

City of Houston, Texas Ordinance No. 2014-1047

**AN ORDINANCE APPROVING AND AUTHORIZING THE STRATEGIC PARTNERSHIP AGREEMENT BETWEEN THE CITY OF HOUSTON AND MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 118; MAKING VARIOUS FINDINGS AND PROVISIONS RELATING TO THE SUBJECT; AND DECLARING AN EMERGENCY**

\* \* \* \*

**WHEREAS**, the Developer entered into an agreement approved by Ordinance 2012-1056 countersigned on December 12, 2012 which approved a restrictive covenant and contemplated a disannexation, creation of municipal utility districts, consent by the City to create such districts and strategic partnership agreements in substantially similar terms with the Related Districts; and

**WHEREAS** the Developer desires (i) the disannexation of the portion of the Property within the City's corporate limits together with the Additional Property from the general purpose boundaries of the City, and (ii) the City's consent to the creation of Montgomery County Municipal Utility District No. 118 (District 118) and the inclusion of the Additional Property into District 118; and

**WHEREAS** conditions precedent to the City's consideration of such annexation matters the Developer delivered to the City the Restrictive Covenants in accordance with Section 3.03 of this Agreement, and (ii) provided a Resolution of the Board of Directors of District 118 in support of executing a strategic partnership agreement by District 118, providing for the limited purpose and subsequent full purpose annexation of the Districts and consenting to and joining in the Developer's petitions described in the recitals of this Agreement; and

**WHEREAS**, the City filed the Declaration of Restriction made on June 10, 2014, which includes a restriction against the construction of a flood protection levee on the property with District 118 and Related Districts in the Real Property records of Montgomery County on September 26, 2014; and

**WHEREAS** the City will disannex the District 118 Property and the Additional Property immediately followed by the consenting to the creation of District 118 and to the inclusion of the Additional Property into District 118; and

**WHEREAS**, the City is interested in entering into such Strategic Partnership Agreement with the District and annexing the area for limited purposes subsequent to its consent to the creation and organization of District 118 and the organization of the other Districts; and

**WHEREAS**, the City of Houston, Texas (the "City"), is authorized to enter into a Strategic Partnership Agreement pursuant to Section 43.0751 of the Texas Local Government Code; and

**WHEREAS**, the City Council, by Ordinance No. 2014-919 adopted on October 8, 2014, called certain public hearings relating to the proposed Strategic Partnership Agreement with Montgomery County Municipal Utility District No.118; and

**WHEREAS**, the City Council, in compliance with Section 43.0751(d) of the Texas Local Government Code, held the required public hearings regarding the proposed Strategic Partnership Agreement on November 5, 2014, and November 12, 2014; **NOW, THEREFORE**,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:**

**Section 1.** The findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as a part of this Ordinance.

**Section 2.** The City Council hereby approves and authorizes the contract, agreement or other undertaking described in the title of this Ordinance, in substantially the form as shown in the document which is attached hereto and incorporated herein by this reference. The Mayor is hereby authorized to execute such document and all related documents on behalf of the City of Houston. The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

**Section 3.** The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such agreement, agreements or other undertaking described in the title of this ordinance, in the event of changed circumstances.

**Section 4.** The City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under said contract without further authorization from

Council.

**Section 5.** There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

**PASSED AND ADOPTED this 3rd day of December 2014.**

**APPROVED this \_\_\_\_\_ day of December 2014.**

\_\_\_\_\_  
Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is DEC 09 2014.



\_\_\_\_\_  
City Secretary

(Prepared by Legal Dept. )

Senior Assistant City Attorney

(Requested by Patrick Walsh, Director, Planning and Development Department)

(L.D. File No. 0611400118001)

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CAPTION PUBLISHED IN DAILY COURT  
REVIEW  
DATE: DEC 09 2014

AYE	NO	
✓		MAYOR PARKER
••••	••••	COUNCIL MEMBERS
✓		STARDIG
✓		DAVIS
✓		COHEN
✓		BOYKINS
✓		MARTIN
✓		NGUYEN
	ABSENT	PENNINGTON
✓		GONZALEZ
✓		GALLEGOS
✓		LASTER
✓		GREEN
✓		COSTELLO
✓		ROBINSON
✓		KUBOSH
✓		BRADFORD
✓		CHRISTIE
CAPTION	ADOPTED	

**STRATEGIC PARTNERSHIP AGREEMENT  
BETWEEN THE CITY OF HOUSTON, TEXAS,  
AND MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 118**

**THE STATE OF TEXAS           §  
  §  
COUNTY OF MONTGOMERY   §**

This **STRATEGIC PARTNERSHIP AGREEMENT** (this “Agreement”) is entered into as of the Effective Date between the **CITY OF HOUSTON, TEXAS**, a municipal corporation principally situated in Montgomery County and Harris County, Texas, acting through its governing body, the City Council of the City of Houston, Texas (the “City”), and Montgomery County Municipal Utility District No. 118 (the “District”), a municipal utility district created pursuant to Article XVI, Section 59, of the Texas Constitution and operating under Chapters 49 and 54 of the Texas Water Code.

**RECITALS**

1. Texas Local Government Code, §43.0751 (the "Act") authorizes the City and certain utility districts to negotiate and enter into a strategic partnership agreement by mutual consent; and
  
2. Pacifico Indio Properties, L.L.C. (“Developer”) entered into a development agreement with the City (the “Development Agreement”), approved by Ordinance 2012-1056 and countersigned on December 12, 2012, which provides for the execution of restrictive covenants by the Developer and contemplates the following: (i) the disannexation of the District 118 Property (as defined in the Development Agreement) and the Additional Property (as defined in the Development Agreement) from the corporate limits of the City, (ii) the City’s consent to the creation of the District, and (iii) the City’s consent to include the Additional Property in the District; and

3. The City intends to consent to the disannexations described above and, immediately thereafter, consent to the creation of the District and the annexation of the Additional Property into the District and, thereafter, the City intends to file the Declaration of Restriction made on June 10, 2014, which includes a restriction against the construction of a flood protection levee on the Property (as defined in the Development Agreement) in the Real Property records of Montgomery County; and

