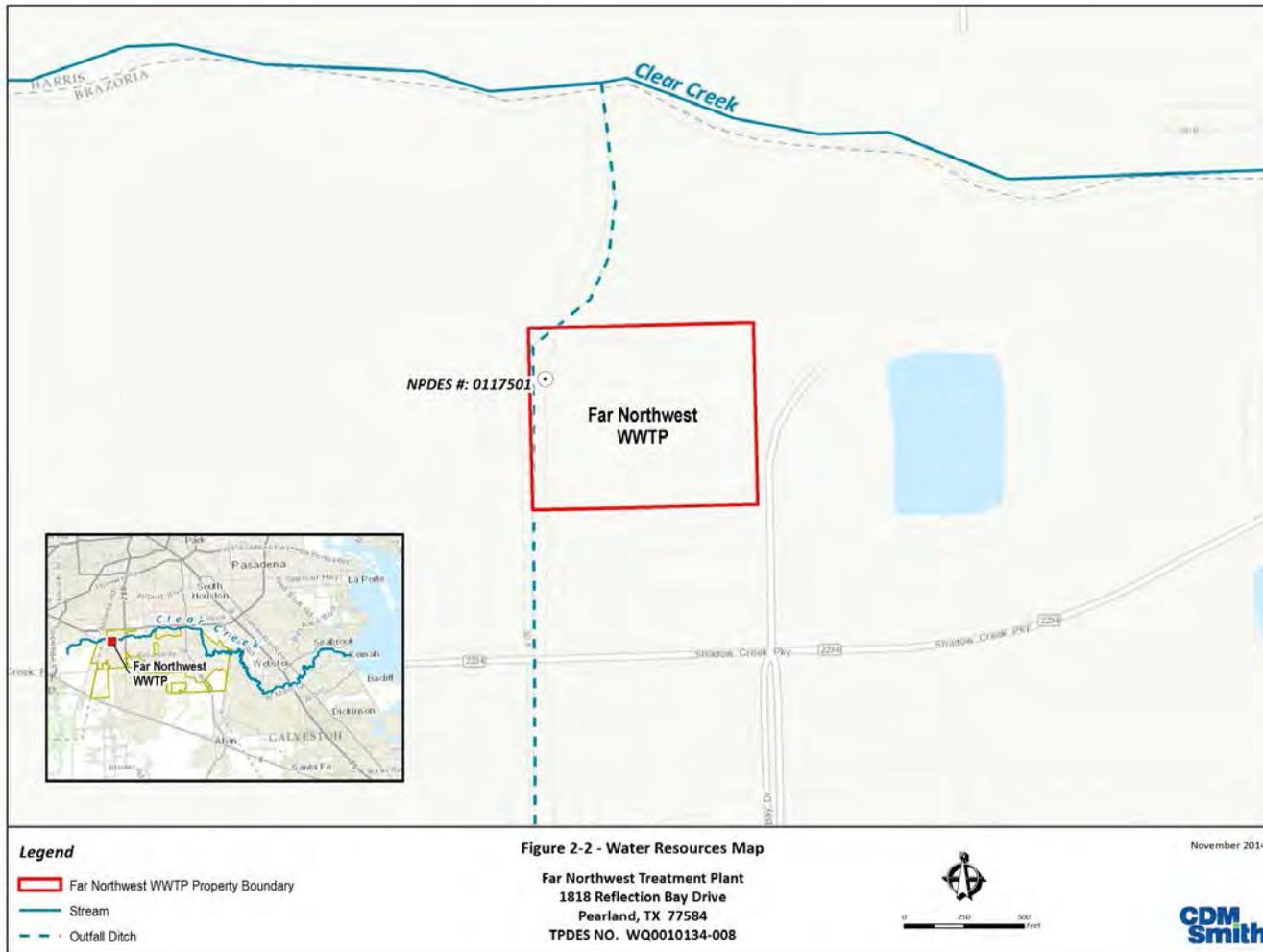


Figure 2-2 Water Resources Map

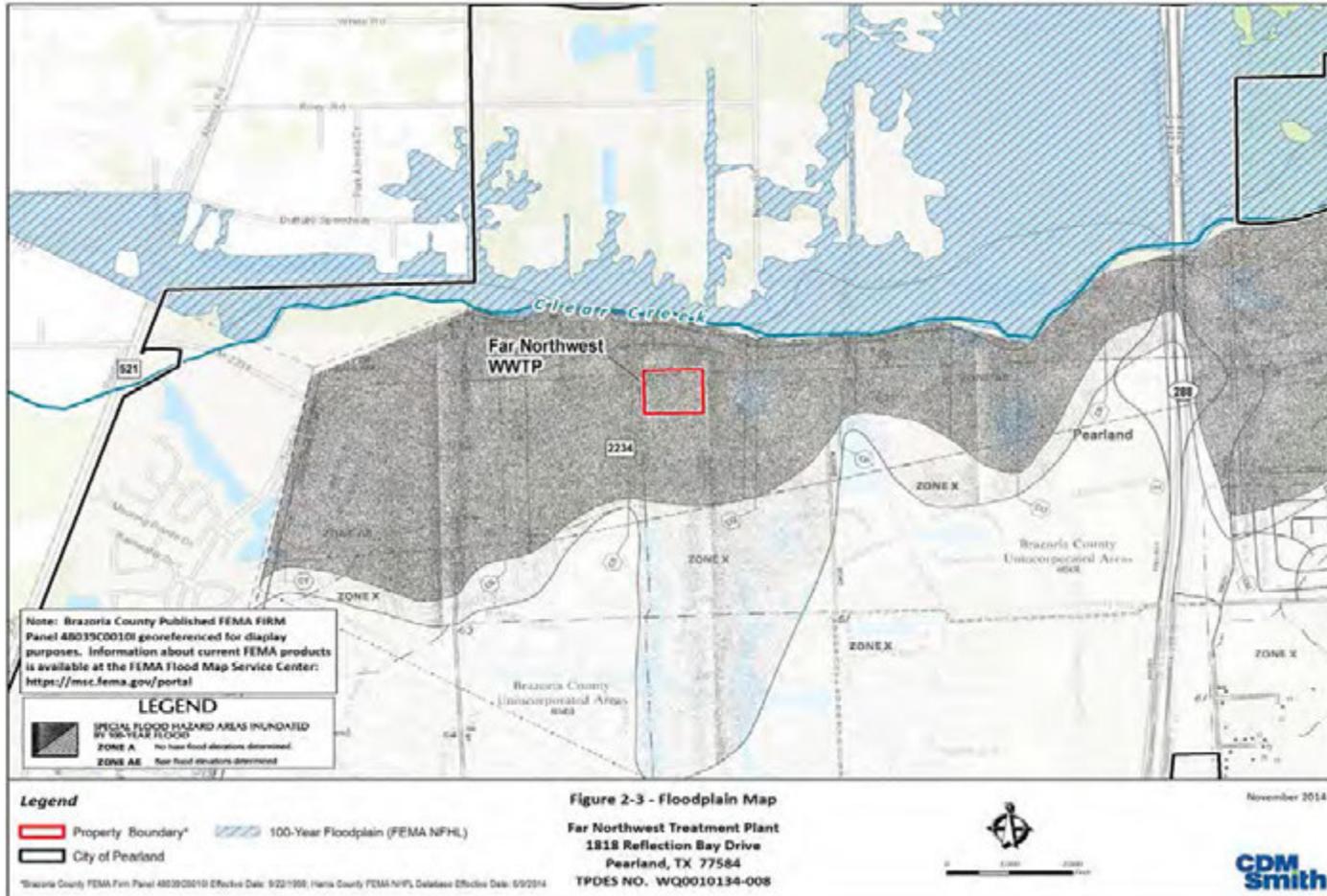


Figure 2-3 Floodplain Map

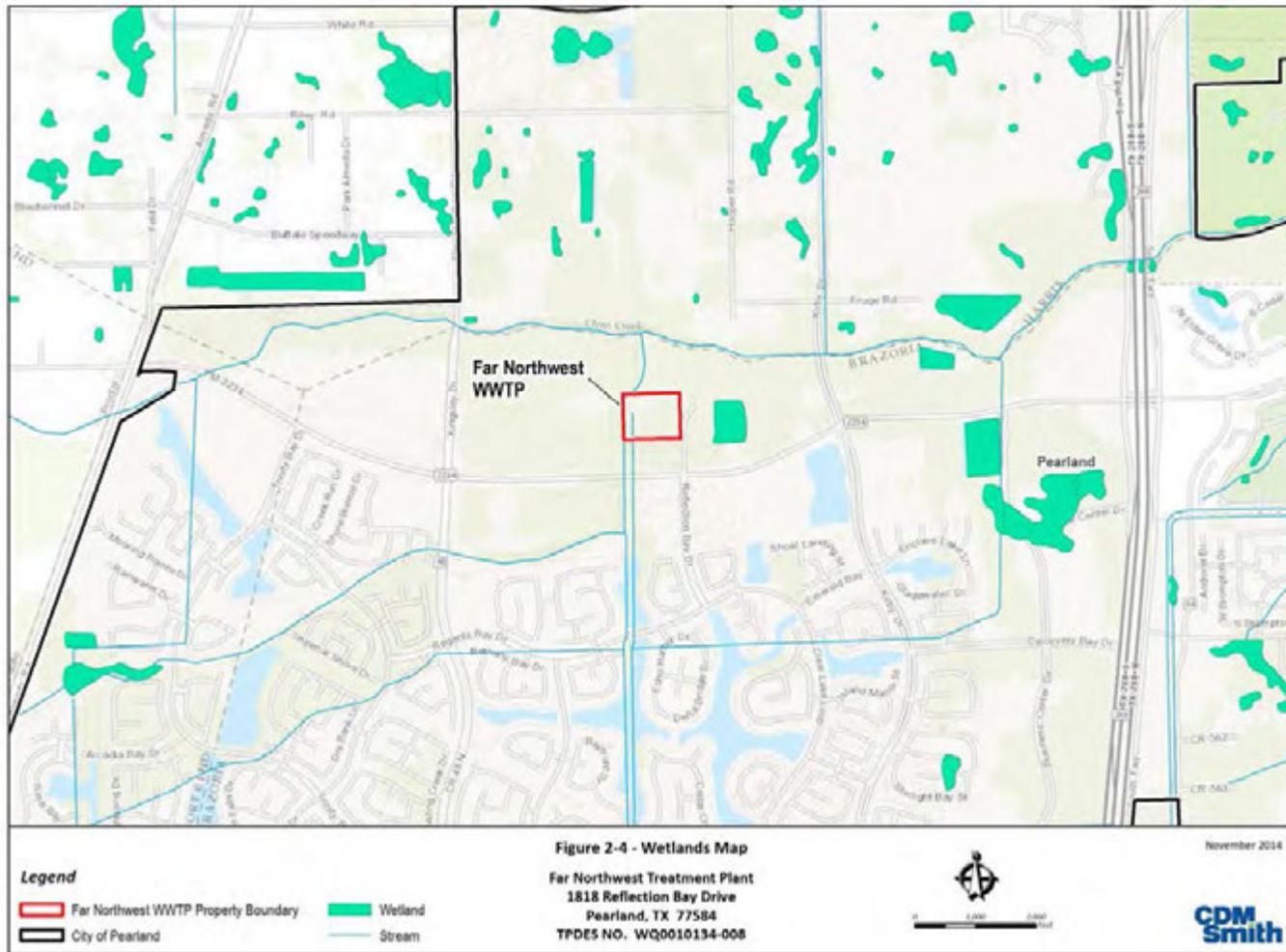


Figure 2-4 Wetland Map

2.1.5 Climatic Elements

The project area is located in the Piney Woods, a region of eastern Texas with a humid subtropical climate. The wettest months of the year are generally April and May. Temperatures range from an average high of 94° F in July to an average low of 39° in January. Rainfall in the area averages 53 inches per year.

Prevailing winds in the area come from the southeast, as shown on **Figure 2-5** (TCEQ, 2014c). The maximum wind speed of 11 to 16 knots (12.7 to 18.4 miles per hour) occurs from the southeast.

The Clean Air Act (CAA; 42 U.S.C. 7401 et seq.), provides the basis for regulating air emissions. Air quality control regions (AQCRs) have been created under the CAA. The U.S. Environmental Protection Agency (EPA) classifies air quality within each AQCR according to whether the concentrations of certain pollutants called criteria air pollutants exceed National Ambient Air Quality Standards (NAAQS).

The proposed project area is within the City of Pearland, which is located in the Houston-Galveston-Brazoria metropolitan area. EPA designates this region as being in nonattainment of 8-Hour Ozone standards (EPA, 2014a). The County's deadline for reaching attainment of the NAAQS average ozone concentration of less than 0.075 parts per million (ppm) for an 8-hour period is December 31, 2015.

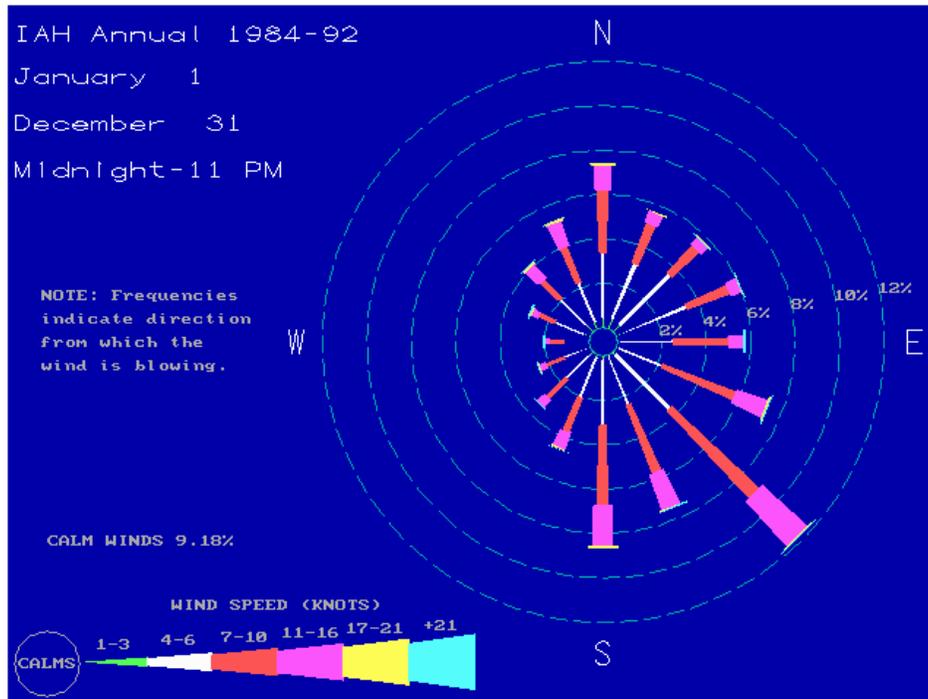


Figure 2-5 Windrose for Houston, TX from 1984 to 1992

2.1.6 Biological Elements

According to the Texas Parks and Wildlife Department (TPWD), Brazoria County lies within the Gulf Prairies ecoregion of Texas (TPWD, 2011). This ecoregion is characterized by shallow bays, estuaries, salt marshes, dunes, and tidal flats (TPWD, 2014). The project area does not include any state or national parks, forests, wildlife refuges, wild or scenic rivers, or natural areas.

The Endangered Species Act of 1973 gives US Fish and Wildlife Service (USFWS) authority for the protection of threatened and endangered species. This protection includes a prohibition of direct take (e.g., killing, harassing) and indirect take (e.g., destruction of critical habitat). TPWD code prohibits take of state-listed threatened and endangered species.

The project area is located entirely in Brazoria County. Both Federal and State listed species for Brazoria County are listed in **Table 2.1** (USFWS, 2014b; TPWD, year). Not all species on the federal or Texas list for Brazoria County share the same probability of occurring in the County. Some are migrants and may only pass through the County on a seasonal basis. Species maps provided by TPWD indicate that the endangered and threatened species in Brazoria County are indicated as county-wide listing and they do not provide a delineation of habitat areas.

The state-listed threatened American Peregrine Falcon (shown in **Figure 2-6**) is a year-round resident and local breeder in east Texas, nests in tall cliff eyries. Also, it migrates across the Country from more northern breeding areas in the U.S. and Canada and winters along the Texas coast and farther south. The falcon occupies a wide range of habitats during migration, including urban areas. It is a low-altitude migrant and stopovers at leading landscape edges such as lake shores, coastlines and barrier islands are common (TPWD 2006).



Figure 2-6 American Peregrine Falcon



Figure 2-7 Interior Least Tern

The federally-listed endangered Interior Least Tern (pictured in **Figure 2-7**) is a subspecies which is listed only when inland (more than 50 miles from the coastline) and nests along sand/gravel bars within braided streams and rivers. It is also known to nest on man-made structures (inland beaches, WWTPs, gravel mines, etc.). It eats small crustaceans, when breeding forages within a few hundred feet of the colony (TPWD 2006).

The Texas-listed threatened Texas horned lizard can be found everywhere in Texas except for the piney woods region in east Texas. The horned lizard's diet mainly consists of harvester ants; however, the lizard

also feeds on grasshoppers, isopods, small beetles, and beetle larvae (TPWD 2006).

The Texas-listed threatened Peregrine Falcon nests in the western U.S., Canada, and Mexico. These birds spend the non-breeding season near their breeding areas or move only moderately southward. The Peregrine Falcon inhabits meadows, mudflats, beaches, marshes, and lakes where birds are abundant (TPWD 2006).

Table 2-1 Endangered Species in Brazoria County

Common Name	Scientific Name	Federal Status	State Status
BIRDS			
American Peregrine Falcon	<i>Falco peregrinus anatum</i>	Not listed	Threatened
Bald Eagle	<i>Haliaeetus leucocephalus</i>	Delisted	Threatened
Eskimo Curlew	<i>Numenius borealis</i>	Not listed	Endangered
Peregrine Falcon	<i>Falco peregrinus</i>	Not listed	Threatened
Piping Plover	<i>Charadrius melodus</i>	Threatened	Threatened
Reddish Egret	<i>Egretta rufescens</i>	Not listed	Threatened
Sooty Tern	<i>Sterna fuscata</i>	Not listed	Threatened
White-faced Ibis	<i>Plegadis chihi</i>	Not listed	Threatened
White-tailed Hawk	<i>Buteo albicaudatus</i>	Not listed	Threatened
Whooping Crane	<i>Grus americana</i>	Endangered	Endangered
Wood Stork	<i>Mycteria americana</i>	Not listed	Threatened
FISHES			
Smalltooth sawfish	<i>Pristis pectinata</i>	Not listed	Endangered
MAMMALS			
Jaguarundi	<i>Herpailurus yaguarondi</i>	Not listed	Endangered
Louisiana black bear	<i>Ursus americanus luteolus</i>	Not listed	Threatened
Ocelot	<i>Leopardus pardalis</i>	Not listed	Endangered
Red wolf	<i>Canis rufus</i>	Not listed	Endangered
West Indian manatee	<i>Trichechus manatus</i>	Endangered	Endangered
MOLLUSKS			
False spike mussel	<i>Quadrula mitchelli</i>	Not listed	Threatened
Smooth pimpleback	<i>Quadrula houstonensis</i>	Candidate for listing	Threatened
Texas fawnsfoot	<i>Truncilla macrodon</i>	Candidate for listing	Threatened
REPTILES			
Alligator snapping turtle	<i>Macrochelys temminckii</i>	Not listed	Threatened
Atlantic hawksbill sea turtle	<i>Eretmochelys imbricata</i>	Endangered	Endangered
Green sea turtle	<i>Chelonia mydas</i>	Threatened	Threatened
Kemp's Ridley sea turtle	<i>Lepidochelys kempii</i>	Endangered	Endangered
Leatherback sea turtle	<i>Dermochelys coriacea</i>	Endangered	Endangered
Loggerhead sea turtle	<i>Caretta caretta</i>	Threatened	Threatened
Texas horned lizard	<i>Phrynosoma cornutum</i>	Not listed	Threatened
Timber rattlesnake	<i>Crotalus horridus</i>	Not listed	Threatened

2.1.7 Cultural Resources

According to the Texas Historical Commission (THC) Atlas, Brazoria County has 131 historical markers, 11 National Registry sites, 3 State Antiquities Landmarks, and 1 courthouse (THC, 2014). There are no historical sites, cemeteries, or museums mapped or located within a one-mile radius of the Reflection Bay WRF project area. There is no record of historic structures on or near this location. One archeological site was studied near this location. The WWTP site has not been surveyed; however an adjacent property was surveyed in 2013. No archeological sites or artifacts were uncovered on the adjacent property (THC, 2014).

2.1.8 Economic Conditions

Under EO 12898, demographic information is used to determine whether minority populations or low-income populations are present in the areas potentially affected by the range of project alternatives. If so, a determination must be made whether implementation of the program alternatives may cause disproportionately high and adverse human health or environmental impacts on those populations. This economic analysis is focused on the local (i.e. census tract and City) level. As shown in **Figure 2-8**, the project area is located in census tract 6606.02 in Brazoria County. **Table 2-2** and **Table 2-3** provide economic and demographic characteristics for census tract 6606.02 and the City of Pearland is presented for comparison (U.S. Census Bureau, 2012).

Table 2-2 Demographic Profile of the Project Area

Ethnic Composition	City of Pearland		Census Tract 6606.02	
	Count	Percentage	Count	Percentage
White alone	58,719	62.4%	12,012	43.8%
Black or African American	15,627	16.6%	7,285	26.6%
American Indian	376	0.4%	0	0.0%
Asian	12,881	13.7%	6,130	22.4%
Native Hawaiian	14	0.0%	0	0.0%
Hispanic/Latino	19,885	21.1%	7,195	23.3%
Total Minority Population	48,783	51.8%	20,122	73.4%
Total Population	94,098	--	27,406	--

As presented in **Table 2-3**, the median household and family income for census tract 6606.02 is higher than the City of Pearland, and the poverty rate is lower compared to the City (U.S. Census Bureau, 2012).

Table 2-3 Income Information in the Project Area

Parameter	City of Pearland	Census Tract 6606.02
Median Household Income	\$92,346	\$106,466
Median Family Income	\$104,344	\$115,600
Poverty Level	4.5%	7.0%

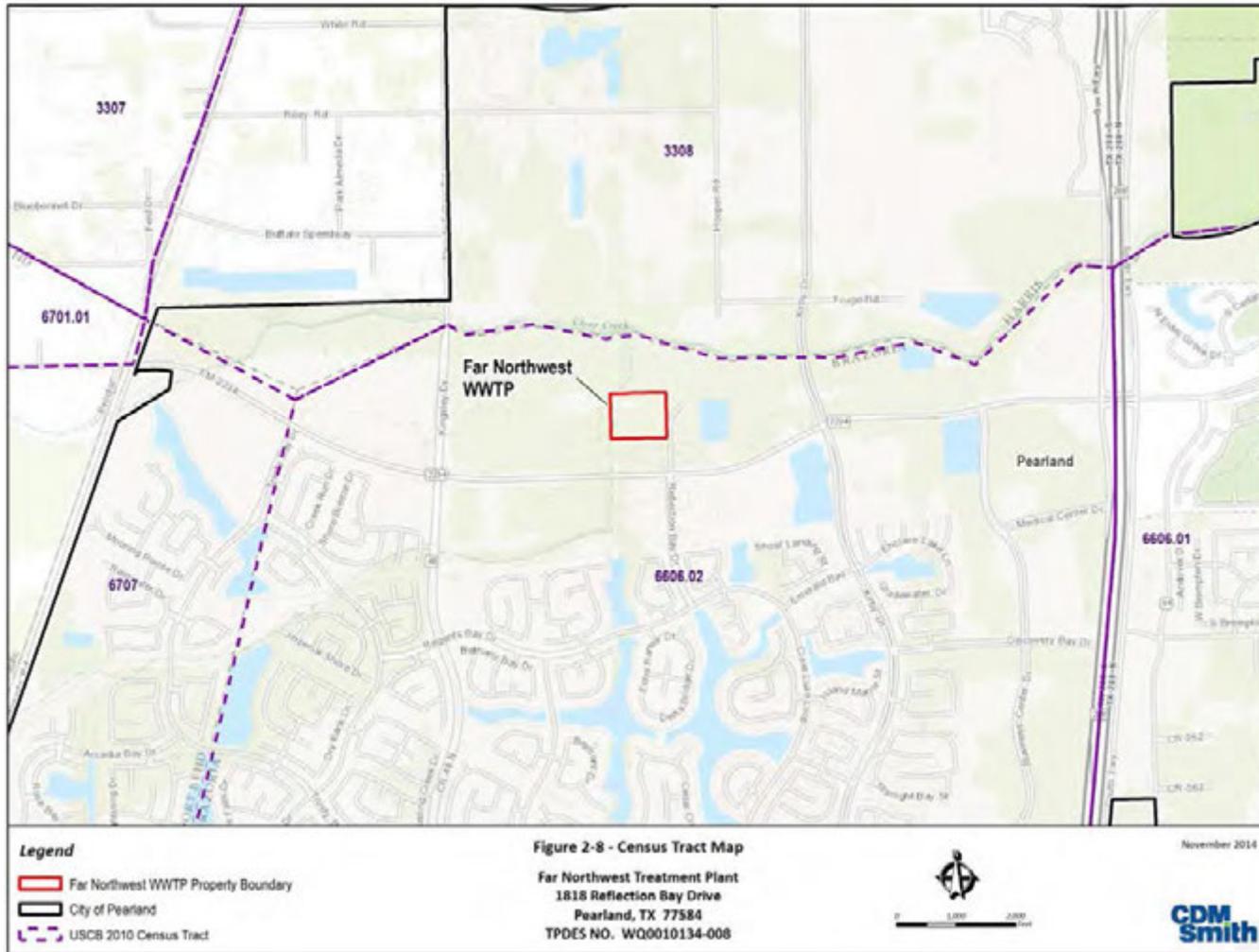


Figure 2-8 Census Tract Map

The TWDB prepares population projections for cities and water utilities across the State in support of the State Water Plan. The project area is located within Regional Water Planning Area H. Population projections prepared by TWDB for the 2016 Regional Water Plans calculate projections through 2070. Population projections for the City of Pearland are presented in **Table 2-4**, the State of Texas is presented for comparison purposes (TWDB, 2014b).

Table 2-4 Population Projections in the Project Area

City of Pearland			State of Texas	
Year	Population	Average Annual Growth Rate (%)	Population	Average Annual Growth Rate (%)
2020	115,164	8.7	29,510,184	14.0
2030	125,231	10.2	33,628,653	12.2
2040	137,955	9.1	37,736,338	11.1
2050	150,444	8.4	41,928,264	10.6
2060	163,118	7.2	46,354,818	10.1
2070	174,933	-	51,040,173	-

2.1.9 Land Use

The land use map for Pearland, Texas is shown in **Figure 2-9**. The area around the Reflection Bay WRF project site is classified as spectrum district land use and the area is zoned planned development. Land use in the vicinity of the WWTP is predominately for residential use. Pearland covers 47 square miles of the north-western portion of Brazoria County and extends minimally into Harris and Fort Bend counties.

2.1.10 Site Assessment

Hazardous materials are those substances defined by the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act, and the Toxic Substances Control Act. The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, which was further amended by the Hazardous and Solid Waste Amendments, defines hazardous wastes. In general, both hazardous materials and waste include substances that, because of their quantity, concentration, physical, chemical, or infectious characteristics, may present substantial danger to public health or to the environment when released or otherwise improperly managed.

To determine whether any hazardous waste facilities exist in the vicinity of the project area, or whether there is a known and documented environmental issue or concern that could affect the project sites, a search for Superfund sites, toxic release inventory sites, industrial water dischargers, hazardous facilities or sites, and multi-activity sites was conducted using the EPA Envirofacts database.

According to the Envirofacts database, no hazardous facilities are located on the project site. In the area surrounding the Pearland Reflection Bay WRF there are 3 facilities that produce and release air pollutants, 7 facilities that have reported toxic releases, 22 facilities that have reported hazardous waste releases, and 7 facilities that discharge to waters of the U.S. **Figure 2-10** identifies the hazardous waste sites in closest proximity to the project area (U.S. EPA, 2014b).

2.1.11 Other Programs and Projects

There are no other programs or projects in the project area that would affect the proposed project or its alternatives.

2.2 Future Environment Without a Project

As this EID has shown, the City of Pearland is a rapidly growing city in the Houston metropolitan area and has identified that upgrades are needed to increase capacity of the Reflection Bay WRF to 6 MGD. If the proposed project is not undertaken, then the City of Pearland will not have adequate capacity in the wastewater treatment system to meet the needs of its residents. Furthermore, without upgrades failures will begin to occur, permit violations will follow, monetary fines will be levied, and administrative orders from TCEQ may be issued. Water quality of the receiving stream, Clear Creek, will further degrade and the wastewater collection system will have increased infiltration/inflow incidents that cause unauthorized sanitary discharges to the environment. Thus the absence of the project in the area would have potential adverse impacts on the existing environment.

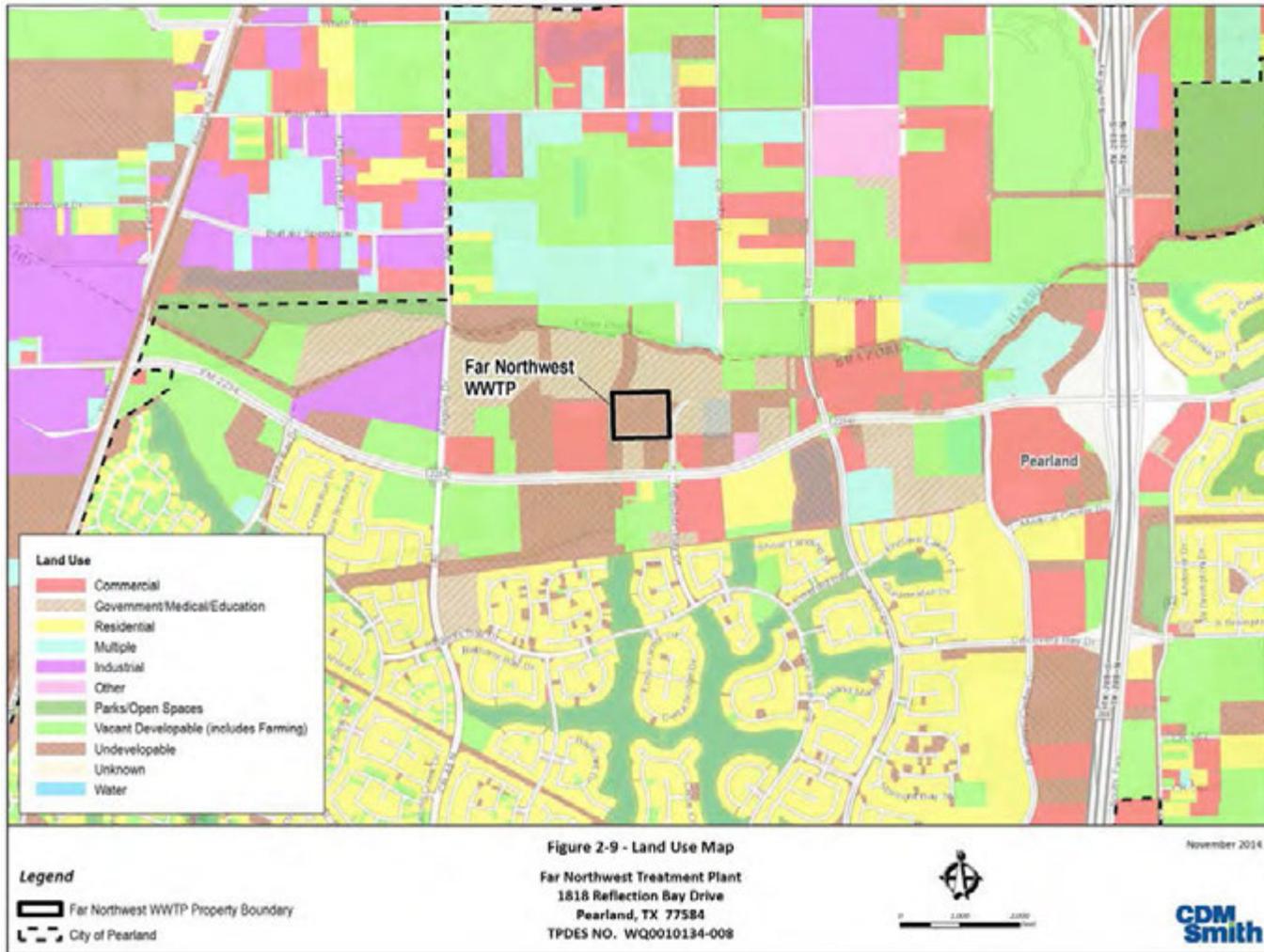


Figure 2-9 Land Cover Map



Figure 2-10 Hazardous Facilities Near Project Area

Section 3

Alternatives to the Proposed Action

This section compares alternatives considered besides the proposed action that may also provide viable water quality solutions for the City of Pearland Reflection Bay WRF capacity issues.

The Far Northwest WTP currently serves significant portions of the north-central and northwestern areas of the City of Pearland's sewer collection areas. The Reflection Bay WRF is currently operating at a capacity of 90% or more with a permitted capacity of 2.0 MGD. The proposed action aims to increase the capacity of the Reflection Bay WRF so the City can meet growing demands for wastewater within the City's growing service area. Furthermore, Southdown WWTP is nearing the end of its useful service life and some treatment components are nearly in disrepair; it is not feasible for extended wastewater treatment service without significant plant rehabilitation. For these reasons, the Southdown WWTP will be decommissioned by December 2015 and its flow (1.0 MGD) will be diverted to the upgraded Reflection Bay WRF, making this the only WWTP serving the north and northwest areas of the City.

The City of Pearland selected CDM Smith to prepare a Preliminary Engineering Report (PER) to evaluate alternatives for expanding the Reflection Bay WRF. CDM Smith evaluated the ability of the Reflection Bay WRF to treat the future liquids and solids waste streams. The PER was originally prepared and submitted to the City of Pearland in September 2014 to document existing conditions for interim improvements to increase Reflection Bay WRF's overall plant capacity from 2.0 to 6.0 MGD through two planned plant expansions with an interim phase of 5.0 MGD and a final phase of 6.0 MGD.

Projected wastewater flows and organic loadings for the design year of 2030 were used to determine the size of future treatment facilities that are needed. CDM Smith reviewed and compared population data from the TWDB and historical population growth rates (defined by the number of sewer connections added each year) for the City of Pearland and Brazoria County. A projected 2030 population of 125,231 was estimated for the City of Pearland. CDM Smith analyzed wastewater flow data from the City and found that the overall per capita wastewater generation rate (including all sources) was approximately 100 GPCD.

3.1 Alternative Solutions to the Water Quality Problems

The proposed action alternative and the other proposed project alternatives under consideration must be evaluated according to their needs or for any proposed construction in environmentally sensitive areas. Later within the alternatives analysis, following **Section 3.1**, any flow and waste reduction measures; alternative locations, capacities, and construction staging; and alternative methods of project waste disposal options are discussed.

Besides the proposed action alternative that is briefly described above and in greater detail in **Section 4**, the other project alternatives that were considered included the following:

- Evaluate process alternatives at Reflection Bay WRF for treatment design options for the proposed expansion from 2.0 MGD (Initial) to 5 MGD (Intermediate) to the 6 MGD (Final) phase

capacity without diverting the 1 MGD flow from the Southdown WWTP to the Reflection Bay WRF.

- Maintain the Reflection Bay WRF at 2.0 MGD, transfer any excess flows to the Southdown WWTP and rehabilitate and expand the Southdown WWTP to a final capacity of 6 MGD.
- The no action alternative does not include any planned improvements for the Reflection Bay WRF or the Southdown WWTP.

As part of the alternatives evaluation process, the needs for selection of a new site, for interceptor pipeline routes, or for proposed construction in environmentally sensitive areas are all activities that require careful evaluation. None of the proposed project's characteristics involve any of the three above described actions. Each alternative must further be screened with regards to physical and legal constraints, regulatory requirements, cost-effectiveness, and significant impacts over the design life of the project. The project alternatives that are under consideration for this loan request are consistent with the TWDB CWSRF engineering feasibility report submitted as part of this loan application. In the following section, other project alternatives that are not considered as the proposed action alternative are discussed.

3.1.1 Alternative Wastewater Development and Management Techniques

This section presents the other action alternatives that were considered and evaluated for implementation as solutions for addressing this wastewater treatment facility's development needs. One action alternative evaluates process alternatives at Reflection Bay WRF for treatment design options for the proposed expansion from 2.0 MGD (Initial) to 5.0 MGD (Intermediate) to the 6.0 MGD (Final) phase capacity, but without pumping 1.0 MGD of flow from the Southdown WWTP to the Reflection Bay WRF. While another action alternative keeps Reflection Bay WRF at 2.0 MGD and transfer any excess flows to the Southdown WWTP which would be rehabilitated and expanded to a final capacity of 6.0 MGD to serve this Pearland service area. Finally, the "no action" alternative is presented and documented as required by the National Environmental Policy Act of 1969 (NEPA), as amended, as another project alternative that would not make improvements at either the Reflection Bay WRF or at the Southdown WWTP sites.

3.1.1.1 Considered Action Alternative 1

The first considered action alternative is to evaluate process alternatives at Reflection Bay WRF for treatment design options for the proposed expansion from 2.0 MGD (Initial) to 5.0 MGD (Intermediate) and then to the 6.0 MGD (Final) phase capacity. This action alternative does not include pumping 1.0 MGD from the Southdown WWTP to the Reflection Bay WRF. Without the Southdown WWTP being decommissioned and diverted to the Reflection Bay WRF, the City would maintain both plants. Because of the age and condition of the Southdown WWTP, upgrades would be needed at the Southdown WWTP to ensure the City continues to meet all Texas Pollutant Discharge Elimination System (TPDES) permit requirements. Operating the City's WWTPs in such a manner is expected to cost the City considerably more money compared to the proposed action because both plants would need to be maintained and upgraded in the coming years.

3.1.1.2 Considered Action Alternative 2

The second considered action alternative is to increase the capacity of the City of Pearland's older WWTP, Southdown, by 5.0 MGD to increase its overall treatment capacity from 1.0 MGD to 6.0 MGD. Southdown WWTP provides wastewater treatment service for portions of the north-central and

northwest City of Pearland. Plant components at Southdown WWTP already occupy much of the available space at this plant site and there is little opportunity for any treatment component expansion at Southdown WWTP. Furthermore, the TCEQ buffer zone requirements of a minimum of 150 feet clearance from the plant treatment units to the nearest environmental receptors also limits the ability to expand at this plant site. Under this action alternative the Reflection Bay WRF would not undergo any upgrades or expansions and the permitted flow would remain at 2.0 MGD.

This considered alternative, to expand the Southdown WWTP from 1 MGD to 6 MGD has proven to not be viable because of the small site of the WWTP and no available land adjacent to this site on which to expand. This alternative is limited by space constraints and TCEQ buffer zone requirements.

3.1.1.3 No Action Alternative 3

The no action alternative does not specify or call for any plant improvements at either the Reflection Bay WRF or the Southdown WWTP. As this EID has described, the City of Pearland is a rapidly growing City and its planning process has identified that an increase in wastewater treatment capacity and upgrades to current infrastructure is needed in the near future to meet the growing wastewater flows in the City. If the no action alternative is implemented, then no wastewater treatment capacity improvements will be constructed, eventually wastewater treatment system failures will begin to occur, permit violations will follow, monetary fines will be levied, and administrative orders from TCEQ may be issued. Water quality in Clear Creek will further degrade and the wastewater collection system will have increased infiltration/inflow incidents that cause unauthorized wastewater discharges to the environment. The no action alternative is not a viable option to consider for these particular wastewater service needs according to this evaluation.

3.1.2 Flow and Waste Reduction Measures

City of Pearland has participated in the TCEQ's sanitary sewer overflow program and proactively makes infiltration/inflow repair and replacement of wastewater piping and interceptor lines to provide corrective action to reduce these occurrences. The City of Pearland has an approved Water Conservation Plan and Drought Contingency Plan through the TWDB and TCEQ Water Supply Division to best manage and conserve limited drinking water supplies. The Reflection Bay WRF also utilizes provision 30 Texas Administrative Code (TAC) §210.4(c) that allows for the use of reclaimed water for beneficial use within the plant boundaries as a means to help conserve potable water supplies through the use of non-potable water uses. Each of these three measures demonstrates the City of Pearland's commitment to water conservation and water waste reduction.

Construction of the 1.0 million gallon per day (MGD) emergency services package wastewater treatment plant expansion to the Reflection Bay Water Reclamation Facility (RB WRF) for the City is being managed by CDM Constructors Inc. (CCI). The Design-Builder CCI shall provide for the City of Pearland a 1.0 MGD package wastewater treatment plant designed to meet current discharge permit limit standards, integrate with the existing plant facilities, and be compatible with the future expansion currently under final design.

3.1.3 Alternative Locations, Capacities, and Construction Staging

The action alternatives examined by this EID have considered alternative locations and capacity loadings at the Southdown and Reflection Bay WRFs. At Southdown WWTP, a capacity increase for wastewater treatment was considered from 1.0 MGD to 6.0 MGD. At Reflection Bay WRF, the capacity increase considered was from 2.0 MGD to 6.0 MGD; however, site constraints limit consideration of this option because site expansion would be very limited and possibly infeasible. Another considered

alternative is the optimization of the component selection for the Reflection Bay WRF and this alternative evaluated the influent pump station, liquids and solids processing components, and disinfection options at the existing facilities. There are no other alternative locations for expanding wastewater treatment capacity that would be cost effective for the City.

3.1.4 Alternative Methods of Sludge or Other Project Waste Disposal

The Reflection Bay WRF is a primary municipal sludge processing plant within Pearland. The site is permitted with TCEQ for stabilized sludge disposal at a TCEQ-permitted landfill, currently the Allied Waste Services. The Allied Waste Disposal landfill site under TCEQ permit X000015701 is in Harris County; Allied Waste Disposal also provides hauling under Transporter registration number 85812 from Reflection Bay WRF to the landfill. Other options such as land application, marketing and distribution, or composting methods were considered. The permitted landfill will prove to be as cost-effective and environmentally sound as the other sludge disposal options.

3.2 Reasons for Rejecting or Accepting Alternatives

Considered action alternative 1 is to evaluate process alternatives at the Reflection Bay WRF for treatment design options identified for the proposed expansion from 2 MGD (Initial) to 5 MGD (Intermediate phase) to the 6 MGD (Final phase) capacity. This alternative does not consider pumping 1 MGD from the Southdown WWTP to the Reflection Bay WRF. This alternative was rejected because it would not decommission the Southdown WWTP and divert flows to another WWTP. The cost of continuing to operate the Southdown WWTP after upgrading the Reflection Bay WRF makes this alternative economically infeasible.

Considered action alternative 2 evaluated no upgrades to the Reflection Bay WRF at its current capacity of 2 MGD, without any design improvements, and upgrading the Southdown WWTP. This option would transfer any excess flows, above 2 MGD, from Reflection Bay WRF to the Southdown WWTP which would be rehabilitated and expanded to a final capacity of 6 MGD. The expansion and rehabilitation of the Southdown WWTP would require additional treatment units to be built. The parcel where the Southdown WWTP is located is too small to accommodate the required expansion and no adjacent land is available for the City to purchase. This alternative was rejected because obtaining additional land would be very difficult, time consuming and cost-prohibitive.

The no action alternative was rejected because under this alternative the City would not expand wastewater treatment service and the City would not meet the needs of its residents. Furthermore, attempting to operate a wastewater treatment facility without adequate capacity would cause problems in the plant's operation and water quality impacts to Clear Creek. For these reasons the no action alternative was rejected.

3.3 Floodplain Policy/Wetland Management Notice

For the proposed action alternative at the Reflection Bay WRF, the site construction areas of the plant do not involve "waters of the US" or jurisdictional wetlands. The plant is mapped on FEMA FIRM Map Panel 48039C0010I. Treatment units and areas at the plant have been elevated or diked to protect the site from those areas mapped within the drainage ditches' 100-year floodplain. Both of these Section 404 water resources, floodplains and wetlands, are adjacent to the area proposed for plant expansion but, they are not located within the proposed construction area and they will not be negatively impacted by the proposed construction activities because of projects BMPs.

Section 4

Project Description

4.1 Project Description

The City of Pearland currently operates the Reflection Bay WRF whose location is shown in **Figure 4-1**. The Reflection Bay WRF operates under TPDES permit WQ0010134008 and EPA National Pollutant Discharge Elimination System permit TX0117501 and serves portions of the north-central and northwest wastewater collection areas of Pearland. The Reflection Bay WRF was constructed in 2002 as a 2.0 MGD capacity plant and the plant startup was in March 2003. The Reflection Bay WRF still operates as a 2.0 MGD plant and is located at 1818 Reflection Bay Drive in Pearland, Texas 77584. The plant location is immediately north of McHard Road and is located about 0.2 miles south of Clear Creek, the receiving water of the plant's discharge. The Reflection Bay WRF is situated about 13 miles south of Houston and about 40 miles northwest of Galveston in northwestern Brazoria County.

The City of Pearland retained CDM Smith to prepare a PER, which was issued as final in September 2014. The purpose of the PER was to evaluate and provide alternatives for an expansion of the Reflection Bay WRF. The current effluent treatment limitations are set at 5.0 milligrams per liter (mg/l) biochemical oxygen demand, 5-Day (BOD5); 12.0 mg/l total suspended solids (TSS); 2.0 mg/l ammonia nitrogen (NH₃-N); 126 colony forming units (cfu)/100 m³, *E. coli*; and 6.0 mg/l as a minimum dissolved oxygen (DO).

A component of the PER was to prepare a TPDES major amendment permit application to provide for the proposed plant expansions to 5.0 MGD (Intermediate phase) followed by a final phase expansion to 6.0 MGD. The major amendment permit application has been prepared and is waiting for a minor amendment permit application to be finalized, so that this major amendment may be filed with TCEQ Water Quality Division, Municipal Wastewater Permits Section.

As part of their regional planning efforts, the TWDB projects population by city and county. The historical and projected population from the TWDB for City of Pearland and Brazoria County are shown in **Table 4-1** (TWDB, 2014b).

Table 4-1 Population Data for Pearland and Brazoria County

City/County	2010	2020	2030	2040	2050	2060	2070
Pearland	91,252	115,164	125,231	137,955	150,444	163,118	174,933
Brazoria County	313,166	359,935	411,387	463,886	519,696	581,368	648,568

Dividing the citywide wastewater flow by the 2010 census population, results in a per capita wastewater flow in Pearland of approximately 100 GPCD.

Improvements to the wastewater treatment system should be based on a design life of 20 years. Therefore, plant expansions being planned now should be based, at a minimum, on flow estimates for the year 2034.



Figure 4-1 City of Pearland FNW Wastewater Treatment Plant

4.1.1 Treatment Process Proposed

The proposed action includes adding the following recommended components:

Lift Station

- 3 new lift pumps with valves, piping, and discharge elbows (replacement of 3 remaining existing dry weather pumps for expansion to 6.0 MGD)
- New Motor Control Center (MCC) building to house VFDs for all lift station pumps
- New lift station control panel with Programmable Logic Controller (PLC) controls

Headworks

- New elevated headworks structure for bar screens, grit removal equipment, and distribution chambers for distributing flow to all six ultimate SBR basins
- 2 step screens to handle 28 MGD each, with associated screenings washer/ compactors and controls
- 1 stacked-tray grit removal unit to handle 28 MGD with grit pumps (1 duty, 1 installed spare), grit concentrator, grit dewatering unit, and necessary piping, valves, and controls
- Stainless steel isolation slide gates for isolating channels for maintenance

SBR Basins

- Modification to existing SBR structure to convert existing 4 basins into 2 continuous flow basins
- 4 new SBR basins of equivalent volume to the existing SBR basins equipment for each basin, which includes effluent decanters, influent valves, fine bubble aeration diffusers, waste activated sludge pumps, telescoping valves for scum removal, associated piping and valves, and controls
- Miscellaneous metals including access stairs, handrail, pipe supports, etc.

Blower/Electrical Building

- Concrete Masonry Unit (CMU) building with brick façade, to match existing electrical buildings

- 7 aeration blowers (8 for expansion to 6.0 MGD) with dedicated blowers to each SBR basin and a spare installed blower, includes related valves, piping, controls
- Electrical switchgear to serve blowers and SBR equipment
- Heating, ventilation, and air conditioning (HVAC) equipment

Tertiary Filter Structure

- Structure to house 2 cloth disk filters
- 2 cloth disk filters to handle 12 MGD each with related backwash pumps, valves, gates, weirs, piping, and controls

Ultraviolet (UV)/Flow Measurement Structure

- New UV equipment for existing second channel (third channel constructed with new equipment and switchgear for expansion to 6.0 MGD)
- Removal of nested 2-ft Parshall flume
- Additional air scour blower for new UV channel
- Minor structural changes to move take point for Non-Potable Water (NPW) upstream of Parshall flume

NPW System

- 2 vertical propeller transfer pumps for transferring treated effluent to NPW storage tank, with associated valves, piping, and controls
- NPW storage tank sizes to adjust plant NPW demands between SBR decant cycles
- NPW distribution pumping system with 4 pumps, related valves, piping, controls

Chemical feed/Electrical building

- Stores gaseous chlorine feed equipment and 150pound chlorine cylinders for NPW system and electrical switchgear for NPW system
- Gaseous chlorine feed equipment with related inductors, piping, valves, and controls.
- Miscellaneous metals including pipe supports, etc.

Aerated Sludge Holding Tanks

- 2 new common wall constructed aerated sludge holding tanks, each of equal volume to the combined existing sludge holding tanks
- Internal equipment associated with the sludge holding tanks, including coarse bubble aeration equipment, telescoping valves for decanting, and isolation gates
- Waste activated sludge (WAS) flow meters and isolation valves on piping from SBR WAS pumps
- 4 new rotary lobe, positive displacement blowers (3 duty, 1 installed spare) to provide mixing and aeration air to sludge holding tanks
- Miscellaneous metals including access stairs, grating (as needed), handrails, pipe supports, etc.

Dewatering Improvements

- 2 new 3-belt filter presses housed in the existing dewatering building with associated washwater booster pumps, piping, and controls
- Modifications to the existing dewatering building, installation of new roll-up doors, interior wall modifications to accommodate new sludge conveyors, new HVAC equipment, modifications to the existing slab to accommodate new drain piping, containment curbs for belt filter presses, etc.
- 3 new double-disk belt press feed pumps (2 duty, 1 spare), with valves, piping (including recirculating piping back to the aerated sludge holding tanks), magnetic flow meters, and controls
- 2 new packaged polymer systems to deliver polymer to the new belt presses
- 4 new screw conveyors to distribute dewatered sludge from each of 2 new belt presses to 2 existing roll-off dumpster locations
- New bridge crane to serve belt press room
- Electrical switchgear in existing electrical room to support new dewatering and sludge holding tank equipment

1.0 MGD Package Wastewater Treatment Package Plant

- 1.0 million gallon per day (MGD) emergency services package wastewater treatment plant expansion to the Reflection Bay Water Reclamation Facility (RB WRF)
 - Furnish and installation of the following equipment:

- [4] each 32' Clarifiers
- [16] each 52'x 12' x 12'-2" Aeration Basins
- [1] each 10' x 10' x 10' Effluent Splitter Tank
- [1] each Headwork Tower
- [5] each Centrifugal Blowers
- Process Piping
 - Furnish and install process piping for the 1.0 MGD Pre-engineered Wastewater Treatment Plant.
 - All process piping is above ground
 - All process piping is PVC Schedule 80 with the exception of air line that is carbon steel
 - For the process piping, the pipe joints are not restrained.
- Temporary Filters
 - Furnish and install 3 each of Five Start Disk Filter Model FSDF-6D84D-CS units placed in a carbon steel tank.
- SCADA & System Control and Instrumentation
 - Not included in contract
 - All instrumentation equipment is manual (on/off).

4.1.2 Anticipated Parameters and Other Operational Requirements

The City of Pearland must increase its overall wastewater treatment system capacity to support the rapid population growth that has occurred within its service area. According to the U.S. Census Bureau, the population of Pearland increased by 11.3 percent between 2010 and 2013 (2014). Wastewater flows have increased in direct proportion with this rapid population growth and has created the need to add wastewater treatment capacity to meet TPDES effluent discharge standards. The proposed Reflection Bay WRF expansion is from its current 2.0 MGD capacity to an interim expansion of 5.0 MGD and a final expansion to 6.0 MGD.

4.1.3 List of Project Elements and Funding Sources

Please refer to Section 4.4 for project elements and funding sources.

4.1.4 Existing Treatment Facilities

The existing phase treatment process includes a complete mix activated sludge plant, designed with single nitrification criteria. Wastewater flows through an influent lift station with an automatic fine screen that eliminates large influent items and then goes to the 4 SBRs for biological treatment and settling. Fine bubble air diffuser systems are utilized for activated sludge aeration, and floating decanters remove supernatant flow. Positive displacement blowers supply air to the SBR basins. Supernatant flows go to an automatic backwash sand filter, then through a UV disinfection system. Flow is then metered and discharged to a drainage ditch flowing north to the Clear Creek above Tidal (Segment 1201) via Outfall 001.

Part of the Reflection Bay WRF service area will soon include the City's existing Southdown WWTP service area. The Southdown WWTP will be decommissioned December 2015 and all flows (1.0 MGD) will be diverted to the Reflection Bay WRF. The Reflection Bay WRF is now considered as a treatment plant of the future for Pearland that will provide ample wastewater treatment service to meet a significant portion of the City of Pearland's wastewater demands that are located within their TCEQ CCN license #20403 for the sanitary service area.

Each SBR basin has a dedicated submersible non-clog sludge pump. After settling, sludge is pumped to the 2 aerobic digesters. Positive displacement blowers supply air to the digesters. From the digesters, sludge is transferred to a centrifuge via the sludge pumping station. Dewatered sludge is discharged into a dumpster. Sludge is transported offsite to a TCEQ-registered landfill in Harris County.

Table 4-2 Reflection Bay WRF Annual Average Effluent Flows

Year	2000	2001	2002	2003	2004	2005	2006
Annual Average Daily Flow (MGD)	4.19	4.51	4.49	5.10	5.50	5.44	5.44

Commented [JG1]: Update - flows (Kim cahanslor/Chris Varnon) -RS

According to 30 TAC §305.126, municipalities must initiate planning and engineering when the sanitary flows of a facility reach 75 percent of the average daily flow for three consecutive months and they must commence construction when the flows reach 90 percent for three consecutive months. Discharge monitoring reports (DMRs) from 2000 to 2006 provide the basis for the average annual effluent flows at Reflection Bay WRF. Since the Reflection Bay WRF has reached the 90 percent capacity threshold, it is proposed that the City pursue an interim improvements approach to address their immediate capacity needs first while planning for the future capacity of 6.0 MGD.

4.1.5 Special Project Elements

The proposed project will provide City of Pearland with sufficient capacity for wastewater service to meet the demand of the projected population growth. It will also eventually result in the decommissioning of the Southdown WWTP. The flows currently received by the Southdown WWTP are anticipated to be transferred to the expanded Reflection Bay WRF in the coming years.

4.1.6 Land Required

The construction of the proposed project is anticipated to occur entirely on the existing Reflection Bay WRF site, which is already partially developed by the existing plant. No additional land acquisition is required for implementation of the proposed project.

4.1.7 Method of Sludge or other Project Waste Disposal and Disposal site

The City currently uses TCEQ-registered sludge transport trucks for pickup of stabilized sludge from the Reflection Bay WRF for disposal at the TCEQ-permitted Allied Waste Disposal landfill in Harris County. Centrifuge feed pumps on the north side of the aerobic digesters and then the sludge is sent to the dewatering building for stabilization by belt press and then discharges directly into a dump truck, and the truck has to be moved periodically for even distribution of the sludge. An alternative to using dump trucks for cake loading would be to use roll-off containers. Roll-off containers allow a shorter building height and maximize the use of trucks for hauling to the landfill. The existing dump trucks could potentially be reused to haul roll-off containers by changing out the trailer to a roll-off hoist trailer. Before proceeding with a roll-off system, the minimum recommended truck specifications for a roll-off hoist trailer would need to be checked against the specifications for the City's existing and contracted hauling trucks.

4.2 Proposed Linework

All proposed linework is expected to be within the Reflection Bay WRF site.

4.3 Maps of all Proposed Project Elements

Figure 4-2 illustrates the location of all proposed project work in relation to existing development and the service area of the Reflection Bay WRF.

4.4 Total Estimated Project Costs and Financing Sources

The most current itemized project cost estimate for the proposed project is summarized in **Table 4-3**. The emergency 1.0 MGD package wastewater treatment plant expansion at the Reflection Bay WRF construction cost estimate is shown in **Table 4-4** and the engineering design cost estimate is presented in **Table 4-5**.

As mentioned earlier, the primary source of funding that is being sought is the TWDB Clean Water SRF (CWSRF) Loan Program.