4. The Development Agreement also provides that the District (and the Related Districts) will consider a strategic partnership agreement as soon as practicable following the City's disannexation of the District 118 Property and the Additional Property and the City's consent to the creation of the District and the inclusion of the Additional Property into the District; and

5. As required by the Act, the City held public hearings on November 5, 2014 and November 12, 2014 at City Council Chambers, and the District held public hearings on October 30, 2014, and November 5, 2014, at which members of the public were given the opportunity to present testimony or evidence regarding the proposed Agreement, and the City and the District made copies of the proposed Agreement available, and gave notice of the hearings prior to the public hearings in accordance with the terms of the Act; and

6. This Agreement now provides for the annexation of area in the District as more specifically described in Exhibit "A" and illustrated in Exhibit "B" ("Tract"), by the City for limited purposes; it being understood, however, that the effectiveness of this Agreement as to the Additional Property is subject to the annexation of the same into the boundaries of the District; and

7. The City and the District wish to enter into this Agreement to provide the terms under which services will be provided by the District and under which the District will continue to exist for an extended period of time after the Tract of land within the District is annexed for limited purposes.

**THE PARTIES AGREE AS FOLLOWS:**

## **ARTICLE I**

### **FINDINGS**

The City and the District find and declare:

1. The Act authorizes the City and the District to enter into this Agreement to define the terms under which services will be provided to the City and the District and under which the District will continue to exist after the Tract is annexed for limited purposes pursuant to this Agreement;

2. This Agreement does not require the District to provide revenue to the City solely for the purpose of an agreement with the City to forgo annexation of the District;

3. This Agreement provides benefits to the City and the District, including revenue, services, or regulations which are reasonable and equitable with regard to the benefits provided to the other Party;

4. All the terms contained in this Agreement are lawful and appropriate to provide for the provision of municipal services; and

5. The City and the District negotiated this Agreement by mutual consent; the terms of the Agreement are not a result of the City's Annexation Plan or any arbitration between the City and the District.

## **ARTICLE II**

### **DEFINITIONS**

Unless the context requires otherwise, and in addition to the terms defined above, the following terms used in this Agreement will have the meanings set out below:

"Act" means Texas Local Government Code, §43.0751 and any amendments thereto.

"Agreement" means this strategic partnership agreement between the City and the District.

"Board" means the Board of Directors of the District.

"City" means the City of Houston, Texas, a municipal corporation principally situated in Harris County, Texas.

"City Charter" means the Charter of the City and any amendments thereto.

"City Code" means the Code of Ordinances of the City and any amendments thereto.

"City Council" means the City Council of the City or any successor governing body.

"Commercial Purposes" means a developed land use other than for single family, multi-family, or other residential use.

"Consent Ordinance" means the ordinances, including all attachments and exhibits, passed by the City Council on November 12, 2014, consenting to the creation of and inclusion of land in the District.

"Comptroller" means the Comptroller of Public Accounts of the State of Texas.

"Director" means the Director of Planning and Development Department of the City or his or her designee.

"District" means Montgomery County Municipal Utility District No. 118, a municipal utility district created pursuant to Article XVI, Section 59, of the Texas Constitution and operating under Chapters 49 and 54 of the Texas Water Code.

"Effective Date" means the date the City Controller countersigns this Agreement.

"ETJ" means the extraterritorial jurisdiction of the City.

"Government Code" means the Texas Government Code and any amendments thereto.

"Implementation Date" means the date the limited-purpose annexation ordinance is passed by City Council pursuant to Section 3.01.

"Landowner" means a person that owns real property in the District.

"Local Government Code" means the Texas Local Government Code and any amendments thereto.

"Party" or "Parties" means a party or the parties to this Agreement, being the City and the District.

"Related Districts" means Montgomery County Municipal Utility District Nos. 102 ("District 102"), 103 ("District 103"), 104 ("District 104") and 117 ("District 117").

"Resident" means a person that resides in the District.

"Sales and Use Tax" means the sales and use tax authorized to be imposed in the Tract by the Act and Tax Code Chapter 321.

"Tax Code" means the Texas Tax Code and any amendments thereto.

"Tract" means the tract(s) of land described in Exhibit "A" and illustrated in Exhibit "B" to this Agreement but excluding territory outside the boundaries of the District.

### **ARTICLE III**

#### **LIMITED-PURPOSE ANNEXATION**

##### **Section 3.01 Generally**

As soon as practicable following the approval of this Agreement by City Council, as authorized by the Act, and from time to time thereafter the City shall annex, for limited purposes:

- (i) those portions of the Tract which have, as of the date hereof, been developed for Commercial Purposes; and
- (ii) those portions of the Tract which, after the date of this Agreement, are developed for Commercial Purposes.

Any portions of the Tract that are annexed for limited purposes shall be set forth and described on Exhibit "A-1" as such areas are added from time to time. The City shall provide the District with at least ninety (90) days prior written notice of its intent to annex, for limited purposes any portion of the Tract described in subsection (ii) above.

The Parties recognize that at the time of the Agreement, the City's power to zone is restricted by City Charter Article VII-b, Section 13. If the City adopts a zoning ordinance pursuant to City

Charter Article VII-b, Section 13, during the period of limited-purpose annexation, the zoning ordinance shall only apply to the Tract if the exclusion of the Tract from the zoning ordinance would, as a matter of law, invalidate the City's ability to zone the City as a whole. If the City initiates procedures to adopt a zoning ordinance, the City agrees to use its best efforts to draft an ordinance in a manner that would not require any application of the ordinance to the Tract. If the City is required to apply any zoning ordinance to the Tract during the period of limited-purpose annexation, the City agrees to apply a zoning classification to the property inside the Tract that would not cause any then-current structure or the use of any property inside the Tract to become noncomplying or nonconforming as a result of the classification.

### **Section 3.02 Property Taxes and District Liability for Debts of the City**

During the term of this Agreement, except as provided in Article V: (i) neither the District nor any owners of taxable property within the District is liable for any present or future debts of the City, and (ii) current and future ad valorem taxes levied by the City will not be levied on taxable property within the District.

### **Section 3.03 Powers and Functions Retained by the District**

Except as limited by the Consent Ordinance, the District is authorized to exercise all powers and functions of a municipal utility district provided by existing law or any amendments or additions thereto. The District's assets, liabilities, indebtedness, and obligations will remain the responsibility of the District. Disposition or acquisition of additional assets, liabilities, indebtedness, and obligations will be governed by the Consent Ordinance to the extent the Consent Ordinance is not inconsistent with this Agreement.

### **Section 3.04 Extraterritorial Jurisdiction**

This agreement does not remove any area of the District from the extraterritorial jurisdiction of the City of Houston. The City may regulate the District in the same manner in which it may regulate other areas within the extraterritorial jurisdiction of the City.

## ARTICLE IV

### VOTING RIGHTS IN THE DISTRICT

#### **Section 4.01 Generally**

Upon annexation of the Tract for limited purposes by the City, the qualified voters of the Tract may vote in City elections pursuant to Local Government Code §43.130. Voting rights are subject to all state and federal laws and regulations.

#### **Section 4.02 Notice**

On or after the 15th day but before the fifth day before the date of the first election held in which the residents of the Tract are entitled to vote as set out in Section 4.01, the City at its own expense, shall publish a quarter-page advertisement in a newspaper of general circulation in the District per Subsection 43.130(a) of the Act notifying the residents of the Tract of their eligibility to vote in the election and stating the location of all polling places within the Tract. The District, at its own expense, may provide for similar notice in a newspaper of general circulation in the Tract or otherwise.

#### **Section 4.03 Designation of Precincts and Preparation of Ballots**

The City shall include the Tract in an adjacent single-member City Council district and establish an election precinct or election precincts for the purpose of allowing qualified voters in the area to participate in City elections. The City Secretary shall prepare the official ballot by which the qualified resident voters of the Tract are entitled to vote pursuant to the laws of the State of Texas.

## ARTICLE V

### SALES AND USE TAX

#### **Section 5.01 Imposition of the City's Sales and Use Tax**

Pursuant to Subsection (k) of the Act, the City shall impose a Sales and Use Tax within the Tract upon the limited-purpose annexation of the Tract. The Sales and Use Tax shall be imposed on the receipts from the sale and use at retail of taxable items at the maximum available rate up to two

percent or the rate specified under future amendments to Chapter 321 of the Tax Code. The Sales and Use Tax shall take effect on the date described in Tax Code §321.102.

**Section 5.02 Payment of Sales and Use Tax to the District**

The City shall pay to the District an amount equal to 50% of the Sales and Use Tax revenues that are reported on the monthly sales tax report provided by the Comptroller and received by the City from the Comptroller after the date of the limited-purpose annexation of the Tract. The City shall deliver the District's portion of the Sales and Use Tax revenues to the District within 30 days of the City's receipt of the sales report from the Comptroller. Government Code Chapter 2251 shall govern and provide the penalty if the City fails to deliver the District's portion in a timely manner. For the purposes of determining the applicable overdue date under Chapter 2251, the City is deemed to have received an invoice from the District on the date the City receives the sales tax report from the Comptroller without further action from the District.

The City agrees to make reasonable efforts to obtain amended and supplemental reports from the Comptroller to reflect, to the greatest extent practicable, all Sales and Use Tax revenues generated within the boundaries of the Tract. Revenues resulting from such amended and supplemental reports will be divided and paid as provided above.

The City shall deliver to the District a condensed version of each monthly sales tax report provided by the Comptroller, containing only the contents of the sales tax report relating to retail sales and retailers in the Tract within 30 days of the City's receipt of the sales tax report.

**Section 5.03 Notification of Comptroller**

The City shall send notice of this Agreement and the limited-purpose annexation of the Tract to the Comptroller within three days of the Implementation Date in the manner provided by Tax Code §321.102. The City shall send to the District a copy of any notice from the Comptroller delaying the effectiveness of the Sales and Use Tax in the Tract.

#### **Section 5.04 District Use of Sales and Use Tax Revenue**

The District shall use the Sales and Use Tax revenue provided in Section 5.02 only for purposes for which the District is lawfully authorized to use its ad valorem tax revenues or other revenues.

#### **Section 5.05 District Audit Rights**

The District may audit the Sales and Use Tax collections by the City solely to determine whether the Sales and Use Tax revenue payments provided by Section 5.02 have been made to the District in accordance with this Agreement. Any audit shall be made at the District's sole cost and expense and may be performed at any time during the City's regular business hours by an auditor hired by the District on 30 days written notice to the City. For the purpose of any audits, the City shall maintain and make available to the District or its representatives all books, records, documents and other evidence of accounting procedures or practices in whatever form sufficiently maintained to reflect the collection of all Sales and Use Tax revenues that are subject to this Agreement.

#### **Section 5.06 City Audit Rights**

The District is required by law to prepare an annual audit within 120 days after the close of the District's fiscal year. The District shall provide a copy of its annual audit to the City within 30 days after the audit is completed.

The City may audit the District's expenditures made with the Sales and Use Tax revenue paid under Section 5.02, solely to determine whether the expenditures have been made by the District in accordance with Section 5.04. Any audit shall be made at the City's sole cost and expense and may be performed at any time during regular business hours by the City's internal auditors or an independent auditing firm on 30 days written notice to the District. For the purpose of any audits, the District shall maintain and make available to the City or its representatives all books, records, documents and other evidence of accounting procedures or practices in whatever form maintained sufficient to reflect the expenditure of all Sales and Use Tax revenues that are subject to this Agreement.

### **Section 5.07 Emergency Services District**

The creation of an Emergency Services District (“ESD”) overlapping any territory in the Tract and which imposes or intends to impose a Sales and Use Tax within the Tract without City consent would diminish the benefits to be derived by the City and the District under this Agreement. In the event such an overlapping ESD is created that imposes or intends to impose a Sales and Use Tax within the Tract, the District will use all reasonable efforts to support the exclusion of the Tract from the territory of the ESD and/or oppose the imposition of a Sales and Use Tax by such ESD within the Tract.