Table 4-3 Summary of Costs for Proposed Expansions to 6 MGD

Proposed Plant Improvements	Cost
Site Work/Demolition	\$567,000
Lift Station	\$878,000
Headworks	\$2,703,000
SBRs	\$6,440,000
Blower/Electrical Building	\$2,656,000
Filters	\$1,620,000
UV Disinfection	\$494,000
NPW System	\$880,000
Aerated Sludge Holding Tanks	\$1,352,000
Dewatering Improvements	\$3,121,000
Yard Piping	\$1,908,000
Generator and Associated Switchgear	\$1,334,000
Sub Total (before contingency & escalation)	\$23,953,000
Contingency (20%) & Escalation (30%)	\$5,653,000
Total	\$29,606,000

Table 4-4 Summary of Construction Costs for 1.0 MGD Package Plant

Purchased Equipment:	
Package Plant	\$2,976,882
Filters	\$725,000
Valves	\$214,422
RAS/WAS Pumps	\$96,000
Bar Screens	\$160,000
Sub Total	4,172,304
Piping & Rock Base	1,281,151
Electrical	\$737,955
Demo Filter	\$318,000
Other (Sitework, Concrete, etc.)	\$106,956
Installation	\$611,273
Bonds/Insurance/Fuel, etc.	\$328,928
Design-Builder's Equipment (Direct Field Costs)	\$291,558
Sub Total	\$3,675,821
Direct Cost Total	7,848,125
Contractor OH&P (12%)	\$941,775
Sub Total	\$8,789,900
Design-Builder Construction Management Labor (Reimbursable)	\$831,500
Sub Total	\$9,621,400
Contingency (5%)	481,070
Total Construction Cost	\$10,102,470
Design (Lump Sum)	\$687,000
Grand Total	\$10,789,470

Table 4-5 Summary of Design Costs for 1.0 MGD Package Plant

I. Preliminary and Final Design (Lump Sum)	\$420,000
A. Pre-Construction Design Services	\$41,000
B. Monthly Meetings (3)	\$11,000
C. Final Plans and Specifications	\$360,000
D. Coordination with Regulatory Agencies	\$8,000
II. Basic Procurement Services (Lump Sum)	\$164,000
A. Coordination with Contractor, Subs & Manufacturers	\$65,000
B. Conformed Drawings	\$76,000
C. Demo Filter	\$23,000
III. Design Services During Construction (Lump Sum)	\$103,000
A. Monthly Meeting	\$21,000
B. Review Shop Drawings/Submittals/Insurance/Fuel, etc.	\$49,000
C. Evaluate RFIs	\$23,000
D. Inspections/Walkthroughs/Startups	\$10,000
Total Contract Value	\$687,000

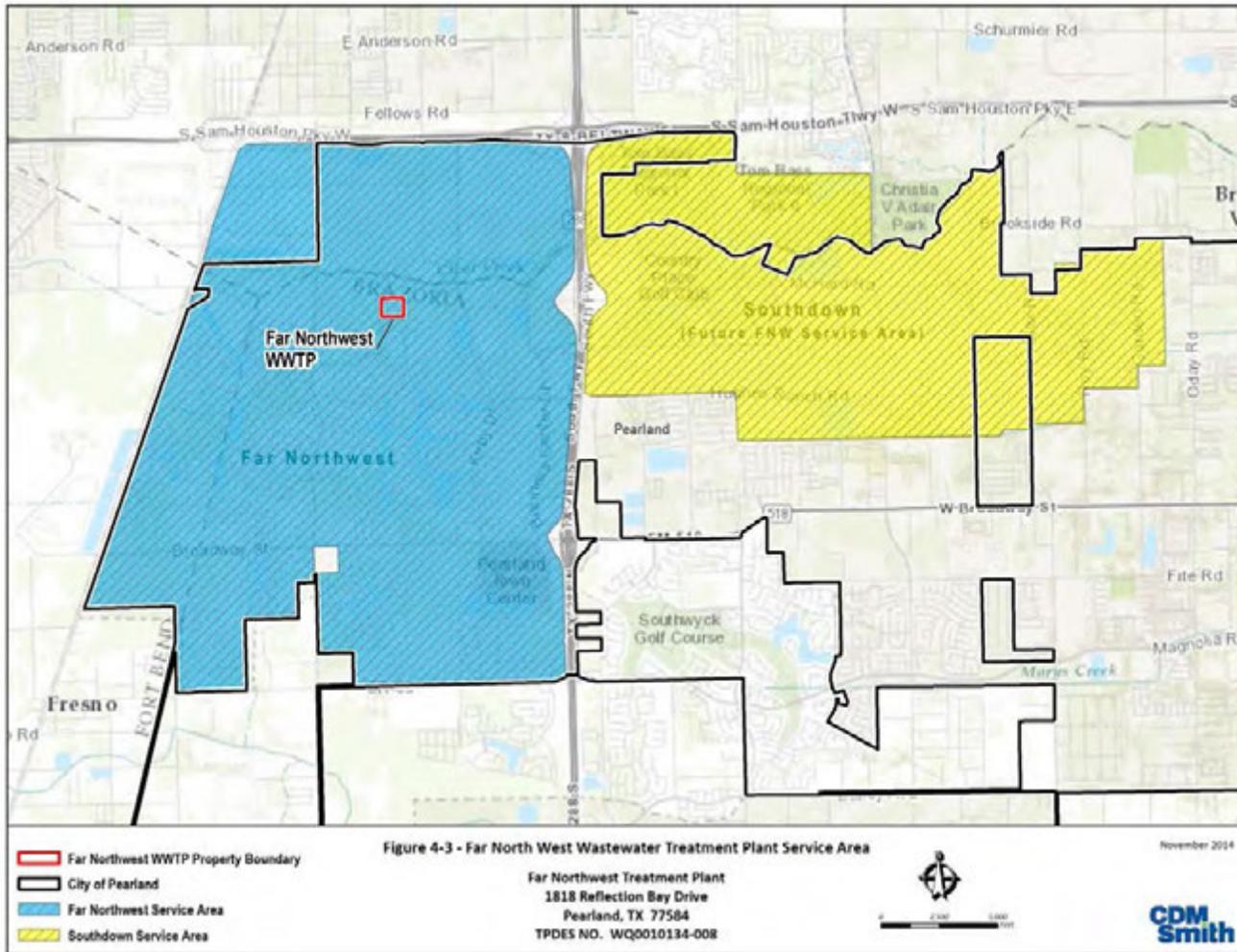


Figure 4-2 Service Area and Location of the Reflection Bay WRF

Section 5

Environmental Impacts of Proposed Project

This section discusses both primary and secondary environmental impacts of the proposed project.

5.1 Primary Impacts

Primary environmental impacts are direct impacts that are normally related to construction activities, operation of the constructed facilities and land use changes. Primary environmental impacts may be divided into short-term and long-term impacts. Both short- and long-term primary impacts that the proposed project would have on the community are discussed below.

5.1.1. Short-Term Impacts

The proposed project is expected to cause some temporary and minor adverse impacts associated with construction. Construction activities would result in soil disturbance; however, no impacts to water quality are anticipated because best management practices (BMPs) such as silt fencing will be employed to minimize erosion and sedimentation during construction. Since the area of disturbance for the proposed project will be more than one acre, coverage under the Construction General Permit (CGP) (TXR150000) will be obtained for the planned construction activities. This permit will require the development and implementation of a site-specific storm water pollution prevention plan (SWP3) with specified BMPs to minimize erosion and sedimentation in runoff during project construction. At a minimum, this project will utilize silt fence to protect and filter down gradient areas from sediment laden runoff that is discharged from plant construction area during storm events. Re-vegetation of any disturbed areas will take place during the post-construction period.

The proposed project would not significantly alter any land forms, streams or natural drainage patterns that currently exist except to elevate structures above the base flood elevation. The proposed project would not involve any dredging, trenching or tunneling in any water courses. The proposed project would be located at the existing Reflection Bay WRF and the project construction will take place within already disturbed areas on the site wherever possible. Contours of drainage patterns will remain unaltered and will match pre-construction elevation after construction. There are no anticipated negative effects directly to watercourses from the construction of this project. There will be no extensive clearing of vegetation that would require use of herbicides, defoliant and cutting or burning. Any soil recovered from the site would potentially be used to level areas of construction after the soil settles within the excavated area.

The proposed project is not expected to have any impact on federally or state threatened or endangered species. The project site is an already developed tract of land in a heavily urbanized area and there is no data to indicate this area is used by these species or that these species would adversely impacted by the proposed project. The project will not necessitate the use of pesticides or insecticides at the project site. Should insect control be necessary, it will be performed in compliance with governing regulations and with the approval of the Design Engineer.

The proposed project would have the beneficial impact of providing for a reliable and safe way to discharge of the community's wastewater and protect the water quality of Clear Creek, the receiving stream.

The project will require that appropriate dust suppression methods are used to maintain air quality and to avoid causing a hazard or nuisance to the adjacent landowners during construction. An approved method of stabilization consisting of sprinkling, water truck distribution or other similar water use methods will be employed to control dust. The use of petroleum products for dust control will be prohibited.

During the construction of the proposed action project, measures will be taken to minimize noise caused by construction operations. Equipment shall have silencers or mufflers designed to operate with the least possible noise in compliance with State and Federal regulations. Work will only be conducted during daylight hours, as allowable, to minimize noise impacts.

Vehicular and pedestrian traffic considerations will be specific towards the maintenance of utility service and property access, assurance of access through the area by emergency response vehicles, limit the daily length of the disruption, and provide notice of construction activities to TCEQ and the public. Traffic control plans will be developed, as necessary, to maintain vehicular and pedestrian traffic flow, and to promote general health and safety. Work for the proposed project will normally be performed during daytime work hours.

5.1.2 Long-Term Impacts

Long-term impacts are generally related to land use changes, impacts from the location of new permanent facilities, and potential effects to the environment and area water resources. The proposed project is not expected to result in any long-term adverse direct impacts to the environment. Expansion of the WWTP capacity and upgrading the facility would have a long-term beneficial direct impact to water quality in Clear Creek by ensuring wastewater discharged to the creek meets TPDES permit limits.

The proposed project would not directly change current or future land use upon completion of construction, and no future beneficial uses of land would be prevented by this project. Once project construction is complete, existing contours will be matched and re-vegetation will take place. Land use will generally remain unchanged for this established 13-acre WWTP site and its vicinity.

The windrose provides summary data from 1984 to 1992 for the Houston metropolitan area is shown in **Figure 2-7**. The maximum wind speed of 11-16 knots (12.7 – 18.4 mile/hour) occurs predominantly from the southeast.

The project would not negatively impact existing water supplies. Appropriate erosion and sedimentation controls are specified in the SWP3 and wastewater quality limitations are specified by their TPDES CGP permit to maintain surface water quality during the temporary construction, and over the long-term operation of the WWTP.

The construction of the proposed project will not have an adverse impact on any historical resources, and no further investigation has been recommended by the THC. There are no National Registry or THC landmarks mapped on the project site or within the immediate vicinity of the project site. In the event that any potentially significant artifacts are discovered during construction, construction would immediately halt and the TWDB and THC would be consulted prior to any continuation of construction. The proposed project is not located adjacent to or near any state or national parks, recreational areas, or natural preserves.

The project will primarily be located and occur on the existing Reflection Bay WRF site that is not expected to result in significant environmental disruption. However, in the case that a threatened or endangered species is discovered within or directly adjacent to the construction site area, then construction will immediately halt. The TWDB and TPWD will be notified and USFWS should be consulted, as necessary, regarding the need for an incidental take permit and developing mitigation measures in cooperation with TWDB and TPWD.

The project should not have any negative long-term impacts on air quality as the facilities do not contain sources of air quality pollution. The only potentially adverse air quality impact is dust, in the short-term, during construction.

The proposed project is located within the 100-year floodplain; however, no impacts are expected on the floodplain or on flood levels. Furthermore, the project will be constructed to ensure all facilities are above base flood elevation and will remain operational in the event of a flood.

5.2 Secondary Impacts

Secondary impacts, beneficial and adverse, are those that may result from indirect or induced changes caused by the proposed project throughout the planning period.

5.2.1 Impacts of Future Development on Land Use

The proposed project is not anticipated to change the rate, density, or type of development (e.g. residential, commercial, industrial, recreational, and open space areas) in the vicinity of the project site. The land use will generally remain single and multi-family residential, commercial, and undeveloped land around the Reflection Bay WRF site after construction.

5.2.2 Effects on Air Quality

There will be no population changes or land use changes in the project area as a result of the construction of the proposed project. The proposed project would not produce significant air emissions; therefore, air quality would not be adversely impacted in the project vicinity. The proposed projects would allow the provision of adequate wastewater service for the customers within the Reflection Bay WRF service area.

5.2.3 Relate Population and Land Use Effects

There will be no population or land use changes within the Reflection Bay WRF project area due to the proposed project; therefore, water quality and water availability would not be impacted within the project vicinity. Population increases in Pearland may result in a more densely developed City; however, it is difficult to predict development rates and patterns and these changes would not be impacted by the proposed project.

5.2.4 Effects on Public Services

The rapid population growth in the City of Pearland is driving an increase in wastewater flows at the City's WWTPs. In order to ensure proper operation of City WWTPs and protect water quality of Clear Creek, an increase in wastewater capacity is necessary. The City of Pearland will manage the proposed sewage collection system improvements to accommodate growth within the service area.

5.2.5 Economic Impacts

There may be a potential increase in the wastewater utility rates, but not attributable to the proposed project. Should there be a rate increase, it would be attributable to system-wide wastewater cost of service adjustment. However, the cost to the residents would be negligible when compared to obtaining a permit and designing, constructing and maintaining a new WWTP. If such a wastewater service increase is determined warranted, it will be due to wastewater system-wide improvements.

5.2.6 Conformance or Conflict with Land Use Planning

The proposed project would not create any conflict in the future land use planning of City of Pearland's Community Development Department. These improvements would be coordinated with the City's Planning staff within the Community Development Department.

5.2.7 Impacts of Development on Environmentally Sensitive Areas

The project would have minimal impact on environmentally sensitive features such as wetlands, threatened or endangered species, critical habitats, cultural resources and any other environmentally or culturally sensitive areas. The proposed project would result in moderate soil disturbance during construction. BMPs will be implemented to provide sedimentation and erosion control during construction to protect surface water. All disturbed areas would be re-vegetated following completion of construction to provide erosion control and soil stabilization.

The proposed project would be located within the 100-year floodplain of Clear Creek. The project site is an existing WWTP located in the 100-year floodplain and all construction will be within this already developed tract; therefore, impacts to the floodplain would be minimal. To ensure facility operation in the event of a flood, all treatment unit structures will be elevated above the base flood elevation.

Section 6

Adverse Impacts Which Cannot Be Avoided Should the Project Be Implemented

Implementation of the proposed project would result in a few adverse impacts which cannot be avoided; however, BMPs will be employed to mitigate these potential impacts. The proposed project would result in the following unavoidable adverse impacts: temporary soil disturbance and erosion, temporary increase in noise and traffic, and an increased footprint in the 100-year floodplain.

Since the area of disturbance for the proposed project will be more than one acre, TCEQ TXR150000 stormwater Construction General Permit (CGP) coverage will be obtained for the proposed construction. CGP coverage requires the development and implementation of a site-specific SWP3 which will outline specific BMPs to protect water quality. The City will also file a Notice of Intent (NOI) with TCEQ. The SWP3 would be implemented on site throughout the construction process, as required by the CGP. Dust would be controlled using dust suppression methods such as sprinkling and water truck distribution.

Work within the floodplain will be conducted in a manner to protect the floodplain. The proposed project would be constructed so that all treatment unit facilities will be elevated above the base flood elevation to ensure operation in the event of a flood.

Work would be conducted during daytime hours only to limit noise disturbance to nearby residents. A traffic management plan would be developed and implemented to ensure adequate vehicular and pedestrian traffic during project implementation.

Section 7

Relationship between Local Short-Term Uses of Man's Environment and Maintenance and Enhancement of Long-Term Productivity

Short-term construction impacts such as noise, dust, traffic impairment, and erosion-sedimentation are the prevalent impacts that may occur on a temporary, short-term basis. Construction phase effects will be intermittent and temporary lasting only while the associated infrastructure is being built. Ambient noise levels will likely increase on an intermittent basis during the temporary construction period of the Pearland Reflection Bay WRF project. The intensity and duration of the noise levels will vary with the construction activities and equipment used. Anticipated construction phase effects at this plant also include noise, dust, emissions from construction vehicles, and increased onsite stormwater runoff. Noise and construction vehicle emissions will be present during construction during the daylight hours only and dust suppression will be periodically abated as needed through the application of water. The BMPs specified in the project's site-specific construction SWP3 will provide pollutant abatement and minimization. Structural site controls such as silt fencing, as appropriate, will serve as a temporary BMP while hydro-seeding and re-vegetation will provide permanent soil stabilization and will collectively provide adequate pollutant removal and protection of localized water quality.

Long-term project benefits are improving the health and quality of the surrounding receiving waters as well ensuring that the City of Pearland is compliant and is satisfying the appropriate environmental regulations. Without access to adequate public wastewater service or expansion of the wastewater treatment facility, this community will continue to face many future public health and environmental challenges. In addition, long-term economic growth cannot be expected without the provision of such basic public services as adequate wastewater collection and treatment.

Long-term public benefits of the proposed action alternative outweigh the short-term, temporary impacts that are caused by the Reflection Bay WRF's project construction.

Section 8

Irreversible and Irretrievable Commitment of Resources to the Proposed Project

The proposed action project does not require the irreversible and irretrievable commitment of resources for it to be implemented. The project will benefit the public good and does not anticipate the cause of any significant long-term negative impacts.

No land acquisition is required to implement the project. The project should have minimal to no impact on environmentally sensitive features such as floodplains, wetlands, threatened or endangered species, critical habitats, and any other environmentally or culturally sensitive areas. The proposed project will minimize soil disturbance during construction. BMPs will provide adequate erosion and sedimentation control during the temporary construction process to protect surface water (Clear Creek Segment 1102) and ground water sources, and grass seed re-vegetation will provide adequate post-construction erosion control and soil stabilization.

Section 9

Public Participation and Coordination

9.1 Discussion

This section contains a discussion of the proposed resolution of comments, complaints, or problems that were voiced for or against the proposed action.

9.2 Public Hearing

The City of Pearland held a public hearing about the project on **insert date**, so that any comments, complaints, or problems that are perceived by the public regarding the project may be incorporated into the engineering design plans for the proposed CWSRF project.

9.2.1 Advertisement

The City of Pearland must advertise the public hearing by advertisement in a general circulation newspaper within Pearland at least 30-days before the proposed hearing date. The public hearing advertisement was posted in the Pearland Journal/Houston Chronicle on **insert date**. Prior to this time, the City of Pearland had previously circulated copies of the draft EID to the identified reviewing agencies shown in **Section 9.3**.

9.2.2 Hearing notice

The public hearing notice included the following items: date, time, and place of the hearing; brief description of the Proposed Action alternative; the cost of the project and any related surcharge fee that the project might cause. The City provided one convenient and accessible location for the EID to be made publicly available and that was at the Pearland City Hall. The public hearing notice did include this statement, "One of the purposes of this hearing is to discuss the potential environmental impacts of the project and alternatives to it." The Public Hearing was advertised on **insert date** in the Pearland Journal/Houston Chronicle and was held on **insert date** at the Pearland City Hall. Hearing notice information, the text for the hearing notice, a copy of the newspaper publication and the public hearing sign-in sheet are presented in **Appendix A**.

9.2.3 Public Availability of EID

The draft EID document was displayed at the convenient, accessible location of the Pearland City Hall and was kept there for at least 15 days, from **insert date** through **insert date**, preceding the Public Hearing and then made available for review at the hearing.

9.2.4 Hearing Format

The public hearing format was conducted in the following order: statement of purpose of hearing that includes this statement, "One of the purposes of this hearing is to discuss the potential impacts of the project and alternatives to it;" regulatory and cost considerations as well as any proposed rate increases; question and answer period, list of witnesses, and final testimony. The Public Hearing presentation made by CDM Smith is included in **Appendix A**. No members of the public attended.

9.2.5 Hearing Record

The Hearing Record documents the public meeting and is placed within **Appendix B** of the EID. The hearing record consists of the following elements, as applicable: a copy of the hearing notices, a sample letter of agency notification and the list of recipients; a statement signed by the City acknowledging that the hearing was held in conformance with the Public Hearing notice; list of witnesses and complete text of their statement or written testimony, and a verbatim transcript of the public hearing. There were no attendees from the public at the Public Hearing. Consequently, no public witnesses were present and no statements, written testimony, or transcripts were documented.

9.3 Coordination of Review

The draft EID was circulated on **insert date** to the applicable reviewing agencies that are listed below:

- USACE
- USFWS
- THC
- TPWD
- FEMA
- City of Pearland Engineering Division - Floodplain Administrator
- TCEQ
- Houston-Galveston Area Council
- Natural Resources Conservation Service
- US Forest Service
- US Park Service

9.3.1 Circulation of EID

At the same time that the Public Hearing public notice process begins, it is recommended that the City circulate copies of the draft EID to the identified reviewing agencies. The City of Pearland transmitted the draft EID to the reviewing agencies by US Certified Mail on **insert date**.

9.3.2 Notice of the Public Hearing and Availability

The draft EID document was displayed at the Pearland City Hall at 3519 Liberty Drive as a convenient, accessible location. The draft EID was kept there for at least 15 days, from **insert date** through **insert date**, preceding the public hearing and then made available for the public at the hearing.

9.3.3 Documentation

The Hearing Record documents the public meeting held on **insert date** at the Pearland City Hall and is placed within **Appendix B** of the EID.

Section 10

References

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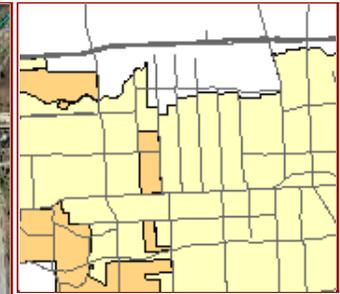
Appendix A

Public Hearing Presentation

Appendix B

Public Hearing Record Documents

Reflection Bay Water Reclamation Facility (Far Northwest WWTP) Location Map



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

Scale 1:10,593
1 in = 883 ft
July 28, 2014



Far Northwest WWTP Expansion

City of Pearland
Public Works Department



Environmental Information Document (EID)

Jeffrey S. Peters, P.E.,
BCEE

Public Hearing
Pearland, Texas

May 11, 2015

**CDM
Smith**®

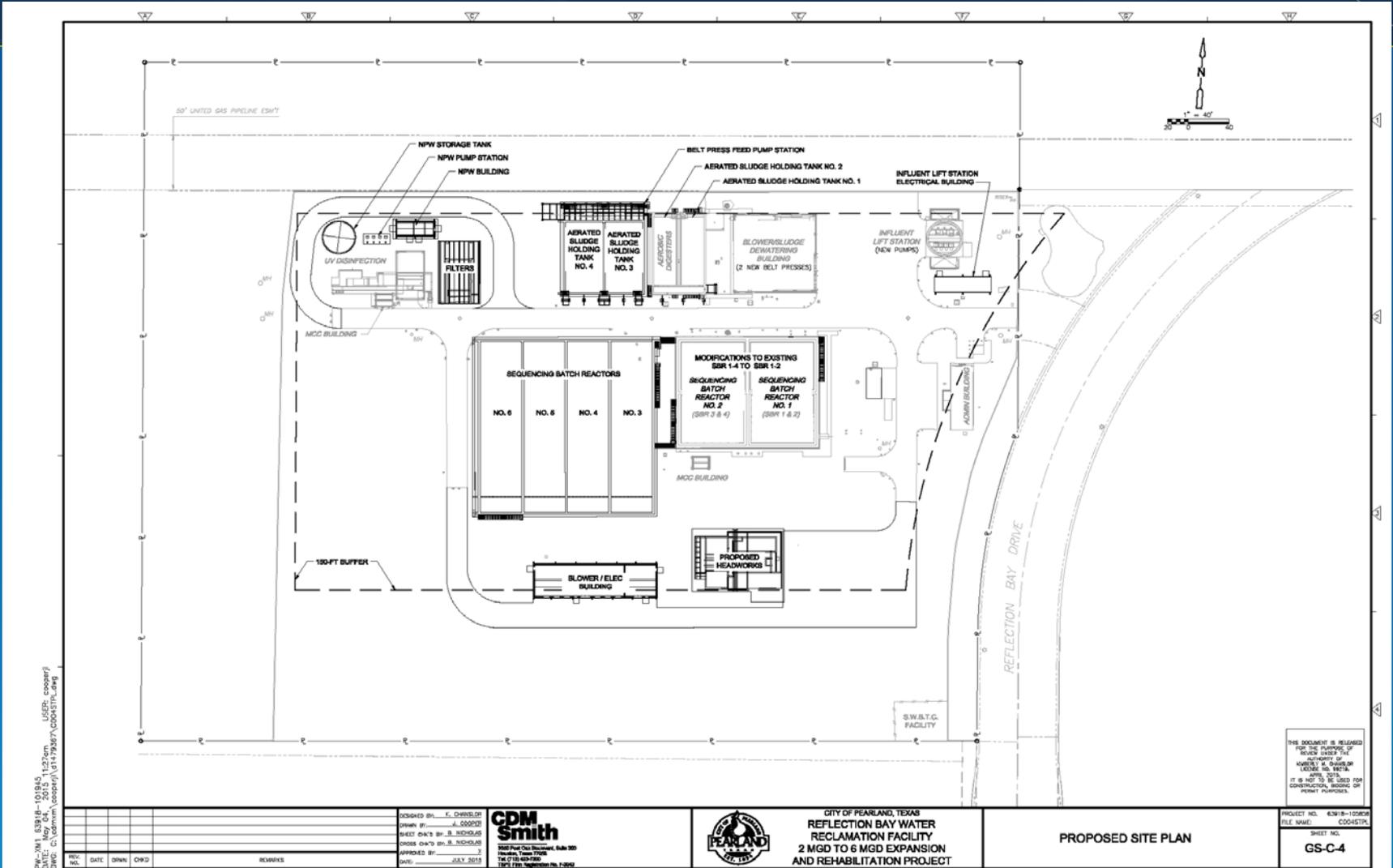
Purpose of Presentation

- Far Northwest WWTP requires expansion
- City of Pearland seeking TWBD funds
- TWDB funds originate through State Revolving Fund (SRF)
- SRF requires compliance with NEPA
- NEPA requires Environmental Information Document (EID)
- EID process includes public hearing
- TWDB Funding Request is for \$55 Million

Far Northwest WWTP – Location Map



Far Northwest WWTP – Proposed Site Plan



PW-011, S2916-101845-1-0170.mxd USER: rccorrey
 DWG: C:\cdm\mva\correy\11719287\CD0431FL.dwg

NO.	DATE	DRWN	CHKD	REMARKS

DESIGNED BY: K. CHRISTIE
 DRAWN BY: J. SPODICH
 SHEET CHECKED BY: J. SPODICH
 APPROVED BY: J. SPODICH
 DATE: JULY 2015

CDM Smith
 2000 First City Boulevard, Suite 900
 Houston, Texas 77002
 THE CITY OF PEARLAND
 TSP's Title Registration No. 1-0000

CITY OF PEARLAND, TEXAS
REFLECTION BAY WATER RECLAMATION FACILITY
 2 MGD TO 6 MGD EXPANSION AND REHABILITATION PROJECT

PROPOSED SITE PLAN

THIS DOCUMENT IS RELEASED FOR THE PURPOSE OF RECORD CASE #17. ANY REUSE OF THIS DOCUMENT WITHOUT THE WRITTEN PERMISSION OF CDM SMITH IS PROHIBITED. IT IS NOT TO BE USED FOR CONSTRUCTION, BIDDING OR PERMIT PURPOSES.

PROJECT NO. 63918-10089
 FILE NAME: CD0431FL.dwg
 SHEET NO. GS-C-4

National Environmental Policy Act (NEPA): Overview

- Evaluates relevant environmental effects of Proposed Action Alternative
- Proposed Action Project must develop appropriate NEPA document (EIS, EID, EA)
- Develop site-specific EID for Agency Review and Approval
- Make EID available for public viewing (at City Hall) and hold a Public Hearing
- Incorporate Agency Review and Public Comments in EID

NEPA: EID Findings and Conclusions

- Geologic and Soils Impacts are negligible and manageable
- Water Quality protected by TCEQ for Clear Creek Above Tidal (Stream Segment 1102)
- Proposed improvements are located above base flood elevation and there are no adverse impacts on flood storage
- No significant archeological sites are mapped near site
- Endangered and Threatened Species evaluation by TPWD

Questions?

Jeffrey S. Peters, P.E., BCEE

Principal Engineer

CDM Smith Inc.
3050 Post Oak Boulevard
Suite 300
713.423.7300 – Office
petersjs@cdmsmith.com



MINUTES OF A SPECIAL MEETING OF THE CITY COUNCIL OF THE CITY OF PEARLAND, TEXAS, HELD ON MONDAY, APRIL 20, 2015 AT 6:30 P.M., IN THE COUNCIL CHAMBERS, CITY HALL, 3519 LIBERTY DRIVE, PEARLAND, TEXAS.

Mayor Reid called the meeting to order at 6:30 p.m. with the following present:

Mayor	Tom Reid
Mayor Pro-Tem	Keith Ordeneaux
Councilmember	Tony Carbone
Councilmember	Scott Sherman
Councilmember	Gary Moore
Councilmember	Greg Hill
City Manager	Clay Pearson
City Attorney	Darrin Coker
City Secretary	Young Lorfing

Others in attendance: Jon Branson Deputy City Manager.

Executive Session under Texas Government Code

Council adjourned into Executive Session under Texas Government Code at 6:31 p.m. to discuss the following:

1. **Section 551.074 – Personnel Matters** – Regarding the City Manager’s Annual Anniversary Review with the City Council and Priorities Ahead.

New Business Continued:

Council returned from Executive Session at 7:45 p.m.

Council Action – Regarding the City Manager’s Annual Anniversary Review with the City Council and Priorities Ahead.

Mayor Pro-Tem Ordeneaux made the motion, seconded by Councilmember Sherman, to approve the amounts as discussed in Executive Session.

Voting “Aye” Councilmembers Carbone, Sherman, Ordeneaux, Moore, and Hill.

Voting “No” None.

Motion Passed 5 to 0.

Adjournment

Meeting was adjourned at 7:46 p.m.

Minutes approved as submitted and/or corrected this the 11th day of May, A.D. 2015.

Tom Reid
Mayor

ATTEST:

Young Lorfing, TRMC
City Secretary

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

AGENDA OF: May 11, 2015	ITEM NO.: Resolution R2015-76	
DATE SUBMITTED: April 28, 2015	DEPT. OF ORIGIN: Engineering and Capital Projects	
PREPARED BY: Anthony Vu	PRESENTOR: Trent Epperson	
REVIEWED BY: Trent Epperson	REVIEW DATE: May 5, 2015	
SUBJECT: R-2015-76 - A Resolution of the City Council of the City of Pearland, Texas, conveying a surface site easement, in the vicinity of Kingsley Drive and Shadow Creek Ranch Boulevard, to Kinder Morgan Texas Pipeline, LLC, in exchange for fair market value compensation of \$65,355.19.		
EXHIBITS: R-2015-76; A- Easement; B- Survey Map; C- Aerial Exhibit		
FUNDING: <input type="checkbox"/> Grant <input type="checkbox"/> Developer/Other <input type="checkbox"/> Cash <input type="checkbox"/> Bonds To Be Sold <input type="checkbox"/> Bonds- Sold <input type="checkbox"/> L/P – Sold <input type="checkbox"/> L/P – To Be Sold		
EXPENDITURE REQUIRED: NA		AMOUNT BUDGETED: NA
AMOUNT AVAILABLE: NA		PROJECT NO.:
ACCOUNT NO.: NA		
ADDITIONAL APPROPRIATION REQUIRED:		
ACCOUNT NO.:		
PROJECT NO.:		
To be completed by Department:		
Finance	X Legal	Ordinance
		X Resolution

RECOMMENDED ACTION

Consideration and approval of a resolution approving an easement sale to Kinder Morgan Texas Pipeline LLC, for the grand total of \$65,355.19 and authorizing the City Manager to execute the surface site easement.

EXECUTIVE SUMMARY

BACKGROUND

Kinder Morgan Texas Pipeline LLC, (KM) has been contracted to construct a (3) three inch pipeline to provide gas service to a waste management company in Harris County. KM has proposed compensation in the amount of \$65,355.19 to purchase a surface site easement located within the City of Pearland (CITY) Shadow Creek Ranch Park property. The property

consisted of approximately 65.231 acres generally bounded by Kinglsey Drive to the east, Clear Creek to the north, Fort Bend and Brazoria County limit to the west and Shadow Creek Parkway (FM 2234) to the south (see Exhibit C). The proposed limits of the pipeline easement would begin at the exiting Kinder Morgan pipeline within the existing pipeline right of way in the Park and travel north along the west side Kingsley Drive..

The valuation of the proposed easement was based on a market study to provide information regarding the sale of properties in the area along the proposed alignment of the KM pipeline. This report was prepared in conformance with the Code of Ethics and Standards of Professional Practice of the Appraisal Institute. Further, the report is intended to comply with the Uniform Standards of Professional Appraisal Practice. Staff have reviewed the offer and determined it was within reasonable price range for similar uses within this area. The intended use of the easement by KM is compatible with their business plan and existing facilities located elsewhere on this property. As KM has identified this property as an ideal location for the gas service , they would have the option to exercise Eminent Domain to acquire the property if this negotiated price is not accepted.

SCOPE OF CONTRACT/AGREEMENT

KM purchase of a 15' easement (1 rod = 16.5 feet)	72.26 rods @\$750.00 per rod	= \$54,195.00
--	------------------------------	---------------

Temporary workspace: .38 acre (16,553 square feet) x \$0.61		= \$10,097.33
Additional Temporary workspace: .04 acre (1742 square feet) x \$0.61		= \$ 1,062.86

Total: \$65,355.19

BID AND AWARD

n/a

SCHEDULE

May 11, 2015	City Council approval
May 15, 2015	Obtain signatures for Easement
May 16, 2015	Easement to Kinder Morgan
May 30, 2015	Kinder Morgan check request (2 weeks)
July 1, 2015	Receive compensation

POLICY/GOAL CONSIDERATION

This activity complies with Council’s strategic goals of Healthy Economy and Safe Community

RESOLUTION NO. R2015-76

A Resolution of the City Council of the City of Pearland, Texas, conveying a surface site easement, in the vicinity of Kingsley Drive and Shadow Creek Ranch Boulevard, to Kinder Morgan Texas Pipeline, LLC, in exchange for fair market value compensation of \$65,355.19.

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

Section 1. That certain Easement attached hereto as Exhibit "A" and made a part hereof for all purposes, is hereby conveyed to Kinder Morgan Texas Pipeline, LLC.

PASSED, APPROVED, AND ADOPTED this 11th day of May, A.D., 2015.

TOM REID
MAYOR

ATTEST:

YOUNG LORFING, TRMC
CITY SECRETARY

APPROVED AS TO FORM:

DARRIN M. COKER
CITY ATTORNEY

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION NRECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SURFACE SITE EASEMENT

STATE OF TEXAS

§

COUNTY OF BRAZORIA

§

§

That the undersigned, **CITY OF PEARLAND** (hereinafter called "Grantor", whether one or more), whose address is **3519 LIBERTY DRIVE, PEARLAND, TEXAS 77581** for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable considerations in hand paid, the receipt and sufficiency of which is hereby acknowledged, do hereby grant, bargain, sell, and convey unto Kinder Morgan Texas Pipeline LLC, a Delaware limited liability company with offices at 1001 Louisiana Street, Suite 1000, Houston, Texas 77002, its successors and assigns, (hereinafter called "Grantee") a Surface Site Easement upon the tract of land hereinafter described for the exclusive use and occupancy thereof for the construction of certain pipelines, pipeline facilities, including, but not limited to, erecting, constructing, maintaining, operating, repairing, inspecting, replacing, protecting, and removing, including, pipelines, above-ground and below-ground valves and valve settings, fittings, pipes, conduits, tie-ins, equipment and structures to facilitate the operation, maintenance, repair and use of its pipeline facilities, either below or above the surface of the ground along, under, upon, over, through and across said surface site being situated in Harris County, Texas.

The Surface Site Easement is more particularly described and depicted in Exhibits "A & B" attached hereto and made a part hereof; together with the rights of ingress and egress thereto as shown on Exhibits "A & B", across land of Grantor at a point designated by Grantor for the enjoyment of the uses, rights and privileges aforesaid.

Subject to any laws to the contrary, Grantors shall have the right to fully use and enjoy said easement and the land encumbered thereby for any purposes which shall not unreasonably interfere with the rights herein granted to Grantee.

Grantee may not fence and enclose any of the facilities installed under the above described Surface Site Easement except for a six (6) foot by six (6) foot pipe guard around the above ground tap valve. Grantee shall have all rights and benefits necessary or convenient for the full enjoyment and use thereof, including, but not limited to, the right, from time to time, to cut and remove all undergrowth, and other obstructions, on the Surface Site Easement. The Surface Site Easement shall be maintained and kept clean of debris, trash, and weeds and Grantee shall have the right to place gravel or caliche within the fenced in area of the Surface Site Easement to inhibit the growth of grasses and weeds.

GRANTEE SHALL DEFEND, INDEMNIFY, PROTECT AND HOLD HARMLESS GRANTOR, GRANTOR'S HEIRS, SUCCESSORS, ASSIGNS, TRANSFEREES, EMPLOYEES, AGENTS, LESSEES, CONTRACTORS, SUBCONTRACTORS, AS WELL AS TRUSTEES, BENEFICIARIES, RELATIVES, PARTNERS, OFFICERS, DIRECTORS AND RELATED OR AFFILIATED ENTITIES (COLLECTIVELY THE "GRANTOR PARTIES") FROM ANY AND ALL LIENS, CLAIMS, DEMANDS, COSTS (INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ACCOUNTANT'S FEES, ENGINEER'S FEES, CONSULTANT'S FEES AND EXPERT'S FEES), EXPENSES, DAMAGES, LOSSES AND CAUSES OF ACTION FOR DAMAGES BECAUSE OF INJURY TO PERSONS (INCLUDING DEATH) AND INJURY OR DAMAGE TO OR LOSS OF ANY PROPERTY OR IMPROVEMENTS TO THE EXTENT ARISING FROM OR CAUSED BY THE NEGLIGENCE, GROSS NEGLIGENCE OR STRICT LIABILITY OF GRANTEE ON THE SURFACE SITE OR GRANTOR'S ADJACENT LANDS AND/OR FACILITIES

This Surface Site Easement covers all the agreements and stipulations between Grantor and Grantee and no representations or statements, verbal or written, have been made modifying, adding to or changing the terms or considerations for this grant.

If at any time after 24 months from the date hereof, Grantee should cease to use the facilities on the Surface Site Easement for the transportation of gas through the associated pipeline and if such cessation of use should continue for a continuous twenty four (24) month period, all rights of Grantee herein shall ipso facto terminate and revert to Grantor, his heirs, legal representatives, and assigns. Grantee shall have the right for six (6) months following any termination of this Surface Site Easement to remove its pipe, valves and all other property. Following the expiration of such period, any such property remaining on the Surface Site shall be and become the property of Grantor.

Grantee shall have the right to assign this Surface Site Easement, in whole or in part, in which event Grantor acknowledges and agrees that the assignee shall succeed to the rights and obligations of Grantee to the extent conveyed in such assignment.

TO HAVE AND TO HOLD the rights, privileges and authority hereby granted unto the Grantee, its successors and assigns, forever, upon the condition that Grantee will at all times, after doing any work in connection with the construction, reconstruction, repair or removal within said easement, restore said premises to the condition in which they existed prior to the work being undertaken by the Grantee, and that in the use of said rights and privileges herein granted to, Grantee will not create a nuisance or do any act that will be detrimental to said premises or Grantors adjacent lands and/or facilities. Grantor does hereby agree to warrant and defend said Surface Site Easement unto Grantee, its successors and assigns. This Surface Site Easement and all of its terms, provisions and obligations shall be covenants running with the land affected thereby and shall inure to the benefit of and be binding upon Grantor and Grantee and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the said undersigned have hereto set their hands and seals, on this the _____ day of _____ 2015.

GRANTOR:

CITY OF PEARLAND

BY:

TITLE:

ACKNOWLEDGEMENT

STATE OF TEXAS §
COUNTY OF _____ §
§

BEFORE ME, the undersigned authority, on this day personally appeared _____(NAME)_____, ___(TITLE)_____ of CITY OF PEARLAND known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____ 2015.

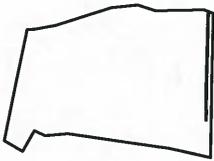
Notary Public in and for the State of Texas

(Print Name of Notary Public Here)

BRAZORIA COUNTY, TEXAS

S.G. HAYNIE SURVEY A-212

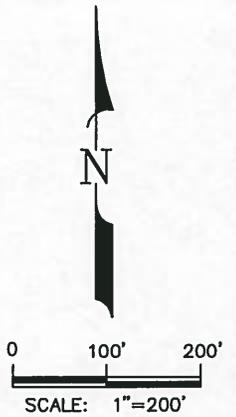
EXHIBIT "A"



VICINITY MAP
N.T.S.

145-011-00-02

PEARLAND INVESTMENTS
LIMITED PARTNERSHIP
99.6852 ACRES
APRIL 8, 1999
DOC. 99 015973



FND. 5/8" I.R.
W/CAP "WEISSER ENG"

S68°13'34"E
85.88'

P.O.B.

SEE DETAIL "A"
SHEET 2 OF 3

APPROX. HARRIS COUNTY LINE
APPROX. BRAZORIA COUNTY LINE

PROPOSED
PIPELINE

KINGSLEY DRIVE
A.K.A. ALMEDA SHOOL ROAD
(VARIABLE WIDTH R.O.W.)

S.G. HAYNIE SURVEY
A-212

SEE DETAIL "B"
SHEET 2 OF 3

145-011-00-01

CITY OF PEARLAND
65.231 ACRES
DOC. NO. W303449

LINE TABLE		
LINE NO.	BEARING	DISTANCE
L1	S68°13'34"E	15.53'
L2	S07°14'14"W	55.56'
L3	S01°06'57"W	1,064.54'
L4	N88°52'44"W	15.00'
L5	N01°06'57"E	1,065.67'
L6	N07°14'34"E	59.94'
L7	N00°00'00"E	6.67'
L8	N90°00'00"E	38.90'
L9	N01°06'57"E	1,089.03'
L10	N07°14'24"E	57.75'

EXIST. KM PIPELINE

SEE DETAIL "C"
SHEET 2 OF 3

PEARLAND INVESTMENTS
LIMITED PARTNERSHIP
99.6852 ACRES
APRIL 8, 1999
DOC. 99 015973

FND. 5/8" I.R.
W/CAP "JLA ENG"

TOTAL LENGTH: 1,192.35 FEET = 72.26 RODS

- PERMANENT EASEMENT (0.39 AC.)
- TEMPORARY WORKSPACE (0.38 AC.)
- ADDITIONAL TEMPORARY WORKSPACE (0.04 AC.)

NOTES:

1. BASIS OF BEARING IS THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE 4203, NAD 83 (2011).
2. SURVEYOR HAS MADE NO INVESTIGATION OF INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. ALL DISTANCES ARE REPRESENTED IN GRID VALUES MEASURED IN US SURVEY FEET, AND ARE BASED ON SAID HORIZONTAL DATUM.
4. INFORMATION DEPICTED HEREON IS BASED ON A SURVEY FOR THE DETERMINATION OF ESTABLISHING A BASELINE FOR MAPPING, PARTICULAR TOPOGRAPHIC FEATURES, LOCATING NECESSARY PIPELINE FOR DESIGN AND EASEMENTS ACQUISITION.
5. THE SIDE LINES OF SAID EASEMENT AREA TO BE PROLONGED OR SHORTENED TO TERMINATE ON THE DEED LINES.



Leonard C. Dawkin 4/24/15
LEONARD C. DAWKIN
REGISTERED PROFESSIONAL LAND SURVEYOR
NO. 5339

PREPARED BY:



ENCOMPASS ENERGY SERVICES LLC
2470 GRAY FALLS DRIVE, SUITE 110
HOUSTON, TX 77077
832-781-4800

SURVEYED FEBRUARY, 2014

KINDER MORGAN TEXAS
PIPELINE LLC

PROPOSED 15' EASEMENT ACROSS
CITY OF PEARLAND

PLAT

DRAWING NO:

SCALE 1"=200' AFE.

145-011-00-01

1 OF 3

APPROVED BY:

DRAWING SIZE



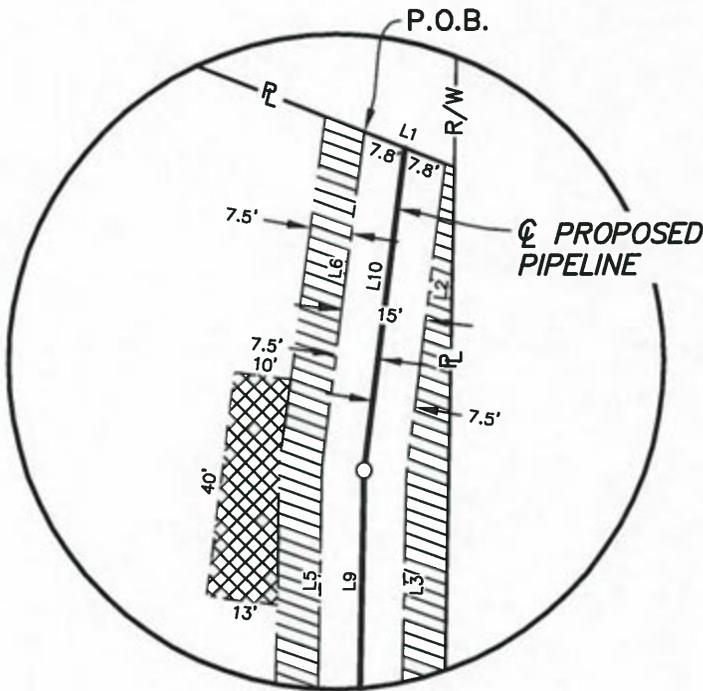
REVISIONS

REV	DATE	BY	AFE	DESCRIPTION	RPLS	DATE
3	04/24/15	JRC		RE-ISSUE	LCD	04/24/15
2	03/13/15	JRC		RE-ISSUE	LCD	03/13/15
1	01/21/15	JRC		RE-ISSUE	LCD	01/21/15
0	01/20/15	MM		FOR ISSUE	LCD	01/20/15

BRAZORIA COUNTY, TEXAS

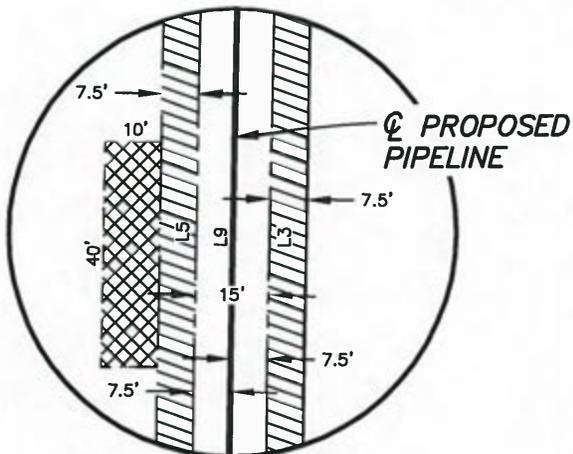
S.G. HAYNIE SURVEY A-212

EXHIBIT "A"



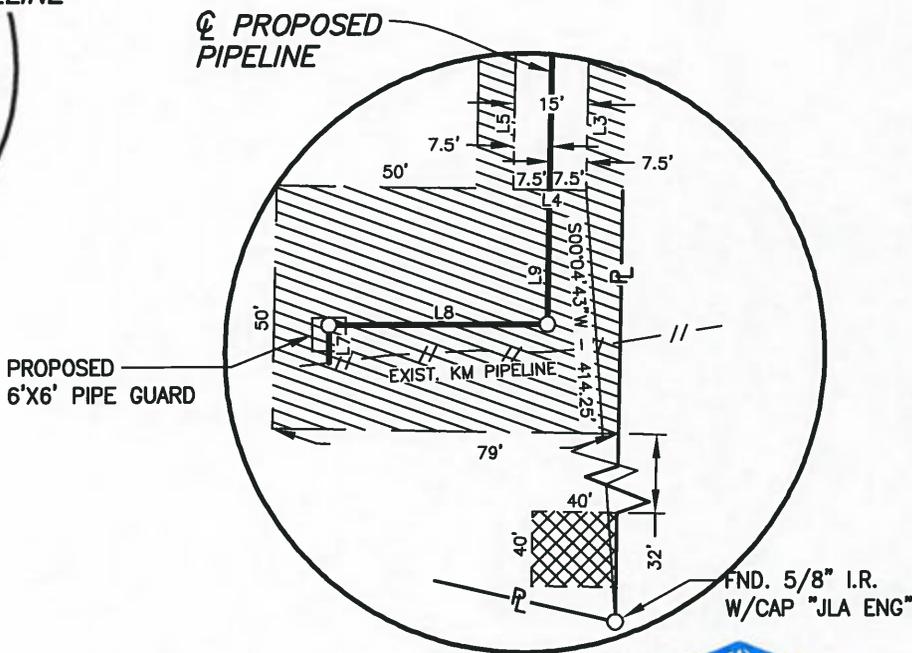
DETAIL "A"

N.T.S.



DETAIL "B"

N.T.S.



DETAIL "C"

N.T.S.

TOTAL LENGTH: 1,192.35 FEET = 72.26 RODS



PERMANENT EASEMENT (0.39 AC.)



TEMPORARY WORKSPACE (0.38 AC.)



ADDITIONAL TEMPORARY WORKSPACE (0.04 AC.)

NOTES:

1. BASIS OF BEARING IS THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE 4203, NAD 83 (2011).
2. SURVEYOR HAS MADE NO INVESTIGATION OF INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. ALL DISTANCES ARE REPRESENTED IN GRID VALUES MEASURED IN US SURVEY FEET, AND ARE BASED ON SAID HORIZONTAL DATUM.
4. INFORMATION DEPICTED HEREON IS BASED ON A SURVEY FOR THE DETERMINATION OF ESTABLISHING A BASELINE FOR MAPPING, PARTICULAR TOPOGRAPHIC FEATURES, LOCATING NECESSARY PIPELINE FOR DESIGN AND EASEMENTS ACQUISITION.
5. THE SIDE LINES OF SAID EASEMENT AREA TO BE PROLONGED OR SHORTENED TO TERMINATE ON THE DEED LINES.



Leonard C. Dawkin 4/24/15
 LEONARD C. DAWKIN
 REGISTERED PROFESSIONAL LAND SURVEYOR
 NO. 5339

PREPARED BY:



ENCOMPASS ENERGY SERVICES LLC
 2470 GRAY FALLS DRIVE, SUITE 110
 HOUSTON, TX 77077
 832-781-4800

SURVEYED FEBRUARY, 2014

KINDER MORGAN TEXAS
 PIPELINE LLC

PROPOSED 15' EASEMENT ACROSS
 CITY OF PEARLAND

PLAT

DRAWING NO.

SCALE N.T.S. AFE

145-011-00-01

2 OF 3

APPROVED BY:

DRAWING SIZE

REV	DATE	BY	AFE	DESCRIPTION	RPLS	DATE
3	04/24/15	JRC		RE-ISSUE	LCD	04/24/15
2	03/13/15	JRC		RE-ISSUE	LCD	03/13/15
1	01/21/15	JRC		RE-ISSUE	LCD	01/21/15
0	01/20/15	MM		FOR ISSUE	LCD	01/20/15

REVISIONS

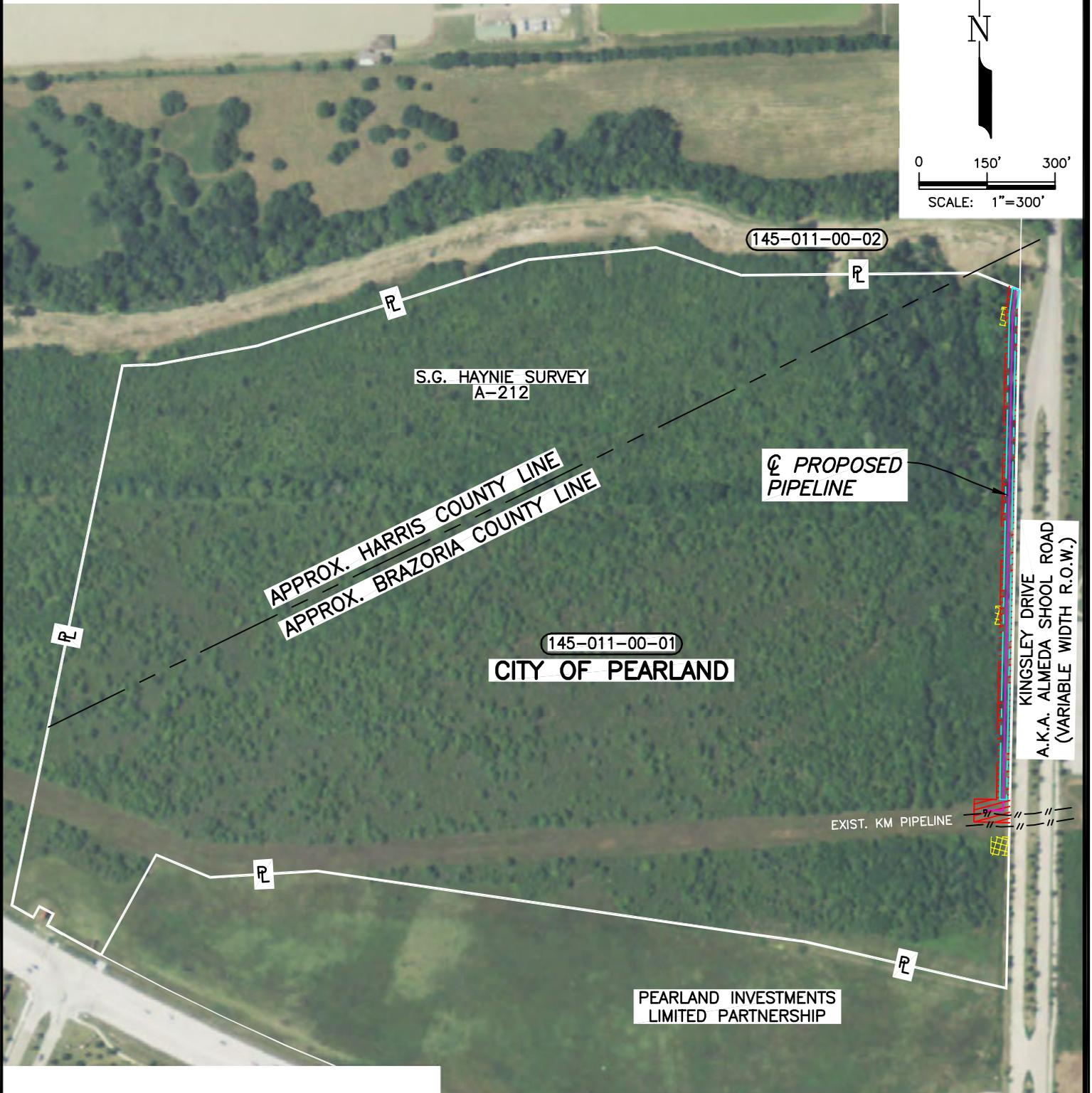
BRAZORIA COUNTY, TEXAS

S.G. HAYNIE SURVEY A-212

EXHIBIT "A"



0 150' 300'
SCALE: 1"=300'



TOTAL LENGTH: 1,192.35 FEET = 72.26 RODS

- PERMANENT EASEMENT (0.39 AC.)
- TEMPORARY WORKSPACE (0.38 AC.)
- ADDITIONAL TEMPORARY WORKSPACE (0.04 AC.)

PREPARED BY:



ENCOMPASS ENERGY SERVICES LLC
2470 GRAY FALLS DRIVE, SUITE 110
HOUSTON, TX 77077
832-781-4800

SURVEYED FEBRUARY, 2014

REV	DATE	BY	AFE	DESCRIPTION	RPLS	DATE
0	04/27/15	JRC		FOR ISSUE	LCD	04/27/15

KINDER MORGAN TEXAS
PIPELINE LLC

PLAT

PROPOSED 15' EASEMENT ACROSS
CITY OF PEARLAND

APPROVED BY: _____ DRAWING SIZE: _____

DRAWING NO:
145-011-00-01 SKETCH IMAGE

SCALE: 1"=300' AFE:
1 OF 1

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

AGENDA OF:	May 11, 2015	ITEM NO.:	R2015-66
DATE SUBMITTED:	May 1, 2015	DEPT. OF ORIGIN:	Finance
PREPARED BY:	Bob Pearce	PRESENTOR:	Eric Wilson
REVIEWED BY:	Trent Epperson	REVIEW DATE:	May 5, 2015
SUBJECT: Resolution No. R2015-66 A Resolution of the City Council of the City of Pearland, Texas, awarding a service contract for HVAC/Refrigeration repair, maintenance and equipment to American Mechanical Service of Houston, LLC for package one (1) and to the Lee Thompson Company for package two (2) in the total estimated amount of \$130,000.00.			
EXHIBITS: Resolution #R2015-66 Exhibit A - Bid Tabulation Exhibit B - Withdraw Request Letter			
FUNDING:			
<input type="checkbox"/> Grant <input type="checkbox"/> Developer/Other <input checked="" type="checkbox"/> Cash <input type="checkbox"/> Bonds To Be Sold <input type="checkbox"/> Bonds- Sold <input type="checkbox"/> L/P – Sold <input type="checkbox"/> L/P – To Be Sold			
EXPENDITURE REQUIRED: \$ 130,000 (est.). AMOUNT BUDGETED: \$130,000			
AMOUNT AVAILABLE: \$130,000.00		PROJECT NO.:	
ACCOUNT NO.: 010-3522-553-05-00			
ADDITIONAL APPROPRIATION REQUIRED:			
ACCOUNT NO.:			
PROJECT NO.:			
To be completed by Department:			
<input checked="" type="checkbox"/> Finance	<input checked="" type="checkbox"/> Legal	<input type="checkbox"/> Ordinance	<input checked="" type="checkbox"/> Resolution

EXECUTIVE SUMMARY

BACKGROUND

It is necessary for the City to retain the services of an outside contractor to perform maintenance and repairs on existing HVAC/refrigeration systems and equipment, and periodic system replacements at various City facilities as required. In addition to these services, the contractor is required to provide any parts required for repair of equipment at a fixed percentage above the contractor's cost.

SCOPE OF CONTRACT

Provision of HVAC/refrigeration system repairs on an as-needed basis as authorized by the City of Pearland Public Works Department.

BID AND AWARD

The City solicited competitive bids through Bid Number 0215-22, which was published in the paper and posted on the City’s e-bid website. The bid consisted of two packages: package one for all City locations excluding the Recreation Center and Natatorium location; package two for only the Recreation Center and Natatorium. The bid was separated into two packages due to the Dectron units at the RCN requiring certification specific to that brand.

The City received a total of three (3) responses for package one and two (2) responses for package two. Sentinel A/C & Heating was the low bidder for both packages; however, they have expressed concern in being able to adequately service our account due to the size and have asked to be removed from consideration, which Purchasing staff elected to accommodate.

Due to the significant amount of time and effort that has been put forth between the City and Lee Thompson in finding resolutions to the equipment failures and stabilization of the Dectron units, it is recommended by the Facilities Management Division of Public Works that package two for the Dectron units be awarded to Lee Thompson, and that package one be awarded to American Mechanical Services of Houston, LLC.

SCHEDULE

Repairs and maintenance will be conducted on an as-needed basis, to be determined by the City of Pearland Public Works Department.

POLICY/GOAL CONSIDERATION

This purchase is contemplated and recommended for the purpose of furthering the City’s objective to provide for public health, safety and welfare, and to maintain the integrity of the City’s HVAC systems.

CURRENT AND FUTURE FUNDING /FINANCIAL IMPACTS

Funding for the purchase of this system will come from the General Fund for Public Works.

O&M IMPACT INFORMATION

This award will provide for fixed unit costs for each item for a period of one (1) year, with no allowable price increases. At the expiration of the initial term, an option is available for two (2) additional one (1) year renewals upon the mutual agreement of both parties, and the approval of City Council. Any price adjustment requested by the contracted vendor for the renewal period must be substantiated by a comparable increase in the Consumer Price Index for the Houston-Galveston-Brazoria metropolitan area. In the event a renewal is not agreeable to both parties, the contract will continue on a month-to-month basis until such time as a new contract can be awarded.

Fiscal Year	2015	2016	2017
Est. Expenditure	\$130,000 (est.)	\$130,000*	\$130,000*

*Based on the current CPI of -0.7%

RECOMMENDED ACTION

A Resolution of the City Council of the City of Pearland, Texas, awarding a service contract for HVAC Refrigeration repair, maintenance and equipment to American Mechanical Services of Houston, LLC for package one (1) and to the Lee Thompson Company for package two (2) in the total estimated amount of \$130,000.00.

RESOLUTION NO. R2015-66

A Resolution of the City Council of the City of Pearland, Texas, awarding a service contract for HVAC repair, maintenance and equipment to American Mechanical Service of Houston, LLC for package one (1) and to the Lee Thompson Company for package two (2) in the total estimated amount of \$130,000.00.