## **ARTICLE VI**

### **SERVICES PROVIDED BY THE DISTRICT AND THE CITY**

#### **Section 6.01 Water, Sewer, and Drainage Services**

The District shall continue to develop, to own, and to operate and maintain a water, wastewater, and drainage system in the District. Further, as consideration of the receipt of funds from the City as described in this Agreement, the District shall take one or a combination of the following actions for the benefit of the District, its Landowners and Residents:

1. Accelerate the development of the water, wastewater and drainage system in the District (including the Tract) as necessary to encourage private investment in new construction in the District;
2. Accelerate reimbursements to developers for eligible infrastructure development to encourage such development in the District;
3. Lower the overall property tax rate of the Landowners to encourage additional investment and development within the District;
4. Perform other District functions that might otherwise be diminished, curtailed, abbreviated or delayed by financial limitations.

The District agrees to operate and maintain water, wastewater, and drainage service at the same level as the District has operated and maintained them before the Implementation Date. The City may periodically inspect the District's water, wastewater, and drainage facilities.

## **ARTICLE VII**

### **FULL-PURPOSE ANNEXATION**

#### **Section 7.01 No Full-Purpose Annexation During Term of Agreement**

The City agrees that irrespective of its right and power it will not annex all or part of the District or commence any action to annex all or part of the District for full purposes until at least the later of (i) 90% of the District's water supply and distribution, waste water treatment and collection facilities, drainage facilities, recreational facilities, and road facilities have been developed and the developer of such facilities within the District has been reimbursed for costs and expenses associated therewith, or (ii) 30 years have elapsed. If on the twenty-ninth anniversary date of the Effective Date, the District has not been annexed for full purposes, then the Director shall evaluate whether the City should negotiate a new strategic partnership agreement with the District, annex the District for full purposes upon the termination of this Agreement if 7.01(i) is satisfied, or allow this Agreement to expire. Within six months of twenty-ninth anniversary date, the Director shall make a recommendation to the City Council regarding the negotiation of a new strategic partnership agreement, the full-purpose annexation of the District, or the expiration of the Agreement. If the Director recommends that the City negotiate a new strategic partnership agreement or annex the District and the City Council approves the recommendation the City shall begin proceedings to enter into a new strategic partnership agreement or to annex the District for full purposes at the end of the term of this Agreement as applicable. If the Director recommends that the City neither negotiate a new strategic partnership agreement nor annex the District for full purposes, and the City Council agrees or if the City Council rejects the Director's recommendation to negotiate a new strategic partnership agreement or to annex the District for full purposes, the City may begin proceedings to disannex the limited purpose annexed portions of the Tract for limited purposes if authorized under the applicable provision of the Local Government Code. If the City decides to disannex the limited purpose annexed portions of the Tract and has the authority to disannex, the City may institute proceedings to accomplish such disannexation to be effective upon termination of this Agreement.

## **MATERIAL BREACH, NOTICE AND REMEDIES**

### **Section 8.01 Material Breach of Agreement**

A. It is the intention of the Parties to this Agreement that the District and the City be regulated in accordance with the terms of this Agreement. A material breach of this Agreement by the District includes any one or more of the following:

1. Failure of the District to act in good faith in the annexation of the Tract by the City for limited purposes as authorized by this Agreement; or
2. Failure of the District to develop and to operate and maintain the District's water, sewer, and drainage facilities as provided in Article VI.

B. A material breach of this Agreement by the City includes any one or more of the following:

1. Any attempt by the City to annex the District for full purposes during the term of this Agreement; or
2. Failure of the City to pay to the District the District's share of the Sales and Use Tax, as provided in Article V.

If a Party to this Agreement believes that another Party has, by act or omission, committed a material breach of this Agreement, the provisions of this Article shall govern the remedies for breach of this Agreement.

### **Section 8.02 Notice of District's Default**

A. The City shall notify the District in writing of an alleged failure by the District to comply with a provision of this Agreement, describing the alleged failure with reasonable particularity. The District shall, within 30 days after receipt of the notice or a longer period of time as the City may specify in the notice, either cure the alleged failure or, in a written response to the

City, either present facts and arguments in refutation or excuse of the alleged failure or state that the alleged failure will be cured and set forth the method and time schedule for accomplishing the cure.

B. The City shall determine (i) whether a failure to comply with a provision has occurred; (ii) whether the failure is excusable; and (iii) whether the failure has been cured or will be cured by the District. The District shall make available to the City, if requested, any records, documents or other information necessary to make the determination.

C. If the City determines that the failure has not occurred, or that the failure either has been or will be cured in a manner and in accordance with a schedule reasonably satisfactory to the City, or that the failure is excusable, the determination shall conclude the investigation.

D. If the City determines that a failure to comply with a provision has occurred and that the failure is not excusable and has not been or will not be cured by the District in a manner and in accordance with a schedule reasonably satisfactory to the City, then the City may exercise the applicable remedy under Section 8.04(A).

### **Section 8.03 Notice of City's Default**

A. The District shall notify the Director in writing specifying any alleged failure by the City to comply with a provision of this Agreement, describing the alleged failure with reasonable particularity. The City shall, within 30 days after receipt of the notice or the longer period of time as the District may specify in the notice, either cure the alleged failure or, in a written response to the District, either present facts and arguments in refutation or excuse of the alleged failure or state that the alleged failure will be cured and set forth the method and time schedule for accomplishing the cure.

B. The District shall determine (i) whether a failure to comply with a provision has occurred; (ii) whether the failure is excusable; and (iii) whether the failure has been cured or will be cured by the City. The City shall make available to the District, if requested, any records, documents or other information necessary to make the determination.

C. If the District determines that the failure has not occurred, or that the failure either has been or will be cured in a manner and in accordance with a schedule reasonably satisfactory to the District, or that the failure is excusable, the determination shall conclude the investigation.

D. If the District determines that a failure to comply with a provision has occurred and that the failure is not excusable and has not been or will not be cured by the City in a manner and in accordance with a schedule reasonably satisfactory to the District, then the District may exercise the applicable remedy under Section 8.04(B).

#### **Section 8.04 Remedies**

A. If the City determines that the District has committed a material breach of this Agreement, the City may file suit in a court of competent jurisdiction in Harris County, Texas, and seek any relief available at law or in equity, including, but not limited to, an action under the Uniform Declaratory Judgment Act and termination of this Agreement as to the District in addition to the monetary awards as may be appropriate.