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

Section 1. That the City obtained unit supply pricing for the purchase of repair and maintenance services, and such bids have been reviewed and tabulated.

Section 2. That the City Council hereby awards the bid to American Mechanical Services of Houston, LLC and The Lee Thompson Co., in the unit supply amounts reflected in Exhibit "A" attached hereto.

Section 3. The City Manager or his designee is hereby authorized to execute a contract for the purchase of repair and maintenance services.

PASSED, APPROVED and ADOPTED this the 11th day of May, A.D., 2015.

TOM REID
MAYOR

ATTEST:

YOUNG LORFING, TRMC
CITY SECRETARY

APPROVED AS TO FORM:

DARRIN M. COKER
CITY ATTORNEY

EXHIBIT A

Bid No. 0215-22 HVAC Refrigeration Repairs and Maintenance Tabulation

Bid Closed: 3/24/15

				American Mechanical Services of Houston, LLC		Sentinel A/C & Heating		The Lee Thompson Company	
				Total Price	\$46,020.00	Total Price	\$49,080.00	Total Price	\$61,580.00
Line #	Description	QTY	UOM	Unit	Extended	Unit	Extended	Unit	Extended
1	HVAC Services for all locations excluding the Recreation Center and Natatorium location. Note: any quantities listed are estimates.	1	PKG		\$46,020.00		\$38,885.00		\$50,230.00
1.1	Technician - Standard Hourly Rate	500	Hours	\$78.00	\$ 39,000	\$70.00	\$ 35,000	\$85.00	\$ 42,500
1.2	Helper - Standard Hourly Rate	100	Hours	\$68.00	\$ 6,800	\$35.00	\$ 3,500	\$75.00	\$ 7,500
1.3	Percent mark-up for materials/supplies/parts, based on an annual spend of approximately \$40,000.	1	EA	15	15%	30	30%	35	35%
1.4	Additional travel cost per call out, if applicable.	1	EA			\$70.00	\$ 70	\$30.00	\$ 30
1.5	Emergency Repair Rate (Rate which will be charged after standard business hours).	1	EA	\$110.00	\$ 110	\$105.00	\$ 105	\$85.00	\$ 85
1.6	Minimum charge per call out for emergency repairs (after hours).	1	EA	\$110.00	\$ 110	\$210.00	\$ 210	\$115.00	\$ 115
2	HVAC Services for only the Recreation Center and Natatorium location.	1	PKG	\$0.00	\$0.00		\$10,195.00		\$11,350.00
2.1	Technician - Standard Hourly Rate	100	Hours			\$90.00	\$ 9,000	\$95.00	\$ 9,500.00
2.2	Helper - Standard Hourly Rate	20	Hours			\$35.00	\$ 700	\$75.00	\$ 1,500.00
2.3	Percent mark-up for materials/supplies/parts, based on an annual spend of approximately \$10,000.	1	EA			30	30%	35	35%
2.4	Additional travel cost per call out, if applicable.	1	EA			\$90.00	\$ 90	\$30.00	\$ 30.00
2.5	Emergency Repair Rate (Rate which will be charged after standard business hours).	1	EA			\$135.00	\$ 135	\$95.00	\$ 95.00
2.6	Minimum charge per call out for emergency repairs (after hours).	1	EA			\$270.00	\$ 270	\$225.00	\$ 225.00

Julie Blackmore

From: Khrysta Lee <klee@sentinelac.com>
Sent: Monday, April 27, 2015 1:59 PM
To: Julie Blackmore
Cc: service@sentinelac.com
Subject: Formal Withdraw Request

Ms. Blackmore,

On 3/24/2015 a bid was submitted for bid #0215-22. At the time of this bid, I was on medical leave and not aware of this bid. Unfortunately, you were prepared to award us the bid, but I do not believe my company is large enough to handle the amount of labor required. We are a specialty company and do not have the man power to handle a PM contract of your size. I apologize for any inconvenience this may have cause, but I respectfully request that you allow us to withdraw our formal bid submitted 3/24/2015 for bid #0215-22.

Regards,

Ted Garza Jr.
Owner of Sentinel AC & Heating

Typed By :

Khrysta Lee
Sentinel A/C & Heating
Office: 281.374.8080
Fax: 281.374.8084
E-Mail: klee@sentinelac.com
Website: www.sentinelac.com

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

AGENDA OF: May 4, 2015	ITEM NO.: Consent Agenda
DATE SUBMITTED: May 4, 2015	DEPARTMENT OF ORIGIN: City Secretary
PREPARED BY: Maria E. Rodriguez	PRESENTOR: City Council
REVIEWED BY: Jon R. Branson	REVIEW DATE: May 7, 2015
SUBJECT: Excuse the absence of Councilmember Greg Hill from the Regular Council Meeting held on April 27, 2015.	
EXHIBITS: None	
EXPENDITURE REQUIRED: N/A AMOUNT AVAILABLE: N/A ACCOUNT NO.: N/A	AMOUNT BUDGETED: N/A PROJECT NO.: N/A
ADDITIONAL APPROPRIATION REQUIRED: N/A ACCOUNT NO.: N/A PROJECT NO.: N/A	
To be completed by Department: <input type="checkbox"/> Finance <input type="checkbox"/> Legal <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution	

EXECUTIVE SUMMARY

Excuse Councilmember Greg Hill's absence from the April 27, 2015, Regular Council Meeting.

RECOMMENDED ACTION

Council action required.

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

AGENDA OF: May 11, 2015	ITEM NO.: Resolution No. R2015-75								
DATE SUBMITTED: April 25, 2015	DEPT. OF ORIGIN: Eng. & Cap. Projects								
PREPARED BY: Andrea Brinkley	PRESENTOR: Skipper Jones								
REVIEWED BY: Trent Epperson	REVIEW DATE: May 5, 2015								
<p>SUBJECT: R-2015-75 - A Resolution of the City Council of the City of Pearland, Texas, authorizing the City Manager or his designee to enter into a Sub-Grantee Agreement with Brazoria County for use of the Coastal Impact Program (CIAP) funds and authorizing the City Manager to execute the Agreement.</p>									
<p>EXHIBITS: R-2015-75, A – Sub-Grantee Agreement, B - Project Location Map</p>									
<p>FUNDING:</p> <table style="width: 100%; border: none;"> <tr> <td style="text-align: center;"><input type="checkbox"/> Bonds To Be Sold</td> <td style="text-align: center;"><input type="checkbox"/> Grant</td> <td style="text-align: center;"><input type="checkbox"/> Developer/Other</td> <td style="text-align: center;"><input checked="" type="checkbox"/> Cash</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/> Bonds- Sold</td> <td style="text-align: center;"><input type="checkbox"/> L/P – Sold</td> <td style="text-align: center;"><input type="checkbox"/> L/P – To Be Sold</td> <td></td> </tr> </table>		<input type="checkbox"/> Bonds To Be Sold	<input type="checkbox"/> Grant	<input type="checkbox"/> Developer/Other	<input checked="" type="checkbox"/> Cash	<input type="checkbox"/> Bonds- Sold	<input type="checkbox"/> L/P – Sold	<input type="checkbox"/> L/P – To Be Sold	
<input type="checkbox"/> Bonds To Be Sold	<input type="checkbox"/> Grant	<input type="checkbox"/> Developer/Other	<input checked="" type="checkbox"/> Cash						
<input type="checkbox"/> Bonds- Sold	<input type="checkbox"/> L/P – Sold	<input type="checkbox"/> L/P – To Be Sold							
<p>EXPENDITURE REQUIRED:N/A AMOUNT AVAILABLE: \$475,263.13 ACCOUNT NO.: ADDITIONAL APPROPRIATION REQUIRED: ACCOUNT NO.: PROJECT NO.:</p>	<p>AMOUNT BUDGETED: \$538,066 PROJECT NO.: P20008</p>								
<p>To be completed by Department:</p> <table style="width: 100%; border: none;"> <tr> <td style="text-align: center;">X Finance</td> <td style="text-align: center;">X Legal</td> <td style="text-align: center;">Ordinance</td> <td style="text-align: center;">X Resolution</td> </tr> </table>		X Finance	X Legal	Ordinance	X Resolution				
X Finance	X Legal	Ordinance	X Resolution						

RECOMMENDED ACTION

Consideration and approval of a resolution approving a Sub-Grantee Agreement with Brazoria County for the use of Coastal Impact Assistance Program (CIAP) funds and authorizing the City Manager to execute the agreement.

EXECUTIVE SUMMARY

BACKGROUND

The CIAP program is a federal grant fund program derived from federal offshore lease revenues to oil producing states for conservation, protection, or restoration of coastal areas including wetlands. The grant originates from the U.S. Department of the Interior – Fish and

Wildlife Service, as part of its Coastal Impact Assistance Program. The goal is to provide public access to the natural coastal environment.

The opportunity arose to implement a portion of the educational outdoor infrastructure related to the Nature Center at the JHEC property, through the use of CIAP funds that Brazoria County had received.

The Dolores Fenwick Nature Center (Nature Center) is a 2007 Bond project, which includes a building and associated parking. This project develops the outdoor educational infrastructure at the John Hargrove Environmental Center (JHEC) property. In February, 2013, the City entered into an Inter-local agreement with Brazoria County to collaboratively construct the project using these CIAP funds. A partnership between the City and Keep Pearland Beautiful funded the design of the project.

The outdoor educational components includes the 8 foot wide walking trail around both ponds, interpretive signage, site amenities, 9 additional parking spaces at the Stella Roberts Recycling Center, and a boardwalk across the east pond with an observation structure. The CIAP grant does not cover the entire cost of the proposed project, so it was divided into phases. The phase of the project that is proposed to be constructed by this CIAP grant includes: the 8 ft. walking trail, the 6 and 8 ft. concrete sidewalks, the 9 additional parking spaces, interpretive signs and site amenities along the trail. The boardwalk and observation structure will be constructed as a future phase of the project when additional funding is available.

SCOPE OF CONTRACT/AGREEMENT

The Sub-Grantee agreement takes the place of the 2013 Inter-local agreement and provides the mechanism by which the City will access the grant funds and be reimbursed by the County for the improvements. The agreement limits Brazoria County's contributions to the amount of the grant, \$463,350 and limits their use to the proscribed scope of the project. The responsibilities of the city under the agreement are to bid, award, and manage the construction of the project in accordance with the federal grant guidelines and requirements. The City will make payment to the contractor for the work performed and approved on a monthly progress basis and be reimbursed by the County upon presentation of the specified monthly reports and copies of project documentation, contracts, and invoices.

The construction contract will be administered by the City as a "Sub-Recipient" of the grant funds via the attached Sub-Recipient Agreement, and the City will be paid for its expenditures on a cost-reimbursement basis. The City's agreement with the County will expire in December of 2016. The project is ready for bidding, providing approximately 18 months to complete the bidding and construction.

BID AND AWARD

The project will be advertised and bid per the City's standard processes and the contract for construction will be the City's standard contract documents. Once the bids have been tabulated Staff will bring Council a recommendation of Award in keeping with the standard process.

SCHEDULE

The City will bid the project and begin construction pending Council approval and Brazoria County Commissioner's Court approval of the agreement. Design is complete at this time and

the Bid Phase is expected to require approximately two months and Construction is estimated at approximately four months.

POLICY/GOAL CONSIDERATION

The project is in keeping with Council Strategic Objectives of Sustainable Infrastructure, and the provision of Parks, Recreation & Events.

CURRENT AND FUTURE CIP FUNDING /FINANCIAL IMPACTS/DEBT SERVICE

The funding is a grant, in the amount of \$475,000 in CIAP funding, of which \$11,650 has been expended for environmental permit related work. The remaining funds to be committed to construction total \$463,350.

Year	To Date	2016	2017	2018	2019	Total
Budget	\$ 538,066					\$ 538,066
Prior Expenditures						
PER						-
Land/ROW						-
Design/Survey	74,716					74,716
Construction						-
FF&E						-
Current Request	-					
						-
Future Expenditures	463,350					463,350
PER						-
Land/ROW						-
Design/Survey						-
Construction						-
FF&E						-
Total Expenditures	\$ 538,066	\$ -	\$ -	\$ -	\$ -	\$ 538,066
Remaining Balance	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

Debt Sold						
Debt to Be Sold						
Annual Debt Service						

O&M IMPACT INFORMATION

N/A

Year	2015	2016	2017	2018	2019
Operation and Maintenance Costs					

RESOLUTION NO. R2015-75

A Resolution of the City Council of the City of Pearland, Texas, authorizing the City Manager or his designee to enter into a Sub-Grantee Agreement with Brazoria County for use of the Coastal Impact Program (CIAP) funds and authorizing the City Manager to execute the Agreement.

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

Section 1. That certain Sub-Grantee Agreement by and between the City of Pearland and Brazoria County, a copy of which is attached hereto as Exhibit "A" and made a part hereof for all purposes, is hereby authorized and approved.

Section 2. That the City Manager or his designee is hereby authorized to execute and the City Secretary to attest a Sub-Grantee Agreement with Brazoria County.

PASSED, APPROVED and ADOPTED this the _____ day of _____,
A.D., 2015.

TOM REID
MAYOR

ATTEST:

YOUNG LORFING, TRMC
CITY SECRETARY

APPROVED AS TO FORM:

DARRIN M. COKER
CITY ATTORNEY

SUB-GRANTEE AGREEMENT

This Sub-grantee Agreement is entered into by and between the COUNTY OF BRAZORIA, TEXAS, hereinafter referred to as "the County" and the CITY OF PEARLAND, hereinafter referred to as "CITY," to provide financial assistance of Coastal Impact Assistance Program (CIAP) funds received under U.S. Department of the Interior, Fish and Wildlife Service Grant Award Agreement Number F12AF01190 "Coastal/Wetland/Birding Interpretive Trails." Partial funding under the grant is provided to CITY under this Agreement for the construction of a public walking trail and park amenities at the John Hargrove Environmental Complex (the project).

1. **PURPOSE:** The purpose of the project is to improve public access and enjoyment of the coastal natural environment.
2. **PROJECT:** The project shall be performed in accordance with the Grant Award Letter as amended, attached hereto as Attachment A, the Work Plan attached hereto as Attachment B, and the federal assurances document attached hereto as Attachment C. All constructed features will become the sole property of CITY, who will maintain and repair such features for the useful life of the features, at no cost to the County.
3. **TERM:** This Sub-grantee Agreement (Agreement) will become effective upon execution of both parties and will terminate on December 31, 2016.
 - The County may terminate this Agreement by giving written notice specifying a termination date at least thirty (30) days subsequent to the date of the notice. Upon receipt of such notice, CITY shall cease work, undertake to terminate any relevant subcontracts, and incur no further expense related to this Agreement. Such early termination shall be subject to the equitable settlement of the respective interest of the parties accrued up to the date of termination.
4. **BUDGET:** Subject to the terms and conditions of this Agreement, the County agrees to make a sub-grant to CITY in the amount of **Four Hundred Sixty-three Thousand Three Hundred Fifty and NO/100 Dollars (\$463,350.00)**, payable in installments as reimbursement of allowable expenses incurred by CITY.
 - With each reimbursement request, CITY shall include copies of all actual receipts, cancelled checks, and/or such other documentation that, in the judgment of the County, allows for full substantiation of the costs incurred.
 - CITY may request permission to reallocate funding among budget categories as listed in the Work Plan by submitting a written request and detailed justification to the County.
 - In the event CITY fails to comply in accordance with the Grant Award Letter attached hereto as Attachment A, the Work Plan attached hereto as Attachment B, and the federal assurances document attached hereto as Attachment C, CITY may be required to reimburse County for all installments paid. If County is required to

reimburse the U.S. Fish and Wildlife Service any funds for CITY's failure to comply with Grant requirements, CITY will reimburse County any and all such funds.

5. PROJECT REPORTS: CITY shall submit written monthly progress reports and a final report to the County. Monthly progress reports on the status of the project are due on or before the 10th day of each calendar month documenting the progress for the previous month, beginning June 10, 2015.

- Reports shall include, at a minimum, all documentation pertaining to the project for the previous month, including but not limited to: all procurement documents, all submitted bids, documentation on the award of the contract identifying the contractor, the contract amount, all contracts entered into between CITY and contractor(s), all proof of insurance for each contractor, purchase orders issued, actual receipts, cancelled checks, progress reports, pictures of progress, expenses, and any other documentation pertaining to the project during the month.
- All reports shall be electronically sent to:
 - o Bryan Frazier
Director of Brazoria County Parks Department
bryanf@brazoria-county.com
(979) 864-1541

and

- o Charlene Buck
Brazoria County Auditor's Office
charleneb@brazoria-county.com
(979) 864-1876

6. INSPECTION AND AUDIT: CITY agrees that all relevant records related to this Agreement shall be subject at any reasonable time for inspection, examination, review, audit, and copying with or without notice by the County, the U.S. Fish and Wildlife Service, the Comptroller General, the General Accounting Office, the Office of Inspector General or any of their authorized representatives of the U.S. Government.

- CITY shall retain all records relevant to this Agreement for a minimum of three (3) years, beginning at the date of final payment of reimbursable expenses by the County or from the date of termination of the Agreement, whichever is later.
- The period of retention shall be extended for a period reasonably necessary to complete an audit and/or to complete any administrative proceeding or litigation that may ensue.

7. INDEMNITY: Except for damages directly or proximately caused by the gross negligence of the County, CITY shall indemnify and hold harmless the County and its officers, representatives, agents, and employees from any losses, claims, suits, actions, damages, or liability arising in connection with this Agreement.

- CITY shall be solely responsible for the safety and well being of its employees, customers, and invitees. These requirements shall survive the termination of this Agreement until all claims have been settled or resolved and suitable evidence to that effect has been furnished to the County.

8. RELATIONSHIP OF THE PARTIES: On or about February 11, 2013, COUNTY and CITY entered into an Interlocal Cooperation Agreement regarding this project. The terms of this Agreement control and replace the responsibilities of each party in the Interlocal Agreement. CITY is associated with the County only for the purpose and to the extent specified in this Agreement.

- CITY shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Agreement.
- County shall have the right to inspect the progress and completion of the project during normal working hours.
- Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create for the County any liability whatsoever with respect to the indebtedness, liabilities, and obligations of CITY or any other party.

9. COMPLIANCE WITH OTHER LAWS: In the performance of this Agreement, CITY shall comply with all applicable federal, state, and local laws, ordinances, and regulations.

- CITY certifies it will comply with all applicable federal grant requirements, as evidenced by Attachment C, the signed "Assurances - Construction Programs" document.
- CITY will be in charge of all procurement procedures for purchase of materials, equipment and contractual services in accordance with 43 CFR 12, Subpart A--"Administrative and Audit Requirements and Cost Principles for Assistance Programs," Subpart E--"Buy American Requirements for Assistance Programs, and Subpart C--"Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

10. WHISTLEBLOWER PROTECTION: CITY is required to follow 41 United States Code (U.S.C.) 4712, Pilot Program for Enhancement of Recipient and Subrecipient Employee Whistleblower Protection, including but not limited to following:

- A. This Agreement and any related subawards and contracts over \$100,000 and all employees working on this Agreement and related subawards and contracts over \$100,000 are subject to the whistleblower rights and remedies in the pilot program, established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (P.L. 112-239).
- B. CITY and its subrecipients and contractors awarded contracts over \$100,000 related to this Agreement, shall inform its employees in writing, in the predominant language of the workforce, of the employee whistleblower rights and protection under 41 U.S.C. 4712.

C. CITY shall insert this clause, including this paragraph (C) in all subawards and contracts over \$100,000 related to this Agreement.

11. No modification of this Agreement shall be effective unless it is in writing and signed by both parties.

L.M. "Matt" Sebesta
County Judge
BRAZORIA COUNTY

Tom Reid
Mayor
CITY OF PEARLAND

Date of Execution: _____

Date of Execution: _____

ATTACHMENT A
GRANT AWARD LETTER



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240



In Reply Refer To:
WSFR/CIAP/ F12AF01190

The Honorable Judge E. J. "Joe" King **JUN 21 2013**
County Judge
Brazoria County
313 West Mulberry
Angleton, Texas 77515

Dear Judge King:

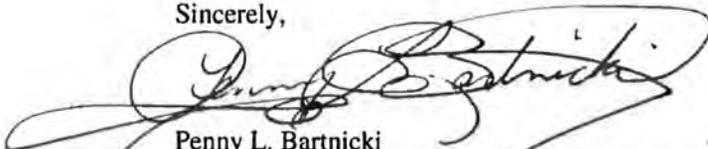
Grant number F12AF01190, amendment 1, "Coastal/ Wetland/ Birding Interpretive Trails," is approved for a \$121,149.62 decrease in funding under the Coastal Impact Assistance Program (CFDA # 15.668). The previous award was \$1,145,000.00. The grant award is now \$1,023,850.38. The effective date for this amendment is May 22, 2013. The grant agreement period remains July 01, 2012 through June 30, 2015. All grant conditions identified in previous award letter(s) remain in effect.

Acceptance of a Federal financial award carries with it the responsibility to be aware of and comply with the terms and conditions of the award, including those assurances submitted annually by your agency http://www.doi.gov/pam/programs/financial_assistance/TermsandConditions.cfm. Acceptance is defined as the start of work, drawing down funds, or accepting the award via electronic means. Awards are based on the application and supporting documents as submitted to and approved by the CIAP awarding agency.

Please submit correspondence, amendment requests, financial and performance reports and general inquiries to FW9_WSFR_CIAP@fws.gov. We appreciate this opportunity to work with you as the implementation of your approved State CIAP Plan project continues.

Please contact Maylily Le, Grant Specialist, at 703-358-2313, or me at 703-358-1783, with any questions regarding the terms of this award, specified conditions, and/or reporting requirements.

Sincerely,



Penny L. Bartnicki
Chief, Coastal Impact Assistance Program Branch
Wildlife and Sport Fish Restoration Program

cc: Kathy Smartt
Richard Hurd
Thomas Calnan, CIAP



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240



March 10, 2015

In Reply Refer To:
FWS/WSFR/CIAP/ F12AF01190

The Honorable L. Matt Sebesta, Jr.
County Judge
Brazoria County
111 East Locust Street, Suite 102A
Angleton, Texas 77515

Dear Judge Sebesta:

An extension of the performance period for grant number F12AF01190, amendment 2, "Coastal/Wetland/Birding Interpretive Trails," is approved under the Coastal Impact Assistance Program (CFDA # 15.668). The effective date for this amendment is February 23, 2015. The revised grant performance period is July 01, 2012 through December 31, 2016.

This grant award is subject to the following terms and conditions:

a. Reporting requirements:

1) Financial and performance reports are required under this award, as follows:

Report	Report Period	Report Due Date
Annual interim financial & performance reports	07/01/2012 – 06/30/2013	Received
	07/01/2013 – 06/30/2014	Received
	07/01/2014 – 06/30/2015	09/28/2015
	07/01/2015 – 06/30/2016	09/28/2016
Final financial & performance reports	07/01/2012 – 12/31/2016	03/31/2017

2) Requests for an extension of the report due date up to an additional 90 days must be submitted to, and received by, this office, no later than **1 day** before the report due date.

3) A performance report must contain the following:

- A. A comparison of actual accomplishments with the goals and objectives established for the reporting period;
- B. If the goals and objectives were not met, reasons why; and
- C. Other important information including, when appropriate, analysis and explanation of cost overruns or high unit costs compared to the benefit received to reach an objective.

- 4) A financial report must be submitted as an SF-425 Federal Financial Report which can be found at www.whitehouse.gov/omb/grants_forms/
- b. **41 United States Code (U.S.C.) 4712, Pilot Program for Enhancement of Recipient and Subrecipient Employee Whistleblower Protection:** This requirement applies to all awards issued after July 1, 2013 and shall be in effect until January 1, 2017.
- 1) This award and related subawards and contracts over the simplified acquisition threshold and all employees working on this award and related subawards and contracts over the simplified acquisition threshold are subject to the whistleblower rights and remedies in the pilot program on award recipient employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (P.L. 112-239).
 - 2) Recipients, and their subrecipients and contractors awarded contracts over the simplified acquisition threshold related to this award, shall inform their employees in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 U.S.C. 4712.
 - 3) The recipient shall insert this clause, including this paragraph (3), in all subawards and contracts over the simplified acquisition threshold related to this award.
- c. All Grant conditions identified in previous award letter(s) remain in effect.

Events may occur between the scheduled performance reporting dates that have a significant impact upon the supported activity. In such cases, notify the CIAP Chief in writing by sending an email to the CIAP inbox at FW9_WSFR_CIAP@fws.gov as soon as the following types of conditions become known:

- a. Problems, delays, or adverse conditions that will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of any corrective action(s) taken or contemplated, and any assistance needed to resolve the situation.
- b. Favorable developments that enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

Under the terms and conditions of this award, grantees must maintain an active System for Award Management (SAM) registration at <https://www.sam.gov/portal/public/SAM/> until the final financial report is submitted or final payment is received, whichever is later. If a grantee's

Judge L. Matt Sebesta, Jr.
F12AF01190

3

SAM registration expires during the required period, the Service can suspend payment under this and all other Service awards to that grantee until the registration is updated. Failure to update the SAM registration can result in further penalties including termination of grant awards.

Acceptance of a Federal financial award carries with it the responsibility to be aware of and comply with the terms and conditions of the award, including those assurances submitted annually by your agency per <http://www.fws.gov/grants/>. Acceptance is defined as the start of work, drawing down funds, or accepting the award via electronic means. Awards are based on the application and supporting documents as submitted to and approved by the CIAP awarding agency.

Please submit correspondence, amendment requests, financial and performance reports and general inquiries to FW9_WSFR_CIAP@fws.gov. We appreciate this opportunity to work with you as the implementation of your approved State CIAP Plan project continues.

Please contact J. Max Carithers, Grant Specialist, at 703-358-2550, or me at 703-358-1783, with any questions regarding the terms of this award, specified conditions, and/or reporting requirements. Please contact Thomas Calnan, Texas State Liaison, at 512-463-5100, with any questions regarding technical guidance during project development / implementation and project monitoring.

Sincerely,

PENNY BARTNICKI

Penny L. Bartnicki
Chief, Coastal Impact Assistance Program Branch
Wildlife and Sport Fish Restoration Program

Digitally signed by PENNY BARTNICKI
DN: c=US, o=U.S. Government, ou=Department of the
Interior, ou=U.S. Fish and Wildlife Service, cn=PENNY
BARTNICKI
0.9.2342.19200300.100.1.1=14001000364728
Date: 2015.03.10 16:00:40 -0400

cc: Kathy Smartt, Smartt Grants
Tom Calnan, CIAP

ATTACHMENT B
PROJECT WORK PLAN

WORK PLAN

The goal of this project is to protect and enhance coastal natural resources and enhance environmental management. The purpose of the project is to construct trails and park amenities at the John Hargrove Environmental Complex in the City of Pearland.

As funding permits, the following activities will be conducted:

1. Construction of a trail around West Lake and East Lake that will be comprised of 6700 LF of 8' wide decomposed granite between two 6" rolled/mountable concrete curbs.
2. Construction 8' wide concrete sidewalks to connect the main trail to existing sidewalks along Harkey and Magnolia roads.
3. Construction of nine (9) additional parking spaces, including ADA-compliant spaces, in front of the Stella Roberts Recycling Center.
4. Construction of site amenities such as bike rack areas, benches, a drinking fountain, litter receptacle and interpretive signage.

Deliverables:

- 1) Copies of all executed bidding documents including the following
 - a) Copy of executed Certifications regarding debarment, suspension, ineligibility and voluntary exclusion-lower tier covered transactions and lobbying (Form CD-512) by the **contractor**. *See Exhibit B-1.*
 - b) Copy of executed Assurances-Construction Program (Form 424D) by the **contractor**. *See Exhibit B-2.*
- 2) Copies of all invoices as required in the Agreement.
- 3) Interim and final progress reports as required in the Agreement.
- 4) As-built construction documents.
- 5) Photographs of trails, parking spaces and amenities that were built with CIAP funding.
- 6) Photograph of CIAP funding acknowledgement sign.

Budget:

See attached Exhibit B-3 – the estimated construction costs but construction will not exceed \$463,350.00 as provided in the grant.

Certification for Contracts, Grants, Loans, and Cooperative Agreements

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 15 CFR Part 28, for persons entering into a grant, cooperative agreement or contract over \$100,000 or a loan or loan guarantee over \$150,000 as defined at 15 CFR Part 28, Sections 28.105 and 28.110, the applicant certifies that to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
- (4) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

As the duly authorized representative of the contractor and/or subawardee, I hereby certify that the contractor and/or subawardee will comply with the above applicable certification.

_____ Signature of Contractor's Authorized Official
_____ Name and Title of Contractor's Authorized Official
_____ AWARD NUMBER AND/OR PROJECT NAME
_____ Date

ASSURANCES AND CERTIFICATIONS – CONSTRUCTION PROGRAMS

CERTIFICATIONS AND ASSURANCES REGARDING COMPLIANCE WITH UNIFORM ADMINISTRATIVE REQUIREMENTS FOR FEDERALLY-FUNDED CONSTRUCTION PROGRAMS, DEBARMENT, SUSPENSION, INELIGIBILITY, VOLUNTARY EXCLUSION – LOWER-TIER COVERED TRANSACTIONS AND LOBBYING

Signature on this form provides for compliance with certification requirements under 15 CFR Part 26, "Government-wide Debarment and Suspension (Non-procurement)" and 15 CFR Part 28, "New Restrictions on Lobbying."

Examination of Records. The undersigned hereby certifies and assures that it will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, the right to examine all records, books, papers, or documents related to the assistance; and establish a proper accounting system in accordance with generally accepted accounting standards or agency directives. It shall retain all records pertinent to expenditures incurred under this Agreement for a period of five (5) years after the termination of all activities funded under this Agreement or after the resolution of all Federal audit findings, whichever occurs later.

Review and Approval of Plans and Specifications. The undersigned hereby certifies and assures that it will comply with the requirements of the assistance awarding agency, the direct recipient of assistance funding, and/or its partners or assigns with regard to the drafting, review and approval of construction plans and specifications.

Competent Supervision. The undersigned hereby certifies and assures that it will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms to the approved plans and specifications and furnish progressive reports and such other information as may be required by the assistance awarding agency or State.

Timely Execution of the Scope of Work. The undersigned hereby certifies and assures that it will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

Buy American Provision. The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic construction material. Components, used in this clause, means those articles, materials, and supplies

incorporated directly into construction materials. Construction material, as used in this clause, means an article, material, or supply brought to the construction site for incorporation into the building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site. Domestic construction material, as used in this clause, means (a) an unmanufactured construction material mined or produced in the United States, or (b) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the construction materials determined to be unavailable pursuant to § 12.810(a)(3) of 43 CFR part 12, subpart E shall be treated as domestic. The undersigned agrees that only domestic construction material will be used by the contractor, subcontractors, materialmen, and suppliers in the performance of this agreement, except for foreign construction materials, if any, listed in this agreement

Subcontracts. The undersigned must require all Subcontract Agreements to contain specific language in reference to the requirements for Subcontractors and/or Purchasers regarding debarment, exclusion, suspension, anti-collusion, drug-free workplace, and applicable Buy American Provisions. The undersigned assures that no award (subgrant or contract) at any tier

will be made to any party which is not registered with the System for Award Management at www.sam.gov.

Conflict of Interest. The undersigned hereby certifies and assures that it will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

Lead-Based Paint. The undersigned hereby certifies and assures that it will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

Fair and Equal Employment Opportunity. The undersigned agrees that it shall utilize the principles provided in President's Executive Order 11246 of September 24, 1965.

Women/Minority Business Enterprise. In accordance with state law, the undersigned agrees to assist Historically Underutilized Businesses (HUBs) whenever possible when providing goods and services. The undersigned also agrees that it shall put forth identifiable efforts to afford minority- and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in these Certifications and Assurances, the term "minority and women business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian Americans, and American Indians.

EEO/AA Statement. The undersigned will, in all applicable solicitations or advertisements for employees placed by it or on its behalf, state that it is an Equal Opportunity Employer.

Nondiscrimination. The undersigned hereby certifies and assures that it will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education

Amendments of 1972, as amended (20 U.S.C. §§1681 1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29) U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

Hatch Act Compliance. The undersigned hereby certifies and assures that it will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328), including its most recent and current amendments and revisions, which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

Flood Insurance. The undersigned hereby certifies and assures that it will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

Compliance with Environmental Standards. The undersigned hereby certifies and assures that it will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91- 190)

and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

Preservation, Conservation & Wildlife Protection. The undersigned hereby certifies and assures that it will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system. The undersigned also agrees to assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

General Compliance with Federal Regulations. The undersigned hereby certifies and assures that it will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program; specifically, 43 CFR Part 12, Subpart A, Administrative and Audit Requirements and Cost Principles for Assistance Programs.

Administrative Guidelines. OMB Circular A-102, Grants and Cooperative Agreements with State and Local Governments 43 CFR Part 12, Subpart C, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Cost Principles. 2 CFR Part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)

Audit Requirements. OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations

Other Requirements.

2 CFR Part 25, Universal Identifier and Central Contractor Registration

2 CFR Part 170, Reporting Subawards and Executive Compensation

2 CFR Part 175, Award Term for Trafficking in Persons (applicable to private entity sub-recipients)

2 CFR Part 1400, Government-wide Debarment and Suspension (Non-procurement)

2 CFR Part 1401, Requirements for Drug-Free Workplace (Financial Assistance)

43 CFR 18, New Restrictions on Lobbying: Submission of an application also represents the applicant's certification of the statements in 43 CFR Part 18, Appendix A, Certification Regarding Lobbying.

41 USC §6306, Prohibition on Members of Congress Making Contracts with Federal Government: No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this award, or to any benefit that may arise therefrom; this provision shall not be construed to extend to an award made to a corporation for the public's general benefit.

Executive Order 13513, Federal Leadership on Reducing Text Messaging while Driving: Recipients are encouraged to adopt and enforce policies that ban text messaging while driving, including conducting initiatives of the type described in section 3(a) of the order.

Religious Organizations. The undersigned agrees that funds provided under this Agreement will be utilized in a manner consistent with that which is outlined in 43 CFR 426.9 – Religious or Charitable Organizations. Financial support of secular religious activities, promotion of secular religious interests, or the financial benefit of a religious organization in accordance with federal regulations are all specifically prohibited uses of federal funds. Only non-secular program activity costs shall be supported by this Agreement, and in accordance with federal regulations.

Whistleblower Protection for CIAP Grants. All employees working under this Agreement are

subject to the whistleblower rights and remedies in the Pilot Program for Enhancement of Recipient and Subrecipient Employee Whistleblower Protection, established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (P.L. 112-239). The undersigned shall inform its employees in writing, in the predominate language of its workforce, of employee whistleblower rights and protections under 41 U.S.C 4712.

Trafficking. The undersigned hereby certifies and assures that it will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or sub-awards under the award.

Debarment, Suspension, Ineligibility and Voluntary Exclusion. As required by executive Order 12549, Debarment and Suspension, and implemented at 15 CFR Part 26, Section 26.510, Participants responsibilities, for prospective participants in lower tier covered transactions (except subcontracts for goods or services under the \$25,000 small purchase threshold unless the sub-tier recipient will have a critical influence on or substantive control over the award), as defined at 15 CF Part 26, Sections 26.105 and 26.110— (1) The prospective lower tier participant certifies, by signing this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Labor Standards and Wages. The undersigned agrees to cause any and all subcontractors or other sub-tiers that receive federal funds under this agreement to use prevailing local wages for all construction projects over \$2,000, and to abide by Chapter 11 of Title 18 of the U.S. Code (18 U.S.C. 201-224), which prohibits a number of

criminal activities, including bribery, graft and conflict of interest.

Lobbying. As required by Section 1352, Title 31 of the U.S. Code, and implemented at 15 CFR Part 28, for persons entering into a grant, cooperative agreement or contract over \$100,000 or a loan or loan guarantee over \$150,000 as defined at 15 CFR Part 28, Sections 28.105 and 28.110, the applicant has certified that to the best of his or her knowledge and belief, that: (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying." in accordance with its instructions. (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Copeland Anti-Kickback Act. All contracts and sub-grants in excess of \$100,000 for construction or repair awarded by recipients and subrecipients shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3,

“Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The undersigned shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency (18 U.S.C. 874 and 40 U.S.C. 276c).

False Claims. The undersigned agrees to abide by 18 U.S.C. 286, which provides for conspiracy to defraud the Federal Government with Respect to Claims. In addition, CONTRACTOR will also abide by the False Claims Act (31 U.S.C. 3729 et seq.); 18 U.S.C. 287 relating to False, Fictitious and Fraudulent Claims; 18 U.S.C. 245 Federally Protected Activities; 18 U.S.C. 1001 regarding General Statements or Entries; the Program Fraud Civil Remedies Act (31 U.S.C. 3801-3812); the Federal Claims Collection Act of 1966 (31 U.S.C. 952) as amended by the Derby Collection Act of 1982; the Meritorious Claims Act (31

U.S.C. 3702); the Tucker Act (28 U.S.C. 1346, 1491, and 2501); the Wunderlich Act (41 U.S.C. 321-322); the Anti-Deficiency Act (31 U.S.C. 1341); and Section 208(a) of the Intergovernmental Personnel Act of 1970, as amended.

Statement for Loan Guarantees and Loan Insurance. The undersigned states, to the best of his or her knowledge and belief, that: If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form- LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

As the duly authorized representative of the prime contractor, subcontractor, subrecipient and/or other sub-award entity, I hereby certify and assure that the entity I represent as stated below will comply with the above applicable certifications and assurances.	
SIGNATURE OF AUTHORIZED REPRESENTATIVE	OFFICIAL PROJECT NAME/IDENTIFIER
_____	_____
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	

Construction Cost Budget (Trail Only)

Project Name: Trail at John Hargrove Environmental Complex

Project No: P20008

	ITEM	QUANTITY	UNITS	UNIT COST	AMOUNT	TOTALS
A.	Trail					\$299,280.00
	6' WIDE CONCRETE SIDEWALK	3,990	SF	\$ 4.00	\$15,960.00	
	8' WIDE CONCRETE SIDEWALK	6,400	SF	\$ 4.00	\$25,600.00	
	8' WIDE DECOMPOSED GRANITE TRAIL	6,700	SY	\$ 30.00	\$201,000.00	
	1' OF CONCRETE EDGE	6,700	LF	\$ 6.00	\$40,200.00	
	18" HPDE 10 FT Long	11	EA	\$ 300.00	\$3,300.00	
	PRECAST CONCRETE SAFETY END TREATMENT	12	EA	\$ 1,000.00	\$12,000.00	
	5" CONCRETE SLABS	305	SF	\$ 4.00	\$1,220.00	
B.	Site Amenities					\$20,390.00
	6' BENCH VICTOR STANLEY-MODEL NRB-6	4	EA	\$ 2,000.00	\$8,000.00	
	LITTER RECEPTICLE VICTOR STANLEY- MODEL T-32	4	EA	\$ 1,500.00	\$6,000.00	
	DRINKING FOUNTAIN	1	EA	\$ 3,390.00	\$3,390.00	
	RING BIKE RACK- LANDSCAPE FORMS	6	EA	\$ 500.00	\$3,000.00	
C.	Additional Parking					\$9,970.00
	REMOVE EXISTING CURB	125	LF	\$4.00	\$500.00	
	6" REINFORCED CONCRETE CURB	125	LF	\$6.00	\$750.00	
	5" CONCRETE PAVEMENT	224	SY	\$30.00	\$6,720.00	
	THERMOPLASTIC STRIPING	1		\$2,000.00	\$2,000.00	
D.	General					\$14,800.00
	TREE PROTECTION	1		\$ 4,000.00	\$4,000.00	
	SWPPP, INCD. INLET PROT., MAINT. & REMOVAL	1		\$ 8,000.00	\$8,000.00	
	STABILIZED CONSTRUCTION ENTRANCE/EXIT	1		\$ 1,600.00	\$1,600.00	
	CONCRETE TRUCK WASHOUT	1		\$ 1,200.00	\$1,200.00	
	SITE RESTORATION (HYDRO-MULCH SEEDING)	1	AC	\$ 3,000.00	\$3,000.00	
E.	Signs					\$20,100.00
	SIGNAGE 8'	6		\$ 3,350.00	\$20,100.00	
	Project Subtotal					\$364,540.00
	Contingency 10%		%	0.1	\$36,454.00	\$400,994.00
	Mobilization 3%		%	0.03	\$12,029.82	
	Project Total (including contingency and mobilization)					\$413,023.82

ATTACHMENT C

ASSURANCES - CONSTRUCTION PROGRAMS

ASSURANCES AND CERTIFICATIONS – CONSTRUCTION PROGRAMS

CERTIFICATIONS AND ASSURANCES REGARDING COMPLIANCE WITH UNIFORM ADMINISTRATIVE REQUIREMENTS FOR FEDERALLY-FUNDED CONSTRUCTION PROGRAMS, DEBARMENT, SUSPENSION, INELIGIBILITY, VOLUNTARY EXCLUSION – LOWER-TIER COVERED TRANSACTIONS AND LOBBYING

Signature on this form provides for compliance with certification requirements under 15 CFR Part 26, "Government-wide Debarment and Suspension (Non-procurement)" and 15 CFR Part 28, "New Restrictions on Lobbying."

Examination of Records. The undersigned hereby certifies and assures that it will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, the right to examine all records, books, papers, or documents related to the assistance; and establish a proper accounting system in accordance with generally accepted accounting standards or agency directives. It shall retain all records pertinent to expenditures incurred under this Agreement for a period of five (5) years after the termination of all activities funded under this Agreement or after the resolution of all Federal audit findings, whichever occurs later.

Review and Approval of Plans and Specifications. The undersigned hereby certifies and assures that it will comply with the requirements of the assistance awarding agency, the direct recipient of assistance funding, and/or its partners or assigns with regard to the drafting, review and approval of construction plans and specifications.

Competent Supervision. The undersigned hereby certifies and assures that it will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms to the approved plans and specifications and furnish progressive reports and such other information as may be required by the assistance awarding agency or State.

Timely Execution of the Scope of Work. The undersigned hereby certifies and assures that it will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

Buy American Provision. The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic construction material. Components, used in this clause, means those articles, materials, and supplies

incorporated directly into construction materials. Construction material, as used in this clause, means an article, material, or supply brought to the construction site for incorporation into the building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site. Domestic construction material, as used in this clause, means (a) an unmanufactured construction material mined or produced in the United States, or (b) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the construction materials determined to be unavailable pursuant to § 12.810(a)(3) of 43 CFR part 12, subpart E shall be treated as domestic. The undersigned agrees that only domestic construction material will be used by the contractor, subcontractors, materialmen, and suppliers in the performance of this agreement, except for foreign construction materials, if any, listed in this agreement

Subcontracts. The undersigned must require all Subcontract Agreements to contain specific language in reference to the requirements for Subcontractors and/or Purchasers regarding debarment, exclusion, suspension, anti-collusion, drug-free workplace, and applicable Buy American Provisions. The undersigned assures that no award (subgrant or contract) at any tier

will be made to any party which is not registered with the System for Award Management at www.sam.gov.

Conflict of Interest. The undersigned hereby certifies and assures that it will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

Lead-Based Paint. The undersigned hereby certifies and assures that it will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

Fair and Equal Employment Opportunity. The undersigned agrees that it shall utilize the principles provided in President's Executive Order 11246 of September 24, 1965.

Women/Minority Business Enterprise. In accordance with state law, the undersigned agrees to assist Historically Underutilized Businesses (HUBs) whenever possible when providing goods and services. The undersigned also agrees that it shall put forth identifiable efforts to afford minority- and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in these Certifications and Assurances, the term "minority and women business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian Americans, and American Indians.

EEO/AA Statement. The undersigned will, in all applicable solicitations or advertisements for employees placed by it or on its behalf, state that it is an Equal Opportunity Employer.

Nondiscrimination. The undersigned hereby certifies and assures that it will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education

Amendments of 1972, as amended (20 U.S.C. §§1681 1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29) U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

Hatch Act Compliance. The undersigned hereby certifies and assures that it will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328), including its most recent and current amendments and revisions, which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

Flood Insurance. The undersigned hereby certifies and assures that it will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

Compliance with Environmental Standards. The undersigned hereby certifies and assures that it will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91- 190)

and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

Preservation, Conservation & Wildlife Protection. The undersigned hereby certifies and assures that it will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system. The undersigned also agrees to assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

General Compliance with Federal Regulations. The undersigned hereby certifies and assures that it will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program; specifically, 43 CFR Part 12, Subpart A, Administrative and Audit Requirements and Cost Principles for Assistance Programs.

Administrative Guidelines. OMB Circular A-102, Grants and Cooperative Agreements with State and Local Governments 43 CFR Part 12, Subpart C, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Cost Principles. 2 CFR Part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)

Audit Requirements. OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations

Other Requirements.

2 CFR Part 25, Universal Identifier and Central Contractor Registration

2 CFR Part 170, Reporting Subawards and Executive Compensation

2 CFR Part 175, Award Term for Trafficking in Persons (applicable to private entity sub-recipients)

2 CFR Part 1400, Government-wide Debarment and Suspension (Non-procurement)

2 CFR Part 1401, Requirements for Drug-Free Workplace (Financial Assistance)

43 CFR 18, New Restrictions on Lobbying: Submission of an application also represents the applicant's certification of the statements in 43 CFR Part 18, Appendix A, Certification Regarding Lobbying.

41 USC §6306, Prohibition on Members of Congress Making Contracts with Federal Government: No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this award, or to any benefit that may arise therefrom; this provision shall not be construed to extend to an award made to a corporation for the public's general benefit.

Executive Order 13513, Federal Leadership on Reducing Text Messaging while Driving: Recipients are encouraged to adopt and enforce policies that ban text messaging while driving, including conducting initiatives of the type described in section 3(a) of the order.

Religious Organizations. The undersigned agrees that funds provided under this Agreement will be utilized in a manner consistent with that which is outlined in 43 CFR 426.9 – Religious or Charitable Organizations. Financial support of secular religious activities, promotion of secular religious interests, or the financial benefit of a religious organization in accordance with federal regulations are all specifically prohibited uses of federal funds. Only non-secular program activity costs shall be supported by this Agreement, and in accordance with federal regulations.

Whistleblower Protection for CIAP Grants. All employees working under this Agreement are

subject to the whistleblower rights and remedies in the Pilot Program for Enhancement of Recipient and Subrecipient Employee Whistleblower Protection, established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (P.L. 112-239). The undersigned shall inform its employees in writing, in the predominate language of its workforce, of employee whistleblower rights and protections under 41 U.S.C 4712.

Trafficking. The undersigned hereby certifies and assures that it will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or sub-awards under the award.

Debarment, Suspension, Ineligibility and Voluntary Exclusion. As required by executive Order 12549, Debarment and Suspension, and implemented at 15 CFR Part 26, Section 26.510, Participants responsibilities, for prospective participants in lower tier covered transactions (except subcontracts for goods or services under the \$25,000 small purchase threshold unless the sub-tier recipient will have a critical influence on or substantive control over the award), as defined at 15 CF Part 26, Sections 26.105 and 26.110— (1) The prospective lower tier participant certifies, by signing this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Labor Standards and Wages. The undersigned agrees to cause any and all subcontractors or other sub-tiers that receive federal funds under this agreement to use prevailing local wages for all construction projects over \$2,000, and to abide by Chapter 11 of Title 18 of the U.S. Code (18 U.S.C. 201-224), which prohibits a number of

criminal activities, including bribery, graft and conflict of interest.

Lobbying. As required by Section 1352, Title 31 of the U.S. Code, and implemented at 15 CFR Part 28, for persons entering into a grant, cooperative agreement or contract over \$100,000 or a loan or loan guarantee over \$150,000 as defined at 15 CFR Part 28, Sections 28.105 and 28.110, the applicant has certified that to the best of his or her knowledge and belief, that: (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying." in accordance with its instructions. (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Copeland Anti-Kickback Act. All contracts and sub-grants in excess of \$100,000 for construction or repair awarded by recipients and subrecipients shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3,

“Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The undersigned shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency (18 U.S.C. 874 and 40 U.S.C. 276c).

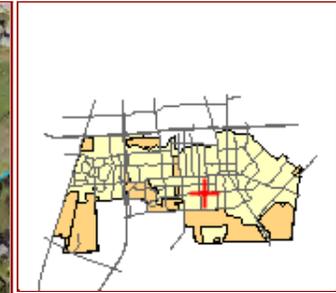
False Claims. The undersigned agrees to abide by 18 U.S.C. 286, which provides for conspiracy to defraud the Federal Government with Respect to Claims. In addition, CONTRACTOR will also abide by the False Claims Act (31 U.S.C. 3729 et seq.); 18 U.S.C. 287 relating to False, Fictitious and Fraudulent Claims; 18 U.S.C. 245 Federally Protected Activities; 18 U.S.C. 1001 regarding General Statements or Entries; the Program Fraud Civil Remedies Act (31 U.S.C. 3801-3812); the Federal Claims Collection Act of 1966 (31 U.S.C. 952) as amended by the Derby Collection Act of 1982; the Meritorious Claims Act (31

U.S.C. 3702); the Tucker Act (28 U.S.C. 1346, 1491, and 2501); the Wunderlich Act (41 U.S.C. 321-322); the Anti-Deficiency Act (31 U.S.C. 1341); and Section 208(a) of the Intergovernmental Personnel Act of 1970, as amended.

Statement for Loan Guarantees and Loan Insurance. The undersigned states, to the best of his or her knowledge and belief, that: If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form- LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

As the duly authorized representative of the prime contractor, subcontractor, subrecipient and/or other sub-award entity, I hereby certify and assure that the entity I represent as stated below will comply with the above applicable certifications and assurances.	
SIGNATURE OF AUTHORIZED REPRESENTATIVE	OFFICIAL PROJECT NAME/IDENTIFIER
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	

JHEC Trails Project Location



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

Scale 1:6,985
1 in = 582 ft
April 25, 2015



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

AGENDA OF:	May 11, 2015	ITEM NO.:	R2015-77
DATE SUBMITTED:	May 1, 2015	DEPT. OF ORIGIN:	Finance
PREPARED BY:	Bob Pearce	PRESENTOR:	Michael Leech
REVIEWED BY:	Trent Epperson	REVIEW DATE:	May 5, 2015
SUBJECT: Resolution No. R2015-77; A resolution of the City Council of the City of Pearland, Texas renewing a unit supply contract for landscape maintenance services (medians, right of ways and City facilities) with Maldonado Nursery & Landscaping, Inc. in the estimated amount of \$577,130.			
EXHIBITS: R2015-77 Maintenance Schedule – Exhibit A			
FUNDING:			
<input type="checkbox"/> Grant <input type="checkbox"/> Developer/Other <input checked="" type="checkbox"/> Cash <input type="checkbox"/> Bonds To Be Sold <input type="checkbox"/> Bonds- Sold <input type="checkbox"/> L/P – Sold <input type="checkbox"/> L/P – To Be Sold			
EXPENDITURE REQUIRED: \$577,130 (est.) AMOUNT BUDGETED: \$537,095 AMOUNT AVAILABLE: \$537,095 PROJECT NO.: ACCOUNT NO.: 101-3580-555.11-15; U of H 140-3320-555.11-15 ADDITIONAL APPROPRIATION REQUIRED: \$40,035 requested in 2016 supplemental budget request ACCOUNT NO.: PROJECT NO.:			
To be completed by Department:			
Finance	X Legal	Ordinance	X Resolution

EXECUTIVE SUMMARY

BACKGROUND

Pursuant to Resolution #R2014-20, City Council approved a bid award to Maldonado Nursery & Landscaping, Inc. in May, 2014 for Landscape Maintenance for both City Facilities, and Right of Ways and Medians.

SCOPE OF CONTRACT

Renewal for one (1) year, with one (1) renewal option remaining.

BID AND AWARD

The initial contract term was for a period of one (1) year, with two (2) additional one (1) year renewal options available upon the mutual agreement of both parties and the approval of City Council. See attached list for locations.

Maldonado Nursery & Landscaping, Inc. has agreed to renew their contracts with no price increase at this time, therefore pricing for the renewal period will be at the unit prices originally bid and awarded by Council, plus similar pricing for the following new locations/additions:

- Four additional City Facility locations amended to the contract that are currently maintained by the Parks Department beginning October 1, 2015 (Old Fire Station #3, New Fire Station #3, Old Fire Station #2, and New Fire Station #2 which is to be added once complete). \$13,259 is included in 2016 base budget for these services.
- Increase the quantity of services for Class B properties (24 visits) to match that of Class A properties (48 visits) for Median and Right of Way locations amended to the contract beginning in October. This increase will provide for a consistent mowing schedule for neighboring properties (Class B - shoulders to Class A - medians) thus providing a consistent appearance in landscaping. \$40,035 is requested in 2016 supplemental budget request for these services.

Aside from these properties, Purchasing has issued a current Request for Proposal to service twenty-one (21) properties which are currently maintained by the Parks Department.

SCHEDULE

Based on Maintenance Schedule – Exhibit A for the period of June 1, 2015 through May 31, 2016.

POLICY/GOAL CONSIDERATION

Strategy 5.0 in the Pearland 20/20 Strategic Plan, facilitated by the PEDC and adopted by Council, relates to the development of a comprehensive beautification strategy and specific tactics related to the maintenance and standards along landscaped roads and corridors.

In keeping with that strategy, and recognizing the need for improvement in the appearance of our landscaped areas, PEDC enlisted the support of a landscape architect to review and recommend service enhancements to the existing bid specifications and those recommendations were incorporated into the bids.

Proper grounds maintenance services are needed in order to complete City mowing projects for a well-maintained, aesthetically-pleasing community, and play a role in the economic development and image of the community.

RECOMMENDED ACTION

A resolution of the City Council of the City of Pearland, Texas renewing a unit supply contract for landscape maintenance services (medians, right of ways and City facilities) with Maldonado Nursery & Landscaping, Inc. in the estimated amount of \$577,130.

LOCATION LIST FOR CITY FACILITIES INCLUDED IN CONTRACT:

Package	Location	Annual Charges
1	FIRE STATION #5 - 3100 KIRBY DRIVE	\$14,708.00
2	PUBLIC SAFETY BUILDING - 2525 CULLEN PARKWAY	\$11,468.40
3	RECREATION CENTER AND NATATORIUM - 4141 BAILEY ROAD	\$47,685.00
4	FIRE DEPARTMENT ADMINISTRATION BUILDING - 2703 VETERANS DRIVE	\$29,718.00
5	CITY HALL - 3519 LIBERTY DRIVE	\$21,335.00
6	COMMUNITY CENTER - 3523 LIBERTY DRIVE	\$15,518.00
7	TOM REID LIBRARY - 3522 LIBERTY DRIVE	\$23,946.00
8	UNIVERSITY OF HOUSTON CLEAR LAKE/PEARLAND CAMPUS - 1200 PEARLAND PARKWAY	\$48,840.00
9	EXTRA SERVICES	\$4,778.80

LOCATION LIST FOR MEDIANS AND RIGHT OF WAYS INCLUDED IN CONTRACT

Package	Location	Annual Charges
1	BUSINESS CENTER DRIVE FROM FM 518 TO CR 59	\$12,365.88
2	DIXIE FARM FROM HWY 35 TO BLACKHAWK	\$20,669.00
3	FM 518 FROM SH 288 TO FM 521	\$33,979.00
4	FM 2234 FROM SH 288 TO FM 521	\$10,192.00
5	KIRBY DRIVE AT FM 518 AND PEARLAND TOWN CENTER	\$4,103.00
6	KIRBY DRIVE FROM FM 2234 TO BELTWAY 8	\$8,516.00
7	MAGNOLIA FROM PEARLAND PARKWAY TO MORGAN (INCLUDES CULLEN FROM MAGNOLIA TO N. FORK)	\$37,033.00
8	MCHARD FROM CULLEN TO COUNTRY PLACE PARKWAY	\$69,119.00
9	PEARLAND PARKWAY FROM OILER DRIVE TO CLEAR CREEK BRIDGE	\$81,647.00
10	MYKAWA TO SMITH RANCH ROAD	\$10,896.00
11	FM518 to Beltway 8 Center Island	\$12,552.00
12	EXTRA SERVICES	\$4,768.80

RESOLUTION NO. R2015-77

A Resolution of the City Council of the City of Pearland, Texas, renewing a unit supply contract for landscape maintenance services (medians, right of ways and City facilities) with Maldonado Nursery Landscaping, Inc., in the estimated amount of \$577,130.00.

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

Section 1. That competitive bids were previously obtained for landscape maintenance services.

Section 2. That the City Council hereby awards the contract to Maldonado Nursery Landscaping, Inc., in the estimated amount of \$577,130.00.

Section 3. The City Manager or his designee is hereby authorized to execute a contract for the purchase of landscaping maintenance services.

PASSED, APPROVED and ADOPTED this the 11th day of May, A.D., 2015.

TOM REID
MAYOR

ATTEST:

YOUNG LORFING, TRMC
CITY SECRETARY

APPROVED AS TO FORM:

DARRIN M. COKER
CITY ATTORNEY

EXHIBIT A

Maintenance Schedule

Bid #0415-39

Landscape Maintenance of Additional Right of Ways and Medians II

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
Mowing and edging Class A areas	3	3	4	5	4	4	5	4	5	4	4	3
Mowing and edging Class B areas*	3	3	4	5	4	4	5	4	5	4	4	3
Trash removal from roadway	3	3	4	5	4	4	5	4	5	4	4	3
Fertilize Turf - Class A areas			1			1				1		
Fertilize Turf - Class B areas			1			1				1		
Summer Fertilize Turf - Class A areas						1						
Broadleaf herbicide application			1							1		
Monthly irrigation inspection	1	1	1	1	1	1	1	1	1	1	1	1
Quarterly irrigation inspection		1			1			1			1	
Prune shrubs and trim groundcovers	1			1			1			1		
Complete weeding of planting/shrub beds	1	1	2	2	2	2	2	2	2	2	1	1
Pre-emergent weed control**												
Dead heading of annuals/perennials	1	1	1	1	1	1	1	1	1	1	1	1
Prune/thin of ground cover			1			1			1			
Fertilize planting/shrub beds			1						1			
Cultivate planting/shrub beds			1						1			
Changeout seasonal color				1						1		
Mulching of planting/shrub beds			1			1			1			
Weed control in hardscape	1	1	1	1	1	1	1	1	1	1	1	1
Fire ant spot treatment	1	1	1	1	1	1	1	1	1	1	1	1
Removal of sucker growth from trees	1	1	1	1	1	1	1	1	1	1	1	1
Annual tree pruning***												
Cultivate tree rings and tree areas			1						1			
Mulching of tree rings and tree areas			1			1			1			

*Mow frequency reflects quantities that are dependant on 2016 supplemental budget approval beginning in October; if not funded the mow frequency will reduce back to current contract.