B. If the District determines that the City has committed a material breach of this Agreement, the District may file suit in a court of competent jurisdiction in Harris County, Texas, and seek any relief available at law or in equity, including, but not limited to, an action under the Uniform Declaratory Judgment Act in addition to the monetary awards as may be appropriate.

### **ARTICLE IX BINDING AGREEMENT, TERM, AND AMENDMENT**

#### **Section 9.01 Beneficiaries**

This Agreement binds and inures to the benefit of the Parties, their successors and assigns, and, only as provided in Article VII, the Landowners and Residents. In the event of a material breach of Article VII by the City, the Landowners and Residents shall have the same rights as the District

and shall follow the same procedures as the District as set out in Article VIII. The District shall record this Agreement with the County Clerk in Official Records of Montgomery County and Harris County, Texas. This Agreement binds each owner and each future owner of land included within the District's boundaries in accordance with Subsection (c) of the Act.

**Section 9.02 Term**

This Agreement commences and binds the Parties on the Effective Date and continues for 30 years from the Effective Date. Any rights or privileges of the Landowners and Residents under this Agreement will terminate 30 years from the Effective Date. Notwithstanding the foregoing, if the City fails to disannex the District 118 Property and the Additional Property or consent to the creation of the District and the inclusion of the Additional Property into the District prior to its approval of this Agreement as described in the Recitals, then this Agreement shall be null and void.

**Section 9.03 Amendment**

The Parties by mutual consent may amend the terms of this Agreement at any time.

**ARTICLE X  
MISCELLANEOUS PROVISIONS**

**Section 10.01 Notice**

Any formal notices or other communications (Notice) required to be given by one Party to another by this Agreement shall be given in writing addressed to the Party to be notified at the address set forth below for the Party, (i) by delivering the Notice in person (ii) by depositing the Notice in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed to the Party to be notified, (iii) by depositing the Notice with Federal Express or another nationally recognized courier service guaranteeing next day delivery, addressed to the Party to be notified, or (iv) by sending the Notice by telefax with confirming copy sent by mail. Notice deposited in the United States mail in the manner herein above described shall be deemed effective from and after the date of such deposit. Notice given in any other manner shall be effective only if and when received by the Party to be notified. For the purposes of Notice, the addresses of the Parties, until changed as provided below, shall be as follows:

All Notices required or permitted under this Agreement shall be in writing and shall be served on the Parties at the following address:

City: City of Houston  
P.O. Box 1562  
Houston, Texas 77251  
Attn: Director, Department of Planning and Development

District: Montgomery County Municipal District No. 118  
c/o: Schwartz, Page, & Harding, L.L.P.  
Address: 1300 Post Oak Blvd., Ste. 1400  
Houston, Texas 77056  
Attn: Howard Cohen

The Parties may from time to time change their respective addresses, and each may specify as its address any other address within the United States of America by giving at least five days written notice to the other Party. If any date or any period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the notice shall be extended to the first business day following the Saturday, Sunday or legal holiday.

#### **Section 10.02 Time**

Time is of the essence in all things pertaining to the performance of this Agreement.

#### **Section 10.03 Severability**

If any part of this Agreement is found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either Party.

#### **Section 10.04 Waiver**

Any failure by a Party to insist upon strict performance by the other Party of any material provision of this Agreement shall not be deemed a waiver thereof or of any other provision hereof, and the Party shall have the right at any time thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

#### **Section 10.05 Applicable Law and Venue**

The construction and validity of this Agreement shall be governed by the laws of the State of Texas without regard to conflicts of law principles. Venue shall be in Harris County, Texas.

#### **Section 10.06 Reservation of Rights**

To the extent not inconsistent with this Agreement, each Party reserves all rights, privileges, and immunities under applicable laws.

#### **Section 10.07 Further Documents**

The Parties agree that at any time after execution of this Agreement, they will, upon request of the other Party, execute and deliver the further documents and do the further acts and things as the other Party may reasonably request in order to effectuate the terms of this Agreement.

#### **Section 10.08 Incorporation of Exhibits and Other Documents by Reference**

All Exhibits and other documents attached to or referred to in this Agreement are incorporated into this Agreement by reference for the purposes set forth in this Agreement.

#### **Section 10.09 Effect of State and Federal Laws**

Notwithstanding any other provision of this Agreement, the District shall comply with all applicable statutes or regulations of the United States, the State of Texas, and City Ordinances and City Charter provisions implementing such statutes or regulations.

#### **Section 10.10 Authority for Execution**

The City certifies and represents that the execution of this Agreement is duly authorized and adopted in conformity with the City Charter and City Ordinances. The District certifies and represents that the execution of this Agreement is duly authorized and adopted by the Board.

#### **Section 10.11 Semi-Annual Review**

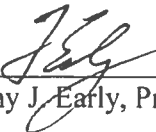
At least semi-annually, the District shall review and confirm, and will notify the Planning and Development Department in a form prescribed by the Department, of the accuracy of the list of resale permit holders as provided by the State Comptroller's Office.


SIGNATURE PAGES FOLLOW

**SIGNATURE PAGE**

IN WITNESS WHEREOF, the parties have executed this Agreement in multiple copies, each of which shall be an original, as of the date countersigned by the City Controller of the City of Houston.

Montgomery County Municipal Utility District No. 118

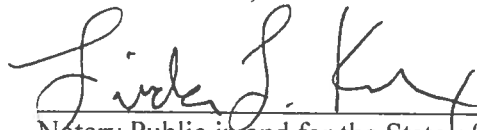
By:   
Timothy J. Early, President, Board of Directors

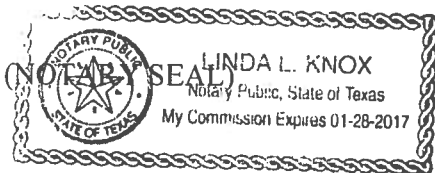
ATTEST:  
By:   
Dan G. Hoffman, Secretary, Board of Directors

Tax ID No. 47-1031821

STATE OF TEXAS                   §  
   §  
COUNTY OF MONTGOMERY     §

This instrument was acknowledged before me this 5th day of November, 2014, by Timothy J. Early, as President and Dan G. Hoffman, as Secretary, of Montgomery County Municipal Utility District No. 118, a political subdivision of the State of Texas, on behalf of said political subdivision.