**Twice A Year, As Needed; At Contractor's Discretion.

***Annual Tree pruning shall take place between December 1 and February 28

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

AGENDA OF:	May 11, 2015	ITEM NO.:	R2015-74
DATE SUBMITTED:	May 1, 2015	DEPT. OF ORIGIN:	Finance
PREPARED BY:	Bob Pearce	PRESENTOR:	Eric Wilson
REVIEWED BY:	Trent Epperson	REVIEW DATE:	May 5, 2015
SUBJECT: Resolution No. R2015-74; A Resolution of the City Council of the City of Pearland, Texas, awarding unit cost bids for street and sidewalk maintenance to Brooks Concrete, Inc. and Precise Services, Inc., in the estimated amount of \$800,000.			
EXHIBITS: R2015-74 Exhibit A - Bid Tabulation			
FUNDING:			
<input type="checkbox"/> Grant <input type="checkbox"/> Developer/Other <input checked="" type="checkbox"/> Cash <input type="checkbox"/> Bonds To Be Sold <input type="checkbox"/> Bonds- Sold <input type="checkbox"/> L/P – Sold <input type="checkbox"/> L/P – To Be Sold			
EXPENDITURE REQUIRED: \$800,000(est.) AMOUNT BUDGETED: \$800,000			
AMOUNT AVAILABLE: \$800,000		PROJECT NO.:	
ACCOUNT NO.: 010-3570-565.65-00, 010-3570-553.04-00			
ADDITIONAL APPROPRIATION REQUIRED:			
ACCOUNT NO.:			
PROJECT NO.:			
To be completed by Department:			
Finance	X Legal	Ordinance	X Resolution

EXECUTIVE SUMMARY

BACKGROUND

It is necessary for the City to retain the services of an outside contractor to perform paving services as needed, as well as maintenance and repairs on sidewalks and streets.

SCOPE OF CONTRACT

Provision of Sidewalk and Street Maintenance on an as-needed basis as authorized by the City of Pearland Public Works Department.

BID AND AWARD

The City solicited proposals through RFP Number 0315-27, which was published in the paper and posted on the City's e-bid website. The RFP consisted of multiple concrete services, ordered on an as-needed basis at fixed unit costs throughout the term of the contract. Services will include, but are not limited to: construction of new sidewalks, wheelchair ramps, demolition/removal/replacement of failed sections of streets, curbs, valve boxes, etc.

The City received a total of five (5) responses to the RFP. Due to the magnitude of work to be completed, the recommendation is to award to a primary vendor and a secondary vendor. Brooks Concrete Inc., the incumbent, was the low bidder and is recommended to be awarded the contract as the primary vendor. Precise Services, Inc. was the second low bidder and is recommended to be awarded the contract as the secondary vendor.

SCHEDULE

Repairs and maintenance will be conducted on an as-needed basis, as determined by the City of Pearland Public Works Department.

POLICY/GOAL CONSIDERATION

This purchase is contemplated and recommended for the purpose of furthering the City's objective to provide for a sustainable infrastructure with infrastructure recapitalization thus maintaining the integrity of the City's sidewalks and streets.

CURRENT AND FUTURE FUNDING /FINANCIAL IMPACTS

Funding for the maintenance will come from the Capital Outlay/Sidewalks, and Maintenance of Streets. Pricing for all concrete work continues to escalate; therefore the planned budget may not be able to achieve the desired level of sidewalk and pavement replacement.

O&M IMPACT INFORMATION

This award will provide for fixed unit costs for each item for a period of one (1) year, with no allowable price increases. At the expiration of the initial term, an option is available for two (2) additional one (1) year renewals upon the mutual agreement of both parties, and the approval of City Council. Any price adjustment requested by the contracted vendor for the renewal period must be substantiated by a comparable increase in the Consumer Price Index for the Houston-Galveston-Brazoria metropolitan area. In the event a renewal is not agreeable to both parties, the contract will continue on a month-to-month basis until such time as a new contract can be awarded.

RECOMMENDED ACTION

A Resolution of the City Council of the City of Pearland, Texas, awarding unit cost bids for street and sidewalk maintenance to Brooks Concrete, Inc. and Precise Services, Inc. in the estimated amount of \$800,000.

RESOLUTION NO. R2015-74

A Resolution of the City Council of the City of Pearland, Texas, awarding unit cost bids for street and sidewalk maintenance to Brooks Concrete, Inc. and Precise Services, Inc., in the estimated amount of \$800,000.00.

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

Section 1. That the City opened unit supply bids for street and sidewalk maintenance, and such bids have been reviewed and tabulated.

Section 2. That the City Council hereby awards the primary bid to Brooks Concrete, Inc., and the secondary bid to Precise Services Inc., in the unit supply amounts reflected in Exhibit "A" attached hereto.

Section 3. The City Manager or his designee is hereby authorized to execute a contract for the purchase of street and sidewalk maintenance.

PASSED, APPROVED and ADOPTED this the 11th day of May, A.D., 2015.

TOM REID
MAYOR

ATTEST:

YOUNG LORFING, TRMC
CITY SECRETARY

APPROVED AS TO FORM:

DARRIN M. COKER
CITY ATTORNEY

EXHIBIT A - BID TABULATION

Bid No. RFP 0315-27 Addendum 2
Close Date 4/10/2015 2:00:00 PM Central

Specification Responses	Description	UOM	QTY	Brooks Concrete Inc		Precise Services, Inc.		A-1 Construction Services		Teamwork Construction Services, Inc.		AGS	
				Unit	Extended	Unit	Extended	Unit	Extended	Unit	Extended	Unit	Extended
1	Saw Cut Concrete (Full Depth) Sidewalk Removal and Replacement - 4-Inch thickness, 4-Foot Width	Linear Foot	140	\$5.15	\$721.00	\$8.20	\$1,148.00	\$10.80	\$1,512.00	\$8.00	\$1,120.00	\$8.00	\$1,120.00
2	Sidewalk Removal and Replacement - 4-Inch Thickness, 5-Foot Width	Linear Foot	28000	\$24.24	\$678,720.00	\$33.44	\$936,320.00	\$36.20	\$1,013,600.00	\$50.00	\$1,400,000.00	\$50.00	\$1,400,000.00
3	Sidewalk Removal and Replacement - 4-Inch Thickness, 6-Foot Width	Linear Foot	350	\$27.80	\$9,730.00	\$50.14	\$17,549.00	\$45.25	\$15,837.50	\$62.50	\$21,875.00	\$50.00	\$17,500.00
4	New Sidewalk Placement - 4-inch thickness, 4-foot width	Linear Foot	4200	\$22.04	\$92,568.00	\$32.36	\$135,912.00	\$25.52	\$107,184.00	\$40.00	\$168,000.00	\$50.00	\$210,000.00
5	New Sidewalk Placement - 4-inch thickness, 5-foot width	Linear Foot	350	\$26.15	\$9,152.50	\$48.27	\$16,894.50	\$31.90	\$11,165.00	\$50.00	\$17,500.00	\$55.00	\$19,250.00
6	New Sidewalk Placement - 4-inch thickness, 6-foot width	Linear Foot	350	\$30.42	\$10,647.00	\$52.59	\$18,406.50	\$38.28	\$13,398.00	\$60.00	\$21,000.00	\$65.00	\$22,750.00
7	Driveway Removal & Placement - 6-inch thickness, varying width	Square Yard	200	\$61.56	\$12,312.00	\$99.06	\$19,812.00	\$112.32	\$22,464.00	\$100.00	\$20,000.00	\$126.00	\$25,200.00
8	Street Removal & Replacement - 8-inch thickness, varying width	Square Yard	200	\$82.89	\$16,578.00	\$113.46	\$22,692.00	\$138.87	\$27,774.00	\$125.00	\$25,000.00	\$180.00	\$36,000.00
9	Wheel Chair Ramp Replacement: 4-inch thickness	EA	28	\$550.00	\$15,400.00	\$1,733.21	\$48,529.88	\$1,900.00	\$53,200.00	\$850.00	\$23,800.00	\$2,250.00	\$63,000.00
10	Manhole Adjusting/Repair	EA	28	\$300.00	\$8,400.00	\$1,190.28	\$33,327.84	\$800.00	\$22,400.00	\$1,250.00	\$35,000.00	\$1,250.00	\$35,000.00
11	Tree Root Barrier	Linear Foot	1400	\$3.50	\$4,900.00	\$18.74	\$26,236.00	\$15.00	\$21,000.00	\$25.00	\$35,000.00	\$25.00	\$35,000.00
12	Curb Removal and Replacement	Linear Foot	280	\$6.35	\$1,778.00	\$14.94	\$4,183.20	\$32.72	\$9,161.60	\$17.50	\$4,900.00	\$25.00	\$7,000.00
13	Valve Boxes, Meter Boxes, and Electrical Boxes Adjusting/Repair	EA	14	\$5.00	\$70.00	\$327.34	\$4,582.76	\$800.00	\$11,200.00	\$375.00	\$5,250.00	\$350.00	\$4,900.00
14	Inlet Adjusting/Repair	Each	14	\$100.00	\$1,400.00	\$1,286.27	\$18,007.78	\$800.00	\$11,200.00	\$1,500.00	\$21,000.00	\$1,250.00	\$17,500.00
15	Extra 5,000 PSI Reinforced Concrete, Where Required. Complete in place.	CY	14	\$100.00	\$1,400.00	\$743.28	\$10,405.92	\$250.00	\$3,500.00	\$50.00	\$700.00	\$225.00	\$3,150.00
16	Payment For Bonds and Insurance	EA	1	\$3,656.25	\$3,656.25	\$36,075.53	\$36,075.53	\$20,454.02	\$20,454.02	\$25,000.00	\$25,000.00	\$3,500.00	\$3,500.00
Total					\$878,898.75		\$1,368,447.41		\$1,384,055.12		\$1,851,395.00		\$1,920,120.00

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

AGENDA OF: 5-11-15	ITEM NO.: Resolution No. R2015-79
DATE SUBMITTED: 5-14-15	DEPARTMENT OF ORIGIN: City Attorney
PREPARED BY: Darrin Coker	PRESENTOR: Darrin Coker
REVIEWED BY: NA	REVIEW DATE: NA
SUBJECT: A Resolution of the City Council of the City of Pearland, Texas, authorizing an Oil and Gas Drilling Permit for Denbury Onshore in the vicinity of SH35 and Hastings Oil Field.	
EXHIBITS: R2015-79; Permit Application	
EXPENDITURE REQUIRED: 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 checked="" type="checkbox"/> Legal
<input type="checkbox"/> Ordinance	<input checked="" type="checkbox"/> Resolution

EXECUTIVE SUMMARY

The City recently received an oil and gas drilling permit request from Denbury. The request is to utilize an existing hole that was drilled in 2014 to plug an older well. The old well had wellbore problems and the only way to properly plug it was to drill a new hole alongside the well and pump cement into it. Since that time, Denbury has evaluated the new hole and determined that it has oil producing potential. Using the new hole to drill will allow Denbury to reduce the surface area disturbance and the amount of time to drill. The total depth of the well will be 6500 feet, and new hole is already 6000 feet. Consequently they will only need to drill another 500 feet. The proposed site is in the Hastings Fields of SH 35, and access to the site will be off of SH35 through private company owned roads. The site is already fenced and has a private gated entry. Upon completion, the drill site will be stripped of its base rock and reseeded so it can return it its pasture land state. The application has been reviewed by Public Works and Legal for compliance and it has been determined that the application is complete and the proposed permit poses no threat to adjacent properties or City infrastructure. Much like platting, if the permit application complies with the City's requirements, the approval of the permit is a ministerial act and should not be denied.

RESOLUTION NO. R2015-79

A Resolution of the City Council of the City of Pearland, Texas, authorizing an Oil and Gas Drilling Permit for Denbury Onshore in the vicinity of SH35 and Hastings Oil Field.

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

Section 1. That Denbury Onshore has submitted the Oil and Gas Drilling Permit attached hereto as Exhibit "A".

Section 2. That Denbury Onshore has complied with the requirements of the City Oil and Gas Ordinance.

Section 3. That the City Council hereby approves as Oil and Gas Permit for Denbury Onshore.

PASSED, APPROVED and ADOPTED this the _____ day of _____, A.D., 2015.

TOM REID
MAYOR

ATTEST:

YOUNG LORFING, TRMC
CITY SECRETARY

APPROVED AS TO FORM:

DARRIN M. COKER
CITY ATTORNEY



March 11, 2015

City of Pearland
Young Lorfing, City Secretary
3519 Liberty Drive
Pearland, TX 77581

Sent Via Federal Express
7731 0226 8930

Re: Denbury Onshore, LLC
Oil & Gas Well Permit to Drill Application
Hastings Community Lease
HCL #1402R

Mr. Lorfing,

Denbury Onshore, LLC respectfully submits two copies of the enclosed oil and gas permit to drill application for the HCL #1402R. Please note Denbury plans to utilize an existing hole that was drilled alongside the HCL #1402 to perform plugging operations. Due to problems with the wellbore, the only way to access and properly plug this well was to drill a new hole alongside the existing well and pump cement into the old casing.

This was successfully accomplished in December 2014 and at the time Denbury had not evaluated the new hole for any use other than to plug the existing well. However, we now see an opportunity to utilize the new hole as a potential oil producer. By using the existing hole that was drilled as a means of plugging HCL #1402 rather than drilling a completely new well, Denbury would be able to reduce surface disturbance as well as reduce the amount of time that a rig would be active on the location. The hole would only need to be deepened by approximately 500'.

Please contact me at 972-673-2778 if you have any questions or need additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read "Eric Linthicum", is written over a light blue horizontal line.

Eric Linthicum
Regulatory Specialist

Enclosures

City of Pearland Drilling Permit Application

Attn: Young Lorfing, City Secretary

1. **Date:** March 11, 2015
2. **Applicant:** **Denbury Onshore, LLC**
5320 Legacy Drive
Plano, Texas 75024
A Delaware, Limited Liability Corporation
3. **Location:** **Hastings Community Lease #1402R**
Northing (Y)=632,451.82" Easting (X)=3,188,092.23
(Texas State Plane, NAD 27, Texas South Central)

Surveyor's Plat attached as Exhibit: **A**
4. **Well Type:** This well will be drilled to a proposed total depth of 6500'.
Once this well is drilled and completed, it will be utilized as either
an oil producer or injection well. This well will be completed within
the Frio Complex of sands.
5. **Well Plan and Casing Program:** Attached as Exhibit: **B**
6. **Start Date:** Proposed April 15, 2015, but will commence ASAP after City
permit is obtained.
7. **Access:** All access to the drill site will be off of State Hwy 35 and private
company owned and maintained lease roads. No City streets will be utilized.
8. **Pipelines:** The new pipeline to serve this well will follow existing pipeline
routes exiting the subject tract to the West and leaving the City limits to the West
within 150' from the new well location.
9. **Rig Type:** Workover
10. **Interest Owners:** Attached as Exhibit: **C**
13. **Fencing:** No additional fencing will be installed, as the location is on
private property behind existing fences with gated entry.
14. **Restoration:** 75% of the drill pad site will be stripped of its base rock to
be used in other area of the field for road and other sites.
The cleaned area will be reseeded and allowed to return
to pastureland.

ADDITIONAL ATTACHMENTS

<u>Exhibit</u>	<u>Description</u>
E	Surveyor's Plat showing 1000' Radius from Wellbore
F	Texas Railroad Commission Form W-1
G	Survey of Public Road Impact
H	Environmental Report
I	Oil and Gas Lease for Tract 12
J	Standard Drilling Contract
K	Copy of Operating Agreement for WHU
L	Texas Water Board Letter

Applicants Comments:

As part of this application, Denbury respectfully requests that special consideration and exceptions be considered by the City Council. In Article 2, Section 21-26 of the City's Drilling Ordinance, it states that the council may exempt the applicant from certain requirements found within the ordinance. We have the following requests for exemption.

Art III, Section 21-40: ...no tripping operations between 10pm and 7am

Art III, Section 21-39: Permitted Hours for delivery and removal of material

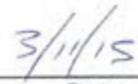
Normal time for drilling in this field requires 18-24 days of drilling operations. Due to the fact that the ordinance specifies a closed mud system instead of the conventional open reserve pits, the delivery of drilling mud/additives and the removal of excess drilling fluids cannot be safely restricted to daylight hours only. If these materials are required, they are typically ordered as needed as the borehole conditions dictate. Storing these materials at the drill site would require construction of a larger pad and additional disturbance to the owner's surface acreage.

The same concern surrounds the restriction of tripping operations between the hours of 10 pm and 7 am. The necessity for making such trips is determined by the condition of the equipment and wellbore. The shut down of drilling operations for 9-hour periods each night would extend the overall drilling time as much as 35

percent and risk the integrity of the open hole during the time drilling is suspended. This extension of rig time is not only an extension of the length of potential disruption to nearby residents, but it would add a considerable amount to the costs associated with the drilling operations. In addition, safety risks are added by leaving the drill string and equipment downhole while suspending drilling and tripping activities.

The location of this well is in a sparsely developed area and more than 1500' from the nearest residence. Due to this distance, disturbances to any residents from 24-hour drilling operations would be very low.

Your consideration of exemptions to these two ordinance requirements is appreciated.



APPLICANTS SIGNATURE

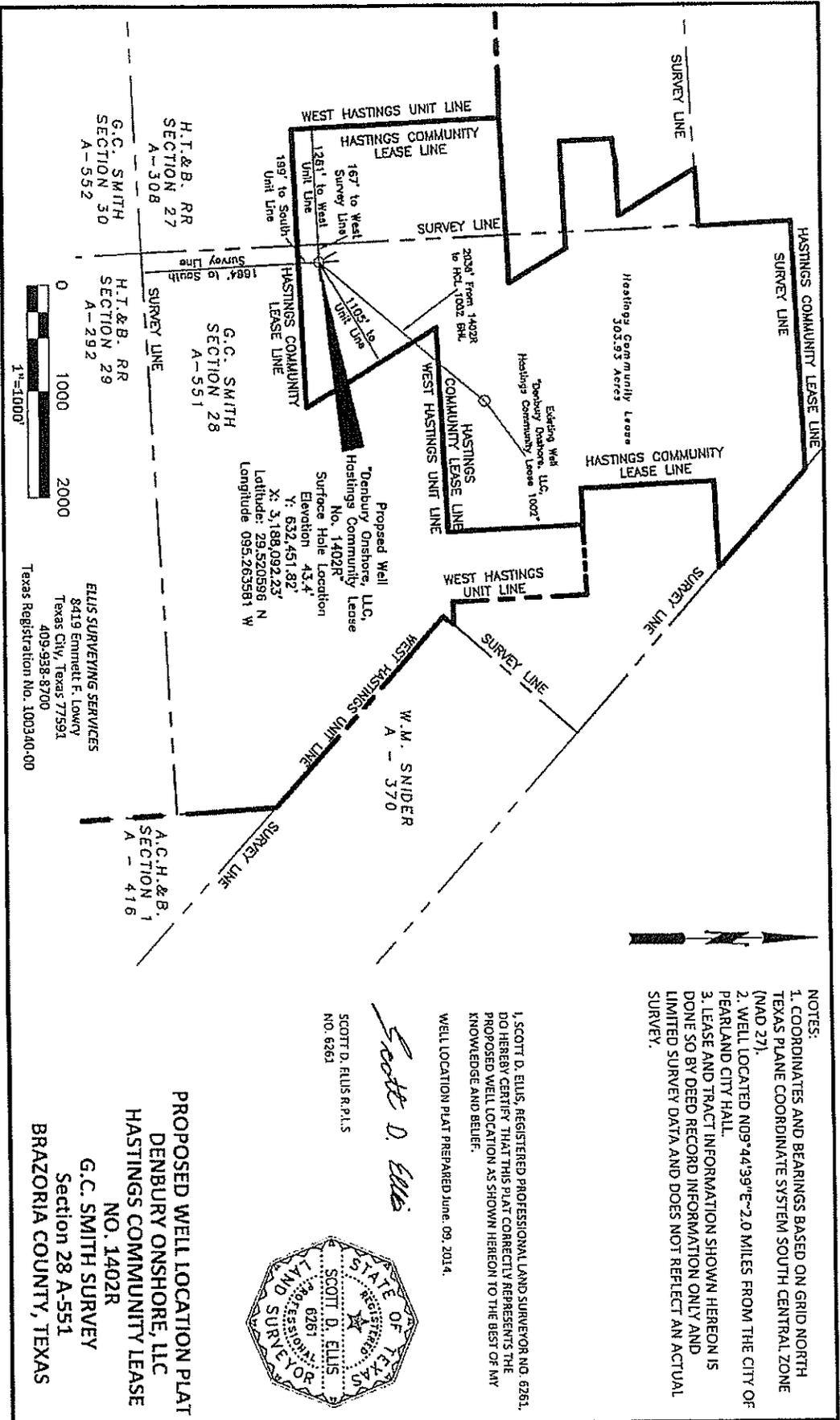
Date

Eric Linthicum
Regulatory Compliance Specialist
Denbury Onshore, LLC
972-673-2778
Eric.Linthicum@Denbury.com

EXHIBIT

“A”

SURVEYOR'S PLAT

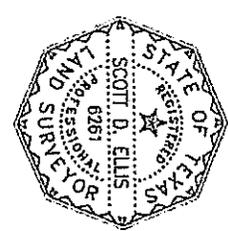


- NOTES:
1. COORDINATES AND BEARINGS BASED ON GRID NORTH TEXAS PLANE COORDINATE SYSTEM SOUTH CENTRAL ZONE (NAD 27).
 2. WELL LOCATED N09°44'39"E-2.0 MILES FROM THE CITY OF PEARLAND CITY HALL.
 3. LEASE AND TRACT INFORMATION SHOWN HEREON IS DONE SO BY DEED RECORD INFORMATION ONLY AND LIMITED SURVEY DATA AND DOES NOT REFLECT AN ACTUAL SURVEY.

1. SCOTT D. ELLIS, REGISTERED PROFESSIONAL LAND SURVEYOR NO. 6261, DO HEREBY CERTIFY THAT THIS PLAT CORRECTLY REPRESENTS THE PROPOSED WELL LOCATION AS SHOWN HEREON TO THE BEST OF MY KNOWLEDGE AND BELIEF.

WELL LOCATION PLAT PREPARED June, 09, 2014.

Scott D. Ellis
 SCOTT D. ELLIS R.P.L.S.
 NO. 6261



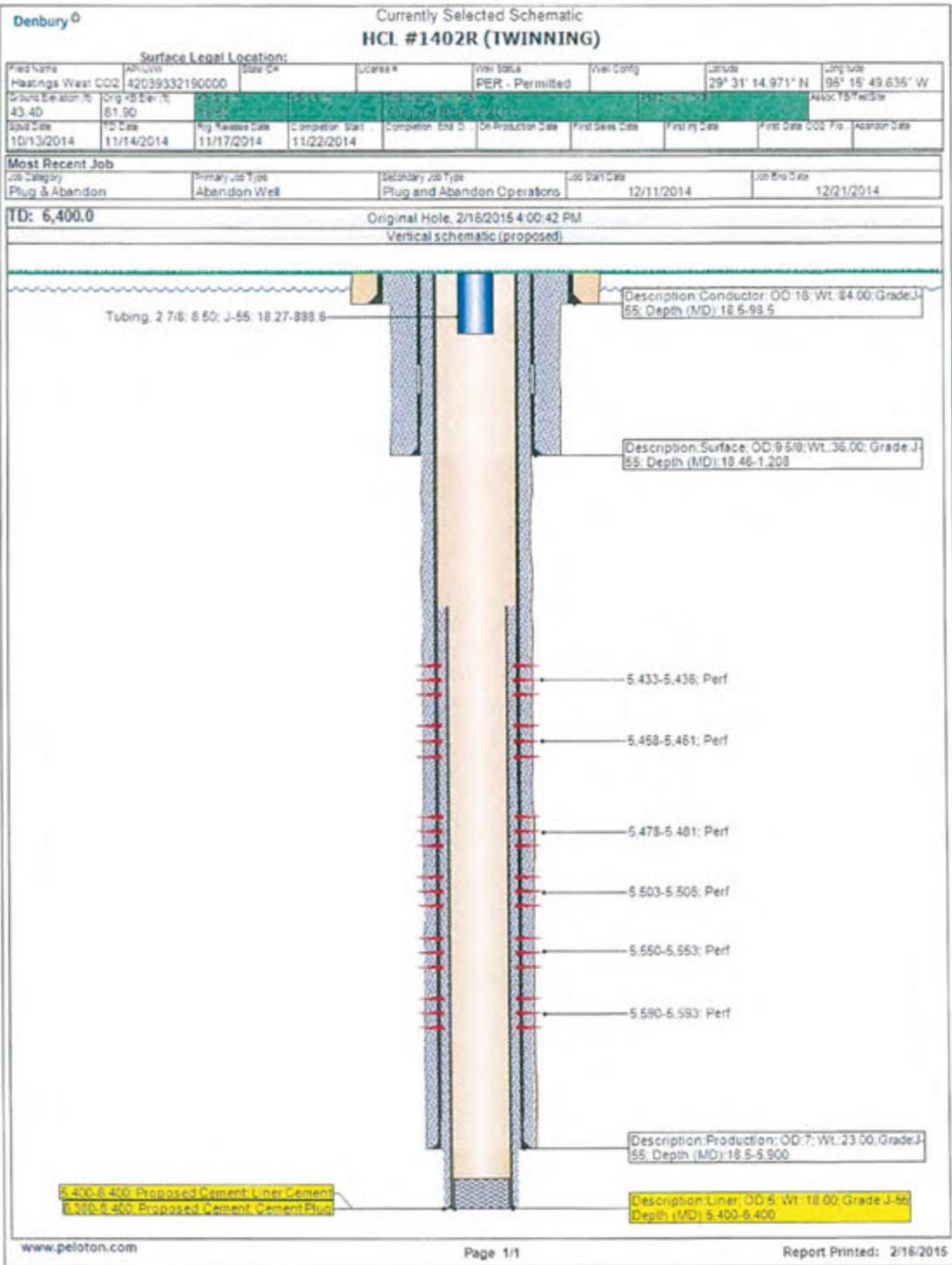
PROPOSED WELL LOCATION PLAT
 DENBURY ONSHORE, LLC
 HASTINGS COMMUNITY LEASE
 NO. 1402R
 G.C. SMITH SURVEY
 Section 28 A-551
 BRAZORIA COUNTY, TEXAS

ELLIS SURVEYING SERVICES
 8419 Emmett F. Lowry
 Texas City, Texas 77591
 409-558-8700
 Texas Registration No. 100340-00

EXHIBIT

“B”

WELL PLAN AND CASING PROGRAM



EXHIBIT

“C”

WORKING INTEREST OWNERS

WI Owners List

Denbury Onshore, LLC **89.817400%**
5320 Legacy Drive
Plano, Texas 75024

Exxon Mobil Corporation **09.716680%**
P.O. Box 4707
Houston, Texas 77210-4707

Private Individuals **00.046592%**

EXHIBIT

“D”

DRILLING MANAGEMENT

Mark Menzies, Drilling Engineer

Office:

5320 Legacy Drive, Rm: 1.3.118

Plano, TX 75024

Email: mark.menzies@denbury.com

Ph: 972.673.2955

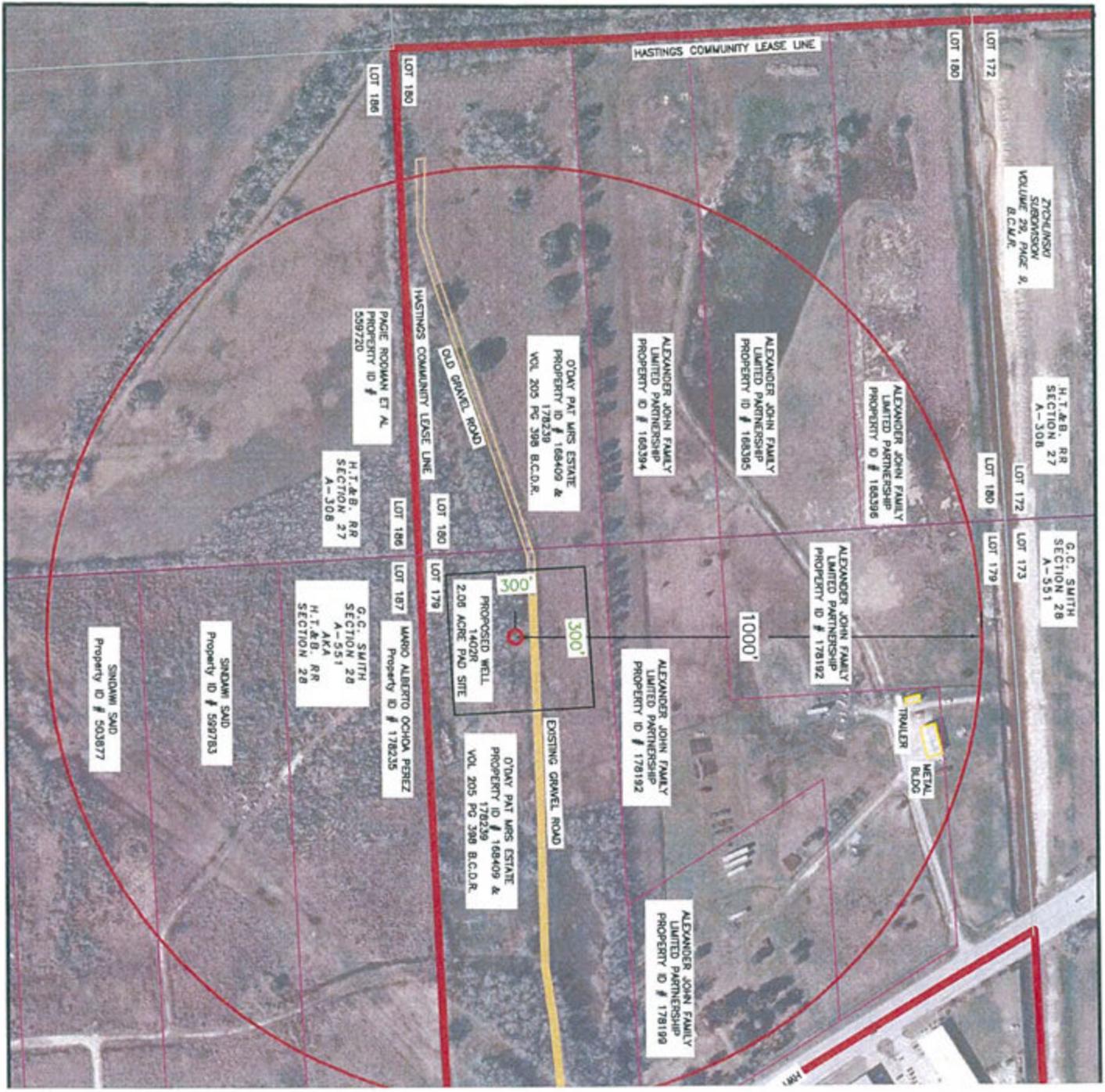
Education: Texas A&M University, Bachelor of Science in Petroleum Engineering - 1998, plus numerous industry schools and other training. Well Control certification is current through August 2015 (Supervisory level).

Experience: 16 years of drilling experience in planning, operations and wellsite supervision. Experience on vertical and directional wells in the following areas: West TX, East TX, New Mexico, Pennsylvania (Marcellus horizontal wells), North Louisiana (Haynesville HTHP horizontal wells), South Louisiana including onshore and inland waters, North Dakota

EXHIBIT

“E”

SURVEYOR’S PLAT WITH 1000’ RADIUS



ZOHLINSKY
SUBDIVISION
VOLUME 29, PAGE 9,
B.C.M.R.

H.T.B. RR
SECTION 27
A-308

G.C. SMITH
SECTION 28
A-351

LOT 180

LOT 172

LOT 180

LOT 172

LOT 173

LOT 179

ALEXANDER JOHN FAMILY
LIMITED PARTNERSHIP
PROPERTY ID # 180396

ALEXANDER JOHN FAMILY
LIMITED PARTNERSHIP
PROPERTY ID # 180395

ALEXANDER JOHN FAMILY
LIMITED PARTNERSHIP
PROPERTY ID # 180394

O'DAY PAT MRS ESTATE
PROPERTY ID # 168409 &
178239
VOL 205 PG 398 B.C.D.R.

PAGIE ROOJANI ET AL
PROPERTY ID #
59720

H.T.B. RR
SECTION 27
A-308

LOT 186

LOT 180

LOT 179

LOT 187

G.C. SMITH
SECTION 28
A-351
H.T.B. RR
SECTION 28

MARCO ALBERTO OCHOA PEREZ
PROPERTY ID # 178235

SINDAM SAUD
PROPERTY ID # 59783

SINDAM SAUD
PROPERTY ID # 503877

PROPOSED WELL
1402R
2.05 ACRE PAD SITE

O'DAY PAT MRS ESTATE
PROPERTY ID # 168409 &
178239
VOL 205 PG 398 B.C.D.R.

ALEXANDER JOHN FAMILY
LIMITED PARTNERSHIP
PROPERTY ID # 178192

ALEXANDER JOHN FAMILY
LIMITED PARTNERSHIP
PROPERTY ID # 178199

1000'

300'
300'

EXISTING GRAVEL ROAD

TRAILER
METAL
SHED

HASTINGS COMMUNITY LEASE LINE

HASTINGS COMMUNITY LEASE LINE

OLD GRAVEL ROAD

EXHIBIT

“F”

TEXAS RAILROAD COMMISSION FORM W-1

API No. 42-039-33219 **RAILROAD COMMISSION OF TEXAS** **FORM W-1** 07/2004
 Drilling Permit # 790944 **OIL & GAS DIVISION**
 SWR Exception Case/Docket No. _____ **APPLICATION FOR PERMIT TO DRILL, RECOMPLETE, OR RE-ENTER**
 This facsimile W-1 was generated electronically from data submitted to the RRC.
 A certification of the automated data is available in the RRC's Austin office.

1. RRC Operator No. 215343 **DENBURY ONSHORE, LLC**
 2. Operator's Name (as shown on form P-5, Organization Report) **DENBURY ONSHORE, LLC**
 3. Operator Address (include street, city, state, zip):
5320 LEGACY DRIVE
PLANO, TX 75024-0000
 4. Lease Name **HASTINGS COMMUNITY LEASE** 5. Well No. 1402R

GENERAL INFORMATION
 6. Purpose of filing (mark ALL appropriate boxes):
 New Drill Recompletion Re-lease Field Transfer Re-Enter
 Amended Amended as Drilled (BHL) (Also File Form W-ID)
 7. Wellbore Profile (mark ALL appropriate boxes):
 Vertical Horizontal (Also File Form W-1H) Directional (Also File Form W-ID) Sidetrack
 8. Total Depth 6400 9. Do you have the right to develop the minerals under any right-of-way? Yes No 10. Is this well subject to Statewide Rule 36 (hydrogen sulfide area)? Yes No

SURFACE LOCATION AND ACREAGE INFORMATION
 11. RRC District No. 03 12. County **BRAZORIA** 13. Surface Location Land Bay/Estuary Inland Waterway Offshore
 14. This well is to be located 2 miles in a NE direction from _____ which is the nearest town in the county of the well site.
 15. Section 28 16. Block _____ 17. Survey **HT&B RR CO/SMITH, G C** 18. Abstract No. A-551 19. Distance to nearest lease line: 199 ft. 20. Number of contiguous acres in lease, pooled unit, or unitized tract: 303.93

21. Lease Perpendiculars: 1261 ft from the W line and 199 ft from the S line.
 22. Survey Perpendiculars: 1664 ft from the S line and 167 ft from the W line.
 23. Is this a pooled unit? Yes No 24. Unitization Docket No.: _____ 25. Are you applying for Substandard Acreage Field? Yes No (attach Form W-1A)

FIELD INFORMATION List all fields of anticipated completion including Wildcat. List one zone per line.

26. RRC District No.	27. Field No.	28. Field Name (exactly as shown in RRC records)	29. Well Type	30. Completion Depth	31. Distance to Nearest Well in this Reservoir	32. Number of Wells on this lease in this Reservoir
03	39603001	HASTINGS, WEST	Oil Well	1	2036.00	3

BOTTOMHOLE LOCATION INFORMATION is required for: DIRECTIONAL, HORIZONTAL, AND AMENDED/AS DRILLED PERMIT APPLICATIONS

Remarks
 [RRC STAFF Jul 28, 2014 10:12 AM]: There have been problems identified with this permit (see problem letter attachment). Notification sent.; [RRC STAFF Jul 28, 2014 3:11 PM]: Problems identified with this permit are resolved.; [RRC STAFF Aug 6, 2014 7:28 AM]: There have been problems identified with this permit (see problem letter attachment). Notification sent.; [RRC STAFF Aug 6, 2014 9:47 AM]: Problems identified with this permit are resolved.; [RRC STAFF Aug 6, 2014 9:47 AM]: As per Eric Linthicum: The Pat Oday #2 was P&A on 4/16/2014.

Signature:
 I certify that information stated in this application is true and complete, to the best of my knowledge.
 Name of filer: Eric Linthicum, Regulatory Specialist Date submitted: Jul 03, 2014
 Phone: (972)673-2778 E-mail Address (OPTIONAL): eric.linthicum@denbury.com

RRC Use Only Data Validation Time Stamp: Aug 6, 2014 9:52 AM (Current Version)

Railroad Commission of Texas

PERMIT TO DRILL, RE-COMplete, OR RE-ENTER ON REGULAR OR ADMINISTRATIVE EXCEPTION LOCATION

CONDITIONS AND INSTRUCTIONS

Permit Invalidation. It is the operator's responsibility to make sure that the permitted location complies with Commission density and spacing rules in effect on the spud date. The permit becomes invalid automatically if, because of a field rule change or the drilling of another well, the stated location is not in compliance with Commission field rules on the spud date. If this occurs, application for an exception to Statewide Rules 37 and 38 must be made and a special permit granted prior to spudding. Failure to do so may result in an allowable not being assigned and/or enforcement procedures being initiated.

Notice Requirements. Per H.B 630, signed May 8, 2007, the operator is required to provide notice to the surface owner no later than the 15th business day after the Commission issues a permit to drill. Please refer to subchapter Q Sec. 91.751-91.755 of the Texas Natural Resources Code for applicability.

Permit expiration. This permit expires two (2) years from the date of issuance shown on the original permit. The permit period will not be extended.

Drilling Permit Number. The drilling permit number shown on the permit **MUST** be given as a reference with any notification to the district (see below), correspondence, or application concerning this permit.

Rule 37 Exception Permits. This Statewide Rule 37 exception permit is granted under either provision Rule 37 (h)(2)(A) or 37(h)(2)(B). Be advised that a permit granted under Rule 37(h)(2)(A), notice of application, is subject to the General Rules of Practice and Procedures and if a protest is received under Section 1.3, "Filing of Documents," and/or Section 1.4, "Computation of Time," the permit may be deemed invalid.

Before Drilling

Fresh Water Sand Protection. The operator must set and cement sufficient surface casing to protect all usable-quality water, as defined by the Railroad Commission of Texas (RRC) Groundwater Advisory Unit (GWAU). Before drilling a well, the operator must obtain a letter from the Railroad Commission of Texas stating the depth to which water needs protection. Write: Railroad Commission of Texas, Groundwater Advisory Unit (GWAU), P.O. Box 12967, Austin, TX 78711-3087. File a copy of the letter with the appropriate district office.

Accessing the Well Site. If an OPERATOR, well equipment TRANSPORTER or WELL service provider must access the well site from a roadway on the state highway system (Interstate, U.S. Highway, State Highway, Farm-to-Market Road, Ranch-to-Market Road, etc.), an access permit is required from TxDOT. Permit applications are submitted to the respective TxDOT Area Office serving the county where the well is located.

Water Transport to Well Site. If an operator intends to transport water to the well site through a temporary pipeline laid above ground on the state's right-of-way, an additional TxDOT permit is required. Permit applications are submitted to the respective TxDOT Area Office serving the county where the well is located.

*NOTIFICATION

The operator is **REQUIRED** to notify the district office when setting surface casing, intermediate casing, and production casing, or when plugging a dry hole. The district office **MUST** also be notified if the operator intends to re-enter a plugged well or re-complete a well into a different regulatory field. Time requirements are given below. The drilling permit number **MUST** be given with such notifications.

During Drilling

Permit at Drilling Site. A copy of the Form W-1 Drilling Permit Application, the location plat, a copy of Statewide Rule 13 alternate surface casing setting depth approval from the district office, if applicable, and this drilling permit must be kept at the permitted well site throughout drilling operations.

***Notification of Setting Casing.** The operator **MUST** call in notification to the appropriate district office (phone number shown the on permit) a minimum of eight (8) hours prior to the setting of surface casing, intermediate casing, AND production casing. The individual giving notification **MUST** be able to advise the district office of the drilling permit number.

*Notification of Re-completion/Re-entry. The operator MUST call in notification to the appropriate district office (phone number shown on permit) a minimum of eight (8) hours prior to the initiation of drilling or re-completion operations. The individual giving notification MUST be able to advise the district office of the drilling permit number.

Completion and Plugging Reports

Hydraulic Fracture Stimulation using Diesel Fuel: Most operators in Texas do not use diesel fuel in hydraulic fracturing fluids. Section 322 of the Energy Policy Act of 2005 amended the Underground Injection Control (UIC) portion of the federal Safe Drinking Water Act (42 USC 300h(d)) to define "underground injection" to EXCLUDE " ...the underground injection of fluids or propping agents (other than diesel fuels) pursuant to hydraulic fracturing operations related to oil, gas, or geothermal production activities." (italic and underlining added.) Therefore, hydraulic fracturing may be subject to regulation under the federal UIC regulations if diesel fuel is injected or used as a propping agent. EPA defined "diesel fuel" using the following five (5) Chemical Abstract Service numbers: 68334-30-5 Primary Name: Fuels, diesel; 68476-34-6 Primary Name: Fuels, diesel, No. 2; 68476-30-2 Primary Name: Fuel oil No. 2; 68476-31-3 Primary Name: Fuel oil, No. 4; and 8008-20-6 Primary Name: Kerosene. As a result, an injection well permit would be required before performing hydraulic fracture stimulation using diesel fuel as defined by EPA on any well in Texas. Hydraulic fracture stimulation using diesel fuel as defined by EPA on a well in Texas without an injection well permit could result in enforcement action.

Producing Well. Statewide Rule 16 states that the operator of a well shall file with the Commission the appropriate completion report within thirty (30) days after completion of the well or within ninety (90) days after the date on which the drilling operation is completed, whichever is earlier. Completion of the well in a field authorized by this permit voids the permit for all other fields included in the permit unless the operator indicates on the initial completion report that the well is to be a dual or multiple completion and promptly submits an application for multiple completion. All zones are required to be completed before the expiration date on the existing permit. Statewide Rule 40(d) requires that upon successful completion of a well in the same reservoir as any other well previously assigned the same acreage, proration plats and P-15s (if required) must be submitted with no double assignment of acreage.

Dry or Noncommercial Hole. Statewide Rule 14(b)(2) prohibits suspension of operations on each dry or non-commercial well without plugging unless the hole is cased and the casing is cemented in compliance with Commission rules. If properly cased, Statewide Rule 14(b)(2) requires that plugging operations must begin within a period of one (1) year after drilling or operations have ceased. Plugging operations must proceed with due diligence until completed. An extension to the one-year plugging requirement may be granted under the provisions stated in Statewide Rule 14(b)(2).

Intention to Plug. The operator must file a Form W-3A (Notice of Intention to Plug and Abandon) with the district office at least five (5) days prior to beginning plugging operations. If, however, a drilling rig is already at work on location and ready to begin plugging operations, the district director or the director's delegate may waive this requirement upon request, and verbally approve the proposed plugging procedures.

*Notification of Plugging a Dry Hole. The operator MUST call in notification to the appropriate district office (phone number shown on permit) a minimum of four (4) hours prior to beginning plugging operations. The individual giving the notification MUST be able to advise the district office of the drilling permit number and all water protection depths for that location as stated in the Texas Commission on Environmental Quality letter.

DIRECT INQUIRIES TO: DRILLING PERMIT SECTION, OIL AND GAS DIVISION

PHONE
(512) 463-6751

MAIL:
PO Box 12967
Austin, Texas, 78711-2967

RAILROAD COMMISSION OF TEXAS
OIL & GAS DIVISION
SWR #13 Formation Data

BRAZORIA (039) County

Formation	Shallow Top	Deep Top	Remarks	Geological Order	Effective Date
CAPROCK	580	590	disposal	1	12/17/2013
MIOCENE	1,750	6,220	disposal	2	12/17/2013
FRIO	2,000	4,200	disposal	3	12/17/2013
HET LIME	4,400	4,400	disposal	4	12/17/2013
OLIGOCENE	5,760	5,760	disposal	5	12/17/2013
OTIS	7,810	7,810	disposal	6	12/17/2013

This is a dynamic table that will be updated continuously. It is the operators responsibility to make sure that at time of spudding the well the most current table is being referenced.

EXHIBIT

“G”

SURVEY OF PUBLIC ROAD IMPACT



EarthCon Consultants, Inc.
14405 Walters Road
Suite 700
Houston, Texas 77014

P: 281-240-5200
F: 866-263-0098
www.earthcon.com

March 2, 2015

Honorable Mayor Tom Reid
City of Pearland
City Hall
3519 Liberty Drive
Pearland, Texas 77581

RE: Report of Potential Impact to City of Pearland Public Roads and Streets
City of Pearland, Texas Code of Ordinances
Hastings Community Lease Well HCL 1402R
Denbury Resources, Inc.
EarthCon Project No. 02.20150066.00

Dear Mayor Reid:

This report provides the information and conclusions necessary to determine the impact of Denbury Resources, Inc. (Denbury) planned construction of the Hastings Community Lease Well HCL 1402R (development) on the public roads and streets in the City of Pearland, Texas. This report is required as part of the City of Pearland, Texas Code of Ordinances. EarthCon Consultants, Inc. (EarthCon) has prepared this report to fulfill that requirement. A site visit was performed on February 24, 2015 by Mr. Andy Shook, P.E., Senior Engineer to obtain specific site and vicinity information for this report.

INTRODUCTION

The proposed development area is located approximately 1,100 feet west of the intersection of Texas State Highway 35 (SH35) and County Road 126 (CR126), also known as Dixie Farm Road, within the City of Pearland, Texas. SH35 is a State of Texas Department of Transportation (TxDOT) maintained roadway. **Figure 1** presents a Site Location Map and is included in **Attachment 1**.

The development is located west of SH35 and is accessed by a gravel road that crosses a drainage ditch parallel to SH35. A 24-inch diameter drainage culvert extends underneath the access road parallel to SH35 (see **Figure 2** in **Attachment 1**). The proposed well will be located about 1,100 feet west of SH35 (see **Figure 3** in **Attachment 1**).

The development area is approximately 300 foot by 300 foot in plan dimensions (see **Figure 4** in **Attachment 1**). There have been no previous known industrial activities within this development area.

The planned activities consist of installing one oil producing well (Well HCL 1402R) within the development. The development area is relatively level with drainage generally to the east toward the SH35 drainage ditch

This development is part of an Enhanced Oil Recovery (EOR) project in which water and CO₂ are injected (flooded) into a reservoir to increase production by reducing oil viscosity and increasing the flow of oil to adjacent recovery wells.

The operation of this EOR system will require water or CO₂ injection at high pressure from other wells in the area into the oil-bearing formation, recovery of oil at the 1402R, and transport of the recovered oil via pipeline to an offsite recovery facility. This development will include operation and maintenance of the oil well and construction of appurtenances on the well head for production.

This system has been used successfully in this and other areas of the country to improve recovery of oil, thus limiting the United States of America dependence on foreign product.

INSTALLATION

The actual installation and construction of this development will utilize the same basic processes typical of oil field production wells in this area. Typical equipment and supplies used include a work over rig, drill pipe, steel mud pits, container box storage structures, steel well casing, drilling mud, bulk cement, portable office building and other similar equipment. This equipment and supplies are usually mobilized to the site on tractor-trailers or, in some cases, the equipment may be truck mounted. The well drilling and completion operations typically require several months to complete. Traffic consists of labor and supplies after the initial mobilization and completion.

Activities associated with well installation and completion will be in accordance with the requirements of the Railroad Commission of Texas (RRC) and the Texas Oil and Gas Code.

OPERATIONS

Once the development is operational, the traffic on surrounding roadways and streets will generally be limited to small support trucks, pickup trucks or passenger vehicles. The pipeline bringing the water onsite will provide the driving force to recover oil from adjacent wells. The oil from these wells will be transported via pipeline to an offsite facility. Occasional repairs may require the use of workover rigs and other mobile equipment. The workover rigs are usually

truck mounted. Other equipment will typically be brought onsite by tractor-trailers or smaller trucks.

ASSESSMENT

The equipment and materials brought onsite will all follow a route that will be on state highways. The equipment and materials will all enter the site from the access road located on the west side of SH35, approximately 100 feet south of the intersection of SH35 and CR126. There is sufficient distance between the development and SH35 to allow for temporary staging of the required number of vehicles to support the project, without blocking public roads.

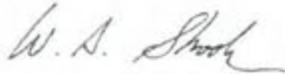
CONCLUSION

All major activity on streets and roads associated with this development will occur on SH35. No adverse effect to City of Pearland public roads and streets is anticipated. Any damage to SH35 or the culvert below the access road will be repaired in consultation with TxDOT.

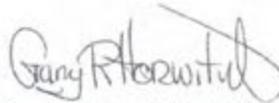
We appreciate the opportunity to submit this report. If you have any questions, please feel free to call Gary R. Horwitch, P.E. at (281) 240-5200, extension 2716, or Andy Shook, P.E. at (281) 240-5200, extension 2723.

Sincerely,

EARTHCON CONSULTANTS, INC.
Firm No. 7572



W. A. Shook, P.E.
Senior Engineer
Texas P.E. No. 79335



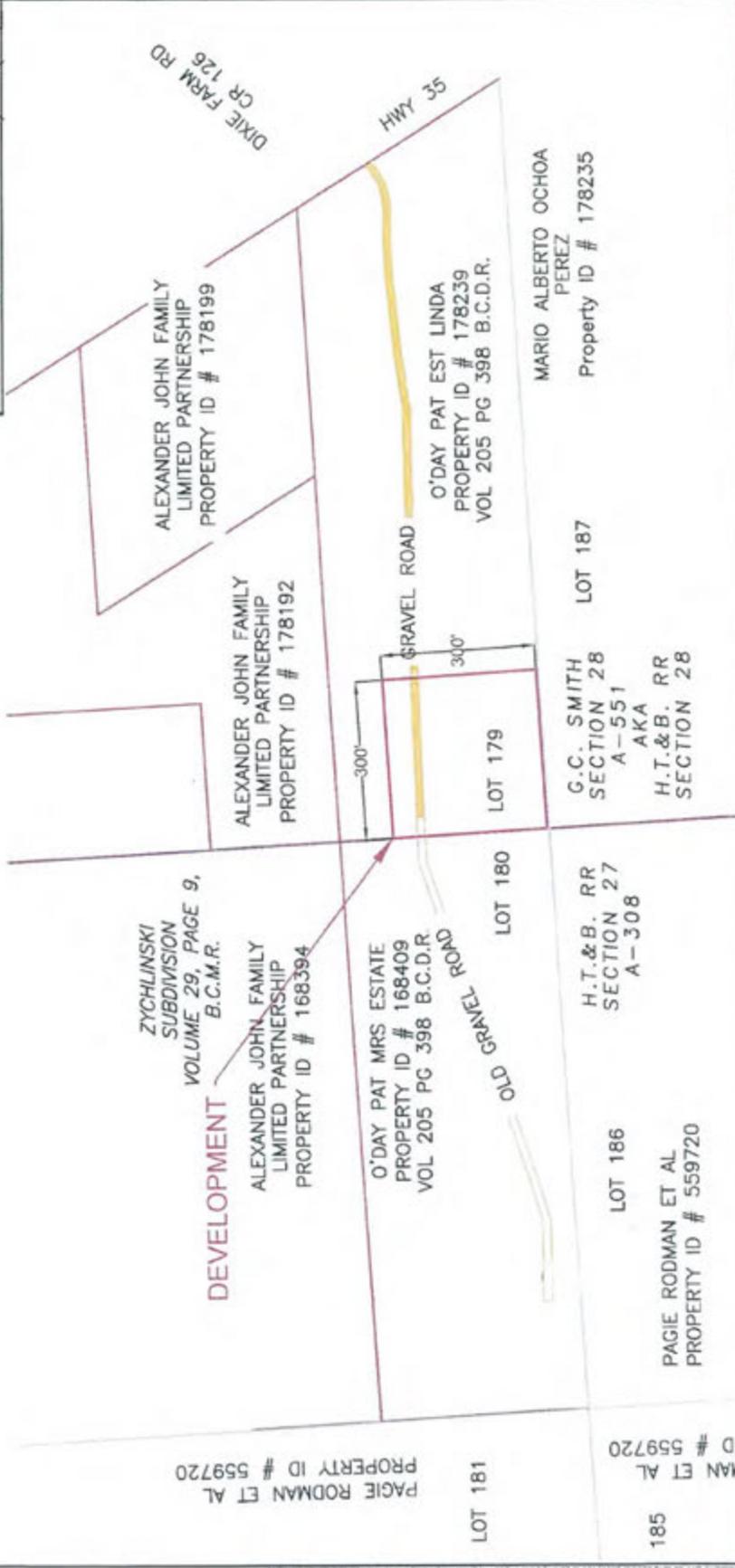
Gary R. Horwitch, P.E.
Principal Engineer/Vice President
Texas P.E. No. 48456

ATTACHMENT 1

FIGURES



<p>EARTHCON EarthCon Consultants Inc. 14000 Highway 100 Houston, TX 77034 Phone: 281-279-1100 Fax: 281-279-1101</p>	<p>DEMBURY ONSHORE, LLC Proposed Well Location Hazbop Community Lease Lot No. 14024 Brazoria County - Texas</p>	<p>SCALE FEET 0 100 200 300</p> <p>Source: Google Earth 2014</p>	<p>ENTRANCE LOCATION</p> <table border="1"> <tr> <td>DATE</td> <td>BY</td> <td>CHK</td> <td>APP</td> <td>SCALE</td> </tr> <tr> <td>11/11/14</td> <td>AS</td> <td></td> <td></td> <td></td> </tr> </table>	DATE	BY	CHK	APP	SCALE	11/11/14	AS			
DATE	BY	CHK	APP	SCALE									
11/11/14	AS												



Source: Denbury Onshore, LLC.

SCALE FEET
0 150 300

DENBURY ONSHORE, LLC.
Proposed Well Location
Hastings Community Lease Unit No. 1402R
Brazoria County, Texas
PROJ. NO. 02-20150068.00

EARTHCON
EarthCon Consultants Inc.
14405 Walters Rd., Suite 700
Houston, Tx 77014
Form 7572

PLAN OFFSET

DRAWN	JMT	CHECKED	AS	DATE	02/2015	TAGARE	3
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DEVELOPMENT

SURVEY LINE

HASTINGS COMMUNITY
LEASE LINE

167'
199'

Source:
Denbury Onshore, LLC.



DENBURY ONSHORE, LLC.
Proposed Well Location
Hastings Community Lease Unit No. 1402R
Brazoria County, Texas

REC'D NO. 02/20/2015 08



EarthCon Consultants Inc.
14405 Walkers Rd, Suite 700
Houston, TX 77014
Firm 7572

PLAN DIMENSIONS

DRAWN	CHECKED	DATE	FIGURE
JMT	AS	02/20/15	4

EXHIBIT

“H”

ENVIRONMENTAL REPORT



EarthCon Consultants, Inc.
14405 Walters Road
Suite 700
Houston, Texas 77014

P: 281-240-5200
F: 866-263-0098
www.earthcon.com

March 2, 2015

Honorable Mayor Tom Reid
City of Pearland
City Hall
3519 Liberty Drive
Pearland, Texas 77581

RE: Report of Potential Damage to Land, Air, Water and Animals Due to Operations
City of Pearland, Texas Code of Ordinances
Hastings Community Lease Well HCL 1402R
Denbury Resources, Inc.
EarthCon Project No. 02.20150066.00

Dear Mayor Reid:

This report provides the information and conclusions necessary to determine possible environmental damage to the land, air, water and animals from the Denbury Resources, Inc. (Denbury) planned construction of Hastings Community Lease Well HCL 1402R (development) in the City of Pearland, Texas. This report is required as part of the City of Pearland, Texas Code of Ordinances. EarthCon Consultants, Inc. (EarthCon) has prepared this report to fulfill that requirement. A site visit was performed on February 24, 2015 by Mr. Andy Shook, P.E., Senior Engineer, to obtain specific site and vicinity information for this report.

INTRODUCTION

The proposed development area is located approximately 1,100 feet west of the intersection of Texas State Highway 35 (SH35) and County Road 126 (CR126), also known as Dixie Farm Road, within the City of Pearland, Texas. SH35 is a State of Texas Department of Transportation (TxDOT) maintained roadway. **Figure 1** presents a Site Location Map and is included in **Attachment 1**.

The development is located west of SH35 and is accessed by a gravel road that crosses a drainage ditch parallel to SH35. A 24-inch diameter drainage culvert extends underneath the access road parallel to SH35 (see **Figure 2** in **Attachment 1**). The proposed well will be located about 1,100 feet west of SH35 (see **Figure 3** in **Attachment 1**). The development area is approximately 300 foot by 300 foot in plan dimensions (see **Figure 4** in **Attachment 1**).

There have been no previous known industrial activities within this development area.

The planned activities consist of installing one oil producing well (Well HCL 1402R) within the development. The development area is relatively level with drainage generally to the east toward the SH35 drainage ditch

This development is part of an Enhanced Oil Recovery (EOR) project in which water and CO₂ are injected (flooded) into a reservoir to increase production by reducing oil viscosity and increasing the flow of oil to adjacent recovery wells.

The operation of this EOR system will require water or CO₂ injection at high pressure from other wells in the area into the oil-bearing formation, recovery of oil at the 1402R, and transport of the recovered oil via pipeline to an offsite recovery facility. This development will include operation and maintenance of the oil well and construction of appurtenances on the well head for production.

This system has been used successfully in this and other areas of the country to improve recovery of oil, thus limiting the United States of America dependence on foreign product.

INSTALLATION

The actual installation and construction of this development will utilize the same basic processes typical of oil field wells in this area. Typical equipment and supplies used include drilling rigs, drill pipe, steel mud pits, container box storage structures, steel well casing, drilling mud, bulk cement, portable office building and other similar equipment. This equipment and supplies are usually mobilized to the site on tractor-trailers or, in some cases, the equipment may be truck mounted. The well drilling and completion operations usually require several months to complete. Traffic consists of labor and supplies after the initial mobilization and completion.

Activities associated with well installation and completion will be in accordance with the requirements of the Railroad Commission of Texas (RRC) and the Texas Oil and Gas Code.

OPERATIONS

Once the development is operational, the traffic on surrounding roadways and streets will generally be limited to small support trucks, pickup trucks or passenger vehicles. The pipeline bringing the water onsite will provide the driving force to recover oil from adjacent wells. The oil from these wells will be transported via pipeline to an offsite facility. Occasional repairs may require the use of workover rigs and other mobile equipment. The workover rigs are usually truck mounted. Other equipment will typically be brought onsite by tractor-trailers or smaller trucks.

ASSESSMENT

Possible environmental damage to the land, air, water and animals from the EOR system could potentially come from a leak of water from the high pressure pipeline onsite or at the wellhead. A leak of water or oil will usually be indicated by the following:

- Dead or discolored vegetation amid healthy plants;
- An unusual hissing or roaring sound;
- Strange or unusual odor near the pipeline;
- A pool of liquid on the ground near the pipeline; and
- Fire or explosion.

As a means to limit the potential of a leak occurring, and to limit the impact if a leak should occur, remote monitoring of valves and pressures provides the capability to operate automated valves to shutdown and/or isolate sections of the pipeline systems, if necessary. In addition, Denbury personnel will be making routine daily rounds to monitor the well's performance.

If a leak of water occurs, the potential damage to the land, air and water will be minimal, as water will have only a small impact area. Potential damage to animals will also be limited, as the noise associated with the water leak will chase animals away from the area.

If an oil leak from adjacent wells occurs, the potential for damage to land and water is more likely, but still considered minimal. The impact will be minimized by remote monitoring of the oil recovery system and pipeline. As soon as an oil leak is discovered, the Denbury Emergency Response Plan will be implemented which includes notifying local, state and federal emergency response agencies. The necessary equipment and personnel will be mobilized to repair the damage, clean up the oil spill, and remediate the area as required by the RRC and the Texas Oil and Gas Code.

The cost for remediating a spill is dependent on the quantity of oil spilled, the duration the leak has to soak into the soil, and if any water is impacted. The scenario in the cost estimate would occur with an oil leak from one of the adjacent recovery wells with a quantity of oil sufficient to flow from the leak to the south and east. The leak is assumed to cause an impact to both onsite and offsite soil, as well as impacting standing water in the drainage ditch along SH35. The estimated cost to remediate a routine (or larger) spill or leak would likely be on the order of \$25,000 to \$100,000. The major equipment required for remediation includes a vacuum truck, a backhoe/excavator, and dump trucks.

CONCLUSION

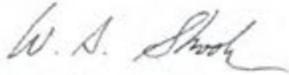
Safety of the public and company personnel is Denbury's highest priority. In the unlikely event of a leak or incident, Denbury will immediately initiate their Emergency Response Plan to quickly

control the situation and notify the City of Pearland and state and federal emergency response agencies.

We appreciate the opportunity to submit this report. If you have any questions, please feel free to call Gary R. Horwitch, P.E. at (281) 240-5200, extension 2716 or Andy Shook, P.E. at (281) 240-5200, extension 2723.

Sincerely,

EARTHCON CONSULTANTS, INC.
Firm No. 7572



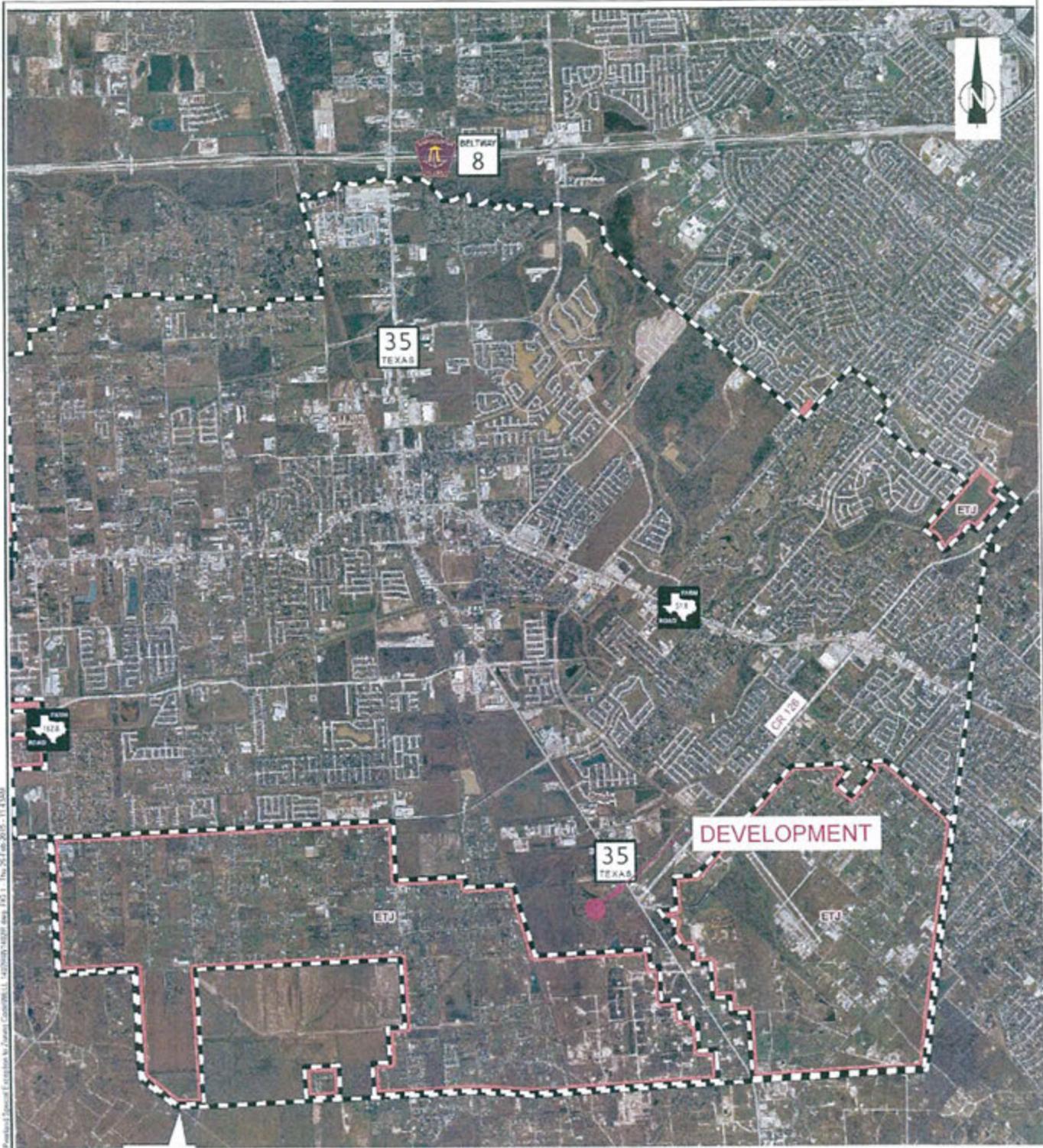
W. A. Shook, P.E.
Senior Engineer
Texas P.E. No. 79335



Gary R. Horwitch, P.E.
Principal Engineer/Vice President
Texas P.E. No. 48456

ATTACHMENT 1

FIGURES



I:\PROJECTS\ETJ\02015\020150206\020150206.dwg
 User: jmt
 Date: 02/02/2015 11:43:59 AM
 Plot Date: 02/02/2015 11:43:59 AM
 Plot Scale: 1:1
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 Plot Font Angle (inches): 0.0000

LEGEND

ETJ
Boundaries current as of date produced

City Limits

SCALE FEET

0 2500 5000

Source: City of Pearland Aerial Imagery 2012.

DENBURY ONSHORE, LLC.
 Proposed Well Location
 Hastings Community Lease Unit No. 1402R
 Brazoria County, Texas

EARTHCON[®]
EarthCon Consultants Inc.
 14405 Walters Rd, Suite 700
 Houston, Tx 77014
 Firm 7572

SITE LOCATION MAP

DRAWN	JMT	CHECKED	AS	DATE	02/2015	FIGURE	1
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© 2014 EarthCon Consultants, Inc. All Rights Reserved.

Source: Google Earth 2014

SCALE FEET
0 100 200

DEMINRY ONDCHRE, LLC
Proposed Well Location
Hasting Community Leasing Unit No. 1450W
Blair County, Texas

EARTHCON
EarthCon Consultants Inc.
14800 Highway 101
Houston, TX 77033
Form 0727

ENTRANCE LOCATION

Project	Client	City	State	County



DEVELOPMENT

SURVEY LINE

HASTINGS COMMUNITY
LEASE LINE

167'
199'

Source:
Dentbury Onshore, LLC.



DENBURY ONSHORE, LLC.
Proposed Well Location
Hastings Community Lease Unit No. 1402R
Brazoria County, Texas

FILED NO. 02/2015008.00

EARTHCON[®]
EarthCon Consultants Inc.
14405 Walkers Rd, Suite 700
Houston, Tx 77014
Firm 7572

PLAN DIMENSIONS

DESIGN	CHECKED	AS	DATE	FIGURE
JMT			02/2015	4

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

AGENDA OF:	May 11, 2015	ITEM NO.:	Resolution No. R2015-64								
DATE SUBMITTED:	May 1, 2015	DEPT. OF ORIGIN:	Municipal Court								
PREPARED BY:	Jennifer Huhn	PRESENTOR:	Clay Pearson								
REVIEWED BY:	Jon R. Branson	REVIEW DATE:	May 1, 2015								
<p>SUBJECT: A Resolution of the City Council of the City of Pearland, Texas, authorizing the City Manager or his designee to enter into an Interlocal Agreement with Brazoria County Tax Assessor-Collector implementation of a Scofflaw Program in accordance with Chapter 702 of the Texas Transportation Code.</p>											
<p>EXHIBITS: Resolution NO. 2015-64; Interlocal Agreement-Scofflaw, Thursday Packet Scofflaw Program</p>											
<p>FUNDING:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 25%;"><input type="checkbox"/> Bonds To Be Sold</td> <td style="width: 25%;"><input type="checkbox"/> Grant</td> <td style="width: 25%;"><input type="checkbox"/> Developer/Other</td> <td style="width: 25%;"><input type="checkbox"/> Cash</td> </tr> <tr> <td><input type="checkbox"/> Bonds- Sold</td> <td><input type="checkbox"/> L/P - Sold</td> <td><input type="checkbox"/> L/P - To Be Sold</td> <td></td> </tr> </table>				<input type="checkbox"/> Bonds To Be Sold	<input type="checkbox"/> Grant	<input type="checkbox"/> Developer/Other	<input type="checkbox"/> Cash	<input type="checkbox"/> Bonds- Sold	<input type="checkbox"/> L/P - Sold	<input type="checkbox"/> L/P - To Be Sold	
<input type="checkbox"/> Bonds To Be Sold	<input type="checkbox"/> Grant	<input type="checkbox"/> Developer/Other	<input type="checkbox"/> Cash								
<input type="checkbox"/> Bonds- Sold	<input type="checkbox"/> L/P - Sold	<input type="checkbox"/> L/P - To Be Sold									
<p>EXPENDITURE REQUIRED: \$ AMOUNT AVAILABLE: ACCOUNT NO.:</p>		<p>AMOUNT BUDGETED: \$ PROJECT NO.:</p>									
<p>ADDITIONAL APPROPRIATION REQUIRED: ACCOUNT NO.: PROJECT NO.:</p>											
<p>To be completed by Department:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 25%; text-align: center;">Finance</td> <td style="width: 25%; text-align: center;">Legal</td> <td style="width: 25%; text-align: center;">Ordinance</td> <td style="width: 25%; text-align: center;">Resolution</td> </tr> </table>				Finance	Legal	Ordinance	Resolution				
Finance	Legal	Ordinance	Resolution								

EXECUTIVE SUMMARY

In accordance with the Texas Department of Motor Vehicles a City may contract with the county Tax Assessor-Collector of the Texas Department of Transportations (DMV) to deny motor vehicle registration to an owner who has an outstanding warrant for failure to appear or failure to pay a fine involving a traffic offense with a possible maximum fine of \$200.

Chapter 702 of the Transportation Code is referred to as "Scofflaw." Prior to 2011, only home-rule cities could enter into these agreements with County Tax Assessor-Collectors. In 2011, the authority was extended to general-law cities. The denial of the vehicle registration is permissive, meaning the County Assessor-Collector must agree to participate in the program. Cities may collect a \$20 fee from defendants who are referred to the Scofflaw program, but the fee can only be used to reimburse the County for its services.

After meeting with Perdue Brandon Fielder Collins Mott, LLP and Brazoria County staff located in the Pearland west tax office (Pearland Public Safety Building), the process would be that the Court sends collection files directly to Perdue. Perdue in turn shares the information that we give to them with the Brazoria County Tax office. When an individual comes in to renew their vehicle registration their driver's license will be swiped and will either be clear or show that there is an open warrant.

In the event that there is an open warrant the individual will not be able to get a current vehicle registration until they provide a receipt from the Court stating that the warrant is cleared. When the individual shows that warrant is cleared then the Tax Office will charge the \$20 fee to the individual eliminating the need for the Court to reimburse the county.

SCOPE OF CONTRACT

The purpose of the Agreement is to state the terms and conditions under which the County Tax Assessor-Collector will refuse to register or re-register certain motor vehicles when the County Tax Assessor-Collector receives information from City that the owner of the vehicle has an outstanding warrant for failure to appear or failure to pay a fine on a complaint that involves a violation of a traffic law, as defined by section 702.001 of the Transportation Code, as authorized and specifically set out under section 702.003 of the Texas Transportation Code.

BID AND AWARD

N/A

SCHEDULE

Once approved by City and County this process will take a matter of days to implement.

POLICY/GOAL CONSIDERATION

Another resource to clear warrants.

RECOMMENDED ACTION

Recommend approval of Interlocal Agreement between the City of Pearland and the Brazoria County Tax Assessor-Collector establishing the Scofflaw Program and the parameters therein.

STATE OF TEXAS

§
§
§

INTERLOCAL AGREEMENT - SCOFFLAW

COUNTY OF BRAZORIA

This Agreement made and entered into this _____ day of _____, 2015, by and between the County of Brazoria, hereinafter referred to as "County", with the agreement, consent, and participation of the *Brazoria County Tax Assessor-Collector*, hereinafter referred to as the "County or County Tax Assessor-Collector", and the *City of Pearland* a Texas home-rule municipal corporation hereinafter referred to as "City", under the authority and in accordance with the Interlocal Cooperation Act, as set out in Chapter 791, Texas Government Code, and as authorized by Texas Transportation Code, Chapter 702.

WITNESSETH:

WHEREAS, Texas Government Code, Chapter 791, authorizes local governments of the state to enter into contracts for governmental functions and services to increase their efficiency and effectiveness; and

WHEREAS, the County and the City are local governments as defined in Texas Government Code, Section 791.003(4), have the authority to enter into this agreement, and have each entered into this agreement by the action of its governing body in the appropriate manner prescribed by law; and

WHEREAS, Transportation Code §702.003 allows a county tax assessor-collector, upon receipt of information from a municipality to assist a municipality in the enforcement of outstanding warrants of arrest for the failure to appear or failure to pay a fine on a complaint that involves the violation of a traffic offenses by refusing to register or re-register a motor vehicle; and

WHEREAS, Transportation Code §702.003 further allows a municipality to contract with the County to provide the necessary information to a county for the above determination by the county tax assessor-collector to deny motor vehicle registration or re-registration to certain persons; and

WHEREAS, such a consolidated effort in the effectuation of Texas Transportation Code, Chapter 702, are in each party's best interest and that of the public and that this agreement will increase the effective and efficient functioning of each party; and

WHEREAS, both the City and County represent to one another that each respective party has the authority to enter into this agreement and perform the obligations and duties stated herein; and

WHEREAS, the County and the City agree that this contract supersedes all prior oral and written agreements between the parties regarding this program and the refusal of motor vehicle registration.

NOW THEREFORE, this contract is made and entered into by County and City in consideration of the aforementioned recitals and for the mutual consideration stated herein (“the Agreement”):

PURPOSE OF AGREEMENT.

The purpose of the Agreement is to state the terms and conditions under which the County Tax Assessor-Collector will refuse to register or re-register certain motor vehicles when the County Tax Assessor-Collector receives information from City that the owner of the vehicle has an outstanding warrant for failure to appear or failure to pay a fine on a complaint that involves a violation of a traffic law, as defined by section 702.001 of the Transportation Code, as authorized and specifically set out under section 702.003 of the Texas Transportation Code.

1. DUTIES OF THE CITY.

- 2.1** The City shall contract with the County to provide information to enable the County Tax Assessor-Collector to identify vehicle owners which have an outstanding warrant from the City for failure to appear or failure to pay a fine on a complaint that involves a violation of a traffic law pursuant to the Texas Transportation Code that is past due. The City will comply with all provisions of the Texas Transportation Code as well as all other applicable laws of the State of Texas while in the performance of its duties and obligations under the Agreement.
- 2.2** The City shall notify the County Tax Assessor-Collector within the next business day when a traffic law matter is cleared regarding a person:
 - 2.2.1** Against whom a judgment has been entered and who has paid the municipal court the full amount of the fine or civil penalty and all court costs; or
 - 2.2.2** Who has perfected an appeal of the case for which the arrest warrant was issued; or
 - 2.2.3** Whose charge for which the arrest warrant was issued has been dismissed; or
 - 2.2.4** Whose charge for which the arrest warrant was issued has been cleared through judicial action or clerical correction.
- 2.3** The City shall impose an additional \$20 fee to a person who has an outstanding warrant for failure to appear or failure to pay a fine on a complaint that involves the violation of a traffic law to be collected by the County as prescribed in

Section 3.3 of this contract. The additional fee may be used only to reimburse the County Tax Assessor-Collector for its expenses for providing services under this contract, as set out in Section 702.003 of the Texas Transportation Code. In the event that the individual is acquitted of the underlying charge, then no payment will be imposed.

- 2.4** The City shall provide to the County Tax Assessor Collector's office periodic updates not to exceed two weeks, with the information of all outstanding records with warrant status for failure to appear in court as prescribed in Subsection (a) of Section 702.003 of the Texas Transportation Code. The City shall provide all data records in an electronic format acceptable with Tax Office Database for the purposes of adding, updating, or deleting records.
- 2.5** The City shall provide a telephone number or the location of an office where individual inquiries and complaints can be made regarding denial of registration by the County Tax Assessor-Collector due to outstanding City warrants and/or civil penalties that are past due, as well as to explain the procedures necessary to resolve the issues so as to obtain valid registration.
- 2.6** The City shall identify, by name, address, and telephone number, an individual or individuals who shall have authority on behalf of the City to coordinate, direct and supervise the Agreement.
- 2.7** Pursuant to Texas Transportation Code Section 702.004, the City shall insure that each city peace officer shall issue a written warning to each person to whom the officer issues a citation for a violation of a traffic law in the municipality that states that if the person fails to appear in court as provided by law for the prosecution of the offense or fails to pay a fine for the violation, the person might not be permitted to register or re-register a motor vehicle in this state. The warning may be printed on the citation.
- 2.8** The City shall immediately recall all warrants for each individual who pays his/her fines and all court costs.
- 2.9** The City shall upon clearance of citation/warrant, sign and seal release forms issued by county tax office personnel to an individual who is denied vehicle registration. City signature and seal serves as authorization and notice from City for the Tax Office to issue motor vehicle registration renewal and clearance from Tax Office Database.
- 2.10** The City has the sole discretion to provide the County with an outstanding violation record to prohibit motor vehicle registration. However, the City shall only include those outstanding violation records that involve a violation of a "traffic law", as defined by section 702.001 of the Texas Transportation Code.

- 2.11** If deemed necessary by either party, the City shall allow Tax Assessor Collector's Office to contract directly with the City's current collections database vendor, for the sole purpose of obtaining necessary reports in required electronic format and or language. Such additional cost for services rendered by collections database vendor, shall be paid at Tax Assessor-Collector's Office expense.

2. DUTIES OF THE COUNTY

- 3.1** The County Tax Assessor-Collector, and his/her subcontractor/agent, shall:
- 3.1.1** Create or maintain information system database that accurately stores and accesses record entries from government entities. Maintain records after compliance for five years and indefinitely on those who do not comply. Data collected from any governmental entity shall be considered confidential and such data will be used only for the purpose expressed in this contract.
 - 3.1.2** Refuse to register or re-register all motor vehicles whose owner(s) has/have outstanding City warrants for traffic violations.
 - 3.1.3** Issue corresponding Release Forms to individuals who are denied vehicle registration due to outstanding violations/warrants with the City.
 - 3.1.4** Distribute to motor vehicle owners that have been denied registration, instruction sheets that will explain the steps necessary to resolve their outstanding traffic violation to obtain vehicle registration, and properly give directions to corresponding City offices where necessary issues may be resolved. Such instructions sheets will contain the case number and corresponding municipal entities where outstanding fines are owed.
 - 3.1.5** Distribute an instruction sheet with a telephone number and office address to individuals who want to complain about registration denial if said instructions and address are furnished by the City.
- 3.2** The County Tax Assessor-Collector, and his/her subcontractor/agent, shall register or re-register a motor vehicle upon receipt of notice from the City that the motor vehicle owner's traffic law matter is cleared pursuant to Sections 2.2 and 2.10 above.
- 3.3** The County Tax Assessor-Collector, and his/her subcontractor/agent upon receipt of properly signed and sealed Release Form, shall collect the additional fee of \$20 imposed by the City from an individual attempting to renew his/her registration pursuant to Section 2.4 above.

3.4 The County Tax Assessor-Collector shall at any time have the sole authority and prerogative to register or re-register a motor vehicle.

3. **TERM AND TERMINATION.**

This Interlocal Agreement shall be effective upon its date of execution by the last party to execute the Agreement and shall terminate on the _____ day of _____, 20___. The agreement shall automatically renew for successive one-year terms. This agreement may be terminated at any time by either party upon sixty (60) days written notice to the other parties.

4. **NOTICE.**

Official notice shall be by written notice and delivery to all of the parties to this Agreement. Delivery shall be by fax or deposit in the United States Postal Service, first class, return receipt requested to:

TO THE COUNTY TAX ASSESSOR-COLLECTOR:

Ro'Vin Garrett
111 E. Locust
Angleton, TX 77515
(979) 864-1320

TO THE CITY:

City of Pearland
Darrin Coker
3519 Liberty Drive
Pearland, TX 77581

5. **INDEMNIFICATION.**

County and City agree that both County and City shall each be responsible for their own negligent acts or omissions or other tortuous conduct in the course of performance of this Agreement, without waiving any sovereign or governmental immunity available to either County or City under Texas law and without waiving any available defenses under Texas law. Nothing in this paragraph shall be construed to create or grant any rights, contractual or otherwise, in or to any third persons or entities.

6. **FISCAL FUNDING.**

Notwithstanding anything to the contrary herein, this Agreement is expressly contingent upon the availability of county funding for each item and obligation contained herein. City shall have no right of action against the County as regards this Agreement, specifically including any funding by County of this Agreement in the event that the County is unable to fulfill its obligations under this Agreement as a result of the lack of sufficient funding for any item or obligation from any source utilized to fund this Agreement or failure of any funding party to budget or authorize funding for this during the current or future fiscal years. In the event of insufficient funding, or if funds become unavailable in whole or part, the County, at its sole

discretion, may provide funds from a separate source or terminate this Agreement. In the event that payments or expenditures are made, they shall be made from current funds as required by Chapter 791, Texas Government Code.

7. VENUE.

Venue to enforce this Agreement shall lie exclusively in Brazoria County, Texas.

8. NONDISCRIMINATION.

Parties to this Agreement shall not discriminate on the basis of race, color, national origin, sex, religion, age, disability, sexual orientation.

9. ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement between the parties hereto and may not be modified except by an instrument in writing executed by the parties hereto as herein provided.

10. SEVERABILITY.

If any provision of this Agreement shall be held invalid, void or unenforceable, the remaining provisions hereof shall not be affected or impaired, and such remaining provisions shall remain in full force and effect.

11. DEFAULT/WAIVER/MITIGATION.

It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this Agreement does not preclude pursuit of other remedies in this Agreement or provided by law.

12. FEDERAL OR STATE OF TEXAS FUNDING.

In the event that any work or part thereof is funded by State of Texas or U. S. Government funding and any statute, rule, regulation, grant, contract provision or other State of Texas or U. S. Government law, rule, regulation or other provision imposes additional or greater requirement(s) than stated herein, City agrees to timely comply therewith without additional cost or expense to County.

13. HEADINGS.

The titles which are used following the number of each paragraph are only for convenience in locating various provisions of this AGREEMENT and shall not be deemed to affect the interpretation or construction of such provision.

14. NUMBER AND GENDER.

Words of any gender used in this Agreement shall be held and construed to include any other gender; and words in the singular shall include the plural and vice versa, unless the text clearly requires otherwise.

15. COUNTERPARTS.

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

16. REMEDIES.

This Agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this Agreement and shall be cumulative.

17. APPROVAL

This agreement is expressly subject to and contingent upon formal approval by the Brazoria County Commissioners Court and by resolution of the respective City Council.

IN WITNESS WHEREOF this Agreement has been executed on behalf of the County of Brazoria and the City of Pearland in the manner provided by law.

BRAZORIA COUNTY, TEXAS

THE CITY OF PEARLAND

By: _____
L. M. "Matt" Sebesta, Jr.,
County Judge

By: _____
Clay Pearson, City Manager

Attested By:

Attested By:

Joyce Hudman, County Clerk

Young Lorfing, City Secretary

By: _____

Ro'Vin Garrett, Tax Assessor-Collector

RESOLUTION NO. R2015-64

A Resolution of the City Council of the City of Pearland, Texas, authorizing the City Manager or his designee to enter into an Interlocal Agreement with Brazoria County Tax Assessor-Collector implementation of a Scofflaw Program in accordance with Chapter 702 of the Texas Transportation Code.

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

Section 1. That certain Interlocal Agreement by and between the City of Pearland and Brazoria County Tax Assessor-Collector, a copy of which is attached hereto as Exhibit "A" and made a part hereof for all purposes, is hereby authorized and approved.

Section 2. That the City Manager or his designee is hereby authorized to execute and the City Secretary to attest an Interlocal Agreement with Brazoria County Tax Assessor-Collector.

PASSED, APPROVED and ADOPTED this the _____ day of _____,
A.D., 2015.

TOM REID
MAYOR

ATTEST:

YOUNG LORFING, TRMC
CITY SECRETARY

APPROVED AS TO FORM:

DARRIN M. COKER
CITY ATTORNEY

**City of Pearland**

3519 Liberty Drive
Pearland, Texas 77581
Tel: 281.652.1600
cityofpearland.com

To: Mayor & City Council.
Proposed Scofflaw program.
Pearland will be the first City in
Brazoria County to utilize the
program if implemented.

MEMORANDUM

TO: Jon R. Branson, Deputy City Manager
FROM: Jennifer Huhn, Municipal Court Administrator
DATE: April 6, 2015
SUBJECT: Scofflaw Provisions

In accordance with the Texas Department of Motor Vehicles a City may contract with the County Assessor-Tax Collector or the Texas Department of Transportation (DMV) to deny motor vehicle registration to an owner who has an outstanding warrant for failure to appear or failure to pay a fine involving a traffic offense with a possible maximum fine of \$200.

In Chapter 702 of the Transportation Code (Ch. 702, T.C.), this program is referred to as "Scofflaw," and is used much less by cities than the OmniBase program. Prior to 2011, only home-rule cities could enter into these agreements. In 2011, the authority was extended to general-law cities. The denial of the vehicle registration is permissive, meaning the County Assessor-Tax Collector must agree to participate. Cities may collect a \$20 fee from defendants who are referred to the Scofflaw program, but the fee can only be used to reimburse the county for its services.

After meeting with Perdue Brandon Fielder Collins Mott, LLP and Brazoria County staff located in the Pearland west tax office, it is my understanding that the court sends collection files directly to Perdue. They in turn share the information that we give to them to the Brazoria County Tax office. When an individual comes in to renew their vehicle registration their driver's license will be swiped and will either be clear or show that there is an open warrant.

In the event that there is a warrant the individual will not be able to get a current vehicle registration until they provide a receipt from the court stating that the warrant is cleared. When the individual shows that warrant is cleared then the Tax Office will charge the \$20 fee to the individual eliminating the need for the Court to reimburse the county.

Should the City move forward with this process, The City of Pearland will be the first City to move forward on this program in Brazoria County. Once approved, this process will take a matter of days to implement. Should you have any questions or require additional information please contact me at your convenience. This item will be presented to Council at the April 27, 2015 meeting for their consideration.

Draft Document

STATE OF TEXAS §

COUNTY OF BRAZORIA §

AN ORDINANCE PROVIDING FOR COLLECTION OF SCOFFLAW FEES PURSUANT TO TEXAS TRANSPORTATION CODE SECTION 702

WHEREAS, It has been and remains the longstanding policy of the CITY OF PEARLAND that the collection of delinquent fees and fines owed to the City is a priority and to encourage violators to pay their delinquent fees and fines, and

WHEREAS, the City has an interest in collecting the delinquent fees and/or fines owed to the City pursuant to Section 702 of the Texas Transportation Code; and

WHEREAS, the CITY OF PEARLAND is authorized by the provisions of Section 702.003(e-1) of the Texas Transportation Code to impose an additional Twenty Dollar (\$20.00) fee when BRAZORIA COUNTY places a registration hold on vehicles owned by individuals that have delinquent fees and/or fines owed to the CITY OF PEARLAND; and

WHEREAS, the provisions of Section 702 of the Texas Transportation Code have been complied with to add an additional Twenty Dollar (\$20.00) fee when BRAZORIA COUNTY places a registration hold on vehicles owned by individuals that have delinquent fees and/or fines owed to the CITY OF PEARLAND; and

WHEREAS, Perdue Brandon Fielder Collins & Mott, LLP is a Texas law firm that has developed and maintains the "Automated Assistant Program", which allows BRAZORIA COUNTY to access the law firm's database to identify if a person is a scofflaw in the CITY OF PEARLAND in cases referred to the law firm.

NOW THEREFORE BE IT RESOLVED by the CITY OF PEARLAND CITY COUNCIL that it imposes an additional Twenty Dollar (\$20.00)) fee when BRAZORIA COUNTY places a registration hold on vehicles owned by individuals that owe the CITY OF PEARLAND delinquent fees and/or fines as authorized by Texas Transportation Code Section 702.

Passed and approved this the _____ day of _____, 2015.

CITY OF PEARLAND, TOM REID, MAYOR

Attested:

Draft Document

STATE OF TEXAS

§
§
§

INTERLOCAL AGREEMENT - SCOFFLAW

COUNTY OF BRAZORIA

This Agreement made and entered into this _____ day of _____, 2015, by and between the County of Brazoria, hereinafter referred to as "County", with the agreement, consent, and participation of the *Brazoria County Tax Assessor-Collector*, hereinafter referred to as the "County or County Tax Assessor-Collector", and the City of _____, a Texas home-rule municipal corporation hereinafter referred to as "City", under the authority and in accordance with the Interlocal Cooperation Act, as set out in Chapter 791, Texas Government Code, and as authorized by Texas Transportation Code, Chapter 702.

WITNESSETH:

WHEREAS, Texas Government Code, Chapter 791, authorizes local governments of the state to enter into contracts for governmental functions and services to increase their efficiency and effectiveness; and

WHEREAS, the County and the City are local governments as defined in Texas Government Code, Section 791.003(4), have the authority to enter into this agreement, and have each entered into this agreement by the action of its governing body in the appropriate manner prescribed by law; and

WHEREAS, Transportation Code §702.003 allows a county tax assessor-collector, upon receipt of information from a municipality to assist a municipality in the enforcement of outstanding warrants of arrest for the failure to appear or failure to pay a fine on a complaint that involves the violation of a traffic offenses by refusing to register or re-register a motor vehicle; and

WHEREAS, Transportation Code §702.003 further allows a municipality to contract with the County to provide the necessary information to a county for the above determination by the county tax assessor-collector to deny motor vehicle registration or re-registration to certain persons; and

WHEREAS, such a consolidated effort in the effectuation of Texas Transportation Code, Chapter 702, are in each party's best interest and that of the public and that this agreement will increase the effective and efficient functioning of each party; and

WHEREAS, both the City and County represent to one another that each respective party has the authority to enter into this agreement and perform the obligations and duties stated herein; and

WHEREAS, the County and the City agree that this contract supersedes all prior oral and written agreements between the parties regarding this program and the refusal of motor vehicle registration.

NOW THEREFORE, this contract is made and entered into by County and City in consideration of the aforementioned recitals and for the mutual consideration stated herein (“the Agreement”):

PURPOSE OF AGREEMENT.

The purpose of the Agreement is to state the terms and conditions under which the County Tax Assessor-Collector will refuse to register or re-register certain motor vehicles when the County Tax Assessor-Collector receives information from City that the owner of the vehicle has an outstanding warrant for failure to appear or failure to pay a fine on a complaint that involves a violation of a traffic law, as defined by section 702.001 of the Transportation Code, as authorized and specifically set out under section 702.003 of the Texas Transportation Code.

1. DUTIES OF THE CITY.

- 2.1** The City shall contract with the County to provide information to enable the County Tax Assessor-Collector to identify vehicle owners which have an outstanding warrant from the City for failure to appear or failure to pay a fine on a complaint that involves a violation of a traffic law pursuant to the Texas Transportation Code that is past due. The City will comply with all provisions of the Texas Transportation Code as well as all other applicable laws of the State of Texas while in the performance of its duties and obligations under the Agreement.
- 2.2** The City shall notify the County Tax Assessor-Collector within the next business day when a traffic law matter is cleared regarding a person:
 - 2.2.1** Against whom a judgment has been entered and who has paid the municipal court the full amount of the fine or civil penalty and all court costs; or
 - 2.2.2** Who has perfected an appeal of the case for which the arrest warrant was issued; or
 - 2.2.3** Whose charge for which the arrest warrant was issued has been dismissed; or
 - 2.2.4** Whose charge for which the arrest warrant was issued has been cleared through judicial action or clerical correction.
- 2.3** The City shall impose an additional \$20 fee to a person who has an outstanding warrant for failure to appear or failure to pay a fine on a complaint that involves

the violation of a traffic law to be collected by the County as prescribed in Section 3.3 of this contract. The additional fee may be used only to reimburse the County Tax Assessor-Collector for its expenses for providing services under this contract, as set out in Section 702.003 of the Texas Transportation Code. In the event that the individual is acquitted of the underlying charge, then no payment will be imposed.

- 2.4 The City shall provide to the County Tax Assessor Collector's office periodic updates not to exceed two weeks, with the information of all outstanding records with warrant status for failure to appear in court as prescribed in Subsection (a) of Section 702.003 of the Texas Transportation Code. The City shall provide all data records in an electronic format acceptable with Tax Office Database for the purposes of adding, updating, or deleting records.
- 2.5 The City shall provide a telephone number or the location of an office where individual inquiries and complaints can be made regarding denial of registration by the County Tax Assessor-Collector due to outstanding City warrants and/or civil penalties that are past due, as well as to explain the procedures necessary to resolve the issues so as to obtain valid registration.
- 2.6 The City shall identify, by name, address, and telephone number, an individual or individuals who shall have authority on behalf of the City to coordinate, direct and supervise the Agreement.
- 2.7 Pursuant to Texas Transportation Code Section 702.004, the City shall insure that each city peace officer shall issue a written warning to each person to whom the officer issues a citation for a violation of a traffic law in the municipality that states that if the person fails to appear in court as provided by law for the prosecution of the offense or fails to pay a fine for the violation, the person might not be permitted to register or re-register a motor vehicle in this state. The warning may be printed on the citation.
- 2.8 The City shall immediately recall all warrants for each individual who pays his/her fines and all court costs.
- 2.9 The City shall upon clearance of citation/warrant, sign and seal release forms issued by county tax office personnel to an individual who is denied vehicle registration. City signature and seal serves as authorization and notice from City for the Tax Office to issue motor vehicle registration renewal and clearance from Tax Office Database.
- 2.10 The City has the sole discretion to provide the County with an outstanding violation record to prohibit motor vehicle registration. However, the City shall only include those outstanding violation records that involve a violation of a "traffic law", as defined by section 702.001 of the Texas Transportation Code.

- 2.11 If deemed necessary by either party, the City shall allow Tax Assessor Collector's Office to contract directly with the City's current collections database vendor, for the sole purpose of obtaining necessary reports in required electronic format and or language. Such additional cost for services rendered by collections database vendor, shall be paid at Tax Assessor-Collector's Office expense.

2. DUTIES OF THE COUNTY

- 3.1 The County Tax Assessor-Collector, and his/her subcontractor/agent, shall:

Create or maintain information system database that accurately stores and accesses record entries from government entities. Maintain records after compliance for five years and indefinitely on those who do not comply. Data collected from any governmental entity shall be considered confidential and such data will be used only for the purpose expressed in this contract.

- 3.1.1 Refuse to register or re-register all motor vehicles whose owner(s) has/have outstanding City warrants for traffic violations.
- 3.1.2 Issue corresponding Release Forms to individuals who are denied vehicle registration due to outstanding violations/warrants with the City.
- 3.1.3 Distribute to motor vehicle owners that have been denied registration, instruction sheets that will explain the steps necessary to resolve their outstanding traffic violation to obtain vehicle registration, and properly give directions to corresponding City offices where necessary issues may be resolved. Such instructions sheets will contain the case number and corresponding municipal entities where outstanding fines are owed.
- 3.1.4 Distribute an instruction sheet with a telephone number and office address to individuals who want to complain about registration denial if said instructions and address are furnished by the City.
- 3.2 The County Tax Assessor-Collector, and his/her subcontractor/agent, shall register or re-register a motor vehicle upon receipt of notice from the City that the motor vehicle owner's traffic law matter is cleared pursuant to Sections 2.2 and 2.10 above.
- 3.3 The County Tax Assessor-Collector, and his/her subcontractor/agent upon receipt of properly signed and sealed Release Form, shall collect the additional fee of \$20 imposed by the City from an individual attempting to renew his/her registration pursuant to Section 2.4 above.

3.4 The County Tax Assessor-Collector shall at any time have the sole authority and prerogative to register or re-register a motor vehicle.

3. **TERM AND TERMINATION.**

This Interlocal Agreement shall be effective upon its date of execution by the last party to execute the Agreement and shall terminate on the _____ day of _____ 20____. The agreement shall automatically renew for successive one-year terms. This agreement may be terminated at any time by either party upon sixty (60) days written notice to the other parties.

4. **NOTICE.**

Official notice shall be by written notice and delivery to all of the parties to this Agreement. Delivery shall be by fax or deposit in the United States Postal Service, first class, return receipt requested to:

TO THE COUNTY TAX ASSESSOR-COLLECTOR:

Ro'Vin Garrett
111 E. Locust
Angleton, TX 77515
(979) 864-1320

TO THE CITY:

of

5. **INDEMNIFICATION.**

County and City agree that both County and City shall each be responsible for their own negligent acts or omissions or other tortuous conduct in the course of performance of this Agreement, without waiving any sovereign or governmental immunity available to either County or City under Texas law and without waiving any available defenses under Texas law. Nothing in this paragraph shall be construed to create or grant any rights, contractual or otherwise, in or to any third persons or entities.

6. **FISCAL FUNDING.**

Notwithstanding anything to the contrary herein, this Agreement is expressly contingent upon the availability of county funding for each item and obligation contained herein. City shall have no right of action against the County as regards this Agreement, specifically including any funding by County of this Agreement in the event that the County is unable to fulfill its

obligations under this Agreement as a result of the lack of sufficient funding for any item or obligation from any source utilized to fund this Agreement or failure of any funding party to budget or authorize funding for this during the current or future fiscal years. In the event of insufficient funding, or if funds become unavailable in whole or part, the County, at its sole discretion, may provide funds from a separate source or terminate this Agreement. In the event that payments or expenditures are made, they shall be made from current funds as required by Chapter 791, Texas Government Code.

7. **VENUE.**

Venue to enforce this Agreement shall lie exclusively in Brazoria County, Texas.

8. **NONDISCRIMINATION.**

Parties to this Agreement shall not discriminate on the basis of race, color, national origin, sex, religion, age, disability, sexual orientation.

9. **ENTIRE AGREEMENT.**

This Agreement constitutes the entire agreement between the parties hereto and may not be modified except by an instrument in writing executed by the parties hereto as herein provided.

10. **SEVERABILITY.**

If any provision of this Agreement shall be held invalid, void or unenforceable, the remaining provisions hereof shall not be affected or impaired, and such remaining provisions shall remain in full force and effect.

11. **DEFAULT/WAIVER/MITIGATION.**

It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this Agreement does not preclude pursuit of other remedies in this Agreement or provided by law.

12. **FEDERAL OR STATE OF TEXAS FUNDING.**

In the event that any work or part thereof is funded by State of Texas or U. S. Government funding and any statute, rule, regulation, grant, contract provision or other State of Texas or U. S. Government law, rule, regulation or other provision imposes additional or greater requirement(s) than stated herein, City agrees to timely comply therewith without additional cost or expense to County.

13. **HEADINGS.**

The titles which are used following the number of each paragraph are only for convenience in locating various provisions of this AGREEMENT and shall not be deemed to affect the interpretation or construction of such provision.

14. **NUMBER AND GENDER.**

Words of any gender used in this Agreement shall be held and construed to include any other gender; and words in the singular shall include the plural and vice versa, unless the text clearly requires otherwise.

15. **COUNTERPARTS.**

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

16. **REMEDIES.**

This Agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this Agreement and shall be cumulative.

17. **APPROVAL**

This agreement is expressly subject to and contingent upon formal approval by the Brazoria County Commissioners Court and by resolution of the respective City Council.

IN WITNESS WHEREOF this Agreement has been executed on behalf of the County of Brazoria and the City of _____ in the manner provided by law.

BRAZORIA COUNTY, TEXAS

THE CITY OF _____

By: _____

By: _____

Matt Sebesta,
County Judge

Mayor

Attested By:

Joyce Hudman, County Clerk

Attested By:

City Secretary

By: _____

Ro'Vin Garrett
Tax Assessor-Collector

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

AGENDA OF:	May 11, 2015	ITEM NO.:	Ordinance No. 1513
DATE SUBMITTED:	May 1, 2015	DEPT. OF ORIGIN:	Municipal Court
PREPARED BY:	Jennifer Huhn	PRESENTOR:	Clay Pearson
REVIEWED BY:	Jon R. Branson	REVIEW DATE:	May 1, 2015
SUBJECT: An Ordinance of the City Council of the City of Pearland, Texas, providing for the establishment of Scofflaw Fees pursuant to Texas Transportation Code Section 702.			
EXHIBITS: Ordinance NO. 1513			
FUNDING:			
<input type="checkbox"/> Bonds To Be Sold <input type="checkbox"/> Grant <input type="checkbox"/> Bonds- Sold <input type="checkbox"/> Developer/Other <input type="checkbox"/> Cash <input type="checkbox"/> L/P – Sold <input type="checkbox"/> L/P – To Be Sold			
EXPENDITURE REQUIRED: \$		AMOUNT BUDGETED: \$	
AMOUNT AVAILABLE:		PROJECT NO.:	
ACCOUNT NO.:			
ADDITIONAL APPROPRIATION REQUIRED:			
ACCOUNT NO.:			
PROJECT NO.:			
To be completed by Department:			
Finance	Legal	Ordinance	Resolution

EXECUTIVE SUMMARY

With the initiation of the Scofflaw program it is necessary to create an Ordinance which establishes a fee so that the Brazoria County Tax Assessor-Collector may collect said fee from the City of Pearland in accordance with the Texas Transportation Code Section 702.

RECOMMENDED ACTION

Consideration and approval of Ordinance NO. 1513.

ORDINANCE NO. 1513

An Ordinance of the City Council of the City of Pearland, Texas, providing for collection of Scofflaw Fees pursuant to Texas Transportation Code Section 702.

WHEREAS, It has been and remains the longstanding policy of the City Of Pearland that the collection of delinquent fees and fines owed to the City is a priority and to encourage violators to pay their delinquent fees and fines, and

WHEREAS, the City has an interest in collecting the delinquent fees and/or fines owed to the City pursuant to Section 702 of the Texas Transportation Code; and

WHEREAS, the City Of Pearland is authorized by the provisions of Section 702.003(e-1) of the Texas Transportation Code to impose an additional Twenty Dollar (\$20.00) fee when Brazoria County places a registration hold on vehicles owned by individuals that have delinquent fees and/or fines owed to the City Of Pearland; and

WHEREAS, the provisions of Section 702 of the Texas Transportation Code have been complied with to add an additional Twenty Dollar (\$20.00) fee when Brazoria County places a registration hold on vehicles owned by individuals that have delinquent fees and/or fines owed to the City Of Pearland; and

WHEREAS, Perdue Brandon Fielder Collins & Mott, LLP is a Texas law firm that has developed and maintains the "Automated Assistant Program", which allows Brazoria County to access the law firm's database to identify if a person is subject to Scofflaw Fees in the City Of Pearland in cases referred to the law firm, now therefore

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

Section 1. That the City imposes an additional Twenty Dollar (\$20.00)) fee when Brazoria County places a registration hold on vehicles owned by individuals that owe the City Of Pearland delinquent fees and/or fines as authorized by Texas Transportation Code Section 702.

ORDINANCE NO. 1513

PASSED and APPROVED ON FIRST READING this the _____ day of _____, A. D., 2015.

TOM REID
MAYOR

ATTEST:

YOUNG LORFING
CITY SECRETARY

APPROVED AS TO FORM:

DARRIN M. COKER
CITY ATTORNEY

PASSED and APPROVED ON SECOND AND FINAL READING this the _____ day of _____, A. D., 2015.

TOM REID
MAYOR

ATTEST:

YOUNG LORFING, TRMC
CITY SECRETARY

APPROVED AS TO FORM:

DARRIN M. COKER
CITY ATTORNEY

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

AGENDA OF: 11 May 2015	ITEM NO.: Resolution No. R2015-82
DATE SUBMITTED: 6 May 2015	DEPT. OF ORIGIN: Fire
PREPARED BY: Vance Riley, Fire Chief	PRESENTOR: Vance Riley
REVIEWED BY: Clay Pearson	REVIEW DATE: 6 May 2015
SUBJECT: Interlocal Agreement for the City of Pearland to provide emergency medical services to the City of Brookside Village.	
EXHIBITS: Interlocal Agreement	
FUNDING: <input type="checkbox"/> Grant <input type="checkbox"/> Developer/Other <input checked="" type="checkbox"/> Cash <input type="checkbox"/> Bonds To Be Sold <input type="checkbox"/> Bonds- Sold <input type="checkbox"/> L/P – Sold <input type="checkbox"/> L/P – To Be Sold	
EXPENDITURE REQUIRED: AMOUNT BUDGETED: AMOUNT AVAILABLE:	
ACCOUNT NO.:	PROJECT NO.:
ADDITIONAL APPROPRIATION REQUIRED:	
ACCOUNT NO.:	
PROJECT NO.:	

EXECUTIVE SUMMARY

BACKGROUND

During a routine review of public safety mutual aid agreements it was discovered that the annual agreement for the City of Pearland to provide emergency medical services to the City of Brookside Village had not been approved since 1983. Since that time Pearland EMS and now Pearland Fire Department have been providing automatic mutual aid for emergency medical calls to the City of Brookside Village without agreement or reimbursement.

During calendar year 2014 that was approximately 65 incidents. City staff met with Brookside Village Council members to establish a new Interlocal Agreement with updated costs. The agreed upon fee is \$5 per rooftop per month, payable in lump sum in December of each year, timed with Brookside Village's property tax collections. The amount is based upon an amount that the City receives from one of the larger ETJ neighborhoods.

The Brookside Village City Council passed the new Interlocal Agreement on 4 May 2015.

City staff is separately reviewing current dispatch practices with the Brookside Village volunteer fire department and will be approaching them. Likewise, staff is in conversations with Brazoria County regarding the amount the City of Pearland receives to offset fire protection costs into the unincorporated areas of Brazoria County in our ETJ.

SCOPE OF CONTRACT

BID AND AWARD

SCHEDULE

POLICY/GOAL CONSIDERATION

Safe Community. Fiscally Responsible.

CURRENT AND FUTURE FUNDING /FINANCIAL IMPACTS

Approximately \$34,200 per fiscal year in additional revenue.

O&M IMPACT INFORMATION

Fiscal Year	2014	2015	2016

RECOMMENDED ACTION

Approval of Interlocal Agreement

Memo

3/6/2015

To: Mayor and City Council members
FYI, work in progress to review and develop a potential agreement with Brookside Village, if they want to continue with Pearland providing EMS. A model may be what City already does with MUD districts -- that would require \$4,400/month or \$53,280/year if Brookside Village chose to stay with the City of Pearland service.
Clay

To: Clay Pearson, City Manager
From: Vance Riley, Fire Chief *VR*
CC: Jon Branson, Deputy City Manager; Trent Epperson, Assistant City Manager; Claire Bogard, Director of Finance; Darrin Coker, City Attorney; Chris Doyle, Chief of Police
Date: 5 March 2015
Re: City of Brookside Village EMS Incidents

After consolidation of the Fire & EMS Departments we have been reviewing ways to improve efficiency and effectiveness as well as cost recovery for our operations. Part of this process is a review of mutual aid agreements and/or compensation for providing fire and EMS services in our ETJ and neighboring cities.

After review of known documents it appears that the City of Pearland may have been providing emergency medical services to the City of Brookside Village (BV) since at least 1979. The earliest document shows a one year contract with BV in the amount of \$3200 per year signed in January of 1980 or 1981. The second document shows a one year contract with BV in the amount of \$4000 per year signed in December 1982. Both of these documents are for one (1) year terms. We are unable to locate any payments or further signed contracts with BV since 1982. We are currently automatically dispatched to emergency medical incidents in BV.

For fire incidents in BV there is a, long-standing, signed mutual aid agreement for fire protection through Brazoria County. Brookside Village VFD must request us to respond to fire incidents; it is not automatic. 9-1-1 calls from BV are routed to Pearland PD who dispatches for BV VFD for fire incidents.

As BV shares the same zip code with Pearland it is difficult to determine the number of times that we provided automatic EMS mutual aid to them before 2014. Internal changes to our incident reporting software have been made to make it easier to track future responses to BV. In 2014, Pearland FD responded 65 times to BV to provide emergency medical services. Members of the former Pearland EMS feel that we have responded a similar number of times in previous years.

We may be currently automatically providing EMS mutual aid to BV without any type of legal or procedural agreement and we recommend that a new contract be signed with the City of Brookside Village as soon as possible. We should charge a reasonable amount to recoup some of our expenses of providing service. We recommend either a per incident fee or an annual fee. If you have any questions please do not hesitate to contact us. Thank you for your time and consideration.

RESOLUTION NO. R2015-82

A Resolution of the City Council of the City of Pearland, Texas, authorizing the City Manager or his designee to enter into an Interlocal Agreement with Brookside Village for emergency medical services.

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

Section 1. That certain Interlocal Agreement by and between the City of Pearland and Brookside Village, a copy of which is attached hereto as Exhibit "A" and made a part hereof for all purposes, is hereby authorized and approved.

Section 2. That the City Manager or his designee is hereby authorized to execute and the City Secretary to attest an Interlocal Agreement with Brookside Village.

PASSED, APPROVED and ADOPTED this the 11th day of May, A.D., 2015.

TOM REID
MAYOR

ATTEST:

YOUNG LORFING, TRMC
CITY SECRETARY

APPROVED AS TO FORM:

DARRIN M. COKER
CITY ATTORNEY

**INTERLOCAL AGREEMENT FOR
EMERGENCY MEDICAL SERVICES**

This Agreement, made and entered into by and between the City of Pearland, a home rule municipality incorporated under the laws of the State of Texas, hereinafter called "City," and the Brookside Village, hereinafter called "BV."

RECITALS

Whereas, The City and BV desire to enter into an agreement allowing the City to provide emergency medical services in BV; and

Whereas, this Agreement is entered into pursuant to the authority of the Interlocal Cooperation Act, V.T.C.A. Gov. Code Sec. 791.001 et seq.

WITNESSETH

NOW THEREFORE, in consideration of the mutual covenants, agreements and benefits to the parties herein named, it is hereby agreed as follows:

I. Purpose

The purpose of this Agreement is to allow the City to provide emergency medical services in BV where it would not otherwise be available.

II. Term

This Agreement shall remain in full force and effect from May 11, 2015 until September 30, 2016 ("Initial Term"), and shall automatically renew on October 1st of each subsequent year ("Renewal Terms") unless terminated as provided herein. Either party shall have the right to terminate this Agreement at its convenience by providing the other party a minimum of thirty (30) days' written notice. **Notwithstanding the forgoing, the parties shall, no later than September 1st of each year, review the costs provided for in Section IV of this Agreement to determine whether said costs shall be renegotiated to insure that the City recaptures all costs associated with providing emergency medical services pursuant to this Agreement.**

III. City Responsibilities

- Automatically provide emergency medical services for emergency medical incidents within the incorporated limits of BV.
- Provide emergency medical service using Texas Department of State Health Services certified and licensed emergency medical personnel and equipment.
- Provide emergency medical service in accordance with Pearland Fire Department Medical Protocols as directed by the Pearland Fire Department Medical Director.
- 9-1-1 telephone calls received by a Public Safety Answering Point for an emergency incident within the incorporated limits of BV shall be transferred to the Pearland Fire Department dispatching agency.
- Emergency medical incidents shall include unplanned illness or injury that may require medical evaluation and/or transportation by ambulance to an appropriate medical facility.
- Emergency medical services shall include, as necessary or needed, basic life support, advanced life support and transport by ambulance to an appropriate medical facility. In no event shall emergency medical services include the routine transport of patients that, in the sole discretion of the Pearland Fire Department, are not emergency medical incidents.
- Pearland Fire Department medical personnel shall have complete authority regarding the treatment and transport destination of any patient in accordance with Pearland Fire Department Medical Protocols.
- The Pearland Fire Department shall respond to emergency medical calls to the best of its ability and based on availability of City resources, but the City at all times shall reserve the discretion to request and utilize surrounding agencies to provide mutual aid when appropriate.

IV. BV Responsibilities

BV shall be responsible for payment of an Initial Term payment of **\$34,200 (estimated 570 rooftops x \$5 per rooftop x 12 months)** to the City on or before December 31, 2015. BV shall make payment of any Renewal Term payment to the City on or before October 1st of each Renewal Term.

V. NOTICES

- A. All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, or delivered to the City at the following address:

City of Pearland
3519 Liberty Drive
Pearland, Texas 77493
Attention: City Manager

- B. All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, or delivered to BV at the following address:

City of Brookside Village
6243 Brookside Road
Brookside Village, Texas 77581

VI. CURRENT FUNDS AVAILABLE

Both parties hereto represent that they have appropriated sufficient funds to satisfy their respective obligations under this Agreement.

VII. MISCELLANEOUS

- A. City and BV recognize and agree that City, in performance of this agreement, shall act as an independent contractor and shall have control of its own work and the manner in which it is performed.
- B. City and BV recognize and agree that BV, in performance of this Agreement, shall act as an independent contractor and shall have control of its own work and the manner in which it is performed.
- C. City and BV shall comply with all applicable laws, regulations and requirements in performance of their respective obligations under this agreement.
- D. City and BV recognize and agree that nothing herein shall be construed to create any rights in third parties.
- E. City and BV agree that no party shall have the right to seek indemnification or contribution from any other party hereto for any losses, costs, expenses, or damages directly or indirectly arising, in whole or part from this Agreement.

F. Whenever possible, each provision of this agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any section, subsection, paragraph, sentence, clause, phrase, work or portion of this Agreement is, for any reason, held invalid unconstitutional or otherwise unenforceable by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

G. The Rights and Obligations of this Agreement shall not be assigned without prior written consent of the City and BV.

H. This Agreement may only be amended, modified, or supplemented in writing and subsequently signed and dated by the City, as acted upon by its City Council and BV, as acted upon by its City Council.

Each person signing below represents that he or she has read this Agreement in its entirety, including any and all attachments and exhibits, understands its terms, is duly authorized to execute this Agreement on behalf of the party indicated by his or her name below and agrees on behalf of said party that the party will be bound by these terms.

SIGNED and ENTERED his _____ day of _____, 2015.

BROOKSIDE VILLAGE

ATTEST:

CITY OF PEARLAND

Clay Pearson, City Manager

ATTEST:

Young Lorfing, City Secretary

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

AGENDA OF: May 11, 2015	ITEM NO.: Resolution No. R2015-78
DATE SUBMITTED: May 7, 2015	DEPT. OF ORIGIN: PEDC
PREPARED BY: Matt Buchanan	PRESENTOR: Matt Buchanan
REVIEWED BY: Darrin Coker	REVIEW DATE:
 SUBJECT: A Resolution of the City Council of the City of Pearland, Texas, authorizing the City Manager or his designee to enter into Purchase Agreements with the Pearland Independent School District (“PISD”) and American Commercial Contractor, LLC., for the transfer of real property located near the intersection of SH35 and Bailey Road. 	
EXHIBITS: R2015-78: Sale and Purchase Agreements	
FUNDING: <input type="checkbox"/> Grant <input type="checkbox"/> Developer/Other <input type="checkbox"/> Cash <input type="checkbox"/> Bonds To Be Sold <input type="checkbox"/> Bonds- Sold <input type="checkbox"/> L/P – Sold <input type="checkbox"/> L/P – To Be Sold	
EXPENDITURE REQUIRED: N/A AMOUNT AVAILABLE: ACCOUNT NO.: ADDITIONAL APPROPRIATION REQUIRED: ACCOUNT NO.: PROJECT NO.:	AMOUNT BUDGETED: PROJECT NO.:
To be completed by Department: Finance X Legal Ordinance X Resolution	

EXECUTIVE SUMMARY

In December 2012 the City created a 121.6 acre reinvestment zone for properties located generally northwest of the intersection of Bailey Road and SH 35 to encourage industrial development that would create jobs and diversify and increase our community’s tax base. 97 acres of the property that was included in the zone is owned by the Pearland Independent School District (PISD). The land was purchased by PISD in 2004 for possible school facilities but has now been determined by the District to be surplus. The City, PEDC and PISD have been working cooperatively to find suitable users for the sites.

The property is currently zoned for manufacturing that would allow various manufacturing and distribution uses. The City and PEDC over the years have invested in sewer, water and the construction of the Bailey overpass to encourage development in the area.

Since December 2013 we have been working with Shale Inland to construct a 210,000 tilt up concrete office, manufacturing and distribution facility on 40 acres of the site. The facility will be located on the northern part of the tract immediately south of Weatherford's manufacturing and storage facility. Investment in land, building, and equipment is estimated at \$21 million and will create approximately 80 jobs.

Shale-Inland Holdings is a leading specialty industrial supplier of pipe, valves, fittings and related products/technical services to the chemical, petrochemical and industrial sectors with distribution from 10 distinct brands and approximately 40 branches throughout North America.

The City will be assisting PISD in the development of the property. PISD will sell the northern portion of the 97 acre tract (approximately 40 acres) to the City of Pearland and the City will then sell it to Shale-Inland's developer, American Commercial Contractors, LLC ("ACC") under the same terms and conditions. The City's purchase will be contingent upon selling the parcel to ACC.

RECOMMENDED ACTION

Approve the City Manager to enter into Sale and Purchase Agreements with the Pearland Independent School District and American Commercial Contractors, LLC.

RESOLUTION NO. R2015-78

A Resolution of the City Council of the City of Pearland, Texas, authorizing the City Manager or his designee to enter into Purchase Agreements with the Pearland Independent School District (“PISD”) and American Commercial Contractor, LLC., for the transfer of real property located near the intersection of SH35 and Bailey Road.

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

Section 1. That certain Purchase Agreements, copies of which are attached hereto as Exhibits “A” and “B” and made a part hereof for all purposes, are hereby authorized and approved.

Section 2. That the City Manager or his designee is hereby authorized to execute, and the City Secretary to attest, certain Purchase Agreements with PISD and American Commercial Contractors, LLC.

PASSED, APPROVED and ADOPTED this the 11th day of May, A.D., 2015.