  
Notary Public in and for the State of Texas



CITY OF HOUSTON, TEXAS

By: \_\_\_\_\_  
Mayor


ATTEST:

By: \_\_\_\_\_  
City Secretary

APPROVED:

By:  \_\_\_\_\_  
Director, Department of Planning and Development

APPROVED AS TO FORM:

By:  \_\_\_\_\_  
Assistant City Attorney  
L.D. File No. 0611400118001

COUNTERSIGNED:

By: \_\_\_\_\_  
City Controller

DATE COUNTERSIGNED: \_\_\_\_\_

**EXHIBIT "A"**

# EXHIBIT "A"

**METES AND BOUNDS DESCRIPTION  
PROPOSED MONTGOMERY COUNTY MUNICIPAL  
UTILITY DISTRICT NUMBER 118  
875.426 ACRES  
38,133,574 SQUARE FEET  
MONTGOMERY COUNTY, TEXAS  
October 20, 2006**

All that certain 875.426 acre (38,133,574 square feet) parcel of land situated in the Joseph A. Parker Survey, Abstract Number 418, in Montgomery County, Texas, and being a portion of that certain call 2,086.441 acre tract described in a Warranty Deed to Pacific Indio Properties, Inc. recorded in Clerk's File Number 2005-116973 of the Official Public Records of Real Property at Montgomery County, Texas (O.P.R.R.P.M.C.T.), and being all of that certain call 347.750 net acres described in a Warranty Deed to Pacific Indio Properties in Clerk's File Number 2006-026099 of the O.P.R.R.P.M.C.T., said 875.426 acre tract being more particularly described by metes and bounds as follows: (All bearings are referenced to the Texas State Plane Coordinate System, South Central Zone)

COMMENCING at a 90d nail found for an interior corner of said 2,086.441 acre tract and the northwest corner of said 347.750 acre tract;

THENCE, generally along a barbed wire fence line marking the occupied southerly line of said 2,086.441 acre tract and the occupied northerly line of said 347.750 acre tract, the following three (3) courses:

- 1) North 76 Degrees 42 Minutes 28 Seconds East, a distance of 1,639.86 feet to a 5/8-inch iron rod with plastic cap stamped "BENCHMARK ENGR." found for an angle point;
- 2) North 77 Degrees 50 Minutes 35 Seconds East, a distance of 1,494.90 feet to a 5/8-inch iron rod with plastic cap stamped "BENCHMARK ENGR." found for an angle point;
- 3) North 73 Degrees 20 Minutes 40 Seconds East, a distance of 896.00 feet to the intersection of the north line of said 347.570 acre tract and the west bank of the West Fork of the San Jacinto River for the POINT OF BEGINNING of the herein described tract;

THENCE, southerly, with the meanders of the west bank of the West Fork of the San Jacinto River, the following fifty-five (55) courses:

- 1) South 13 Degrees 34 Minutes 14 Seconds West, a distance of 16.30 feet;
- 2) South 09 Degrees 53 Minutes 26 Seconds East, a distance of 133.74 feet;
- 3) South 16 Degrees 38 Minutes 15 Seconds East, a distance of 73.61 feet;
- 4) South 19 Degrees 31 Minutes 13 Seconds East, a distance of 116.98 feet;
- 5) South 32 Degrees 54 Minutes 28 Seconds East, a distance of 145.16 feet;
- 6) South 38 Degrees 38 Minutes 20 Seconds East, a distance of 103.32 feet;
- 7) South 41 Degrees 57 Minutes 28 Seconds East, a distance of 118.10 feet;

375.426 Acres  
Proposed MCMUD 118  
October 20, 2006

- 8) South 54 Degrees 00 Minutes 34 Seconds East, a distance of 129.83 feet;
- 9) South 55 Degrees 39 Minutes 23 Seconds East, a distance of 110.71 feet;
- 10) South 66 Degrees 53 Minutes 44 Seconds East, a distance of 73.22 feet;
- 11) South 72 Degrees 25 Minutes 29 Seconds East, a distance of 88.16 feet;
- 12) South 65 Degrees 50 Minutes 00 Seconds East, a distance of 65.94 feet;
- 13) South 79 Degrees 17 Minutes 56 Seconds East, a distance of 92.74 feet;
- 14) South 78 Degrees 35 Minutes 31 Seconds East, a distance of 79.11 feet;
- 15) South 58 Degrees 09 Minutes 49 Seconds East, a distance of 56.76 feet;
- 16) South 88 Degrees 59 Minutes 24 Seconds East, a distance of 70.62 feet;
- 17) South 54 Degrees 16 Minutes 32 Seconds East, a distance of 41.79 feet;
- 18) South 78 Degrees 54 Minutes 47 Seconds East, a distance of 69.93 feet;
- 19) North 59 Degrees 26 Minutes 39 Seconds East, a distance of 59.52 feet;
- 20) South 71 Degrees 42 Minutes 48 Seconds East, a distance of 70.58 feet;
- 21) South 70 Degrees 36 Minutes 57 Seconds East, a distance of 57.20 feet;
- 22) South 82 Degrees 34 Minutes 32 Seconds East, a distance of 43.73 feet;
- 23) North 85 Degrees 40 Minutes 02 Seconds East, a distance of 75.16 feet;
- 24) North 67 Degrees 42 Minutes 24 Seconds East, a distance of 47.81 feet;
- 25) South 85 Degrees 01 Minute 45 Seconds East, a distance of 20.48 feet;
- 26) South 73 Degrees 26 Minutes 33 Seconds East, a distance of 28.81 feet;
- 27) South 68 Degrees 02 Minutes 14 Seconds East, a distance of 158.33 feet;
- 28) South 63 Degrees 08 Minutes 39 Seconds East, a distance of 88.71 feet;
- 29) South 56 Degrees 06 Minutes 22 Seconds East, a distance of 123.11 feet;
- 30) South 49 Degrees 42 Minutes 41 Seconds East, a distance of 102.06 feet;
- 31) South 48 Degrees 16 Minutes 29 Seconds East, a distance of 116.52 feet;