TOM REID
MAYOR

ATTEST:

YOUNG LORFING, TRMC
CITY SECRETARY

APPROVED AS TO FORM:

DARRIN M. COKER
CITY ATTORNEY

SALE AND PURCHASE AGREEMENT

THIS SALE AND PURCHASE AGREEMENT (“Agreement”) made and entered into on the Effective Date, as hereinafter defined, by and between the PEARLAND INDEPENDENT SCHOOL DISTRICT (hereinafter referred to as “Seller”), and the CITY OF PEARLAND (hereinafter “Buyer”). Buyer and Seller are herein collectively referred to as the “Parties” and individually as a “Party”.

WITNESSETH:

1. **Property.** Subject to the terms and conditions set forth below, Seller agrees to sell and convey to Buyer and Buyer agrees to purchase from Seller a certain tract of land described as approximately 40 acres, more or less, located on S. Main Street in Pearland, Texas, located in Brazoria County, Texas, as more particularly described in Exhibit “A,” attached hereto and incorporated herein for all purposes, together with any and all easements, right-of-way, privileges, benefits, contract rights, development rights, permits, licenses or approvals, improvements, or appurtenances arising from, pertaining to or associated with said real estate (collectively, the “Property”). Notwithstanding anything herein to the contrary, the term “Property” shall exclude, and Seller hereby expressly reserves for itself, its successors and assigns, all of Seller’s interest in and to all oil, gas or minerals in or under and that may be produced from the Property, together with the exclusive right, as between Buyer and Seller, to execute any oil, gas and/or other mineral leases (collectively the “Mineral Leases”); and together with all royalties, rentals, bonuses and other payments and consideration from any and all such Mineral Leases now or hereinafter existing with respect to the Property, and together with all other rights, title and interests appurtenant to the mineral estate (herein collectively called the “Mineral Estate”), subject however to Seller’s waiver of its right to use the surface of the Property to drill, produce, treat and/or transport oil, gas or other minerals from the Mineral Estate.

2. **Purchase Price.** The Property shall be sold by the Seller and purchased by the Buyer for the total purchase price (the "Purchase Price") equal to \$1.50 per gross square foot, for an estimated total purchase price of Two Million Six Hundred and Thirteen Thousand, Six Hundred and Dollars (\$2,613,600.00) (the “Purchase Price”), to be adjusted per final plat of the Property. The Purchase Price shall be payable in cash or in immediately available funds to Seller at the closing (the "Closing") of conveying the Property to the Buyer.

3. **Earnest Money.** As a condition precedent to the validity of this Agreement, Twenty Five Thousand and No/100 Dollars (\$25,000.00) is herewith tendered by, and is to be deposited as, earnest money (the “Earnest Money”) with the Title Company (as defined herein) and placed in an interest bearing account, upon execution of the Agreement by both Parties. Such interest earned shall be additional Earnest Money.

4. **Closing.** Subject to the terms and conditions hereof, the closing of this transaction (the “Closing”) shall be held at Old Republic National Title Insurance Company, Attn: Lavinia Longley, 777 Post Oak Boulevard, Suite 125, Houston, Texas 77056-3211 (the “Title Company”), not later than thirty (30) days following the expiration of the Inspection Period (the “Closing Date”), or such other time as may be mutually agreed upon by Seller and Buyer. Seller shall deliver possession of the Property to Buyer on the Closing Date. Closing is expressly conditioned and contingent upon the occurrence of Buyer’s execution and Title Company’s receipt of a binding contract for the sale of the Property to a purchaser acceptable to Seller (hereinafter “Buyer’s Purchaser”), such contract to be approved by Seller prior to Buyer and Buyer’s Purchaser’s execution of the same. Approval by Seller of such contract shall not be unreasonably denied. Closing is further conditioned upon all other conditions of Closing listed in Section 9 below.

5. **Title Insurance.** Within ten (10) days after the Effective Date hereof, Seller shall deliver to Buyer a title commitment (the “Title Commitment”) for an owner’s title insurance policy (standard Texas form) issued by the Title Company, in the amount of the Purchase Price covering title to the Property, showing title in the Seller’s name, subject only to (a) title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount which may be removed by the payment of money at the time of Closing, and which the Seller shall so remove at the time by using the funds to be paid to Seller at closing, and (b) such other exceptions as may be acceptable to Buyer (with all of said exceptions being herein referred to as the “Permitted Exceptions”). Within ten (10) days after the Effective Date, Seller shall cause the Title Company to provide to Buyer copies of any documents referred to as exceptions in the Title Commitment, together with the vesting deed(s). The Title Commitment shall be conclusive evidence of good title as to all matters to be insured by the policy, subject to the exceptions as therein stated. The cost of any title search fees and said Title Commitment and the premium for the basic title insurance policy to be issued pursuant thereto shall be borne by Seller and paid by Seller on or before Closing. The costs of any exceptions, deletions, endorsements or express coverages shall be paid by Buyer.

6. **Survey and Plat.** Within Sixty (60) days of the Effective Date hereof, Buyer will obtain a new or updated Survey acceptable to the Title Company and deliver the acceptable Survey to Buyer and the Title Company. The Survey will (1) identify the Property by metes and bounds; (2) show that the Survey was made and staked on the ground with corners permanently marked; (3) set forth the dimensions and total area of the Property; (4) show the location of all improvements, highways, streets, roads, railroads, rivers, creeks, or other waterways, fences, easements and rights-of-way on the Property with all easements and rights-of-way referenced to their recording information; (5) show any discrepancies or conflicts in boundaries, any visible encroachments, and any portion of the Property that has been designated by the Federal Emergency Management Agency, Federal Insurance Administration, the Army Corps of Engineers, or any other governmental agency or body as being subject to special or increased flooding hazards; and, (6) if required,

contain a surveyor's certificate, addressed to Seller, Buyer and the Title Company, that the Survey is true and correct. At such time as Buyer has received both the Title Commitment (with all underlying documents and the vesting deed) and the Survey, Buyer shall have fifteen (15) days in which to examine the Title Commitment and the Survey and notify Seller of those items which Buyer finds objectionable ("Encumbrances"). Buyer's failure to object to Encumbrances within the time allowed shall constitute a waiver of Buyer's right to object and such Encumbrances shall be deemed Permitted Exceptions, except that satisfaction of the requirements of Schedule C of the Title Commitment shall not be deemed to have been waived. If objections are made by Buyer within the time allowed, Seller, at its sole cost and expense, shall have the right, but not the obligation, to cure or remove the Encumbrances that Buyer has objected to, give Buyer written notice thereof, and deliver within ten (10) days of the date of Buyer's notice, (i) an amended Survey and/or Title Commitment reflecting the cure of such matters, or (ii) written notice to Seller stating that it will not cure or remove any or all such Encumbrances (the "No Cure Notice"). In the event that Seller delivers such No Cure Notice to Buyer, Buyer may either (i) waive such Encumbrances and accept title to the Property subject to such Encumbrances; or (ii) as its sole remedy, terminate this Agreement by providing written notice of such termination to Seller within five (5) days of receipt of the No Cure Notice from Seller, in which event the Earnest Money shall be refunded to Buyer.

Within 150 days of the Effective Date, Buyer will cause to be prepared and recorded, at Buyer's expense, a plat of the Property and Seller's remaining adjacent property as two separate unrestricted reserves. Seller will cooperate in the execution of any documents necessary for the preparation, approval and recording of said plat. Such plat must be clear of any public rights of way for road or access within the Property or Seller's remaining adjacent Property, except for any private shared access roads created by and between Seller and Buyer by plat, separate easement or in the Special Warranty Deed for the Property.

7. **Feasibility Study and Inspection.**

- (a) Within one hundred and eighty (180) days after the Effective Date hereof (the "Inspection Period"), Buyer, at its expense, may complete or cause to be completed inspections of the Property (including any improvements) by inspectors of Buyer's choice. Inspections may include but are not limited to: (1) physical property inspection; (2) economic feasibility study; and, (3) any type of environmental assessment or engineering study including the performance of tests such as soil tests or air sampling. Seller shall permit Buyer, Buyer's inspectors as well as Buyer's Purchaser and its inspectors access to the Property at reasonable times. Buyer hereby indemnifies and holds Seller harmless from any claim, liability, loss, damage, cost and expense for property damage directly arising out of Buyer's activities upon

the Property allowed by this Section. Prior to accessing the Property, Buyer's Purchaser's inspectors and agents must (i) execute documents necessary to indemnify and hold Seller harmless from any claim, liability, loss, damage, cost and expense for property damage directly arising out of Buyer's Purchaser's inspectors' and agents' activities upon the Property allowed by this Section, in form and substance substantially similar to that Access and Indemnity Agreement, attached hereto as Exhibit "C" and incorporated herein by reference (the "Access and Indemnity Agreement"), and (ii) provide evidence that Buyer's Purchaser and its inspectors and agents are covered by policies of Commercial General Liability Insurance covering and personal injury or property damage caused by the acts or omissions of Buyer's Purchaser and its inspectors and agents. If, during this Inspection Period, Buyer elects, in Buyer's sole judgment, to terminate this Agreement for any reason, Buyer may do so by providing written notice of termination before the expiration of the Inspection Period. Upon termination of this Agreement pursuant to this Section on or before the 180th day following the Effective Date, all Earnest Money shall be refunded to Buyer, less the sum of \$500.00 which shall be retained by Seller as additional consideration for this Agreement. In the event that Buyer terminates this Agreement after the expiration of the Inspection Period the entire Earnest Money amount, which shall become non-refundable upon the expiration of the Inspection Period, shall be retained by Seller. If this transaction does not close, Buyer shall restore the property to its original condition if altered due to inspections, studies, or assessments completed by Buyer or Buyer's inspectors.

- (b) Within twenty (20) days of the Effective Date, Seller agrees to provide to Buyer copies of all previous environmental assessments, geotechnical reports, studies or analyses and/or plats of the Property, if any, to the extent available to Seller and under Seller's control, with respect to the Property without any representations as to the truth or accuracy of same. If Buyer terminates this Agreement pursuant to this Section, Buyer agrees to provide to Seller copies of all reports of inspections, studies, or assessments completed or caused to be completed by Buyer under this Section to Seller. However, Buyer and Seller agree that Seller's agreement to provide Buyer with copies of the reports referred to in this Section 7(b) shall not relieve Buyer of the obligation to conduct its own due diligence concerning the purchase of the Property, and Buyer will not be entitled to rely on information contained in documents provided by Seller pursuant to this Section but shall conduct its own investigation of the matters referred to in such documents.

8. **Seller's Documents.** At Closing, Seller shall execute and deliver to Buyer, the following:

- (a) A duly executed and acknowledged Special Warranty Deed, in form and substance substantially similar to that attached in Exhibit “B” (the “Deed”), attached hereto and incorporated herein by reference, conveying good and indefeasible title in fee simple title to all of the surface of the Property and free and clear of any and all liens, encumbrances, conditions, easements, assessments and reservations, subject only to the Permitted Exceptions, Right of Reversion, Right of First Refusal and Development Guidelines and Restrictive Covenants contained the Special Warranty Deed and the exhibits thereto; and
- (b) Such other closing documents as reasonably may be required to consummate the transaction contemplated by this Agreement, including any documents that may be required by the Title Company in order to issue the Title Policy as required by the Title Commitment.

9. **Buyer’s Closing Matters.** At Closing, and as an express condition of Closing, Buyer shall execute and deliver to Seller, the following:

- (a) A duly executed and acknowledged Deed, as described above;
- (b) The Purchase Price in accordance with Section 2 above;
- (c) Evidence that the person executing this Agreement and the Deed has the full power and authority to bind Buyer;
- (d) Evidence that the Property is located in a Reinvestment Zone designated by the City of Pearland in accordance with Texas law;
- (e) Evidence that Buyer’s Purchaser will (i) purchase from Buyer no more or less than the legally described Property herein, and (ii) will pay a purchase price for the Property identical to the Purchase Price herein.
- (f) Evidence that Buyer’s Purchaser will, upon Closing, be contractually bound to develop the Property in accordance with a Project Plan adopted by the City of Pearland for the Reinvestment Zone;
- (g) Evidence that Buyer’s Purchaser will purchase and develop the Property, and Buyer will convey the Property to Buyer’s Purchaser, subject to all terms, conditions, restrictions and development requirements listed under Section 20, (“Restrictions and Development Requirements”)

- (h) Evidence that the Property and Seller's remaining adjacent property has been platted as two separate unrestricted reserves, at Buyer's expense;
- (i) Evidence that Buyer has abandoned any and all public roads, driveways, alleys or rights of way on the Property or Seller's remaining adjacent property.
- (j) Such other closing documents as reasonably may be required to consummate the transaction contemplated by this Agreement, including any documents that may be required by the Title Company.

10. **Expense Provisions.** The basic title premium shall be paid by Seller on or before Closing. Each Party shall bear and pay their own attorneys' fees and expenses. Buyer shall be responsible for any exceptions, deletions, endorsements or express coverages under the Title Insurance Policy. Unless stated otherwise in this Agreement, any charges, fees or expenses of the Title Company shall be shared equally between the Parties. The provisions of this Section shall survive the Closing or earlier termination of this Agreement.

11. **Waiver and Negation of Warranties.** Because the Seller will sell the Property to the Buyer only on an "as is" basis without any warranty or recourse of any kind whatsoever, the Seller and the Buyer agree that anything in this Agreement or otherwise to the contrary notwithstanding, but subject to Texas law:

- (a) The Buyer shall be given the opportunity during the Inspection Period to inspect, examine, and investigate each and every aspect of the Property either independently or through agents of the Buyer's choosing. In the Deed, the Buyer shall acknowledge that it has inspected, examined, and investigated or been given the opportunity to inspect, examine, and investigate the physical condition of the Property, including, without limitation, the interior, the exterior, the structure, the paving, the utilities, and all other physical and functional aspects of the Property, if any. The Buyer shall also acknowledge in the Deed that it has inspected, examined, and investigated or been given the opportunity to inspect, examine, and investigate the Property for the presence or absence of flammable, explosive, carcinogenic, toxic, or hazardous materials, wastes, or substances, including, without limitation, petroleum, its products, by products, and derivatives, other hydrocarbons, oil, crude oil, natural or synthetic gas, polychlorinated biphenyls, asbestos, urea formaldehyde, radon, radioactive materials, and thermal irritants, (collectively, "Hazardous Materials"). The Buyer shall accept the property in its AS-IS, WHERE-IS condition, and shall assume in the Deed the risk of all adverse past, present, or future physical characteristics and conditions of the Property

whether or not they may have been revealed by its inspection, examination, or investigation.

- (b) The Seller makes and shall make to the Buyer no warranty regarding the Property of any nature, kind, or character whatsoever, either expressed or implied, including without limitation, any warranty as to (1) the quality, nature, adequacy, and physical condition of the Property, including, but not limited to, the structural elements, foundation, roof, appurtenances, access, landscaping, parking facilities, and electrical, mechanical, HVAC, plumbing, sewage, and utility systems, facilities, and appliances, if any (2) the quality, nature, adequacy, and physical condition of soils, geology, and any groundwater, (3) the existence, quality, nature, adequacy, and physical condition of utilities serving the Property, (4) the development potential, income potential, or operating expenses of the Property, (5) the Property's value, use, habitability, or merchantability, (6) the fitness, suitability, or adequacy of the Property for any particular use or purpose, (7) the zoning or other legal status of the Property or any other public or private restrictions on the use of the Property, (8) the compliance of the Property or its operation with all applicable codes, laws, rules, regulations, statutes, ordinances, covenants, judgments, orders, directives, decisions, guidelines, conditions, and restrictions (collectively, the "Laws") of any governmental or quasi-governmental entity or of any other person or entity, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6901 et seq., the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. § 1251 et seq., the Toxic Substances Control Act of 1976, as amended by the Asbestos Hazard Emergency Response Act of 1986, 15 U.S.C. § 2601 et seq., the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. § 11001 et seq., the Clean Air Act of 1966, 42 U.S.C. § 7401 et seq., the National Environmental Policy Act of 1969, 42 U.S.C. § 4321, the Endangered Species Act of 1973, 16 U.S.C. § 1521, et seq., the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq., the Safe Drinking Water Act of 1974, 42 U.S.C. § 300(f) et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq., the Pollution Prevention Act of 1990, 42 U.S.C. § 13101 et seq., and any and all Texas acts or laws, as all of the foregoing statutes have been and hereafter may be amended from time to time, (collectively, the "Environmental Laws") (9) the presence of Hazardous Materials on, under, or about the Property or the adjoining or

neighboring property, (10) the quality of any labor and materials used in any improvements included in the Property, (11) the title to the Property, (12) any leases, service contracts, or other agreements affecting the Property, (13) the economics of the operation of the Property, (14) the freedom of the Property, including all improvements located thereon, if any, from vices or defects, (15) the freedom of the Property from either latent or apparent defects, (16) and environmental matters of any kind or nature whatsoever relating to the Property, including all improvements located thereon.

12. **Proration of Taxes and Rollback Assessments.** Current taxes shall be prorated through the Closing Date. If the amount of the ad valorem taxes for the year in which the sale is closed is not available on the closing date, proration of taxes shall be made on the basis of taxes assessed in the previous year. If Seller changes the use of the Property before closing or if a denial of special valuation on the Property claimed by Seller results in the assessment of additional taxes, rollback taxes, penalties, or interest (assessments) for the periods before closing, the assessments will be the obligation of Seller. If this sale or Buyer's use of the Property after closing results in such additional assessments for the periods before closing, the assessments will be the sole obligation of Buyer. Obligations imposed by this Section 12 shall survive closing.

13. **Access to Public Rights of Way; Shared Access.** Buyer agrees to use its best efforts, and Seller agrees to cooperate with Buyer, to obtain a permit for a curb-cut and access to the Property from State Highway 35 ("SH 35"), as well as a permit for a curb-cut and access to Seller's remaining adjacent property from SH 35. Buyer acknowledges and understands that Buyer shall have access at the signaled north corner of the Property at SH 35, and may secure a second access drive near the midpoint of the Property and SH 35, provided the second access drive shall not impair the Seller's ability to secure an access drive to SH 35 for its adjacent tract. This obligation shall survive Closing.

14. **Default.** If the sale contemplated by this Agreement is not consummated through default of the Buyer, Seller's sole and exclusive remedy shall be to terminate this Agreement and retain the Earnest Money deposited by Buyer pursuant to Section 3 above, and the Parties hereunder shall have no further rights or liabilities under this Agreement, such Earnest Money being a reasonable forecast of uncertain damages to Seller. If the sale contemplated by this Agreement is not consummated through default of the Seller, Buyer may, as its sole and exclusive remedy, terminate this Agreement and the Earnest Money shall be refunded to Buyer.

15. **Condemnation.** If, prior to Closing, the Property or any portion thereof, is condemned or taken under power of eminent domain, or if Seller receives any notice or

obtains knowledge that any such taking is threatened or contemplated by an governmental agency or entity or any other entity having the power of eminent domain, then, in any such event, Seller shall promptly give notice thereof to Buyer in writing. Buyer shall then have the options of either (a) terminating this Agreement, with neither Party thereafter having any further obligations to the other hereunder, or (b) waiving such matters and proceeding to close this transaction without reduction in the Purchase Price, but with the right to receive any and all awards or monies payable as a result of any such taking. If Buyer elects to terminate the Agreement pursuant to this Section 15, Buyer shall receive a refund of the Earnest Money. Buyer shall make such election by giving written notice thereof to Seller at any time prior to Closing.

16. **Contract Construction.** Buyer and Seller acknowledge that this Agreement was prepared after substantial negotiations between the Parties. This Agreement shall not be interpreted against either Party solely because such Party or its counsel drafted the Agreement.

17. **Miscellaneous.**

(a) **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing, and shall be deemed to have been given when delivered by hand delivery, or when deposited in the United States Post Office, registered or certified mail, postage prepaid, return receipt requested, if mailed. Notices shall be addressed as follows:

If to Buyer: City of Pearland
 Attn: Mayor
 3519 Liberty Dr.
 Pearland, Texas 77581

with a Copy to: City of Pearland
 Attn: City Attorney
 3519 Liberty Dr.
 Pearland, Texas 77581

If to Seller: Pearland Independent School District
 Attn: Superintendent
 1928 N. Main St.
 Pearland, Texas 77581

Seller's Attorney: Michelle R. Morris
Rogers, Morris & Grover, L.L.P.
5718 Westheimer, Suite 1200
Houston, Texas 77057

or such other address either Party from time to time specify in writing to the other.

(b) **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns. Notwithstanding the foregoing, the Buyer shall not have the right to assign this Agreement, or any of the Buyer's rights or obligations under this Agreement, without the prior written consent of the Seller.

(c) **Amendments and Termination.** Except as otherwise provided herein, this Agreement may be only amended or modified by a written instrument executed by Seller and Buyer, acting by their respective duly authorized agents or representatives.

(d) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

(e) **Section Headings.** The section headings inserted in this Agreement are for convenience only and are intended to, and shall not be construed to, limit, enlarge or affect the scope or intent of this Agreement, nor the meaning of any provision hereof.

(f) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

(g) **Effective Date.** The "Effective Date" of this Agreement shall be the date that this Agreement, fully executed by all Parties, is deposited with the Title Company, together with the Earnest Money.

(h) **Merger of Prior Agreements.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings between the Parties hereto relating to the subject matter hereof. Buyer is not relying upon any representation or statement by Seller regarding the Property, except as set forth in this Agreement.

(i) **Attorneys' Fees and Costs.** In any litigation arising out of or pertaining to this Agreement, the prevailing Party shall be entitled to an award of its attorneys' fees, whether incurred before, after or during trial, or upon any appellate level.

(j) **Time.** Time is of the essence in this Agreement. When any time period specified herein falls or ends upon a Saturday, Sunday or legal holiday, the time period shall be automatically extended to 5:00 P.M. on the next ensuing business day.

18. **Federal Tax Requirements.** If Seller is a "foreign person" as defined by applicable law, or if Seller fails to deliver an Affidavit that Seller is not a "foreign person," then Buyer shall withhold from the sales proceeds at closing an amount sufficient to comply with the applicable tax law and deliver the same to the Internal Revenue Service, together with appropriate tax forms. Internal Revenue Service regulations require filing written reports if cash in excess of specified amounts is received in the transaction.

19. **No Brokerage Commissions.** Seller shall have no obligation to compensate any broker in connection with any conveyance of the Property. **BUYER AGREES TO INDEMNIFY SELLER AND HOLD SELLER HARMLESS FROM ANY LOSS, LIABILITY, DAMAGE, COST OR EXPENSE (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES) PAID OR INCURRED BY SELLER BY REASON OF ANY CLAIM TO ANY BROKER'S, FINDER'S OR OTHER FEE IN CONNECTION WITH THIS TRANSACTION BY ANY PARTY CLAIMING BY, THROUGH OR UNDER BUYER.**

20. **Restrictions and Development Requirements.** Seller's conveyance of the Property to Buyer, and Buyer's conveyance of the Property to Buyer's Purchaser, shall be specifically subject to and conditioned upon the following matters, which shall survive closing:

(a) Seller's Right of Reversion, as set forth in Exhibit D to the Special Warranty Deed. Buyer's contract for sale of the Property to Buyer's Purchaser must be subject to a similar Right of Reversion to Buyer, which shall be approved in form and content by Seller prior to Buyer's sale of the Property to Buyer's Purchaser.

(b) Seller's Right of First Refusal, as set forth in Exhibit E to the Special Warranty Deed. Buyer's conveyance of the Property to Buyer's Purchaser must be subject to the same Right of First Refusal in favor of Seller.

(c) Development Guidelines and Restrictive Covenants, as set forth in Exhibit C to the form of Special Warranty Deed (attached hereto as Exhibit B).

[Remainder of This Page Left Intentionally Blank]

“BUYER”

CITY OF PEARLAND

By: _____

Name: _____

Title: _____

“SELLER”

PEARLAND INDEPENDENT SCHOOL DISTRICT

By: _____

President, Board of Trustees

Date: _____

Receipt of a fully executed copy of this Agreement and of the Earnest Money specified in Section 3 of this Agreement is hereby acknowledged as of the date hereinafter set forth which date shall be the Effective Date of this Contract.

DATED: _____, 2015.

TITLE COMPANY:

By: _____
Name: _____
Title: _____

EXHIBIT "A"
TO SALE AND PURCHASE AGREEMENT

Legal Description

[to be replaced by legal description provided by the Survey or Plat]

EXHIBIT "B"
TO SALE AND PURCHASE AGREEMENT

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

Date _____, 2015

Grantor PEARLAND INDEPENDENT SCHOOL DISTRICT, as authorized by Resolution of the Board of Trustees dated _____, 2015.

Grantor's Mailing Address
Attn: Superintendent
1928 N. Main St.
Pearland, Texas 77581

Grantee CITY OF PEARLAND

Grantee's Mailing Address
Attn: City Manager
3519 Liberty Dr.
Pearland, Texas 77581

Consideration Cash and other valuable consideration, receipt and sufficiency of which are hereby acknowledged.

Property

That certain tract of land described as approximately 46 acres in Pearland, Texas, located in Brazoria County, Texas, as more particularly described in Exhibit "A," attached hereto and incorporated herein for all purposes. *[To be adjusted upon approval of final survey]*

Reservations from and Exceptions to Conveyance and Warranty

1. This conveyance is subject to those matters described and contained in Exhibit B, Exhibit C, Exhibit D and Exhibit E, attached hereto and incorporated herein by reference for all purposes.
2. Taxes and special assessments are prorated as of this date, and Grantee assumes and agrees to pay same except for rollback taxes assessed for periods prior to this date, which shall be paid by Grantor.
3. Further, Grantor reserves and excepts for itself, its successors and assigns, and its predecessors in title in accordance with their respective interests of record, all oil, gas and other minerals on, in and under the above-described Property, but Grantor, on behalf of itself, its successors and assigns, does hereby forever release and relinquish its right to enter upon and use the surface of the Property for exploring and drilling for, and producing and mining such oil, gas and minerals; provided, that Grantor shall have and hereby reserves the right to pool and combine such Property with other land for the purpose of exploring and drilling for, and producing and mining such minerals by virtue of operations conducted on such other lands, but not on the Property.

GRANTOR AND GRANTEE HEREBY ACKNOWLEDGE THAT THE PROPERTY IS BEING CONVEYED "AS IS" AND "WHERE IS", WITH ALL FAULTS. GRANTEE WAS GIVEN THE OPPORTUNITY TO INSPECT, EXAMINE, AND INVESTIGATE, EITHER INDEPENDENTLY OR THROUGH AGENTS OF THE GRANTEE'S CHOOSING, EACH AND EVERY ASPECT OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE INTERIOR, THE EXTERIOR, THE STRUCTURE, THE PAVING, THE UTILITIES, AND ALL OTHER PHYSICAL AND FUNCTIONAL ASPECTS OF THE PROPERTY. GRANTEE WAS GIVEN THE OPPORTUNITY TO INSPECT, EXAMINE, AND INVESTIGATE THE PROPERTY FOR THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS (AS DEFINED IN THAT SALE AND PURCHASE AGREEMENT, EXECUTED BY AND BETWEEN GRANTOR AND GRANTEE, EFFECTIVE _____, 2015 (THE "AGREEMENT")). GRANTEE HEREBY ASSUMES THE RISK OF ALL ADVERSE PAST, PRESENT, OR FUTURE PHYSICAL CHARACTERISTICS AND CONDITIONS OF THE PROPERTY WHETHER OR NOT THEY MAY HAVE BEEN REVEALED BY ITS INSPECTION, EXAMINATION, OR INVESTIGATION.

THE GRANTOR HAS NOT MADE, AND HEREBY DISCLAIMS, ANY AND ALL REPRESENTATIONS, WARRANTIES OR GUARANTIES OF ANY KIND TO GRANTEE (WETHER ORAL, WRITTEN, OR ARISING BY OPERATION OF LAW, EXCEPT AS TO TITLE AS PROVIDED IN THIS DEED) REGARDING THE PROPERTY OF ANY NATURE, KIND, OR CHARACTER WHATSOEVER, EITHER EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY AS TO (1) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, THE

STRUCTURAL ELEMENTS, FOUNDATION, ROOF, APPURTENANCES, ACCESS, LANDSCAPING, PARKING FACILITIES, AND ELECTRICAL, MECHANICAL, HVAC, PLUMBING, SEWAGE, AND UTILITY SYSTEMS, FACILITIES, AND APPLIANCES, (2) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY, AND ANY GROUNDWATER, (3) THE EXISTENCE, QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF UTILITIES SERVING THE PROPERTY, (4) THE DEVELOPMENT POTENTIAL, INCOME POTENTIAL, OR OPERATING EXPENSES OF THE PROPERTY, (5) THE PROPERTY'S VALUE, USE, HABITABILITY, OR MERCHANTABILITY, (6) THE FITNESS, SUITABILITY, OR ADEQUACY OF THE PROPERTY FOR ANY PARTICULAR USE OR PURPOSE, (7) THE ZONING OR OTHER LEGAL STATUS OF THE PROPERTY OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON THE USE OF THE PROPERTY, (8) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ALL APPLICABLE CODES, LAWS, RULES, REGULATIONS, STATUTES, ORDINANCES, COVENANTS, JUDGMENTS, ORDERS, DIRECTIVES, DECISIONS, GUIDELINES, CONDITIONS, AND RESTRICTIONS (COLLECTIVELY, THE "LAWS") OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY OR OF ANY OTHER PERSON OR ENTITY, INCLUDING, WITHOUT LIMITATION, THE ENVIRONMENTAL LAWS (AS DEFINED IN THE AGREEMENT), (9) THE PRESENCE OF HAZARDOUS MATERIALS (AS DEFINED IN THE AGREEMENT) ON, UNDER, OR ABOUT THE PROPERTY OR THE ADJOINING OR NEIGHBORING PROPERTY, (10) THE QUALITY OF ANY LABOR AND MATERIALS USED IN ANY IMPROVEMENTS INCLUDED IN THE PROPERTY, (11) THE TITLE TO THE PROPERTY (EXCEPT FOR ANY WARRANTY OF TITLE EXPRESSLY GRANTED HEREIN), (12) ANY LEASES, SERVICE CONTRACTS, OR OTHER AGREEMENTS AFFECTING THE PROPERTY, (13) THE ECONOMICS OF THE OPERATION OF THE PROPERTY, (14) THE FREEDOM OF THE PROPERTY, INCLUDING ALL IMPROVEMENTS LOCATED THEREON, FROM VICES OR DEFECTS, (15) THE FREEDOM OF THE PROPERTY FROM EITHER LATENT OR APPARENT DEFECTS, AND (16) ENVIRONMENTAL MATTERS OF ANY KIND OR NATURE WHATSOEVER RELATING TO THE PROPERTY, INCLUDING ALL IMPROVEMENTS LOCATED THEREON.

Grantor, for the consideration and subject to the Reservations from and Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it unto Grantee and Grantee's successors and assigns, and Grantor binds itself, its successors and assigns to warrant and forever defend all and singular the Property to Grantee and Grantee's successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise, except as to the Reservations from and Exceptions to Conveyance and Warranty.

When the context requires, singular nouns and pronouns include the plural.

“Grantor”

PEARLAND INDEPENDENT SCHOOL DISTRICT

By: DO NOT SIGN PRIOR TO CLOSING
_____, President, Board of Trustees

Date: _____

STATE OF TEXAS §
 §
COUNTY OF BRAZORIA §

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by _____, acting in his capacity as President of and on behalf of the Board of Trustees of Pearland Independent School District.

Notary Public, State of Texas

After recording, return to:

“Grantee”

CITY OF PEARLAND

By: DO NOT SIGN PRIOR TO CLOSING

Title: _____

STATE OF TEXAS §
 §
COUNTY OF BRAZORIA §

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____, acting in his capacity as _____ of the City of Pearland.

Notary Public, State of Texas

After recording, return to:

EXHIBIT "A"
TO DEED

SUBJECT PROPERTY

[to be replaced by legal description provided by the Survey]

**EXHIBIT “B”
TO DEED**

Permitted Exceptions

1. *[to be completed upon identification of Permitted Exceptions]*

EXHIBIT "C"
TO SPECIAL WARRANTY DEED

DEVELOPMENT RESTRICTIONS AND RESTRICTIVE COVENANTS

A. Development Restrictions

Development of the Property shall comply with the following development guidelines:

1. The Property may only be used for the development of office, warehouse and manufacturing facility.
2. Noise Levels for any development on the Property or operations within the Property may not exceed 85 *dB*, measured from the property line of Grantor's adjacent remaining property, in accordance with Texas law.
3. Provide a 30 foot landscaping buffer with berm along the southern property line that borders PISD property, where adjacent to the fence in front of service yards, storage areas or trash or refuse containers. The height of the berm shall be no more than five (5) feet high with no more than a 4:1 slope and shall crest at the center point of the 30 foot buffer.

Landscape buffer shall include plantings to screen service yards, storage areas or trash or refuse containers. The landscape buffer area should be a mix of evergreen plant material. The plant buffer must achieve approximately 75% opacity from grade in all seasons. Suggested evergreen plant material may include: live oaks, waxmyrtle, holly species, oleander; and all species shall be in accordance with the City of Pearland Unified Development Code approved list.

Buffer planting areas, will be provided with a complete underground irrigation system. All planted areas shall be maintained in healthy condition. Any trees or bushes that die or become diseased must be replaced within 90 days with a similar species of similar size except for trees that will be replaced with a 6 inch caliper or larger.

4. Any development on the Property must comply with all terms, conditions and requirements contained in the Tax Abatement Agreement executed between the owner of the Property and the City of Pearland, if one is in place.
5. All outside storage on the Property shall be placed on a reinforced concrete surface of sufficient depth and strength to support all business operations on the Property.

B. Restrictive Covenants

Grantee shall not permit, or allow any other occupant of the Property to use any premises or any portion thereof for purposes of:

- 1) Cocktail lounge, bar, or any other establishment that sells alcoholic beverages, with the exception of the following allowances for a business in possession or applying for

one or both of the following alcohol licenses as labeled or defined by the Texas Alcoholic Beverage Commission:

- a) Mixed beverage restaurant permit with FB (RM) – further defined as “permit authorizes a restaurant located in an area voted wet for the legal sale of mixed beverages in restaurants by food & beverage certificate holder to sell mixed drinks, wine, beer, ale, and malt liquor for consumption on the premises of the restaurant,” with the added exclusion that no open containers nor consumption is permitted outside the confines of the enclosed conditioned building area;
 - b) Wine and beer retailers off-premises permit (BQ) – further defined as “permit authorizes the holder to sell for off-site consumption only, but not for resale, wine, beer, and malt liquors containing alcohol in excess of one-half of one percent (1/2 of 1%) by volume and not more than 14 percent or 17 percent of alcohol by volume (depending on type of local-option election);
- 2) Smoke or tobacco shop;
 - 3) Disco;
 - 4) Skating rink, roller rink, amusement arcade (except for the operation of video arcade games incidental to the operation of a restaurant otherwise permitted hereunder);
 - 5) Auction house (except that any antique shop shall be permitted to hold auctions of antiques within its facility);
 - 6) Flea market or resale shop;
 - 7) Sale or trade of firearms, weapons, or ammunitions;
 - 8) Blood bank;
 - 9) Tattoo or piercing parlor;
 - 10) Funeral home;
 - 11) Sleeping quarters or lodging;
 - 12) The sale, leasing or storage of automobiles, boats or other vehicles;
 - 13) Any mining or mineral exploration or development except by non-surface means;
 - 14) A carnival, amusement park or circus;
 - 15) An assembly hall;
 - 16) Off track betting establishment (however, the foregoing shall not limit or restrict the sale of lottery tickets as an incidental part of another permitted business operation);
 - 17) Bingo hall or game room;
 - 18) Any use involving the use, storage, disposal or handling of hazardous materials other than the ancillary, prudent and customary use, storage, disposal, and handling of hazardous materials in the ordinary course of business (whose primary business is not the use, storage, disposal or handling of hazardous materials) being operated in accordance with all applicable laws;
 - 19) Any facility for the sale of paraphernalia for use with illicit drugs;
 - 20) Noncompliance with city, county, state, or federal law especially in regards to education;
 - 21) Any use which creates a public nuisance;
 - 22) Sexually oriented business including but not limited to adult book store, adult theatre, adult amusement facility, any facility selling or displaying pornographic materials or having such displays; and
 - 23) Boarding of animals or veterinarian services.
 - 24) Agricultural Animal Husbandry;

- 25) Airport & Heliport/ Helipad & or Landing Field;
- 26) Animal Processing;
- 27) Asphalt Batching Plant;
- 28) Auto Parts Sales (With Outside Storage or Display);
- 29) Auto Repair (Major);
- 30) Auto Repair (Minor);
- 31) Auto Sales/Dealer (New-In Building Auto Servicing and Used Auto Sales as accessory uses only) Combines Auto lease;
- 32) Auto Wrecker Service;
- 33) Asphalt /Concrete Batching Plant;
- 34) Boat Sales Personal Watercraft Sales (New Repair);
- 35) Cattle Feed Lot (CAFO);
- 36) Check Cashing Service;
- 37) Commercial Extraction of Soil business;
- 38) Sand and Gravel or similar material and Storage;
- 39) Construction Contractor with Storage Yard;

- 40) Chemical Packing and/or Blending;
- 41) Dumps and Landfills;
- 42) Explosives Manufacturer and /or Storage;
- 43) Gaming Establishment;
- 44) Gasoline Station;
- 45) Liquefied Petroleum Storage & Sales;
- 46) Manufacturer of Chlorine or Other Toxic Gasses;
- 47) Mini-Warehouse/Self Storage;
- 48) Minor Concrete Batching Operation & Storage of Associated Processing Material;
- 49) Mobile Manufactured Homes Sales or Rental Only;
- 50) Pawn Shop, Pay Day Loan & Gold Exchange;
- 51) Penal Correctional Institutions;
- 52) Petroleum or Petroleum Product Extraction;
- 53) Petroleum Refining Manufacturing or Bulk Storage;
- 54) Petroleum Products Bulk Storage (Wholesale);
- 55) Sanitary Landfill (Private);
- 56) Sanitary Landfill (Public);
- 57) Studio – Tattoo or Body Piercing;
- 58) Tire Retreading and Capping;
- 59) Tire Sales (Outdoors, With Open Storage);
- 60) Transfer Station (Refuse/Pick-up);
- 61) Travel Trailer/RV Park/Campground;
- 62) Truck (Heavy) and Bus Rental or Sales;

63) Wrecking or Salvage Yard (Auto, Steel or Building Materials).

C. These Development Restrictions and Restrictive Covenants shall attach to and run with the land, but shall become null and void and be of no further force and effect upon the expiration of 25 years from the Effective Date of this Deed.

EXHIBIT "D"
TO DEED

Right of Reversion

Subject to the terms and conditions set forth below, Grantor reserves, and Grantor shall have the right and option, but not the obligation, to exercise its Right of Reversion of the Property as described in this Exhibit D.

1. As used herein, "Construction Obligation" shall mean the substantial completion of construction of a tilt up concrete facility, consisting of no less than 200,000 square feet, with office and warehouse storage space of specialty pipe, valves and related products (the "Project") to be built on the Property, and commencement of operations of the facility on the Property.

2. As used herein, "Closing Obligation" shall mean the sale and closing of the Property by Grantee, the City of Pearland, to any third party purchasing the Property from the City of Pearland.

3. Subject to the terms and conditions set forth below, Grantee grants to Grantor, and Grantor shall have, the right and option, but not the obligation, to exercise a reversion of the Property (the "Right of Reversion") if either condition fails to occur (i) the "Closing Obligation has not been satisfied within 3 business days following the Effective Date of this Exhibit D, which shall be the date of execution and recording of the Special Warranty Deed to which this Exhibit D is attached, or (ii) the Construction Obligation has not been by the expiration of three (3) years after the Effective Date of this Exhibit D which shall be the date of execution and recording of the Special Warranty Deed to which this Exhibit D is attached.

(a) In order to exercise the Right of Reversion, Grantor must deliver written notice to Grantee within 45 days after the Termination Date, and pay to Grantee the amount set forth in Section 3(c) no later than 75 days after the Termination Date.

(b) If Grantor exercises the Right of Reversion, Grantee shall reconvey the Property to Grantor by special warranty deed free and clear of all liens and encumbrances, with no title exceptions other than those existing on the date Grantor conveyed the Property to Grantee, except the lien for ad valorem taxes shall be limited to the year of reversion. Taxes shall be prorated for the year of reversion as of the date of the repurchase.

(c) If Grantor exercises the Reversion Right, Grantor shall pay to Grantee an amount equal to the purchase price that Grantee paid Grantor for the Property, excluding and of Grantee's closing costs.

(d) The Right of Reversion shall terminate if Grantor does not give the written exercise notice within the time period specified in Paragraph 3(a) or, if having

given such notice, fails to make the payment of the amount set forth in Section 3(c) within the time period specified in Paragraph 3(a) for closing (for reasons other than Grantee's failure to comply with the provisions of this Paragraph 3).

4. The illegality, invalidity or unenforceability of any provision of this Exhibit D shall not affect the legality, validity or enforceability of any other provision of this Exhibit D.

5. Notices. Any notice, demand or other communication required to be given or to be served upon any party hereunder shall be void and of no effect unless given in accordance with the provisions of this section. All notices, demands or other communications must be in writing and delivered to the person to whom it is directed, either (i) in person or (ii) delivered by a reputable non-electronic delivery service that provides a delivery receipt. Any notice, demand or other communication shall be deemed to have been given and received when delivered to the below stated address of the party to whom it is addressed. All notices, demands and other communications shall be given to the parties hereto at the following addresses:

If to Grantee: City of Pearland
Attn: Mayor
3519 Liberty Dr.
Pearland, Texas 77581

with a Copy to: City of Pearland
Attn: City Attorney
3519 Liberty Dr.
Pearland, Texas 77581

If to Grantor: Pearland Independent School District
Attn: Superintendent
1928 N. Main St.
Pearland, Texas 77581

Grantor's Attorney: Michelle R. Morris
Rogers, Morris & Grover, L.L.P.
5718 Westheimer, Suite 1200
Houston, Texas 77057

Any party entitled to receive notices hereunder may change the address for notice specified above by giving the other party ten days' advance written notice of such change of address.

6. **THIS EXHIBIT D MAY NOT BE AMENDED EXCEPT BY WRITTEN DOCUMENT SIGNED BY THE THEN CURRENT OWNER OF THE PROPERTY AND GRANTOR, SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS AND IS BINDING ON THE PARTIES HERETO AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS.**

7. The prevailing party in any legal proceeding regarding this Exhibit D shall be entitled to recover from the other party all reasonable attorneys' fees and costs incurred in connection with such proceeding.

8. Unless earlier terminated as provided herein, the rights herein granted shall terminate and shall be of no further force or effect on that date which is 46 days following the Termination Date.

EXHIBIT "E" **TO DEED**

Right of First Refusal

Subject to the terms and conditions set forth below, Grantor reserves, and Grantor shall have the right and option, but not the obligation, to purchase the Property or portions thereof as described in this Exhibit E.

1. As used in this Exhibit E, the term "offer" shall include, without limitation, any bona fide option proposed to be granted by Grantor or its successors in interest or assigns.

2. As used in this Exhibit E, the term "sold," "sell" or "sale" shall include a sale or a lease, including all renewal options, or any other disposition of the Property or any portion thereof, or any interest therein (any such sale, lease or other disposition shall be referred to as a "Disposition").

3. As used in this Exhibit E the term "affiliate" shall mean as to the Person (as hereinafter defined) in question, any Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the Person in question. As used in the immediately preceding sentence, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, partnership interests, by contract or otherwise.

4. As used in this Exhibit E the term "Person" shall mean any individual, corporation, partnership, joint venture, association, joint stock company, trust, estate, unincorporated organization, government agency or political subdivision thereof, or any other form of entity.

5. With the exception of mergers or acquisitions involving Grantee or a sale of the property which results in the tenants' continued occupancy of the Property. If Grantee or its successors in interest at any time receives a bona fide offer acceptable to Grantee or its successors in interest to buy or makes a bona fide offer acceptable to the offeree to sell all or any portion of the Property or any interest therein (the Property, or such portion thereof, or such interest therein, being hereinafter referred to as the "Offered Property"), then Grantor shall have the right and option, but not the obligation, to purchase (the term "purchase" shall include a purchase, lease or other acquisition, and the term "purchaser" shall include a purchaser, lessee or the party making such other acquisition) the Offered Property (the "First Refusal Right") on the following terms and conditions:

5.1 Upon Grantee's receipt of any offer, Grantee or its successor in interest shall provide Grantor, or its successor in interest with a written notice (the "Grantee's Notice") of Grantee's or its successor in interest's intent to sell which shall (i) set forth the true identity of the offeror (including the identity of the

principals of the offeror, if known to Grantee or its successor in interest), (ii) include a description of the Offered Property, (iii) and include a description of all material terms of the offer, (the "Offer") (including, without limitation, the price, earnest money and closing date). Grantor shall then have a 30-day period following receipt of the Grantee's Notice in which to decide whether to exercise Grantor's First Refusal Right.

5.2 During the 30-day period following Grantor's actual receipt of the Grantee's Notice (the "Response Period"), Grantor shall have the right, at its expense, to enter onto and conduct tests and investigations on the Offered Property. Grantor shall be responsible for any damages or injuries resulting from Grantor's entry onto the Offered Property and conducting such tests and inspections. If Grantor wishes to exercise its First Refusal Right, Grantor must elect to purchase the Offered Property under the same terms and conditions contained in the Offer described in Grantee's Notice, by delivering written notice of such election to Grantee within the Response Period. If Grantor fails to do so, then Grantee or its successor in interest may effect a Disposition of the Offered Property to the offeror identified in the Grantee's Notice. Such Disposition if made in accordance with this Exhibit E, shall be made free and clear of the First Refusal Right, and Grantor, at the request of Grantee or its successor in interest, shall execute, in recordable form, a confirmation of the release of the First Refusal Right insofar as it pertains to the Offered Property that is so conveyed.

5.5 If Grantor chooses to exercise its First Refusal Right, it must deliver written notice of such exercise to Grantee or its successor in interest within the Response Period. Grantor and Grantee (or its successor in interest) shall then enter into the transaction described in, and upon the terms set forth in, the Grantee's Notice for the Economic Consideration offered to Grantee or its successor in interest by the offeror and detailed in the Grantee's Notice.

5.6 Notwithstanding any provision contained herein to the contrary, the provisions of this Section 5 shall not apply to a sale of all or any portion of the Property to an affiliate of Grantee or its successor in interest; provided, however, the provisions of this Section 5 shall survive such sale to an affiliate of Grantee or its successor in interest, and the Property shall continue to be subject to the First Refusal Right.

6. Nothing herein shall prohibit Grantee or its successor in interest from rejecting all offers, including Grantor's offer, in which case this First Refusal Right shall remain in full force and effect for the duration of the Term.

7. The illegality, invalidity or unenforceability of any provision of this Exhibit E shall not affect the legality, validity or enforceability of any other provision of this Exhibit E.

8. **Notices.** Any notice, demand or other communication required to be given or to be served upon any party hereunder shall be void and of no effect unless given in

accordance with the provisions of this section. All notices, demands or other communications must be in writing and delivered to the person to whom it is directed, either (i) in person or (ii) delivered by a reputable delivery service that provides a delivery receipt. Any notice, demand or other communication shall be deemed to have been given and received when delivered to the below stated address of the party to whom it is addressed. All notices, demands and other communications shall be given to the parties hereto at the following addresses:

If to Grantee: City of Pearland
Attn: Mayor
3519 Liberty Dr.
Pearland, Texas 77581

with a Copy to: City of Pearland
Attn: City Attorney
3519 Liberty Dr.
Pearland, Texas 77581

If to Grantor: Pearland Independent School District
Attn: Superintendent
1928 N. Main St.
Pearland, Texas 77581

Grantor's Attorney: Michelle R. Morris
Rogers, Morris & Grover, L.L.P.
5718 Westheimer, Suite 1200
Houston, Texas 77057

Any party entitled to receive notices hereunder may change the address for notice specified above by giving the other party ten days' advance written notice of such change of address.

9. This Exhibit E may not be amended except by written document signed by Grantor and the then current owner of the Property, is binding on the parties hereto and their respective successors and permitted assign, shall forever run with the land, AND SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS.

10. The prevailing party in any legal proceeding regarding this Exhibit E shall be entitled to recover from the other party all reasonable attorneys' fees and costs incurred in connection with such proceeding.

11. This Exhibit E may not be assigned without the written consent of the nonassigning party; provided, written consent shall not be required for any assignment where the occupying tenant continues to occupy the Property following the assignment.

Furtermore, that Grantor may assign its rights and obligations hereunder to a person or entity who is owned by, owns or is under common ownership with Grantor, without the prior approval of Grantee, but upon providing written notice of such assignment to Grantee. This Exhibit E shall bind and run with the land of the Property but shall not be appurtenant to any other property.

12. Unless earlier terminated as provided herein, the rights herein granted shall terminate and shall be of no further force or effect on that date which is the earlier of (i) ten (10) years after the date of execution of this Deed; or (ii) that date on which substantial completion of construction of a 'tilt up concrete facility' consisting of no less than 200,000 square feet, with office and warehouse storage space of specialty pipe, valves and related products to be built on the Property, is achieved. Notwithstanding the foregoing, if, at the date Grantee receives a bona fide offer to sell the property as set forth in this Exhibit E, Grantor has ceased to exist, with no lawfully formed and existing successor in interest or assignee, this Exhibit E shall be null and void.

**EXHIBIT “C”
TO SALE AND PURCHASE AGREEMENT**

ACCESS AND INDEMNITY AGREEMENT

This Access and Indemnity Agreement (this “Agreement”) is entered into between Pearland Independent School District (“the Owner”), as the record title owner of the real property described on Exhibit “A” attached hereto and incorporated herein for all purposes (the “Property”), and _____ (“Prospective Purchaser”).

WHEREAS, Prospective Purchaser has requested from the Owner the right to temporary access and encroach on, over, and into the Property, for the purposes of conducting physical property inspections, as well as environmental assessments and engineering studies of the Property including the performance of tests such as soil tests and/or air sampling (the “Project”); and

WHEREAS, the Owner has agreed to grant such temporary access to the Property subject to and conditioned upon the terms of this Agreement.

NOW, THEREFORE, in consideration of the promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. PURPOSES. Prospective Purchaser and its agents and contractors may enter upon the Property solely for the purpose of conducting physical property inspections, as well as environmental assessments and engineering studies of the Property including the performance of tests such as soil tests and/or air sampling. Prospective Purchaser agrees that if any disturbance or damage is caused to the Property as a result of the Prospective Purchaser’s exercise of the rights and privileges afforded to it under this instrument, Prospective Purchaser shall, to the fullest extent practicable, restore the affected area to its original condition.
2. DURATION. The Owner’s grant of temporary access to the Property shall automatically terminate at 12:01 a.m. on _____.
3. **RELEASE AND HOLD HARMLESS. TO THE EXTENT PERMITTED BY LAW, PROSPECTIVE PURCHASER HEREBY AGREES TO RELEASE AND HOLD HARMLESS THE OWNER, ITS TRUSTEES, EMPLOYEES, AGENTS, AND REPRESENTATIVES, FROM AND AGAINST ANY CLAIMS, COSTS, EXPENSES, OR DAMAGE, THAT PROSPECTIVE PURCHASER OR ITS AGENTS AND CONTRACTORS MAY SUFFER OR INCUR RELATIVE OR INCIDENTAL TO OR IN CONNECTION WITH THEIR USE OF OR PRESENCE ON THE OWNER’S PROPERTY AND/OR RELATED TO THE PROJECT.**

4. **INDEMNITY. TO THE FULLEST EXTENT PERMITTED BY LAW, PROSPECTIVE PURCHASER AGREES TO INDEMNIFY OWNER, ITS TRUSTEES, ADMINISTRATORS, EMPLOYEES, AGENTS, AND REPRESENTATIVES, FROM AND AGAINST ANY CLAIMS, COSTS, EXPENSES, OR DAMAGE OF ANY KIND THAT OWNER, ITS TRUSTEES EMPLOYEES, AGENTS, OR REPRESENTATIVES MAY SUFFER OR INCUR AS A RESULT OF ANY ACT OR OMISSION BY PROSPECTIVE PURCHASER OR ITS AGENTS OR CONTRACTORS RELATED TO THEIR USE OF OR PRESENCE ON THE PROPERTY AND/OR RELATED TO THE PROJECT.**

5. INSURANCE. Prospective Purchaser shall ensure that its consultants engaged in the Project have Commercial General Liability coverage with a policy limit of no less than \$1,000,000 per occurrence, naming Owner as an additional insured, pertaining to Prospective Purchaser's consultant's actions relative to the work performed by such consultants on or for the Project and related to such consultants or their subcontractors' use of or presence on the Property. Prospective Purchaser shall, prior to entry, furnish the Owner with satisfactory evidence of such insurance carried by Prospective Purchaser's consultants.

The effective date of this Agreement shall be the later of the two execution dates set forth beside the signatures of the respective parties below.

PROSPECTIVE PURCHASER/ _____ :

_____ Date Executed: _____

 NAME

 TITLE

OWNER/PEARLAND INDEPENDENT SCHOOL DISTRICT

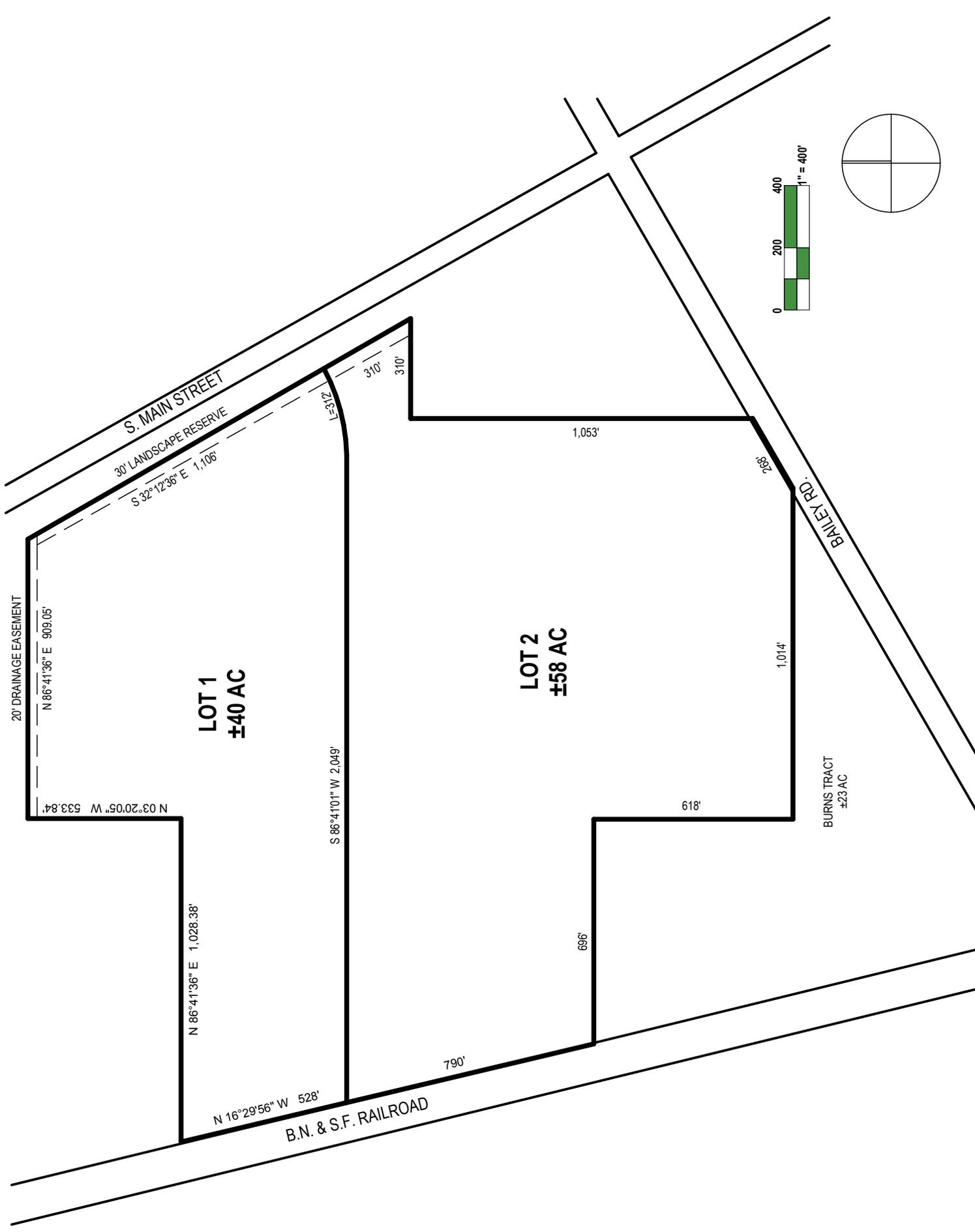
_____ Date Executed: _____

 NAME

 TITLE

EXHIBIT "A" TO ACCESS AND INDEMNITY AGREEMENT

[Attach Legal Description of Owner's Property]



S. MAIN STREET

30' LANDSCAPE RESERVE

S 32°12'36" E 1,106'

20' DRAINAGE EASEMENT

N 86°41'36" E 909.05'

LOT 1
±40 AC

N 03°20'05" W 533.84'

N 86°41'36" E 1,028.38'

S 86°41'01" W 2,049'

L-372

310'

310'

LOT 2
±58 AC

1,053'

288'

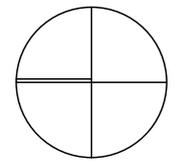
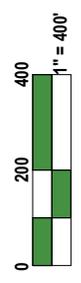
1,014'

618'

696'

790'

B.N. & S.F. RAILROAD



BURNS TRACT
±23 AC

BAILEY RD.

SALE AND PURCHASE AGREEMENT

THIS SALE AND PURCHASE AGREEMENT (“Agreement”) made and entered into on the Effective Date, as hereinafter defined, by and between AMERICAN COMMERCIAL CONTRACTORS, LLC (hereinafter referred to as “Buyer”), and the CITY OF PEARLAND (hereinafter “Seller”). Buyer and Seller are herein collectively referred to as the “Parties” and individually as a “Party”.

WITNESSETH:

1. **Property.** Subject to the terms and conditions set forth below, Seller agrees to sell and convey to Buyer and Buyer agrees to purchase from Seller a certain tract of land described as approximately 40 acres, more or less, located on S. Main Street in Pearland, Texas, located in Brazoria County, Texas, as more particularly described in Exhibit “A,” attached hereto and incorporated herein for all purposes, together with any and all easements, right-of-way, privileges, benefits, contract rights, development rights, permits, licenses or approvals, improvements, or appurtenances arising from, pertaining to or associated with said real estate (collectively, the “Property”). Notwithstanding anything herein to the contrary, the term “Property” shall exclude any interest in and to all oil, gas or minerals in or under and that may be produced from the Property, subject to Seller’s waiver of any right to use the surface of the Property to drill, produce, treat and/or transport oil, gas or other minerals from the Mineral Estate.