875.426 Acres  
Proposed MCMUD 118  
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- 32) South 43 Degrees 01 Minutes 51 Seconds East, a distance of 119.92 feet;
- 33) South 12 Degrees 48 Minutes 47 Seconds East, a distance of 104.77 feet;
- 34) South 31 Degrees 16 Minutes 58 Seconds East, a distance of 116.13 feet;
- 35) South 18 Degrees 57 Minutes 55 Seconds East, a distance of 108.66 feet;
- 36) South 14 Degrees 02 Minutes 37 Seconds East, a distance of 112.14 feet;
- 37) South 20 Degrees 36 Minutes 57 Seconds East, a distance of 99.63 feet;
- 38) South 17 Degrees 52 Minutes 48 Seconds East, a distance of 121.18 feet;
- 39) South 17 Degrees 33 Minutes 50 Seconds East, a distance of 140.50 feet;
- 40) South 11 Degrees 20 Minutes 12 Seconds East, a distance of 78.23 feet;
- 41) South 08 Degrees 46 Minutes 43 Seconds East, a distance of 70.75 feet;
- 42) South 09 Degrees 28 Minutes 03 Seconds East, a distance of 74.18 feet;
- 43) South 08 Degrees 38 Minutes 18 Seconds East, a distance of 116.59 feet;
- 44) South 14 Degrees 33 Minutes 32 Seconds East, a distance of 100.26 feet;
- 45) South 12 Degrees 02 Minutes 45 Seconds East, a distance of 102.47 feet;
- 46) South 12 Degrees 22 Minutes 20 Seconds East, a distance of 92.49 feet;
- 47) South 00 Degrees 03 Minutes 09 Seconds East, a distance of 72.45 feet;
- 48) South 10 Degrees 50 Minutes 22 Seconds East, a distance of 37.82 feet;
- 49) South 08 Degrees 02 Minutes 58 Seconds East, a distance of 102.61 feet;
- 50) South 00 Degrees 09 Minutes 26 Seconds East, a distance of 143.92 feet;
- 51) South 04 Degrees 42 Minutes 52 Seconds East, a distance of 150.23 feet;
- 52) South 09 Degrees 19 Minutes 25 Seconds East, a distance of 115.79 feet;
- 53) South 08 Degrees 57 Minutes 42 Seconds East, a distance of 70.29 feet;
- 54) South 24 Degrees 11 Minutes 10 Seconds East, a distance of 53.99 feet;

875.426 Acres  
Proposed MCMUD 118  
October 20, 2006

- 55) South 16 Degrees 29 Minutes 30 Seconds East, a distance of 9.15 feet to the point of intersection of the west bank of the west fork of the San Jacinto River with the north bank of Spring Creek;

THENCE, westerly, with the meanders of the north bank of Spring Creek, the following one hundred eleven (111) courses:

- 1) South 84 Degrees 10 Minutes 17 Seconds West, a distance of 12.16 feet;
- 2) North 82 Degrees 05 Minutes 24 Seconds West, a distance of 52.61 feet;
- 3) South 87 Degrees 30 Minutes 52 Seconds West, a distance of 53.69 feet;
- 4) North 85 Degrees 13 Minutes 30 Seconds West, a distance of 55.97 feet;
- 5) North 89 Degrees 58 Minutes 05 Seconds West, a distance of 63.43 feet;
- 6) South 83 Degrees 59 Minutes 32 Seconds West, a distance of 56.18 feet;
- 7) South 83 Degrees 08 Minutes 53 Seconds West, a distance of 57.94 feet;
- 8) South 87 Degrees 05 Minutes 35 Seconds West, a distance of 54.78 feet;
- 9) South 79 Degrees 12 Minutes 39 Seconds West, a distance of 57.57 feet;
- 10) North 87 Degrees 18 Minutes 08 Seconds West, a distance of 53.43 feet;
- 11) South 78 Degrees 02 Minutes 27 Seconds West, a distance of 66.74 feet;
- 12) South 81 Degrees 04 Minutes 10 Seconds West, a distance of 59.60 feet;
- 13) South 80 Degrees 01 Minutes 09 Seconds West, a distance of 65.19 feet;
- 14) South 83 Degrees 14 Minutes 43 Seconds West, a distance of 56.92 feet;
- 15) North 86 Degrees 02 Minutes 02 Seconds West, a distance of 70.98 feet;
- 16) South 80 Degrees 01 Minute 36 Seconds West, a distance of 30.04 feet;
- 17) South 79 Degrees 51 Minutes 57 Seconds West, a distance of 45.86 feet;
- 18) South 82 Degrees 10 Minutes 15 Seconds West, a distance of 51.35 feet;
- 19) South 88 Degrees 49 Minutes 36 Seconds West, a distance of 112.54 feet;
- 20) South 86 Degrees 30 Minutes 18 Seconds West, a distance of 72.53 feet;
- 21) North 88 Degrees 51 Minutes 59 Seconds West, a distance of 68.44 feet;