2. **Purchase Price.** The Property shall be sold by the Seller and purchased by the Buyer for the total purchase price (the "Purchase Price") equal to \$1.50 per gross square foot, for an estimated total purchase price of Two Million Six Hundred and Thirteen Thousand, Six Hundred and Dollars (\$2,613,600.00) (the “Purchase Price”), to be adjusted per final plat of the Property. The Purchase Price shall be payable in cash or in immediately available funds to Seller at the closing (the "Closing") of conveying the Property to the Buyer.

3. **Earnest Money.** As a condition precedent to the validity of this Agreement, Twenty Five Thousand and No/100 Dollars (\$25,000.00) is herewith tendered by, and is to be deposited as, earnest money (the “Earnest Money”) with the Title Company (as defined herein) and placed in an interest bearing account, upon execution of the Agreement by both Parties. Such interest earned shall be additional Earnest Money.

4. **Closing.** Subject to the terms and conditions hereof, the closing of this transaction (the “Closing”) shall be held at Old Republic National Title Insurance Company, Attn: Lavinia Longley, 777 Post Oak Boulevard, Suite 125, Houston, Texas 77056-3211 (the “Title Company”), not later than thirty (30) days following the expiration of the Inspection Period (the “Closing Date”), or such other time as may be mutually agreed upon by Seller and Buyer. Seller shall deliver possession of the Property to Buyer on the Closing Date. Closing is expressly conditioned and contingent upon Seller’s purchase of the

Property from the Pearland Independent School District (the “District”) prior to Closing. Closing is further conditioned upon all other conditions of Closing listed in Section 9 below.

5. **Title Insurance.** Within ten (10) days after the Effective Date hereof, Seller shall deliver to Buyer a title commitment (the “Title Commitment”) for an owner’s title insurance policy (standard Texas form) issued by the Title Company, in the amount of the Purchase Price covering title to the Property, showing title in the Seller’s name, subject only to (a) title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount which may be removed by the payment of money at the time of Closing, and which the Seller shall so remove at the time by using the funds to be paid to Seller at closing, and (b) such other exceptions as may be acceptable to Buyer (with all of said exceptions being herein referred to as the “Permitted Exceptions”). Within ten (10) days after the Effective Date, Seller shall cause the Title Company to provide to Buyer copies of any documents referred to as exceptions in the Title Commitment, together with the vesting deed(s). The Title Commitment shall be conclusive evidence of good title as to all matters to be insured by the policy, subject to the exceptions as therein stated. The cost of any title search fees and said Title Commitment and the premium for the basic title insurance policy to be issued pursuant thereto shall be borne by Seller and paid by Seller on or before Closing. The costs of any exceptions, deletions, endorsements or express coverages shall be paid by Buyer.

6. **Survey and Plat.** Within Sixty (60) days of the Effective Date hereof, Seller will obtain a new or updated Survey acceptable to the Title Company and deliver the acceptable Survey to Buyer and the Title Company. The Survey will (1) identify the Property by metes and bounds; (2) show that the Survey was made and staked on the ground with corners permanently marked; (3) set forth the dimensions and total area of the Property; (4) show the location of all improvements, highways, streets, roads, railroads, rivers, creeks, or other waterways, fences, easements and rights-of-way on the Property with all easements and rights-of-way referenced to their recording information; (5) show any discrepancies or conflicts in boundaries, any visible encroachments, and any portion of the Property that has been designated by the Federal Emergency Management Agency, Federal Insurance Administration, the Army Corps of Engineers, or any other governmental agency or body as being subject to special or increased flooding hazards; and, (6) if required, contain a surveyor’s certificate, addressed to Seller, Buyer and the Title Company, that the Survey is true and correct. At such time as Buyer has received both the Title Commitment (with all underlying documents and the vesting deed) and the Survey, Buyer shall have fifteen (15) days in which to examine the Title Commitment and the Survey and notify Seller of those items which Buyer finds objectionable (“Encumbrances”). Buyer’s failure to object to Encumbrances within the time allowed shall constitute a waiver of Buyer’s right to object and such Encumbrances shall be deemed Permitted Exceptions, except that satisfaction of the requirements of Schedule C of the Title Commitment shall not be deemed to have been waived. If objections are made by Buyer within the time allowed, Seller, at its sole cost and expense, shall have the right, but not the obligation, to cure or remove the Encumbrances that Buyer has objected to, give Buyer written notice thereof, and deliver

within ten (10) days of the date of Buyer's notice, (i) an amended Survey and/or Title Commitment reflecting the cure of such matters, or (ii) written notice to Seller stating that it will not cure or remove any or all such Encumbrances (the "No Cure Notice"). In the event that Seller delivers such No Cure Notice to Buyer, Buyer may either (i) waive such Encumbrances and accept title to the Property subject to such Encumbrances; or (ii) as its sole remedy, terminate this Agreement by providing written notice of such termination to Seller within five (5) days of receipt of the No Cure Notice from Seller, in which event the Earnest Money shall be refunded to Buyer. This provision and obligation shall expressly survive closing.

Following Closing, Buyer will cause to be prepared and recorded, at Buyer's expense, a plat of the Property and the District's remaining adjacent property as two separate parcels. Seller will cooperate in the execution of any documents necessary for the preparation, approval and recording of said plat. Such plat must be clear of any public rights of way for road or access within the Property or Seller's remaining adjacent Property, except for any private shared access roads created by and between Seller and Buyer by plat, separate easement or in the Special Warranty Deed for the Property.

7. **Feasibility Study and Inspection.**

- (a) Within one hundred and eighty (180) days after the Effective Date hereof (the "Inspection Period"), Buyer, at its expense, may complete or cause to be completed inspections of the Property (including any improvements) by inspectors of Buyer's choice. Inspections may include but are not limited to: (1) physical property inspection; (2) economic feasibility study; and, (3) any type of environmental assessment or engineering study including the performance of tests such as soil tests or air sampling. Seller shall permit Buyer and Buyer's inspectors' access to the Property at reasonable times. Buyer hereby indemnifies and holds Seller and the District harmless from any claim, liability, loss, damage, cost and expense for property damage directly arising out of Buyer's activities upon the Property allowed by this Section. Prior to accessing the Property, Buyer's inspectors and agents must (i) execute documents necessary to indemnify and hold the District harmless from any claim, liability, loss, damage, cost and expense for property damage directly arising out of Buyer's inspectors' and agents' activities upon the Property allowed by this Section, in form and substance substantially similar to that Access and Indemnity Agreement, attached hereto as Exhibit "C" and incorporated herein by reference (the "Access and Indemnity Agreement"), and (ii) provide evidence that Buyer and its inspectors and agents are covered by policies of Commercial General Liability Insurance covering and personal injury or property damage caused by the acts or omissions of Buyer and its inspectors and agents. If, during this Inspection Period, Buyer elects, in Buyer's sole judgment, to terminate this Agreement for any reason, Buyer

may do so by providing written notice of termination before the expiration of the Inspection Period. Upon termination of this Agreement pursuant to this Section on or before the 180th day following the Effective Date, all Earnest Money shall be refunded to Buyer, less the sum of \$500.00 which shall be retained by Seller as additional consideration for this Agreement. In the event that Buyer terminates this Agreement after the expiration of the Inspection Period the entire Earnest Money amount, which shall become non-refundable upon the expiration of the Inspection Period, shall be retained by Seller. If this transaction does not close, Buyer shall restore the property to its original condition if altered due to inspections, studies, or assessments completed by Buyer or Buyer's inspectors.

- (b) Within twenty (20) days of the Effective Date, Seller agrees to provide to Buyer copies of all previous environmental assessments, geotechnical reports, studies or analyses and/or plats of the Property, if any, to the extent available to Seller and under Seller's control, with respect to the Property without any representations as to the truth or accuracy of same. If Buyer terminates this Agreement pursuant to this Section, Buyer agrees to provide to Seller copies of all reports of inspections, studies, or assessments completed or caused to be completed by Buyer under this Section to Seller. However, Buyer and Seller agree that Seller's agreement to provide Buyer with copies of the reports referred to in this Section 7(b) shall not relieve Buyer of the obligation to conduct its own due diligence concerning the purchase of the Property, and Buyer will not be entitled to rely on information contained in documents provided by Seller pursuant to this Section but shall conduct its own investigation of the matters referred to in such documents.

8. **Seller's Documents** At Closing, Seller shall execute and deliver to Buyer, the following:

- (a) A duly executed and acknowledged Special Warranty Deed, in form and substance substantially similar to that attached in Exhibit "B" (the "Deed"), attached hereto and incorporated herein by reference, conveying good and indefeasible title in fee simple title to all of the surface of the Property and free and clear of any and all liens, encumbrances, conditions, easements, assessments and reservations, subject only to the Permitted Exceptions, Right of Reversion, Right of First Refusal and Development Guidelines and Restrictive Covenants contained the Special Warranty Deed and the exhibits thereto; and
- (b) An approved Tax Abatement Agreement between the Seller and Buyer and/or tenant.

- (c) A contingent Loan Agreement between the Pearland Economic Development Corporation and Shale-Inland Group, LLC.
- (d) An approved Tax Abatement Agreement between Brazoria County and Buyer and/or tenant.
- (e) Such other closing documents as reasonably may be required to consummate the transaction contemplated by this Agreement, including any documents that may be required by the Title Company in order to issue the Title Policy as required by the Title Commitment.

9. **Buyer's Closing Matters.** At Closing, and as an express condition of Closing, Buyer shall execute and deliver to Seller, the following:

- (a) The Purchase Price in accordance with Section 2 above;
- (b) Evidence that the person executing this Agreement and the Deed has the full power and authority to bind Buyer;
- (c) Evidence that Buyer will develop the Property subject to all terms, conditions, restrictions and development requirements listed under Section 19, ("Restrictions and Development Requirements")
- (d) Such other closing documents as reasonably may be required to consummate the transaction contemplated by this Agreement, including any documents that may be required by the Title Company.

10. **Expense Provisions.** The basic title premium shall be paid by Buyer on or before Closing. Each Party shall bear and pay their own attorneys' fees and expenses. Buyer shall be responsible for any exceptions, deletions, endorsements or express coverages under the Title Insurance Policy. Unless stated otherwise in this Agreement, any charges, fees or expenses of the Title Company shall be shared equally between the Parties. The provisions of this Section shall survive the Closing or earlier termination of this Agreement.

11. **Waiver and Negation of Warranties.** Because the Seller will sell the Property to the Buyer only on an "as is" basis without any warranty or recourse of any kind whatsoever, the Seller and the Buyer agree that anything in this Agreement or otherwise to the contrary notwithstanding, but subject to Texas law:

- (a) The Buyer shall be given the opportunity during the Inspection Period to inspect, examine, and investigate each and every aspect of the Property

either independently or through agents of the Buyer's choosing. In the Deed, the Buyer shall acknowledge that it has inspected, examined, and investigated or been given the opportunity to inspect, examine, and investigate the physical condition of the Property, including, without limitation, the interior, the exterior, the structure, the paving, the utilities, and all other physical and functional aspects of the Property, if any. The Buyer shall also acknowledge in the Deed that it has inspected, examined, and investigated or been given the opportunity to inspect, examine, and investigate the Property for the presence or absence of flammable, explosive, carcinogenic, toxic, or hazardous materials, wastes, or substances, including, without limitation, petroleum, its products, by products, and derivatives, other hydrocarbons, oil, crude oil, natural or synthetic gas, polychlorinated biphenyls, asbestos, urea formaldehyde, radon, radioactive materials, and thermal irritants, (collectively, "Hazardous Materials"). The Buyer shall accept the property in its AS-IS, WHERE-IS condition, and shall assume in the Deed the risk of all adverse past, present, or future physical characteristics and conditions of the Property whether or not they may have been revealed by its inspection, examination, or investigation.

- (b) The Seller makes and shall make to the Buyer no warranty regarding the Property of any nature, kind, or character whatsoever, either expressed or implied, including without limitation, any warranty as to (1) the quality, nature, adequacy, and physical condition of the Property, including, but not limited to, the structural elements, foundation, roof, appurtenances, access, landscaping, parking facilities, and electrical, mechanical, HVAC, plumbing, sewage, and utility systems, facilities, and appliances, if any (2) the quality, nature, adequacy, and physical condition of soils, geology, and any groundwater, (3) the existence, quality, nature, adequacy, and physical condition of utilities serving the Property, (4) the development potential, income potential, or operating expenses of the Property, (5) the Property's value, use, habitability, or merchantability, (6) the fitness, suitability, or adequacy of the Property for any particular use or purpose, (7) the zoning or other legal status of the Property or any other public or private restrictions on the use of the Property, (8) the compliance of the Property or its operation with all applicable codes, laws, rules, regulations, statutes, ordinances, covenants, judgments, orders, directives, decisions, guidelines, conditions, and restrictions (collectively, the "Laws") of any governmental or quasi-governmental entity or of any other person or entity, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act of 1976, as amended by the

Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6901 et seq., the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. § 1251 et seq., the Toxic Substances Control Act of 1976, as amended by the Asbestos Hazard Emergency Response Act of 1986, 15 U.S.C. § 2601 et seq., the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. § 11001 et seq., the Clean Air Act of 1966, 42 U.S.C. § 7401 et seq., the National Environmental Policy Act of 1969, 42 U.S.C. § 4321, the Endangered Species Act of 1973, 16 U.S.C. § 1521, et seq., the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq., the Safe Drinking Water Act of 1974, 42 U.S.C. § 300(f) et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq., the Pollution Prevention Act of 1990, 42 U.S.C. § 13101 et seq., and any and all Texas acts or laws, as all of the foregoing statutes have been and hereafter may be amended from time to time, (collectively, the "Environmental Laws") (9) the presence of Hazardous Materials on, under, or about the Property or the adjoining or neighboring property, (10) the quality of any labor and materials used in any improvements included in the Property, (11) the title to the Property, (12) any leases, service contracts, or other agreements affecting the Property, (13) the economics of the operation of the Property, (14) the freedom of the Property, including all improvements located thereon, if any, from vices or defects, (15) the freedom of the Property from either latent or apparent defects, (16) and environmental matters of any kind or nature whatsoever relating to the Property, including all improvements located thereon.

12. **Proration of Taxes and Rollback Assessments.** Current taxes shall be prorated through the Closing Date. If the amount of the ad valorem taxes for the year in which the sale is closed is not available on the closing date, proration of taxes shall be made on the basis of taxes assessed in the previous year. If Seller changes the use of the Property before closing or if a denial of special valuation on the Property claimed by Seller results in the assessment of additional taxes, rollback taxes, penalties, or interest (assessments) for the periods before closing, the assessments will be the obligation of Seller. If this sale or Buyer's use of the Property after closing results in such additional assessments for the periods before closing, the assessments will be the sole obligation of Buyer. Obligations imposed by this Section 12 shall survive closing.

13 **Access to Public Rights of Way; Shared Access.** Buyer agrees to use its best efforts, and Seller agrees to cooperate with Buyer and the District, to obtain a permit for a curb-cut and access to the Property from State Highway 35 ("SH 35"), as well as a permit for a curb-cut and access to Seller's remaining adjacent property from SH 35. Buyer acknowledges and understands that Buyer shall have access at the signaled north corner of the Property at SH 35, and may secure a second access drive near the midpoint of the

Property and SH 35, provided the second access drive shall not impair the District's ability to secure an access drive to SH 35 for their adjacent tract. This obligation shall survive Closing.

14. **Default.** If the sale contemplated by this Agreement is not consummated through default of the Buyer, Seller's sole and exclusive remedy shall be to terminate this Agreement and retain the Earnest Money deposited by Buyer pursuant to Section 3 above, and the Parties hereunder shall have no further rights or liabilities under this Agreement, such Earnest Money being a reasonable forecast of uncertain damages to Seller. If the sale contemplated by this Agreement is not consummated through default of the Seller, Buyer may, as its sole and exclusive remedy, terminate this Agreement and the Earnest Money shall be refunded to Buyer.

15. **Condemnation.** If, prior to Closing, the Property or any portion thereof, is condemned or taken under power of eminent domain, or if Seller receives any notice or obtains knowledge that any such taking is threatened or contemplated by an governmental agency or entity or any other entity having the power of eminent domain, then, in any such event, Seller shall promptly give notice thereof to Buyer in writing. Buyer shall then have the options of either (a) terminating this Agreement, with neither Party thereafter having any further obligations to the other hereunder, or (b) waiving such matters and proceeding to close this transaction without reduction in the Purchase Price, but with the right to receive any and all awards or monies payable as a result of any such taking. If Buyer elects to terminate the Agreement pursuant to this Section 15, Buyer shall receive a refund of the Earnest Money. Buyer shall make such election by giving written notice thereof to Seller at any time prior to Closing.

16. **Contract Construction.** Buyer and Seller acknowledge that this Agreement was prepared after substantial negotiations between the Parties. This Agreement shall not be interpreted against either Party solely because such Party or its counsel drafted the Agreement.

17. **Miscellaneous.**

(a) **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing or electronic mail, and shall be deemed to have been given when delivered by hand delivery, or when deposited in the United States Post Office, registered or certified mail, postage prepaid, return receipt requested, if mailed. Notices shall be addressed as follows:

If to Seller: City of Pearland
Attn: City Manager
3519 Liberty Dr.
Pearland, Texas 77581

with a Copy to: City of Pearland
Attn: City Attorney
3519 Liberty Dr.
Pearland, Texas 77581

If to Buyer: American Commercial Contractors, LLC
Attn: Susan Rozman
4660 Sweetwater Blvd., Suite 110
Sugarland, TX 77479

or such other address either Party from time to time specify in writing to the other.

(b) **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns. Notwithstanding the foregoing, the Buyer shall not have the right to assign this Agreement, or any of the Buyer's rights or obligations under this Agreement, without the prior written consent of the Seller, which consent shall not be unreasonably withheld. Buyer shall have the right to assign this Agreement and any of Buyer's rights or obligations under this Agreement to a third party with the prior written consent of the Seller, which consent shall not be unreasonably withheld.

(c) **Amendments and Termination.** Except as otherwise provided herein, this Agreement may be only amended or modified by a written instrument executed by Seller and Buyer, acting by their respective duly authorized agents or representatives.

(d) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

(e) **Section Headings.** The section headings inserted in this Agreement are for convenience only and are intended to, and shall not be construed to, limit, enlarge or affect the scope or intent of this Agreement, nor the meaning of any provision hereof.

(f) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

(g) **Effective Date.** The “Effective Date” of this Agreement shall be the date that this Agreement, fully executed by all Parties, is deposited with the Title Company, together with the Earnest Money.

(h) **Merger of Prior Agreements.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings between the Parties hereto relating to the subject matter hereof. Buyer is not relying upon any representation or statement by Seller regarding the Property, except as set forth in this Agreement.

(i) **Attorneys’ Fees and Costs.** In any litigation arising out of or pertaining to this Agreement, the prevailing Party shall be entitled to an award of its attorneys’ fees, whether incurred before, after or during trial, or upon any appellate level.

(j) **Time.** Time is of the essence in this Agreement. When any time period specified herein falls or ends upon a Saturday, Sunday or legal holiday, the time period shall be automatically extended to 5:00 P.M. on the next ensuing business day.

18. **Federal Tax Requirements.** If Seller is a “foreign person” as defined by applicable law, or if Seller fails to deliver an Affidavit that Seller is not a “foreign person,” then Buyer shall withhold from the sales proceeds at closing an amount sufficient to comply with the applicable tax law and deliver the same to the Internal Revenue Service, together with appropriate tax forms. Internal Revenue Service regulations require filing written reports if cash in excess of specified amounts is received in the transaction.

19. **No Brokerage Commissions.** Seller shall have no obligation to compensate any broker in connection with any conveyance of the Property. **BUYER AGREES TO INDEMNIFY SELLER AND HOLD SELLER HARMLESS FROM ANY LOSS, LIABILITY, DAMAGE, COST OR EXPENSE (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES) PAID OR INCURRED BY SELLER BY REASON OF ANY CLAIM TO ANY BROKER'S, FINDER'S OR OTHER FEE IN CONNECTION WITH THIS TRANSACTION BY ANY PARTY CLAIMING BY, THROUGH OR UNDER BUYER.**

20. **Restrictions and Development Requirements.** Seller’s conveyance of the Property to Buyer, shall be specifically subject to and conditioned upon the following matters, which shall survive closing:

(a) Seller's Right of Reversion, as set forth in Exhibit D to the Special Warranty Deed. This provision shall survive Closing.

(b) Seller's Right of First Refusal, as set forth in Exhibit E to the Special Warranty Deed.

(c) Development Guidelines and Restrictive Covenants, as set forth in Exhibit C to the form of Special Warranty Deed attached hereto as Exhibit B

[Remainder of This Page Left Intentionally Blank]

“SELLER”

CITY OF PEARLAND

By: _____

Name: _____

Title: _____

“BUYER”

By: _____

Date: _____

Receipt of a fully executed copy of this Agreement and of the Earnest Money specified in Section 3 of this Agreement is hereby acknowledged as of the date hereinafter set forth which date shall be the Effective Date of this Contract.

DATED: _____, 2015.

TITLE COMPANY:

By: _____
Name: _____
Title: _____

EXHIBIT "A"
TO SALE AND PURCHASE AGREEMENT

Legal Description

[to be replaced by legal description provided by the Survey or Plat]

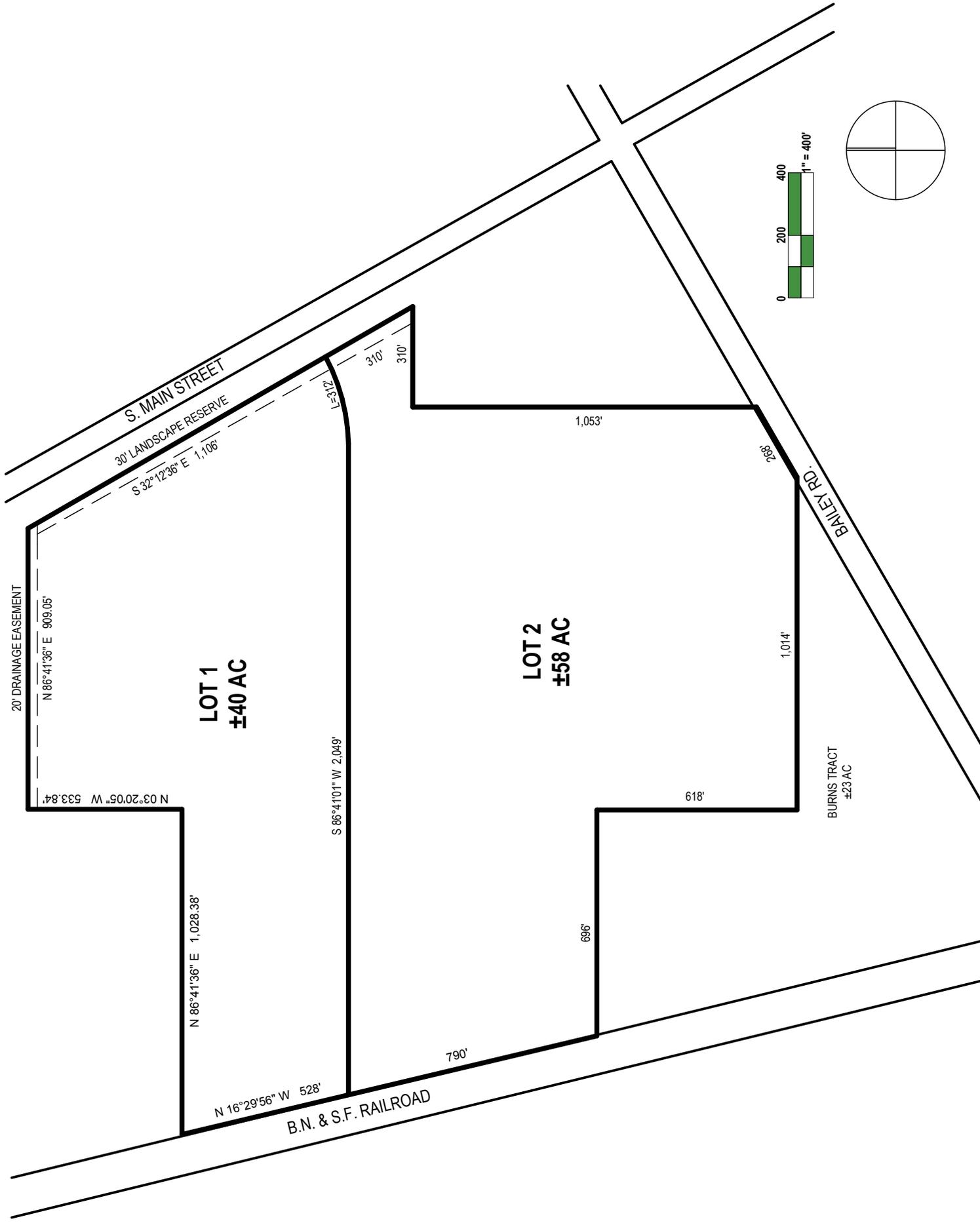


EXHIBIT "B"
TO SALE AND PURCHASE AGREEMENT

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

Date _____, 2015

Grantor City of Pearland, as authorized by Resolution of the City Council dated _____, 2015.

Grantor's Mailing Address

Attn: City Manager
3519 Liberty Drive
Pearland, Texas 77581

Grantee

American Commercial Contractors

Grantee's Mailing Address

Attn: Susan Rozman
4660 Sweetwater Blvd., Suite 110
Sugarland, TX 77479

Consideration

Cash and other valuable consideration, receipt and sufficiency of which are hereby acknowledged.

Property

That certain tract of land described as approximately 40 acres in Pearland, Texas, located in Brazoria County, Texas, as more particularly described in

Exhibit "A," attached hereto and incorporated herein for all purposes. *[To be adjusted upon approval of final survey]*

Reservations from and Exceptions to Conveyance and Warranty

1. This conveyance is subject to those matters described and contained in Exhibit B, Exhibit C, Exhibit D, and Exhibit E attached hereto and incorporated herein by reference for all purposes.
2. Taxes and special assessments are prorated as of this date, and Grantee assumes and agrees to pay same except for rollback taxes assessed for periods prior to this date, which shall be paid by Grantor.
3. Further, Grantor reserves and excepts for itself, its successors and assigns, and its predecessors in title in accordance with their respective interests of record, all oil, gas and other minerals on, in and under the above-described Property, but Grantor, on behalf of itself, its successors and assigns, does hereby forever release and relinquish its right to enter upon and use the surface of the Property for exploring and drilling for, and producing and mining such oil, gas and minerals; provided, that Grantor shall have and hereby reserves the right to pool and combine such Property with other land for the purpose of exploring and drilling for, and producing and mining such minerals by virtue of operations conducted on such other lands, but not on the Property.

GRANTOR AND GRANTEE HEREBY ACKNOWLEDGE THAT THE PROPERTY IS BEING CONVEYED "AS IS" AND "WHERE IS", WITH ALL FAULTS. GRANTEE WAS GIVEN THE OPPORTUNITY TO INSPECT, EXAMINE, AND INVESTIGATE, EITHER INDEPENDENTLY OR THROUGH AGENTS OF THE GRANTEE'S CHOOSING, EACH AND EVERY ASPECT OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE INTERIOR, THE EXTERIOR, THE STRUCTURE, THE PAVING, THE UTILITIES, AND ALL OTHER PHYSICAL AND FUNCTIONAL ASPECTS OF THE PROPERTY. GRANTEE WAS GIVEN THE OPPORTUNITY TO INSPECT, EXAMINE, AND INVESTIGATE THE PROPERTY FOR THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS (AS DEFINED IN THAT SALE AND PURCHASE AGREEMENT, EXECUTED BY AND BETWEEN GRANTOR AND GRANTEE, EFFECTIVE _____, 2015 (THE "AGREEMENT")). GRANTEE HEREBY ASSUMES THE RISK OF ALL ADVERSE PAST, PRESENT, OR FUTURE PHYSICAL CHARACTERISTICS AND CONDITIONS OF THE PROPERTY WHETHER OR NOT THEY MAY HAVE BEEN REVEALED BY ITS INSPECTION, EXAMINATION, OR INVESTIGATION.

THE GRANTOR HAS NOT MADE, AND HEREBY DISCLAIMS, ANY AND ALL REPRESENTATIONS, WARRANTIES OR GUARANTIES OF ANY KIND TO GRANTEE (WETHER ORAL, WRITTEN, OR ARISING BY OPERATION OF LAW,

EXCEPT AS TO TITLE AS PROVIDED IN THIS DEED) REGARDING THE PROPERTY OF ANY NATURE, KIND, OR CHARACTER WHATSOEVER, EITHER EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY AS TO (1) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, THE STRUCTURAL ELEMENTS, FOUNDATION, ROOF, APPURTENANCES, ACCESS, LANDSCAPING, PARKING FACILITIES, AND ELECTRICAL, MECHANICAL, HVAC, PLUMBING, SEWAGE, AND UTILITY SYSTEMS, FACILITIES, AND APPLIANCES, (2) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY, AND ANY GROUNDWATER, (3) THE EXISTENCE, QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF UTILITIES SERVING THE PROPERTY, (4) THE DEVELOPMENT POTENTIAL, INCOME POTENTIAL, OR OPERATING EXPENSES OF THE PROPERTY, (5) THE PROPERTY'S VALUE, USE, HABITABILITY, OR MERCHANTABILITY, (6) THE FITNESS, SUITABILITY, OR ADEQUACY OF THE PROPERTY FOR ANY PARTICULAR USE OR PURPOSE, (7) THE ZONING OR OTHER LEGAL STATUS OF THE PROPERTY OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON THE USE OF THE PROPERTY, (8) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ALL APPLICABLE CODES, LAWS, RULES, REGULATIONS, STATUTES, ORDINANCES, COVENANTS, JUDGMENTS, ORDERS, DIRECTIVES, DECISIONS, GUIDELINES, CONDITIONS, AND RESTRICTIONS (COLLECTIVELY, THE "LAWS") OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY OR OF ANY OTHER PERSON OR ENTITY, INCLUDING, WITHOUT LIMITATION, THE ENVIRONMENTAL LAWS (AS DEFINED IN THE AGREEMENT), (9) THE PRESENCE OF HAZARDOUS MATERIALS (AS DEFINED IN THE AGREEMENT) ON, UNDER, OR ABOUT THE PROPERTY OR THE ADJOINING OR NEIGHBORING PROPERTY, (10) THE QUALITY OF ANY LABOR AND MATERIALS USED IN ANY IMPROVEMENTS INCLUDED IN THE PROPERTY, (11) THE TITLE TO THE PROPERTY (EXCEPT FOR ANY WARRANTY OF TITLE EXPRESSLY GRANTED HEREIN), (12) ANY LEASES, SERVICE CONTRACTS, OR OTHER AGREEMENTS AFFECTING THE PROPERTY, (13) THE ECONOMICS OF THE OPERATION OF THE PROPERTY, (14) THE FREEDOM OF THE PROPERTY, INCLUDING ALL IMPROVEMENTS LOCATED THEREON, FROM VICES OR DEFECTS, (15) THE FREEDOM OF THE PROPERTY FROM EITHER LATENT OR APPARENT DEFECTS, AND (16) ENVIRONMENTAL MATTERS OF ANY KIND OR NATURE WHATSOEVER RELATING TO THE PROPERTY, INCLUDING ALL IMPROVEMENTS LOCATED THEREON.

Grantor, for the consideration and subject to the Reservations from and Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it unto Grantee and Grantee's successors and assigns, and Grantor binds itself, its successors and assigns to warrant and forever defend all and singular the Property to Grantee and Grantee's successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, by,

through or under Grantor, but not otherwise, except as to the Reservations from and Exceptions to Conveyance and Warranty.

When the context requires, singular nouns and pronouns include the plural.

“Grantor”

City of Pearland

By: DO NOT SIGN PRIOR TO CLOSING
_____, City Manager

Date: _____

STATE OF TEXAS §
 §
COUNTY OF BRAZORIA §

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by _____, acting in his capacity as City Manager of and on behalf of the City Council of Pearland .

Notary Public, State of Texas

After recording, return to:

City of Pearland
Attn: City Attorney
3519 Liberty Dr.
Pearland, Texas 77581

“Grantee”

American Commercial Contractors, LLC

By: DO NOT SIGN PRIOR TO CLOSING

Title: _____

STATE OF TEXAS §
 §
COUNTY OF BRAZORIA §

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____, acting in his capacity as _____ of _____ .

Notary Public, State of Texas

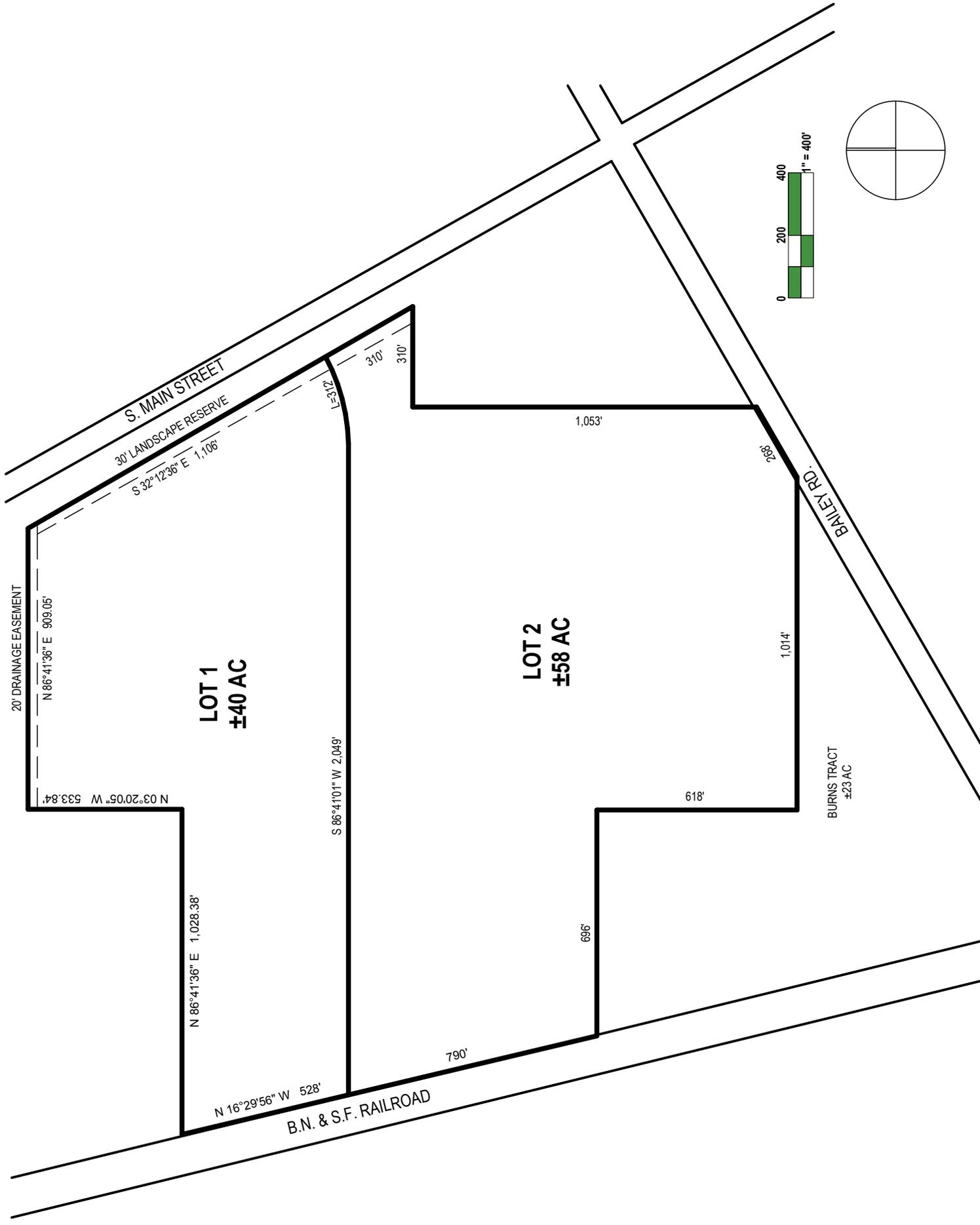
After recording, return to:

American Commercial Contractors, LLC
Attn: Susan Rozman
4660 Sweetwater Blvd., Suite 110
Sugarland, TX 77479

EXHIBIT "A"
TO DEED

SUBJECT PROPERTY

[to be replaced by legal description provided by the Survey]



20' DRAINAGE EASEMENT

N 86°41'36" E 909.05'

N 03°20'05" W 533.84'

**LOT 1
±40 AC**

N 86°41'36" E 1,028.38'

N 16°29'56" W 528'

B.N. & S.F. RAILROAD

S 86°41'01" W 2,049'

L-372

310'

310'

**LOT 2
±58 AC**

1,053'

696'

790'

618'

288'

1,014'

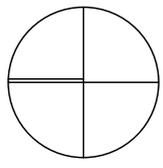
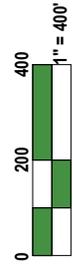
BURNS TRACT
±23 AC

BAILEY RD.

S. MAIN STREET

30' LANDSCAPE RESERVE

S 32°12'36" E 1,106'



**EXHIBIT “B”
TO DEED**

Permitted Exceptions

1. *[to be completed upon identification of Permitted Exceptions]*

**EXHIBIT “C”
TO SPECIAL WARRANTY DEED**

Development Guidelines and Restrictive Covenants

DEVELOPMENT RESTRICTIONS AND RESTRICTIVE COVENANTS

A. Development Restrictions

Development of the Property shall comply with the following development guidelines:

1. The Property may only be used for the development of an office, distribution and storage, warehouse and manufacturing facility.
2. Noise Levels for any development on the Property or operations within the Property may not exceed 85 *dB*, measured from the property line of Grantor’s adjacent remaining property, in accordance with Texas law.
3. Provide a 30 foot landscaping buffer with berm along the southern property line that borders PISD property, where adjacent to the fence in front of service yards, storage areas or trash or refuse containers. The height of the berm shall be no more than five (5) feet high with no more than a 4:1 slope and shall crest at the center point of the 30 foot buffer.

Landscape buffer shall include plantings to screen service yards, storage areas or trash or refuse containers. The landscape buffer area should be a mix of evergreen plant material. The plant buffer must achieve approximately 75% opacity from grade in all seasons. Suggested evergreen plant material may include: live oaks, waxmyrtle, holly species, oleander; and all species shall be in accordance with the City of Pearland Unified Development Code approved list.

Buffer planting areas, will be provided with a complete underground irrigation system. All planted areas shall be maintained in healthy condition. Any trees or bushes that die or become diseased must be replaced within 90 days with a similar species of similar size except for trees that will be replaced with a 6 inch caliper or larger.

4. All outside storage on the Property shall be placed on a reinforced concrete surface of sufficient depth and strength to support all business operations on the Property.
5. Any development on the Property must comply with all terms, conditions and requirements contained in the Tax Abatement Agreement executed between the owner of the Property and the City of Pearland, if one is in place.

B. Restrictive Covenants

Grantee shall not permit, or allow any other occupant of the Property to use any premises or any portion thereof for purposes of:

- 1) Cocktail lounge, bar, or any other establishment that sells alcoholic beverages, with the exception of the following allowances for a business in possession or applying for one or both of the following alcohol licenses as labeled or defined by the Texas Alcoholic Beverage Commission:
 - a) Mixed beverage restaurant permit with FB (RM) – further defined as “permit authorizes a restaurant located in an area voted wet for the legal sale of mixed beverages in restaurants by food & beverage certificate holder to sell mixed drinks, wine, beer, ale, and malt liquor for consumption on the premises of the restaurant,” with the added exclusion that no open containers nor consumption is permitted outside the confines of the enclosed conditioned building area;
 - b) Wine and beer retailers off-premises permit (BQ) – further defined as “permit authorizes the holder to sell for off-site consumption only, but not for resale, wine, beer, and malt liquors containing alcohol in excess of one-half of one percent (1/2 of 1%) by volume and not more than 14 percent or 17 percent of alcohol by volume (depending on type of local-option election);
- 2) Smoke or tobacco shop;
- 3) Disco;
- 4) Skating rink, roller rink, amusement arcade (except for the operation of video arcade games incidental to the operation of a restaurant otherwise permitted hereunder);
- 5) Auction house (except that any antique shop shall be permitted to hold auctions of antiques within its facility);
- 6) Flea market or resale shop;
- 7) Sale or trade of firearms, weapons, or ammunitions;
- 8) Blood bank;
- 9) Tattoo or piercing parlor;
- 10) Funeral home;
- 11) Sleeping quarters or lodging;
- 12) The sale, leasing or storage of automobiles, boats or other vehicles;
- 13) Any mining or mineral exploration or development except by non-surface means;
- 14) A carnival, amusement park or circus;
- 15) An assembly hall;
- 16) Off track betting establishment (however, the foregoing shall not limit or restrict the sale of lottery tickets as an incidental part of another permitted business operation);
- 17) Bingo hall or game room;
- 18) Any use involving the use, storage, disposal or handling of hazardous materials other than the ancillary, prudent and customary use, storage, disposal, and handling of hazardous materials in the ordinary course of business (whose primary business is not the use, storage, disposal or handling of hazardous materials) being operated in accordance with all applicable laws;
- 19) Any facility for the sale of paraphernalia for use with illicit drugs;
- 20) Noncompliance with city, county, state, or federal law especially in regards to education;
- 21) Any use which creates a public nuisance;

- 22) Sexually oriented business including but not limited to adult book store, adult theatre, adult amusement facility, any facility selling or displaying pornographic materials or having such displays; and
- 23) Boarding of animals or veterinarian services.
- 24) Agricultural Animal Husbandry;
- 25) Airport & Heliport/ Helipad & or Landing Field;
- 26) Animal Processing;
- 27) Asphalt Batching Plant;
- 28) Auto Parts Sales (With Outside Storage or Display);
- 29) Auto Repair (Major);
- 30) Auto Repair (Minor);
- 31) Auto Sales/Dealer (New-In Building Auto Servicing and Used Auto Sales as accessory uses only) Combines Auto lease;
- 32) Auto Wrecker Service;
- 33) Asphalt /Concrete Batching Plant;
- 34) Boat Sales Personal Watercraft Sales (New Repair);
- 35) Cattle Feed Lot (CAFO);
- 36) Check Cashing Service;
- 37) Commercial Extraction of Soil business;
- 38) Sand and Gravel or similar material and Storage;
- 39) Construction Contractor with Storage Yard;
- 40) Chemical Packing and/or Blending;
- 41) Dumps and Landfills;
- 42) Explosives Manufacturer and /or Storage;
- 43) Gaming Establishment;
- 44) Gasoline Station;
- 45) Liquefied Petroleum Storage & Sales;
- 46) Manufacturer of Chlorine or Other Toxic Gasses;
- 47) Mini-Warehouse/Self Storage business;
- 48) Minor Concrete Batching Operation & Storage of Associated Processing Material;
- 49) Mobile Manufactured Homes Sales or Rental Only;
- 50) Pawn Shop, Pay Day Loan & Gold Exchange;
- 51) Penal Correctional Institutions;
- 52) Petroleum or Petroleum Product Extraction;
- 53) Petroleum Refining Manufacturing or Bulk Storage;
- 54) Petroleum Products Bulk Storage (Wholesale);
- 55) Sanitary Landfill (Private);
- 56) Sanitary Landfill (Public);
- 57) Studio – Tattoo or Body Piercing;
- 58) Tire Retreading and Capping;
- 59) Tire Sales (Outdoors, With Open Storage);

- 60) Transfer Station (Refuse/Pick-up);
- 61) Travel Trailer/RV Park/Campground;
- 62) Truck (Heavy) and Bus Rental or Sales;
- 63) Wrecking or Salvage Yard (Auto, Steel or Building Materials).

C. These Development Restrictions and Restrictive Covenants shall attach to and run with the land, but shall become null and void and be of no further force and effect upon the expiration of 25 years from the Effective Date of this Deed.

**EXHIBIT “D”
TO DEED**

Right of Reversion

Subject to the terms and conditions set forth below, Grantor reserves, and Grantor shall have the right and option, but not the obligation, to exercise its Right of Reversion of the Property as described in this Exhibit D.

1. As used herein, "Construction Obligation" shall mean the substantial completion of construction of a tilt up concrete facility, consisting of no less than 200,000 square feet, with office and warehouse storage space of specialty pipe, valves and related products (the "Project") to be built on the Property, and commencement of operations of the facility on the Property.

2. As used herein, "Closing Obligation" shall mean the sale and closing of the Property by Grantor, the City of Pearland, to any third party purchasing the Property from the City of Pearland.

3. Subject to the terms and conditions set forth below, Grantee grants to Grantor, and Grantor shall have, the right and option, but not the obligation, to exercise a reversion of the Property (the "Right of Reversion") if either condition fails to occur (i) the "Closing Obligation has not been satisfied within 3 business days following the Effective Date of this Exhibit D, which shall be the date of execution and recording of the Special Warranty Deed to which this Exhibit D is attached, or (ii) the Construction Obligation has not been by the expiration of three (3) years after the Effective Date of this Exhibit D which shall be the date of execution and recording of the Special Warranty Deed to which this Exhibit D is attached.

(a) In order to exercise the Right of Reversion, Grantor must deliver written notice to Grantee within 45 days after the date of the event triggering Grantor's right under Section 3 above, and pay to Grantee the amount set forth in Section 3(c) no later than 105 days after the date of Grantor's written notice herein.

(b) If Grantor exercises the Right of Reversion, Grantee shall reconvey the Property to Grantor by special warranty deed free and clear of all liens and encumbrances, with no title exceptions other than those existing on the date Grantor conveyed the Property to Grantee, except the lien for ad valorem taxes shall be limited to the year of reversion. Taxes shall be prorated for the year of reversion as of the date of the repurchase.

(c) If Grantor exercises the Reversion Right, Grantor shall pay to Grantee an amount equal to the purchase price that Grantee paid Grantor for the Property, excluding Grantee's closing costs.

(d) The Right of Reversion shall terminate if Grantor does not give the written exercise notice within the time period specified in Paragraph 3(a) or, if having

given such notice, fails to make the payment of the amount set forth in Section 3(c) within the time period specified in Paragraph 3(a) for closing (for reasons other than Grantee's failure to comply with the provisions of this Paragraph 3).

4. The illegality, invalidity or unenforceability of any provision of this Exhibit D shall not affect the legality, validity or enforceability of any other provision of this Exhibit D.

5. Notices. Any notice, demand or other communication required to be given or to be served upon any party hereunder shall be void and of no effect unless given in accordance with the provisions of this section. All notices, demands or other communications must be in writing and delivered to the person to whom it is directed, either (i) in person or (ii) delivered by a reputable non-electronic delivery service that provides a delivery receipt. Any notice, demand or other communication shall be deemed to have been given and received when delivered to the below stated address of the party to whom it is addressed. All notices, demands and other communications shall be given to the parties hereto at the following addresses:

If to Grantor: City of Pearland
 Attn: City Manager
 3519 Liberty Dr.
 Pearland, Texas 77581

with a Copy to: City of Pearland
 Attn: City Attorney
 3519 Liberty Dr.
 Pearland, Texas 77581

If to Grantee: American Commercial Contractors, LLC
 Attn: Susan Rozman
 4660 Sweetwater Blvd., Suite 110
 Sugarland, TX 77479

Any party entitled to receive notices hereunder may change the address for notice specified above by giving the other party ten days' advance written notice of such change of address.

6. **THIS EXHIBIT D MAY NOT BE AMENDED EXCEPT BY WRITTEN DOCUMENT SIGNED BY THE THEN CURRENT OWNER OF THE PROPERTY AND GRANTOR, SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS AND IS BINDING ON THE PARTIES HERETO AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS.**

7. The prevailing party in any legal proceeding regarding this Exhibit D shall be entitled to recover from the other party all reasonable attorneys' fees and costs incurred in connection with such proceeding.

8. Unless earlier terminated as provided herein, the rights herein granted shall terminate and shall be of no further force or effect on that date which is 46 days following the Termination Date.

EXHIBIT "E" **TO DEED**

Right of First Refusal

Subject to the terms and conditions set forth below, Grantor reserves, and Grantor shall have the right and option, but not the obligation, to purchase the Property or portions thereof as described in this Exhibit E.

1. As used in this Exhibit E, the term "offer" shall include, without limitation, any bona fide option proposed to be granted by Grantor or its successors in interest or assigns.

2. As used in this Exhibit E, the term "sold," "sell" or "sale" shall include a sale or a lease, including all renewal options, or any other disposition of the Property or any portion thereof, or any interest therein (any such sale, lease or other disposition shall be referred to as a "Disposition").

3. As used in this Exhibit E the term "affiliate" shall mean as to the Person (as hereinafter defined) in question, any Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the Person in question. As used in the immediately preceding sentence, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, partnership interests, by contract or otherwise.

4. As used in this Exhibit E the term "Person" shall mean any individual, corporation, partnership, joint venture, association, joint stock company, trust, estate, unincorporated organization, government agency or political subdivision thereof, or any other form of entity.

5. With the exception of mergers or acquisitions involving Grantee or a sale of the property which results in the tenants' continued occupancy of the Property, If Grantee or its successors in interest at any time receives a bona fide offer acceptable to Grantee or its successors in interest to buy or makes a bona fide offer acceptable to the offeree to sell all or any portion of the Property or any interest therein (the Property, or such portion thereof, or such interest therein, being hereinafter referred to as the "Offered Property"), then Grantor shall have the right and option, but not the obligation, to purchase (the term "purchase" shall include a purchase, lease or other acquisition, and the term "purchaser" shall include a purchaser, lessee or the party making such other acquisition) the Offered Property (the "First Refusal Right") on the following terms and conditions:

5.1 Upon Grantee's receipt of any offer, Grantee or its successor in interest shall provide Grantor, or its successor in interest with a written notice (the "Grantee's Notice") of Grantee's or its successor in interest's intent to sell which shall (i) set forth the true identity of the offeror (including the identity of the

principals of the offeror, if known to Grantee or its successor in interest), (ii) include a description of the Offered Property, (iii) and include a description of all material terms of the offer, (the "Offer") (including, without limitation, the price, earnest money and closing date). Grantor shall then have a 30-day period following receipt of the Grantee's Notice in which to decide whether to exercise Grantor's First Refusal Right.

5.2 During the 30-day period following Grantor's actual receipt of the Grantee's Notice (the "Response Period"), Grantor shall have the right, at its expense, to enter onto and conduct tests and investigations on the Offered Property. Grantor shall be responsible for any damages or injuries resulting from Grantor's entry onto the Offered Property and conducting such tests and inspections. If Grantor wishes to exercise its First Refusal Right, Grantor must elect to purchase the Offered Property under the same terms and conditions contained in the Offer described in Grantee's Notice, by delivering written notice of such election to Grantee within the Response Period. If Grantor fails to do so, then Grantee or its successor in interest may effect a Disposition of the Offered Property to the offeror identified in the Grantee's Notice. Such Disposition if made in accordance with this Exhibit E, shall be made free and clear of the First Refusal Right, and Grantor, at the request of Grantee or its successor in interest, shall execute, in recordable form, a confirmation of the release of the First Refusal Right insofar as it pertains to the Offered Property that is so conveyed.

5.5 If Grantor chooses to exercise its First Refusal Right, it must deliver written notice of such exercise to Grantee or its successor in interest within the Response Period. Grantor and Grantee (or its successor in interest) shall then enter into the transaction described in, and upon the terms set forth in, the Grantee's Notice for the Economic Consideration offered to Grantee or its successor in interest by the offeror and detailed in the Grantee's Notice.

5.6 Notwithstanding any provision contained herein to the contrary, the provisions of this Section 5 shall not apply to a sale of all or any portion of the Property to an affiliate of Grantee or its successor in interest; provided, however, the provisions of this Section 5 shall survive such sale to an affiliate of Grantee or its successor in interest, and the Property shall continue to be subject to the First Refusal Right.

6. Nothing herein shall prohibit Grantee or its successor in interest from rejecting all offers, including Grantor's offer, in which case this First Refusal Right shall remain in full force and effect for the duration of the Term.

7. The illegality, invalidity or unenforceability of any provision of this Exhibit E shall not affect the legality, validity or enforceability of any other provision of this Exhibit E.

8. **Notices.** Any notice, demand or other communication required to be given or to be served upon any party hereunder shall be void and of no effect unless given in

accordance with the provisions of this section. All notices, demands or other communications must be in writing and delivered to the person to whom it is directed, either (i) in person or (ii) delivered by a reputable delivery service that provides a delivery receipt. Any notice, demand or other communication shall be deemed to have been given and received when delivered to the below stated address of the party to whom it is addressed. All notices, demands and other communications shall be given to the parties hereto at the following addresses:

If to Grantor: City of Pearland
 Attn: City Manager
 3519 Liberty Dr.
 Pearland, Texas 77581

with a Copy to: City of Pearland
 Attn: City Attorney
 3519 Liberty Dr.
 Pearland, Texas 77581

If to Grantee: American Commercial Contractors, LLC
 Attn: Susan Rozman
 4660 Sweetwater Blvd., Suite 110
 Sugarland, TX 77479

Any party entitled to receive notices hereunder may change the address for notice specified above by giving the other party ten days' advance written notice of such change of address.

9. This Exhibit E may not be amended except by written document signed by Grantor and the then current owner of the Property, is binding on the parties hereto and their respective successors and permitted assign, shall forever run with the land, AND SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS.

10. The prevailing party in any legal proceeding regarding this Exhibit E shall be entitled to recover from the other party all reasonable attorneys' fees and costs incurred in connection with such proceeding.

11. This Exhibit E may not be assigned without the written consent of the nonassigning party; provided, written consent shall not be required for any assignment where the occupying tenant continues to occupy the Property following the assignment. Furthermore, the Grantor may assign its rights and obligations hereunder to a person or entity who is owned by, owns or is under common ownership with Grantor, without the prior approval of Grantee, but upon providing written notice of such assignment to Grantee. This Exhibit E shall bind and run with the land of the Property but shall not be appurtenant to any other property.

12. Unless earlier terminated as provided herein, the rights herein granted shall terminate and shall be of no further force or effect on that date which is the earlier of (i) ten (10) years after the date of execution of this Deed; or (ii) that date on which substantial completion of construction of a tilt up concrete facility, consisting of no less than 200,000 square feet, with office and warehouse storage space of specialty pipe, valves and related products to be built on the Property, is achieved. Notwithstanding the foregoing, if, at the date Grantee receives a bona fide offer to sell the property as set forth in this Exhibit E, Grantor has ceased to exist, with no lawfully formed and existing successor in interest or assignee, this Exhibit E shall be null and void.

**EXHIBIT “C”
TO SALE AND PURCHASE AGREEMENT**

Access and Indemnity Agreement

This Access and Indemnity Agreement (this “Agreement”) is entered into between Pearland Independent School District (“the Owner”), as the record title owner of the real property described on Exhibit “A” attached hereto and incorporated herein for all purposes (the “Property”), and _____ (“Prospective Purchaser”).

WHEREAS, Prospective Purchaser has requested from the Owner the right to temporary access and encroach on, over, and into the Property, for the purposes of conducting physical property inspections, as well as environmental assessments and engineering studies of the Property including the performance of tests such as soil tests and/or air sampling (the “Project”); and

WHEREAS, the Owner has agreed to grant such temporary access to the Property subject to and conditioned upon the terms of this Agreement.

NOW, THEREFORE, in consideration of the promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **PURPOSES.** Prospective Purchaser and its agents and contractors may enter upon the Property solely for the purpose of conducting physical property inspections, as well as environmental assessments and engineering studies of the Property including the performance of tests such as soil tests and/or air sampling. Prospective Purchaser agrees that if any disturbance or damage is caused to the Property as a result of the Prospective Purchaser’s exercise of the rights and privileges afforded to it under this instrument, Prospective Purchaser shall, to the fullest extent practicable, restore the affected area to its original condition.
2. **DURATION.** The Owner’s grant of temporary access to the Property shall automatically terminate at 12:01 a.m. on _____.
3. **RELEASE AND HOLD HARMLESS. TO THE EXTENT PERMITTED BY LAW, PROSPECTIVE PURCHASER HEREBY AGREES TO RELEASE AND HOLD HARMLESS THE OWNER, ITS TRUSTEES, EMPLOYEES, AGENTS, AND REPRESENTATIVES, FROM AND AGAINST ANY CLAIMS, COSTS, EXPENSES, OR DAMAGE, THAT PROSPECTIVE PURCHASER OR ITS AGENTS AND CONTRACTORS MAY SUFFER OR INCUR RELATIVE OR INCIDENTAL TO OR IN CONNECTION WITH THEIR USE OF OR**

PRESENCE ON THE OWNER'S PROPERTY AND/OR RELATED TO THE PROJECT.

4. **INDEMNITY.** TO THE FULLEST EXTENT PERMITTED BY LAW, PROSPECTIVE PURCHASER AGREES TO INDEMNIFY OWNER, ITS TRUSTEES, ADMINISTRATORS, EMPLOYEES, AGENTS, AND REPRESENTATIVES, FROM AND AGAINST ANY CLAIMS, COSTS, EXPENSES, OR DAMAGE OF ANY KIND THAT OWNER, ITS TRUSTEES EMPLOYEES, AGENTS, OR REPRESENTATIVES MAY SUFFER OR INCUR AS A RESULT OF ANY ACT OR OMISSION BY PROSPECTIVE PURCHASER OR ITS AGENTS OR CONTRACTORS RELATED TO THEIR USE OF OR PRESENCE ON THE PROPERTY AND/OR RELATED TO THE PROJECT.

5. **INSURANCE.** Prospective Purchaser shall ensure that its consultants engaged in the Project have Commercial General Liability coverage with a policy limit of no less than \$1,000,000 per occurrence, naming Owner as an additional insured, pertaining to Prospective Purchaser's consultant's actions relative to the work performed by such consultants on or for the Project and related to such consultants or their subcontractors' use of or presence on the Property. Prospective Purchaser shall, prior to entry, furnish the Owner with satisfactory evidence of such insurance carried by Prospective Purchaser's consultants.

The effective date of this Agreement shall be the later of the two execution dates set forth beside the signatures of the respective parties below.

PROSPECTIVE PURCHASER/ _____:

_____ Date Executed: _____
NAME

TITLE

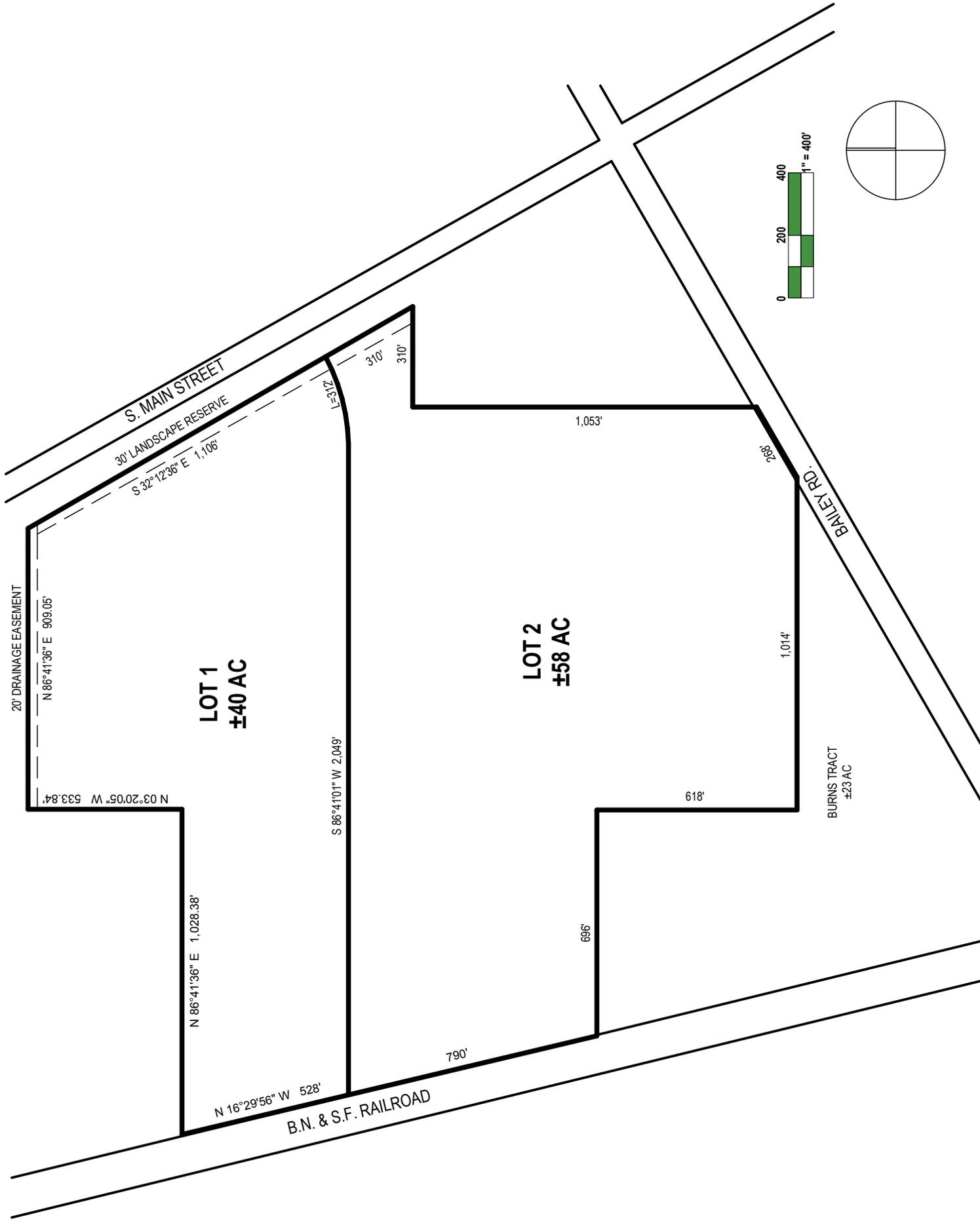
OWNER/PEARLAND INDEPENDENT SCHOOL DISTRICT

_____ Date Executed: _____
NAME

TITLE

EXHIBIT "A" TO ACCESS AND INDEMNITY AGREEMENT

(Attach Legal Description of Owner's Property)



20' DRAINAGE EASEMENT

N 86°41'36" E 909.05'

N 03°20'05" W 533.84'

**LOT 1
±40 AC**

N 86°41'36" E 1,028.38'

N 16°29'56" W 528'

B.N. & S.F. RAILROAD

S 86°41'01" W 2,049'

L-372

310'

790'

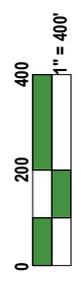
**LOT 2
±58 AC**

696'

1,053'

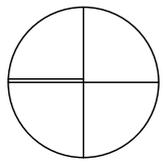
618'

288'



BURNS TRACT
±23 AC

BAILEY RD.



SALE AND PURCHASE AGREEMENT

THIS SALE AND PURCHASE AGREEMENT (“Agreement”) made and entered into on the Effective Date, as hereinafter defined, by and between AMERICAN COMMERCIAL CONTRACTORS, LLC (hereinafter referred to as “Buyer”), and the CITY OF PEARLAND (hereinafter “Seller”). Buyer and Seller are herein collectively referred to as the “Parties” and individually as a “Party”.

WITNESSETH:

1. **Property.** Subject to the terms and conditions set forth below, Seller agrees to sell and convey to Buyer and Buyer agrees to purchase from Seller a certain tract of land described as approximately 40 acres, more or less, located on S. Main Street in Pearland, Texas, located in Brazoria County, Texas, as more particularly described in Exhibit “A,” attached hereto and incorporated herein for all purposes, together with any and all easements, right-of-way, privileges, benefits, contract rights, development rights, permits, licenses or approvals, improvements, or appurtenances arising from, pertaining to or associated with said real estate (collectively, the “Property”). Notwithstanding anything herein to the contrary, the term “Property” shall exclude any interest in and to all oil, gas or minerals in or under and that may be produced from the Property, subject to Seller’s waiver of any right to use the surface of the Property to drill, produce, treat and/or transport oil, gas or other minerals from the Mineral Estate.

2. **Purchase Price.** The Property shall be sold by the Seller and purchased by the Buyer for the total purchase price (the "Purchase Price") equal to \$1.50 per gross square foot, for an estimated total purchase price of Two Million Six Hundred and Thirteen Thousand, Six Hundred and Dollars (\$2,613,600.00) (the “Purchase Price”), to be adjusted per final plat of the Property. The Purchase Price shall be payable in cash or in immediately available funds to Seller at the closing (the "Closing") of conveying the Property to the Buyer.

3. **Earnest Money.** As a condition precedent to the validity of this Agreement, Twenty Five Thousand and No/100 Dollars (\$25,000.00) is herewith tendered by, and is to be deposited as, earnest money (the “Earnest Money”) with the Title Company (as defined herein) and placed in an interest bearing account, upon execution of the Agreement by both Parties. Such interest earned shall be additional Earnest Money.

4. **Closing.** Subject to the terms and conditions hereof, the closing of this transaction (the “Closing”) shall be held at Old Republic National Title Insurance Company, Attn: Lavinia Longley, 777 Post Oak Boulevard, Suite 125, Houston, Texas 77056-3211 (the “Title Company”), not later than thirty (30) days following the expiration of the Inspection Period (the “Closing Date”), or such other time as may be mutually agreed upon by Seller and Buyer. Seller shall deliver possession of the Property to Buyer on the Closing Date. Closing is expressly conditioned and contingent upon Seller’s purchase of the

Property from the Pearland Independent School District (the “District”) prior to Closing. Closing is further conditioned upon all other conditions of Closing listed in Section 9 below.

5. **Title Insurance.** Within ten (10) days after the Effective Date hereof, Seller shall deliver to Buyer a title commitment (the “Title Commitment”) for an owner’s title insurance policy (standard Texas form) issued by the Title Company, in the amount of the Purchase Price covering title to the Property, showing title in the Seller’s name, subject only to (a) title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount which may be removed by the payment of money at the time of Closing, and which the Seller shall so remove at the time by using the funds to be paid to Seller at closing, and (b) such other exceptions as may be acceptable to Buyer (with all of said exceptions being herein referred to as the “Permitted Exceptions”). Within ten (10) days after the Effective Date, Seller shall cause the Title Company to provide to Buyer copies of any documents referred to as exceptions in the Title Commitment, together with the vesting deed(s). The Title Commitment shall be conclusive evidence of good title as to all matters to be insured by the policy, subject to the exceptions as therein stated. The cost of any title search fees and said Title Commitment and the premium for the basic title insurance policy to be issued pursuant thereto shall be borne by Seller and paid by Seller on or before Closing. The costs of any exceptions, deletions, endorsements or express coverages shall be paid by Buyer.

6. **Survey and Plat.** Within Sixty (60) days of the Effective Date hereof, Seller will obtain a new or updated Survey acceptable to the Title Company and deliver the acceptable Survey to Buyer and the Title Company. The Survey will (1) identify the Property by metes and bounds; (2) show that the Survey was made and staked on the ground with corners permanently marked; (3) set forth the dimensions and total area of the Property; (4) show the location of all improvements, highways, streets, roads, railroads, rivers, creeks, or other waterways, fences, easements and rights-of-way on the Property with all easements and rights-of-way referenced to their recording information; (5) show any discrepancies or conflicts in boundaries, any visible encroachments, and any portion of the Property that has been designated by the Federal Emergency Management Agency, Federal Insurance Administration, the Army Corps of Engineers, or any other governmental agency or body as being subject to special or increased flooding hazards; and, (6) if required, contain a surveyor’s certificate, addressed to Seller, Buyer and the Title Company, that the Survey is true and correct. At such time as Buyer has received both the Title Commitment (with all underlying documents and the vesting deed) and the Survey, Buyer shall have fifteen (15) days in which to examine the Title Commitment and the Survey and notify Seller of those items which Buyer finds objectionable (“Encumbrances”). Buyer’s failure to object to Encumbrances within the time allowed shall constitute a waiver of Buyer’s right to object and such Encumbrances shall be deemed Permitted Exceptions, except that satisfaction of the requirements of Schedule C of the Title Commitment shall not be deemed to have been waived. If objections are made by Buyer within the time allowed, Seller, at its sole cost and expense, shall have the right, but not the obligation, to cure or remove the Encumbrances that Buyer has objected to, give Buyer written notice thereof, and deliver

within ten (10) days of the date of Buyer's notice, (i) an amended Survey and/or Title Commitment reflecting the cure of such matters, or (ii) written notice to Seller stating that it will not cure or remove any or all such Encumbrances (the "No Cure Notice"). In the event that Seller delivers such No Cure Notice to Buyer, Buyer may either (i) waive such Encumbrances and accept title to the Property subject to such Encumbrances; or (ii) as its sole remedy, terminate this Agreement by providing written notice of such termination to Seller within five (5) days of receipt of the No Cure Notice from Seller, in which event the Earnest Money shall be refunded to Buyer. This provision and obligation shall expressly survive closing.

Following Closing, Buyer will cause to be prepared and recorded, at Buyer's expense, a plat of the Property and the District's remaining adjacent property as two separate parcels. Seller will cooperate in the execution of any documents necessary for the preparation, approval and recording of said plat. Such plat must be clear of any public rights of way for road or access within the Property or Seller's remaining adjacent Property, except for any private shared access roads created by and between Seller and Buyer by plat, separate easement or in the Special Warranty Deed for the Property.

7. **Feasibility Study and Inspection.**

- (a) Within one hundred and eighty (180) days after the Effective Date hereof (the "Inspection Period"), Buyer, at its expense, may complete or cause to be completed inspections of the Property (including any improvements) by inspectors of Buyer's choice. Inspections may include but are not limited to: (1) physical property inspection; (2) economic feasibility study; and, (3) any type of environmental assessment or engineering study including the performance of tests such as soil tests or air sampling. Seller shall permit Buyer and Buyer's inspectors' access to the Property at reasonable times. Buyer hereby indemnifies and holds Seller and the District harmless from any claim, liability, loss, damage, cost and expense for property damage directly arising out of Buyer's activities upon the Property allowed by this Section. Prior to accessing the Property, Buyer's inspectors and agents must (i) execute documents necessary to indemnify and hold the District harmless from any claim, liability, loss, damage, cost and expense for property damage directly arising out of Buyer's inspectors' and agents' activities upon the Property allowed by this Section, in form and substance substantially similar to that Access and Indemnity Agreement, attached hereto as Exhibit "C" and incorporated herein by reference (the "Access and Indemnity Agreement"), and (ii) provide evidence that Buyer and its inspectors and agents are covered by policies of Commercial General Liability Insurance covering and personal injury or property damage caused by the acts or omissions of Buyer and its inspectors and agents. If, during this Inspection Period, Buyer elects, in Buyer's sole judgment, to terminate this Agreement for any reason, Buyer

may do so by providing written notice of termination before the expiration of the Inspection Period. Upon termination of this Agreement pursuant to this Section on or before the 180th day following the Effective Date, all Earnest Money shall be refunded to Buyer, less the sum of \$500.00 which shall be retained by Seller as additional consideration for this Agreement. In the event that Buyer terminates this Agreement after the expiration of the Inspection Period the entire Earnest Money amount, which shall become non-refundable upon the expiration of the Inspection Period, shall be retained by Seller. If this transaction does not close, Buyer shall restore the property to its original condition if altered due to inspections, studies, or assessments completed by Buyer or Buyer's inspectors.

- (b) Within twenty (20) days of the Effective Date, Seller agrees to provide to Buyer copies of all previous environmental assessments, geotechnical reports, studies or analyses and/or plats of the Property, if any, to the extent available to Seller and under Seller's control, with respect to the Property without any representations as to the truth or accuracy of same. If Buyer terminates this Agreement pursuant to this Section, Buyer agrees to provide to Seller copies of all reports of inspections, studies, or assessments completed or caused to be completed by Buyer under this Section to Seller. However, Buyer and Seller agree that Seller's agreement to provide Buyer with copies of the reports referred to in this Section 7(b) shall not relieve Buyer of the obligation to conduct its own due diligence concerning the purchase of the Property, and Buyer will not be entitled to rely on information contained in documents provided by Seller pursuant to this Section but shall conduct its own investigation of the matters referred to in such documents.

8. **Seller's Documents** At Closing, Seller shall execute and deliver to Buyer, the following:

- (a) A duly executed and acknowledged Special Warranty Deed, in form and substance substantially similar to that attached in Exhibit "B" (the "Deed"), attached hereto and incorporated herein by reference, conveying good and indefeasible title in fee simple title to all of the surface of the Property and free and clear of any and all liens, encumbrances, conditions, easements, assessments and reservations, subject only to the Permitted Exceptions, Right of Reversion, Right of First Refusal and Development Guidelines and Restrictive Covenants contained the Special Warranty Deed and the exhibits thereto; and
- (b) An approved Tax Abatement Agreement between the Seller and Buyer and/or tenant.

- (c) A contingent Loan Agreement between the Pearland Economic Development Corporation and Shale-Inland Group, LLC.
- (d) An approved Tax Abatement Agreement between Brazoria County and Buyer and/or tenant.
- (e) Such other closing documents as reasonably may be required to consummate the transaction contemplated by this Agreement, including any documents that may be required by the Title Company in order to issue the Title Policy as required by the Title Commitment.

9. **Buyer's Closing Matters.** At Closing, and as an express condition of Closing, Buyer shall execute and deliver to Seller, the following:

- (a) The Purchase Price in accordance with Section 2 above;
- (b) Evidence that the person executing this Agreement and the Deed has the full power and authority to bind Buyer;
- (c) Evidence that Buyer will develop the Property subject to all terms, conditions, restrictions and development requirements listed under Section 19, ("Restrictions and Development Requirements")
- (d) Such other closing documents as reasonably may be required to consummate the transaction contemplated by this Agreement, including any documents that may be required by the Title Company.

10. **Expense Provisions.** The basic title premium shall be paid by Buyer on or before Closing. Each Party shall bear and pay their own attorneys' fees and expenses. Buyer shall be responsible for any exceptions, deletions, endorsements or express coverages under the Title Insurance Policy. Unless stated otherwise in this Agreement, any charges, fees or expenses of the Title Company shall be shared equally between the Parties. The provisions of this Section shall survive the Closing or earlier termination of this Agreement.

11. **Waiver and Negation of Warranties.** Because the Seller will sell the Property to the Buyer only on an "as is" basis without any warranty or recourse of any kind whatsoever, the Seller and the Buyer agree that anything in this Agreement or otherwise to the contrary notwithstanding, but subject to Texas law:

- (a) The Buyer shall be given the opportunity during the Inspection Period to inspect, examine, and investigate each and every aspect of the Property

either independently or through agents of the Buyer's choosing. In the Deed, the Buyer shall acknowledge that it has inspected, examined, and investigated or been given the opportunity to inspect, examine, and investigate the physical condition of the Property, including, without limitation, the interior, the exterior, the structure, the paving, the utilities, and all other physical and functional aspects of the Property, if any. The Buyer shall also acknowledge in the Deed that it has inspected, examined, and investigated or been given the opportunity to inspect, examine, and investigate the Property for the presence or absence of flammable, explosive, carcinogenic, toxic, or hazardous materials, wastes, or substances, including, without limitation, petroleum, its products, by products, and derivatives, other hydrocarbons, oil, crude oil, natural or synthetic gas, polychlorinated biphenyls, asbestos, urea formaldehyde, radon, radioactive materials, and thermal irritants, (collectively, "Hazardous Materials"). The Buyer shall accept the property in its AS-IS, WHERE-IS condition, and shall assume in the Deed the risk of all adverse past, present, or future physical characteristics and conditions of the Property whether or not they may have been revealed by its inspection, examination, or investigation.

- (b) The Seller makes and shall make to the Buyer no warranty regarding the Property of any nature, kind, or character whatsoever, either expressed or implied, including without limitation, any warranty as to (1) the quality, nature, adequacy, and physical condition of the Property, including, but not limited to, the structural elements, foundation, roof, appurtenances, access, landscaping, parking facilities, and electrical, mechanical, HVAC, plumbing, sewage, and utility systems, facilities, and appliances, if any (2) the quality, nature, adequacy, and physical condition of soils, geology, and any groundwater, (3) the existence, quality, nature, adequacy, and physical condition of utilities serving the Property, (4) the development potential, income potential, or operating expenses of the Property, (5) the Property's value, use, habitability, or merchantability, (6) the fitness, suitability, or adequacy of the Property for any particular use or purpose, (7) the zoning or other legal status of the Property or any other public or private restrictions on the use of the Property, (8) the compliance of the Property or its operation with all applicable codes, laws, rules, regulations, statutes, ordinances, covenants, judgments, orders, directives, decisions, guidelines, conditions, and restrictions (collectively, the "Laws") of any governmental or quasi-governmental entity or of any other person or entity, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act of 1976, as amended by the

Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6901 et seq., the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. § 1251 et seq., the Toxic Substances Control Act of 1976, as amended by the Asbestos Hazard Emergency Response Act of 1986, 15 U.S.C. § 2601 et seq., the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. § 11001 et seq., the Clean Air Act of 1966, 42 U.S.C. § 7401 et seq., the National Environmental Policy Act of 1969, 42 U.S.C. § 4321, the Endangered Species Act of 1973, 16 U.S.C. § 1521, et seq., the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq., the Safe Drinking Water Act of 1974, 42 U.S.C. § 300(f) et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq., the Pollution Prevention Act of 1990, 42 U.S.C. § 13101 et seq., and any and all Texas acts or laws, as all of the foregoing statutes have been and hereafter may be amended from time to time, (collectively, the "Environmental Laws") (9) the presence of Hazardous Materials on, under, or about the Property or the adjoining or neighboring property, (10) the quality of any labor and materials used in any improvements included in the Property, (11) the title to the Property, (12) any leases, service contracts, or other agreements affecting the Property, (13) the economics of the operation of the Property, (14) the freedom of the Property, including all improvements located thereon, if any, from vices or defects, (15) the freedom of the Property from either latent or apparent defects, (16) and environmental matters of any kind or nature whatsoever relating to the Property, including all improvements located thereon.

12. **Proration of Taxes and Rollback Assessments.** Current taxes shall be prorated through the Closing Date. If the amount of the ad valorem taxes for the year in which the sale is closed is not available on the closing date, proration of taxes shall be made on the basis of taxes assessed in the previous year. If Seller changes the use of the Property before closing or if a denial of special valuation on the Property claimed by Seller results in the assessment of additional taxes, rollback taxes, penalties, or interest (assessments) for the periods before closing, the assessments will be the obligation of Seller. If this sale or Buyer's use of the Property after closing results in such additional assessments for the periods before closing, the assessments will be the sole obligation of Buyer. Obligations imposed by this Section 12 shall survive closing.

13 **Access to Public Rights of Way; Shared Access.** Buyer agrees to use its best efforts, and Seller agrees to cooperate with Buyer and the District, to obtain a permit for a curb-cut and access to the Property from State Highway 35 ("SH 35"), as well as a permit for a curb-cut and access to Seller's remaining adjacent property from SH 35. Buyer acknowledges and understands that Buyer shall have access at the signaled north corner of the Property at SH 35, and may secure a second access drive near the midpoint of the

Property and SH 35, provided the second access drive shall not impair the District's ability to secure an access drive to SH 35 for their adjacent tract. This obligation shall survive Closing.

14. **Default.** If the sale contemplated by this Agreement is not consummated through default of the Buyer, Seller's sole and exclusive remedy shall be to terminate this Agreement and retain the Earnest Money deposited by Buyer pursuant to Section 3 above, and the Parties hereunder shall have no further rights or liabilities under this Agreement, such Earnest Money being a reasonable forecast of uncertain damages to Seller. If the sale contemplated by this Agreement is not consummated through default of the Seller, Buyer may, as its sole and exclusive remedy, terminate this Agreement and the Earnest Money shall be refunded to Buyer.

15. **Condemnation.** If, prior to Closing, the Property or any portion thereof, is condemned or taken under power of eminent domain, or if Seller receives any notice or obtains knowledge that any such taking is threatened or contemplated by an governmental agency or entity or any other entity having the power of eminent domain, then, in any such event, Seller shall promptly give notice thereof to Buyer in writing. Buyer shall then have the options of either (a) terminating this Agreement, with neither Party thereafter having any further obligations to the other hereunder, or (b) waiving such matters and proceeding to close this transaction without reduction in the Purchase Price, but with the right to receive any and all awards or monies payable as a result of any such taking. If Buyer elects to terminate the Agreement pursuant to this Section 15, Buyer shall receive a refund of the Earnest Money. Buyer shall make such election by giving written notice thereof to Seller at any time prior to Closing.

16. **Contract Construction.** Buyer and Seller acknowledge that this Agreement was prepared after substantial negotiations between the Parties. This Agreement shall not be interpreted against either Party solely because such Party or its counsel drafted the Agreement.

17. **Miscellaneous.**

(a) **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing or electronic mail, and shall be deemed to have been given when delivered by hand delivery, or when deposited in the United States Post Office, registered or certified mail, postage prepaid, return receipt requested, if mailed. Notices shall be addressed as follows:

If to Seller: City of Pearland
Attn: City Manager
3519 Liberty Dr.
Pearland, Texas 77581

with a Copy to: City of Pearland
Attn: City Attorney
3519 Liberty Dr.
Pearland, Texas 77581

If to Buyer: American Commercial Contractors, LLC
Attn: Susan Rozman
4660 Sweetwater Blvd., Suite 110
Sugarland, TX 77479

or such other address either Party from time to time specify in writing to the other.

(b) **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns. Notwithstanding the foregoing, the Buyer shall not have the right to assign this Agreement, or any of the Buyer's rights or obligations under this Agreement, without the prior written consent of the Seller, which consent shall not be unreasonably withheld. Buyer shall have the right to assign this Agreement and any of Buyer's rights or obligations under this Agreement to a third party with the prior written consent of the Seller, which consent shall not be unreasonably withheld.

(c) **Amendments and Termination.** Except as otherwise provided herein, this Agreement may be only amended or modified by a written instrument executed by Seller and Buyer, acting by their respective duly authorized agents or representatives.

(d) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

(e) **Section Headings.** The section headings inserted in this Agreement are for convenience only and are intended to, and shall not be construed to, limit, enlarge or affect the scope or intent of this Agreement, nor the meaning of any provision hereof.

(f) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

(g) **Effective Date.** The “Effective Date” of this Agreement shall be the date that this Agreement, fully executed by all Parties, is deposited with the Title Company, together with the Earnest Money.

(h) **Merger of Prior Agreements.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings between the Parties hereto relating to the subject matter hereof. Buyer is not relying upon any representation or statement by Seller regarding the Property, except as set forth in this Agreement.

(i) **Attorneys’ Fees and Costs.** In any litigation arising out of or pertaining to this Agreement, the prevailing Party shall be entitled to an award of its attorneys’ fees, whether incurred before, after or during trial, or upon any appellate level.

(j) **Time.** Time is of the essence in this Agreement. When any time period specified herein falls or ends upon a Saturday, Sunday or legal holiday, the time period shall be automatically extended to 5:00 P.M. on the next ensuing business day.

18. **Federal Tax Requirements.** If Seller is a “foreign person” as defined by applicable law, or if Seller fails to deliver an Affidavit that Seller is not a “foreign person,” then Buyer shall withhold from the sales proceeds at closing an amount sufficient to comply with the applicable tax law and deliver the same to the Internal Revenue Service, together with appropriate tax forms. Internal Revenue Service regulations require filing written reports if cash in excess of specified amounts is received in the transaction.

19. **No Brokerage Commissions.** Seller shall have no obligation to compensate any broker in connection with any conveyance of the Property. **BUYER AGREES TO INDEMNIFY SELLER AND HOLD SELLER HARMLESS FROM ANY LOSS, LIABILITY, DAMAGE, COST OR EXPENSE (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES) PAID OR INCURRED BY SELLER BY REASON OF ANY CLAIM TO ANY BROKER'S, FINDER'S OR OTHER FEE IN CONNECTION WITH THIS TRANSACTION BY ANY PARTY CLAIMING BY, THROUGH OR UNDER BUYER.**

20. **Restrictions and Development Requirements.** Seller’s conveyance of the Property to Buyer, shall be specifically subject to and conditioned upon the following matters, which shall survive closing:

(a) Seller's Right of Reversion, as set forth in Exhibit D to the Special Warranty Deed. This provision shall survive Closing.

(b) Seller's Right of First Refusal, as set forth in Exhibit E to the Special Warranty Deed.

(c) Development Guidelines and Restrictive Covenants, as set forth in Exhibit C to the form of Special Warranty Deed attached hereto as Exhibit B

[Remainder of This Page Left Intentionally Blank]

“SELLER”

CITY OF PEARLAND

By: _____

Name: _____

Title: _____

“BUYER”

By: _____

Date: _____

Receipt of a fully executed copy of this Agreement and of the Earnest Money specified in Section 3 of this Agreement is hereby acknowledged as of the date hereinafter set forth which date shall be the Effective Date of this Contract.

DATED: _____, 2015.

TITLE COMPANY:

By: _____
Name: _____
Title: _____

EXHIBIT "A"
TO SALE AND PURCHASE AGREEMENT

Legal Description

[to be replaced by legal description provided by the Survey or Plat]

EXHIBIT "B"
TO SALE AND PURCHASE AGREEMENT

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

Date _____, 2015

Grantor City of Pearland, as authorized by Resolution of the City Council dated _____, 2015.

Grantor's Mailing Address

Attn: City Manager
3519 Liberty Drive
Pearland, Texas 77581

Grantee

American Commercial Contractors

Grantee's Mailing Address

Attn: Susan Rozman
4660 Sweetwater Blvd., Suite 110
Sugarland, TX 77479

Consideration

Cash and other valuable consideration, receipt and sufficiency of which are hereby acknowledged.

Property

That certain tract of land described as approximately 40 acres in Pearland, Texas, located in Brazoria County, Texas, as more particularly described in

Exhibit "A," attached hereto and incorporated herein for all purposes. *[To be adjusted upon approval of final survey]*

Reservations from and Exceptions to Conveyance and Warranty

1. This conveyance is subject to those matters described and contained in Exhibit B, Exhibit C, Exhibit D, and Exhibit E attached hereto and incorporated herein by reference for all purposes.
2. Taxes and special assessments are prorated as of this date, and Grantee assumes and agrees to pay same except for rollback taxes assessed for periods prior to this date, which shall be paid by Grantor.
3. Further, Grantor reserves and excepts for itself, its successors and assigns, and its predecessors in title in accordance with their respective interests of record, all oil, gas and other minerals on, in and under the above-described Property, but Grantor, on behalf of itself, its successors and assigns, does hereby forever release and relinquish its right to enter upon and use the surface of the Property for exploring and drilling for, and producing and mining such oil, gas and minerals; provided, that Grantor shall have and hereby reserves the right to pool and combine such Property with other land for the purpose of exploring and drilling for, and producing and mining such minerals by virtue of operations conducted on such other lands, but not on the Property.

GRANTOR AND GRANTEE HEREBY ACKNOWLEDGE THAT THE PROPERTY IS BEING CONVEYED "AS IS" AND "WHERE IS", WITH ALL FAULTS. GRANTEE WAS GIVEN THE OPPORTUNITY TO INSPECT, EXAMINE, AND INVESTIGATE, EITHER INDEPENDENTLY OR THROUGH AGENTS OF THE GRANTEE'S CHOOSING, EACH AND EVERY ASPECT OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE INTERIOR, THE EXTERIOR, THE STRUCTURE, THE PAVING, THE UTILITIES, AND ALL OTHER PHYSICAL AND FUNCTIONAL ASPECTS OF THE PROPERTY. GRANTEE WAS GIVEN THE OPPORTUNITY TO INSPECT, EXAMINE, AND INVESTIGATE THE PROPERTY FOR THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS (AS DEFINED IN THAT SALE AND PURCHASE AGREEMENT, EXECUTED BY AND BETWEEN GRANTOR AND GRANTEE, EFFECTIVE _____, 2015 (THE "AGREEMENT")). GRANTEE HEREBY ASSUMES THE RISK OF ALL ADVERSE PAST, PRESENT, OR FUTURE PHYSICAL CHARACTERISTICS AND CONDITIONS OF THE PROPERTY WHETHER OR NOT THEY MAY HAVE BEEN REVEALED BY ITS INSPECTION, EXAMINATION, OR INVESTIGATION.

THE GRANTOR HAS NOT MADE, AND HEREBY DISCLAIMS, ANY AND ALL REPRESENTATIONS, WARRANTIES OR GUARANTIES OF ANY KIND TO GRANTEE (WETHER ORAL, WRITTEN, OR ARISING BY OPERATION OF LAW,

EXCEPT AS TO TITLE AS PROVIDED IN THIS DEED) REGARDING THE PROPERTY OF ANY NATURE, KIND, OR CHARACTER WHATSOEVER, EITHER EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY AS TO (1) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, THE STRUCTURAL ELEMENTS, FOUNDATION, ROOF, APPURTENANCES, ACCESS, LANDSCAPING, PARKING FACILITIES, AND ELECTRICAL, MECHANICAL, HVAC, PLUMBING, SEWAGE, AND UTILITY SYSTEMS, FACILITIES, AND APPLIANCES, (2) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY, AND ANY GROUNDWATER, (3) THE EXISTENCE, QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF UTILITIES SERVING THE PROPERTY, (4) THE DEVELOPMENT POTENTIAL, INCOME POTENTIAL, OR OPERATING EXPENSES OF THE PROPERTY, (5) THE PROPERTY'S VALUE, USE, HABITABILITY, OR MERCHANTABILITY, (6) THE FITNESS, SUITABILITY, OR ADEQUACY OF THE PROPERTY FOR ANY PARTICULAR USE OR PURPOSE, (7) THE ZONING OR OTHER LEGAL STATUS OF THE PROPERTY OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON THE USE OF THE PROPERTY, (8) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ALL APPLICABLE CODES, LAWS, RULES, REGULATIONS, STATUTES, ORDINANCES, COVENANTS, JUDGMENTS, ORDERS, DIRECTIVES, DECISIONS, GUIDELINES, CONDITIONS, AND RESTRICTIONS (COLLECTIVELY, THE "LAWS") OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY OR OF ANY OTHER PERSON OR ENTITY, INCLUDING, WITHOUT LIMITATION, THE ENVIRONMENTAL LAWS (AS DEFINED IN THE AGREEMENT), (9) THE PRESENCE OF HAZARDOUS MATERIALS (AS DEFINED IN THE AGREEMENT) ON, UNDER, OR ABOUT THE PROPERTY OR THE ADJOINING OR NEIGHBORING PROPERTY, (10) THE QUALITY OF ANY LABOR AND MATERIALS USED IN ANY IMPROVEMENTS INCLUDED IN THE PROPERTY, (11) THE TITLE TO THE PROPERTY (EXCEPT FOR ANY WARRANTY OF TITLE EXPRESSLY GRANTED HEREIN), (12) ANY LEASES, SERVICE CONTRACTS, OR OTHER AGREEMENTS AFFECTING THE PROPERTY, (13) THE ECONOMICS OF THE OPERATION OF THE PROPERTY, (14) THE FREEDOM OF THE PROPERTY, INCLUDING ALL IMPROVEMENTS LOCATED THEREON, FROM VICES OR DEFECTS, (15) THE FREEDOM OF THE PROPERTY FROM EITHER LATENT OR APPARENT DEFECTS, AND (16) ENVIRONMENTAL MATTERS OF ANY KIND OR NATURE WHATSOEVER RELATING TO THE PROPERTY, INCLUDING ALL IMPROVEMENTS LOCATED THEREON.

Grantor, for the consideration and subject to the Reservations from and Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it unto Grantee and Grantee's successors and assigns, and Grantor binds itself, its successors and assigns to warrant and forever defend all and singular the Property to Grantee and Grantee's successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, by,

through or under Grantor, but not otherwise, except as to the Reservations from and Exceptions to Conveyance and Warranty.

When the context requires, singular nouns and pronouns include the plural.

“Grantor”

City of Pearland

By: DO NOT SIGN PRIOR TO CLOSING
_____, City Manager

Date: _____

STATE OF TEXAS §
 §
COUNTY OF BRAZORIA §

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by _____, acting in his capacity as City Manager of and on behalf of the City Council of Pearland .

Notary Public, State of Texas

After recording, return to:

City of Pearland
Attn: City Attorney
3519 Liberty Dr.
Pearland, Texas 77581

“Grantee”

American Commercial Contractors, LLC

By: DO NOT SIGN PRIOR TO CLOSING

Title: _____

STATE OF TEXAS §
 §
COUNTY OF BRAZORIA §

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____, acting in his capacity as _____ of _____ .

Notary Public, State of Texas

After recording, return to:

American Commercial Contractors, LLC
Attn: Susan Rozman
4660 Sweetwater Blvd., Suite 110
Sugarland, TX 77479

EXHIBIT "A"
TO DEED

SUBJECT PROPERTY

[to be replaced by legal description provided by the Survey]

**EXHIBIT “B”
TO DEED**

Permitted Exceptions

1. *[to be completed upon identification of Permitted Exceptions]*

**EXHIBIT “C”
TO SPECIAL WARRANTY DEED**

Development Guidelines and Restrictive Covenants

DEVELOPMENT RESTRICTIONS AND RESTRICTIVE COVENANTS

A. Development Restrictions

Development of the Property shall comply with the following development guidelines:

1. The Property may only be used for the development of an office, distribution and storage, warehouse and manufacturing facility.
2. Noise Levels for any development on the Property or operations within the Property may not exceed 85 *dB*, measured from the property line of Grantor’s adjacent remaining property, in accordance with Texas law.
3. Provide a 30 foot landscaping buffer with berm along the southern property line that borders PISD property, where adjacent to the fence in front of service yards, storage areas or trash or refuse containers. The height of the berm shall be no more than five (5) feet high with no more than a 4:1 slope and shall crest at the center point of the 30 foot buffer.

Landscape buffer shall include plantings to screen service yards, storage areas or trash or refuse containers. The landscape buffer area should be a mix of evergreen plant material. The plant buffer must achieve approximately 75% opacity from grade in all seasons. Suggested evergreen plant material may include: live oaks, waxmyrtle, holly species, oleander; and all species shall be in accordance with the City of Pearland Unified Development Code approved list.

Buffer planting areas, will be provided with a complete underground irrigation system. All planted areas shall be maintained in healthy condition. Any trees or bushes that die or become diseased must be replaced within 90 days with a similar species of similar size except for trees that will be replaced with a 6 inch caliper or larger.

4. All outside storage on the Property shall be placed on a reinforced concrete surface of sufficient depth and strength to support all business operations on the Property.
5. Any development on the Property must comply with all terms, conditions and requirements contained in the Tax Abatement Agreement executed between the owner of the Property and the City of Pearland, if one is in place.

B. Restrictive Covenants

Grantee shall not permit, or allow any other occupant of the Property to use any premises or any portion thereof for purposes of:

- 1) Cocktail lounge, bar, or any other establishment that sells alcoholic beverages, with the exception of the following allowances for a business in possession or applying for one or both of the following alcohol licenses as labeled or defined by the Texas Alcoholic Beverage Commission:
 - a) Mixed beverage restaurant permit with FB (RM) – further defined as “permit authorizes a restaurant located in an area voted wet for the legal sale of mixed beverages in restaurants by food & beverage certificate holder to sell mixed drinks, wine, beer, ale, and malt liquor for consumption on the premises of the restaurant,” with the added exclusion that no open containers nor consumption is permitted outside the confines of the enclosed conditioned building area;
 - b) Wine and beer retailers off-premises permit (BQ) – further defined as “permit authorizes the holder to sell for off-site consumption only, but not for resale, wine, beer, and malt liquors containing alcohol in excess of one-half of one percent (1/2 of 1%) by volume and not more than 14 percent or 17 percent of alcohol by volume (depending on type of local-option election);
- 2) Smoke or tobacco shop;
- 3) Disco;
- 4) Skating rink, roller rink, amusement arcade (except for the operation of video arcade games incidental to the operation of a restaurant otherwise permitted hereunder);
- 5) Auction house (except that any antique shop shall be permitted to hold auctions of antiques within its facility);
- 6) Flea market or resale shop;
- 7) Sale or trade of firearms, weapons, or ammunitions;
- 8) Blood bank;
- 9) Tattoo or piercing parlor;
- 10) Funeral home;
- 11) Sleeping quarters or lodging;
- 12) The sale, leasing or storage of automobiles, boats or other vehicles;
- 13) Any mining or mineral exploration or development except by non-surface means;
- 14) A carnival, amusement park or circus;
- 15) An assembly hall;
- 16) Off track betting establishment (however, the foregoing shall not limit or restrict the sale of lottery tickets as an incidental part of another permitted business operation);
- 17) Bingo hall or game room;
- 18) Any use involving the use, storage, disposal or handling of hazardous materials other than the ancillary, prudent and customary use, storage, disposal, and handling of hazardous materials in the ordinary course of business (whose primary business is not the use, storage, disposal or handling of hazardous materials) being operated in accordance with all applicable laws;
- 19) Any facility for the sale of paraphernalia for use with illicit drugs;
- 20) Noncompliance with city, county, state, or federal law especially in regards to education;
- 21) Any use which creates a public nuisance;

- 22) Sexually oriented business including but not limited to adult book store, adult theatre, adult amusement facility, any facility selling or displaying pornographic materials or having such displays; and
- 23) Boarding of animals or veterinarian services.
- 24) Agricultural Animal Husbandry;
- 25) Airport & Heliport/ Helipad & or Landing Field;
- 26) Animal Processing;
- 27) Asphalt Batching Plant;
- 28) Auto Parts Sales (With Outside Storage or Display);
- 29) Auto Repair (Major);
- 30) Auto Repair (Minor);
- 31) Auto Sales/Dealer (New-In Building Auto Servicing and Used Auto Sales as accessory uses only) Combines Auto lease;
- 32) Auto Wrecker Service;
- 33) Asphalt /Concrete Batching Plant;
- 34) Boat Sales Personal Watercraft Sales (New Repair);
- 35) Cattle Feed Lot (CAFO);
- 36) Check Cashing Service;
- 37) Commercial Extraction of Soil business;
- 38) Sand and Gravel or similar material and Storage;
- 39) Construction Contractor with Storage Yard;
- 40) Chemical Packing and/or Blending;
- 41) Dumps and Landfills;
- 42) Explosives Manufacturer and /or Storage;
- 43) Gaming Establishment;
- 44) Gasoline Station;
- 45) Liquefied Petroleum Storage & Sales;
- 46) Manufacturer of Chlorine or Other Toxic Gasses;
- 47) Mini-Warehouse/Self Storage business;
- 48) Minor Concrete Batching Operation & Storage of Associated Processing Material;
- 49) Mobile Manufactured Homes Sales or Rental Only;
- 50) Pawn Shop, Pay Day Loan & Gold Exchange;
- 51) Penal Correctional Institutions;
- 52) Petroleum or Petroleum Product Extraction;
- 53) Petroleum Refining Manufacturing or Bulk Storage;
- 54) Petroleum Products Bulk Storage (Wholesale);
- 55) Sanitary Landfill (Private);
- 56) Sanitary Landfill (Public);
- 57) Studio – Tattoo or Body Piercing;
- 58) Tire Retreading and Capping;
- 59) Tire Sales (Outdoors, With Open Storage);

- 60) Transfer Station (Refuse/Pick-up);
- 61) Travel Trailer/RV Park/Campground;
- 62) Truck (Heavy) and Bus Rental or Sales;
- 63) Wrecking or Salvage Yard (Auto, Steel or Building Materials).

C. These Development Restrictions and Restrictive Covenants shall attach to and run with the land, but shall become null and void and be of no further force and effect upon the expiration of 25 years from the Effective Date of this Deed.

EXHIBIT "D" **TO DEED**

Right of Reversion

Subject to the terms and conditions set forth below, Grantor reserves, and Grantor shall have the right and option, but not the obligation, to exercise its Right of Reversion of the Property as described in this Exhibit D.

1. As used herein, "Construction Obligation" shall mean the substantial completion of construction of a tilt up concrete facility, consisting of no less than 200,000 square feet, with office and warehouse storage space of specialty pipe, valves and related products (the "Project") to be built on the Property, and commencement of operations of the facility on the Property.

2. As used herein, "Closing Obligation" shall mean the sale and closing of the Property by Grantor, the City of Pearland, to any third party purchasing the Property from the City of Pearland.

3. Subject to the terms and conditions set forth below, Grantee grants to Grantor, and Grantor shall have, the right and option, but not the obligation, to exercise a reversion of the Property (the "Right of Reversion") if either condition fails to occur (i) the "Closing Obligation has not been satisfied within 3 business days following the Effective Date of this Exhibit D, which shall be the date of execution and recording of the Special Warranty Deed to which this Exhibit D is attached, or (ii) the Construction Obligation has not been by the expiration of three (3) years after the Effective Date of this Exhibit D which shall be the date of execution and recording of the Special Warranty Deed to which this Exhibit D is attached.

(a) In order to exercise the Right of Reversion, Grantor must deliver written notice to Grantee within 45 days after the date of the event triggering Grantor's right under Section 3 above, and pay to Grantee the amount set forth in Section 3(c) no later than 105 days after the date of Grantor's written notice herein.

(b) If Grantor exercises the Right of Reversion, Grantee shall reconvey the Property to Grantor by special warranty deed free and clear of all liens and encumbrances, with no title exceptions other than those existing on the date Grantor conveyed the Property to Grantee, except the lien for ad valorem taxes shall be limited to the year of reversion. Taxes shall be prorated for the year of reversion as of the date of the repurchase.

(c) If Grantor exercises the Reversion Right, Grantor shall pay to Grantee an amount equal to the purchase price that Grantee paid Grantor for the Property, excluding Grantee's closing costs.

(d) The Right of Reversion shall terminate if Grantor does not give the written exercise notice within the time period specified in Paragraph 3(a) or, if having

given such notice, fails to make the payment of the amount set forth in Section 3(c) within the time period specified in Paragraph 3(a) for closing (for reasons other than Grantee's failure to comply with the provisions of this Paragraph 3).

4. The illegality, invalidity or unenforceability of any provision of this Exhibit D shall not affect the legality, validity or enforceability of any other provision of this Exhibit D.

5. Notices. Any notice, demand or other communication required to be given or to be served upon any party hereunder shall be void and of no effect unless given in accordance with the provisions of this section. All notices, demands or other communications must be in writing and delivered to the person to whom it is directed, either (i) in person or (ii) delivered by a reputable non-electronic delivery service that provides a delivery receipt. Any notice, demand or other communication shall be deemed to have been given and received when delivered to the below stated address of the party to whom it is addressed. All notices, demands and other communications shall be given to the parties hereto at the following addresses:

If to Grantor: City of Pearland
 Attn: City Manager
 3519 Liberty Dr.
 Pearland, Texas 77581

with a Copy to: City of Pearland
 Attn: City Attorney
 3519 Liberty Dr.
 Pearland, Texas 77581

If to Grantee: American Commercial Contractors, LLC
 Attn: Susan Rozman
 4660 Sweetwater Blvd., Suite 110
 Sugarland, TX 77479

Any party entitled to receive notices hereunder may change the address for notice specified above by giving the other party ten days' advance written notice of such change of address.

6. **THIS EXHIBIT D MAY NOT BE AMENDED EXCEPT BY WRITTEN DOCUMENT SIGNED BY THE THEN CURRENT OWNER OF THE PROPERTY AND GRANTOR, SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS AND IS BINDING ON THE PARTIES HERETO AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS.**

7. The prevailing party in any legal proceeding regarding this Exhibit D shall be entitled to recover from the other party all reasonable attorneys' fees and costs incurred in connection with such proceeding.

8. Unless earlier terminated as provided herein, the rights herein granted shall terminate and shall be of no further force or effect on that date which is 46 days following the Termination Date.

EXHIBIT "E" **TO DEED**

Right of First Refusal

Subject to the terms and conditions set forth below, Grantor reserves, and Grantor shall have the right and option, but not the obligation, to purchase the Property or portions thereof as described in this Exhibit E.

1. As used in this Exhibit E, the term "offer" shall include, without limitation, any bona fide option proposed to be granted by Grantor or its successors in interest or assigns.

2. As used in this Exhibit E, the term "sold," "sell" or "sale" shall include a sale or a lease, including all renewal options, or any other disposition of the Property or any portion thereof, or any interest therein (any such sale, lease or other disposition shall be referred to as a "Disposition").

3. As used in this Exhibit E the term "affiliate" shall mean as to the Person (as hereinafter defined) in question, any Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the Person in question. As used in the immediately preceding sentence, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, partnership interests, by contract or otherwise.

4. As used in this Exhibit E the term "Person" shall mean any individual, corporation, partnership, joint venture, association, joint stock company, trust, estate, unincorporated organization, government agency or political subdivision thereof, or any other form of entity.

5. With the exception of mergers or acquisitions involving Grantee or a sale of the property which results in the tenants' continued occupancy of the Property, If Grantee or its successors in interest at any time receives a bona fide offer acceptable to Grantee or its successors in interest to buy or makes a bona fide offer acceptable to the offeree to sell all or any portion of the Property or any interest therein (the Property, or such portion thereof, or such interest therein, being hereinafter referred to as the "Offered Property"), then Grantor shall have the right and option, but not the obligation, to purchase (the term "purchase" shall include a purchase, lease or other acquisition, and the term "purchaser" shall include a purchaser, lessee or the party making such other acquisition) the Offered Property (the "First Refusal Right") on the following terms and conditions:

5.1 Upon Grantee's receipt of any offer, Grantee or its successor in interest shall provide Grantor, or its successor in interest with a written notice (the "Grantee's Notice") of Grantee's or its successor in interest's intent to sell which shall (i) set forth the true identity of the offeror (including the identity of the

principals of the offeror, if known to Grantee or its successor in interest), (ii) include a description of the Offered Property, (iii) and include a description of all material terms of the offer, (the "Offer") (including, without limitation, the price, earnest money and closing date). Grantor shall then have a 30-day period following receipt of the Grantee's Notice in which to decide whether to exercise Grantor's First Refusal Right.

5.2 During the 30-day period following Grantor's actual receipt of the Grantee's Notice (the "Response Period"), Grantor shall have the right, at its expense, to enter onto and conduct tests and investigations on the Offered Property. Grantor shall be responsible for any damages or injuries resulting from Grantor's entry onto the Offered Property and conducting such tests and inspections. If Grantor wishes to exercise its First Refusal Right, Grantor must elect to purchase the Offered Property under the same terms and conditions contained in the Offer described in Grantee's Notice, by delivering written notice of such election to Grantee within the Response Period. If Grantor fails to do so, then Grantee or its successor in interest may effect a Disposition of the Offered Property to the offeror identified in the Grantee's Notice. Such Disposition if made in accordance with this Exhibit E, shall be made free and clear of the First Refusal Right, and Grantor, at the request of Grantee or its successor in interest, shall execute, in recordable form, a confirmation of the release of the First Refusal Right insofar as it pertains to the Offered Property that is so conveyed.

5.5 If Grantor chooses to exercise its First Refusal Right, it must deliver written notice of such exercise to Grantee or its successor in interest within the Response Period. Grantor and Grantee (or its successor in interest) shall then enter into the transaction described in, and upon the terms set forth in, the Grantee's Notice for the Economic Consideration offered to Grantee or its successor in interest by the offeror and detailed in the Grantee's Notice.

5.6 Notwithstanding any provision contained herein to the contrary, the provisions of this Section 5 shall not apply to a sale of all or any portion of the Property to an affiliate of Grantee or its successor in interest; provided, however, the provisions of this Section 5 shall survive such sale to an affiliate of Grantee or its successor in interest, and the Property shall continue to be subject to the First Refusal Right.

6. Nothing herein shall prohibit Grantee or its successor in interest from rejecting all offers, including Grantor's offer, in which case this First Refusal Right shall remain in full force and effect for the duration of the Term.

7. The illegality, invalidity or unenforceability of any provision of this Exhibit E shall not affect the legality, validity or enforceability of any other provision of this Exhibit E.

8. **Notices.** Any notice, demand or other communication required to be given or to be served upon any party hereunder shall be void and of no effect unless given in

accordance with the provisions of this section. All notices, demands or other communications must be in writing and delivered to the person to whom it is directed, either (i) in person or (ii) delivered by a reputable delivery service that provides a delivery receipt. Any notice, demand or other communication shall be deemed to have been given and received when delivered to the below stated address of the party to whom it is addressed. All notices, demands and other communications shall be given to the parties hereto at the following addresses:

If to Grantor: City of Pearland
 Attn: City Manager
 3519 Liberty Dr.
 Pearland, Texas 77581

with a Copy to: City of Pearland
 Attn: City Attorney
 3519 Liberty Dr.
 Pearland, Texas 77581

If to Grantee: American Commercial Contractors, LLC
 Attn: Susan Rozman
 4660 Sweetwater Blvd., Suite 110
 Sugarland, TX 77479

Any party entitled to receive notices hereunder may change the address for notice specified above by giving the other party ten days' advance written notice of such change of address.

9. This Exhibit E may not be amended except by written document signed by Grantor and the then current owner of the Property, is binding on the parties hereto and their respective successors and permitted assign, shall forever run with the land, AND SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS.

10. The prevailing party in any legal proceeding regarding this Exhibit E shall be entitled to recover from the other party all reasonable attorneys' fees and costs incurred in connection with such proceeding.

11. This Exhibit E may not be assigned without the written consent of the nonassigning party; provided, written consent shall not be required for any assignment where the occupying tenant continues to occupy the Property following the assignment. Furthermore, the Grantor may assign its rights and obligations hereunder to a person or entity who is owned by, owns or is under common ownership with Grantor, without the prior approval of Grantee, but upon providing written notice of such assignment to Grantee. This Exhibit E shall bind and run with the land of the Property but shall not be appurtenant to any other property.

12. Unless earlier terminated as provided herein, the rights herein granted shall terminate and shall be of no further force or effect on that date which is the earlier of (i) ten (10) years after the date of execution of this Deed; or (ii) that date on which substantial completion of construction of a tilt up concrete facility, consisting of no less than 200,000 square feet, with office and warehouse storage space of specialty pipe, valves and related products to be built on the Property, is achieved. Notwithstanding the foregoing, if, at the date Grantee receives a bona fide offer to sell the property as set forth in this Exhibit E, Grantor has ceased to exist, with no lawfully formed and existing successor in interest or assignee, this Exhibit E shall be null and void.

**EXHIBIT “C”
TO SALE AND PURCHASE AGREEMENT**

Access and Indemnity Agreement

This Access and Indemnity Agreement (this “Agreement”) is entered into between Pearland Independent School District (“the Owner”), as the record title owner of the real property described on Exhibit “A” attached hereto and incorporated herein for all purposes (the “Property”), and _____ (“Prospective Purchaser”).

WHEREAS, Prospective Purchaser has requested from the Owner the right to temporary access and encroach on, over, and into the Property, for the purposes of conducting physical property inspections, as well as environmental assessments and engineering studies of the Property including the performance of tests such as soil tests and/or air sampling (the “Project”); and

WHEREAS, the Owner has agreed to grant such temporary access to the Property subject to and conditioned upon the terms of this Agreement.

NOW, THEREFORE, in consideration of the promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. PURPOSES. Prospective Purchaser and its agents and contractors may enter upon the Property solely for the purpose of conducting physical property inspections, as well as environmental assessments and engineering studies of the Property including the performance of tests such as soil tests and/or air sampling. Prospective Purchaser agrees that if any disturbance or damage is caused to the Property as a result of the Prospective Purchaser’s exercise of the rights and privileges afforded to it under this instrument, Prospective Purchaser shall, to the fullest extent practicable, restore the affected area to its original condition.
2. DURATION. The Owner’s grant of temporary access to the Property shall automatically terminate at 12:01 a.m. on _____.
3. **RELEASE AND HOLD HARMLESS. TO THE EXTENT PERMITTED BY LAW, PROSPECTIVE PURCHASER HEREBY AGREES TO RELEASE AND HOLD HARMLESS THE OWNER, ITS TRUSTEES, EMPLOYEES, AGENTS, AND REPRESENTATIVES, FROM AND AGAINST ANY CLAIMS, COSTS, EXPENSES, OR DAMAGE, THAT PROSPECTIVE PURCHASER OR ITS AGENTS AND CONTRACTORS MAY SUFFER OR INCUR RELATIVE OR INCIDENTAL TO OR IN CONNECTION WITH THEIR USE OF OR**

PRESENCE ON THE OWNER'S PROPERTY AND/OR RELATED TO THE PROJECT.

4. **INDEMNITY.** TO THE FULLEST EXTENT PERMITTED BY LAW, PROSPECTIVE PURCHASER AGREES TO INDEMNIFY OWNER, ITS TRUSTEES, ADMINISTRATORS, EMPLOYEES, AGENTS, AND REPRESENTATIVES, FROM AND AGAINST ANY CLAIMS, COSTS, EXPENSES, OR DAMAGE OF ANY KIND THAT OWNER, ITS TRUSTEES EMPLOYEES, AGENTS, OR REPRESENTATIVES MAY SUFFER OR INCUR AS A RESULT OF ANY ACT OR OMISSION BY PROSPECTIVE PURCHASER OR ITS AGENTS OR CONTRACTORS RELATED TO THEIR USE OF OR PRESENCE ON THE PROPERTY AND/OR RELATED TO THE PROJECT.

5. **INSURANCE.** Prospective Purchaser shall ensure that its consultants engaged in the Project have Commercial General Liability coverage with a policy limit of no less than \$1,000,000 per occurrence, naming Owner as an additional insured, pertaining to Prospective Purchaser's consultant's actions relative to the work performed by such consultants on or for the Project and related to such consultants or their subcontractors' use of or presence on the Property. Prospective Purchaser shall, prior to entry, furnish the Owner with satisfactory evidence of such insurance carried by Prospective Purchaser's consultants.

The effective date of this Agreement shall be the later of the two execution dates set forth beside the signatures of the respective parties below.

PROSPECTIVE PURCHASER/ _____:

_____ Date Executed: _____
NAME

TITLE

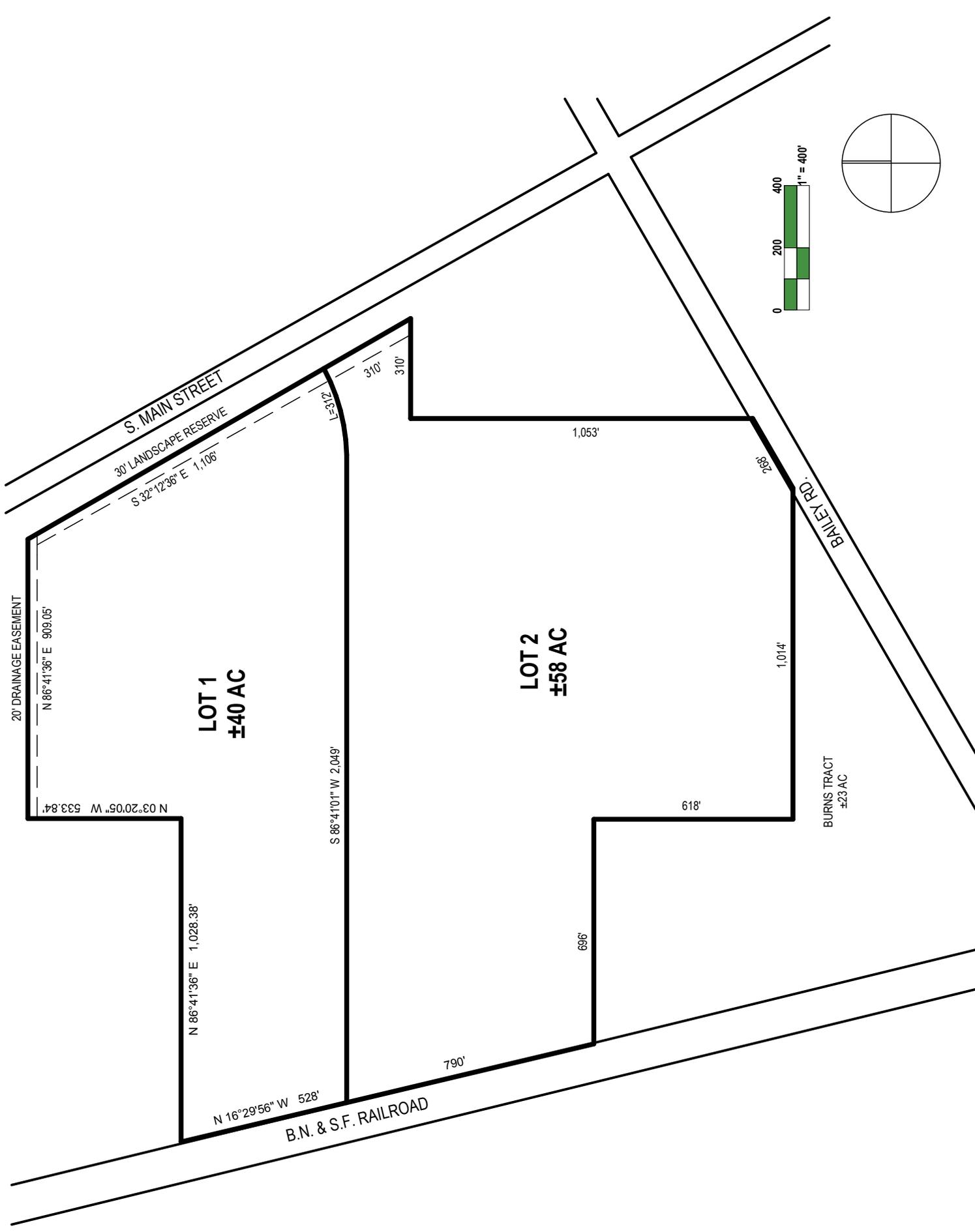
OWNER/PEARLAND INDEPENDENT SCHOOL DISTRICT

_____ Date Executed: _____
NAME

TITLE

EXHIBIT "A" TO ACCESS AND INDEMNITY AGREEMENT

(Attach Legal Description of Owner's Property)



20' DRAINAGE EASEMENT

N 86°41'36" E 909.05'

N 03°20'05" W 533.84'

**LOT 1
±40 AC**

N 86°41'36" E 1,028.38'

N 16°29'56" W 528'

B.N. & S.F. RAILROAD

S 86°41'01" W 2,049'

L-372

310'

790'

**LOT 2
±58 AC**

696'

1,053'

618'

288'

1,014'

BURNS TRACT
±23 AC

BAILEY RD.

S. MAIN STREET

30' LANDSCAPE RESERVE

S 32°12'36" E 1,106'