875.426 Acres  
October 20, 2006.

- 22) North 64 Degrees 05 Minutes 26 Seconds West, a distance of 114.39 feet;
- 23) North 71 Degrees 33 Minutes 04 Seconds West, a distance of 103.48 feet;
- 24) North 76 Degrees 15 Minutes 50 Seconds West, a distance of 103.87 feet;
- 25) North 73 Degrees 28 Minutes 22 Seconds West, a distance of 104.56 feet;
- 26) North 81 Degrees 02 Minutes 43 Seconds West, a distance of 90.53 feet;
- 27) North 83 Degrees 54 Minutes 04 Seconds West, a distance of 58.82 feet;
- 28) North 78 Degrees 20 Minutes 21 Seconds West, a distance of 59.65 feet;
- 29) North 76 Degrees 33 Minutes 35 Seconds West, a distance of 145.88 feet;
- 30) North 68 Degrees 50 Minutes 05 Seconds West, a distance of 103.05 feet;
- 31) South 84 Degrees 44 Minutes 17 Seconds West, a distance of 105.88 feet;
- 32) South 88 Degrees 03 Minutes 24 Seconds West, a distance of 183.85 feet;
- 33) South 88 Degrees 18 Minutes 37 Seconds West, a distance of 67.90 feet;
- 34) South 83 Degrees 52 Minutes 15 Seconds West, a distance of 94.33 feet;
- 35) South 78 Degrees 45 Minutes 34 Seconds West, a distance of 185.77 feet;
- 36) South 68 Degrees 52 Minutes 14 Seconds West, a distance of 96.12 feet;
- 37) South 89 Degrees 42 Minutes 53 Seconds West, a distance of 114.36 feet;
- 38) South 69 Degrees 18 Minutes 57 Seconds West, a distance of 182.63 feet;
- 39) South 65 Degrees 05 Minutes 47 Seconds West, a distance of 131.79 feet;
- 40) South 67 Degrees 49 Minutes 48 Seconds West, a distance of 118.11 feet;
- 41) South 67 Degrees 30 Minutes 43 Seconds West, a distance of 78.96 feet;
- 42) South 65 Degrees 36 Minutes 02 Seconds West, a distance of 107.52 feet;
- 43) South 63 Degrees 46 Minutes 55 Seconds West, a distance of 95.81 feet;
- 44) South 66 Degrees 23 Minutes 06 Seconds West, a distance of 90.69 feet;
- 45) South 65 Degrees 35 Minutes 24 Seconds West, a distance of 154.98 feet;
- 46) South 70 Degrees 11 Minutes 48 Seconds West, a distance of 137.88 feet;



875.426 Acres  
Proposed MCMUD 118  
October 20, 2006

- 70) South 69 Degrees 12 Minutes 15 Seconds West, a distance of 70.45 feet;
- 71) South 64 Degrees 35 Minutes 58 Seconds West, a distance of 59.79 feet;
- 72) South 64 Degrees 44 Minutes 57 Seconds West, a distance of 59.16 feet;
- 73) South 60 Degrees 13 Minutes 56 Seconds West, a distance of 252.86 feet;
- 74) South 64 Degrees 10 Minutes 28 Seconds West, a distance of 62.59 feet;
- 75) South 65 Degrees 06 Minutes 39 Seconds West, a distance of 91.82 feet;
- 76) South 59 Degrees 53 Minutes 47 Seconds West, a distance of 163.90 feet;
- 77) South 54 Degrees 16 Minutes 56 Seconds West, a distance of 74.01 feet;
- 78) South 61 Degrees 44 Minutes 05 Seconds West, a distance of 60.82 feet;
- 79) South 64 Degrees 41 Minutes 37 Seconds West, a distance of 111.39 feet;
- 80) South 66 Degrees 07 Minutes 21 Seconds West, a distance of 98.40 feet;
- 81) South 57 Degrees 41 Minutes 49 Seconds West, a distance of 68.10 feet;
- 82) South 47 Degrees 45 Minutes 02 Seconds West, a distance of 170.94 feet;
- 83) South 35 Degrees 08 Minutes 27 Seconds West, a distance of 103.10 feet;
- 84) South 24 Degrees 52 Minutes 57 Seconds West, a distance of 90.42 feet;
- 85) South 22 Degrees 05 Minutes 54 Seconds West, a distance of 76.13 feet;
- 86) South 25 Degrees 51 Minutes 39 Seconds West, a distance of 122.93 feet;
- 87) South 41 Degrees 59 Minutes 34 Seconds West, a distance of 113.29 feet;
- 88) South 34 Degrees 52 Minutes 05 Seconds West, a distance of 131.64 feet;
- 89) South 31 Degrees 35 Minutes 15 Seconds West, a distance of 151.54 feet;
- 90) South 43 Degrees 25 Minutes 49 Seconds West, a distance of 56.67 feet;
- 91) South 52 Degrees 48 Minutes 42 Seconds West, a distance of 70.82 feet;
- 92) South 63 Degrees 40 Minutes 47 Seconds West, a distance of 73.57 feet;
- 93) South 72 Degrees 43 Minutes 32 Seconds West, a distance of 68.14 feet;



875.426 Acres  
Proposed MCMUD 118  
October 20, 2006

- 2) North 02 Degree 47 Minutes 24 Seconds West, a distance of 1,365.81 feet to an exterior corner of said City of Houston City Limit line and the northwest corner of the herein described tract;

THENCE, continuing through and across said 2,086.441 acre tract and with a north line of said City of Houston City Limit Line and the north line of the herein described tract, the following three (3) courses:

- 1) North 88 Degrees 42 Minutes 54 Seconds East, a distance of 5,691.72 feet to an angle point;
- 2) North 87 Degrees 57 Minutes 42 Seconds East, a distance of 6.43 feet to an angle point;
- 3) North 88 Degrees 08 Minutes 36 Seconds East, a distance of 1,430.41 feet to the intersection of the north line of said City of Houston City Limit Line with the west bank of the west fork of the San Jacinto River;

THENCE, southerly, with the meanders of the west bank of the West Fork of the San Jacinto River, the following three (3) courses:

- 1) South 24 Degrees 34 Minutes 53 Seconds West, a distance of 88.11 feet;
- 2) South 17 Degrees 20 Minutes 07 Seconds West, a distance of 78.44 feet;
- 3) South 13 Degrees 34 Minutes 14 Seconds West, a distance of 118.21 feet to the POINT OF BEGINNING and containing 875.426 acres (38,133,574 square feet) of land.

This description is based on a survey made on the ground on and is issued in conjunction with an exhibit prepared by Benchmark Engineering Corporation dated October 20, 2006.

*M Hoover*

Michael Hoover, R.P.L.S.  
Texas Registration No. 5423



**METES AND BOUNDS DESCRIPTION**  
**21.453 ACRES**  
**(934,482 SQUARE FEET)**  
**HARRIS COUNTY, TEXAS**  
October 10, 2005

All that certain 21.453 Acre (934,482 square feet) tract of land situated in the William Hobby Survey, Abstract 345, Harris County, Texas, and being out of and a portion of that certain tract known as Tract "P" described in that certain partition deed recorded in Volume 69, Page 320, of the Harris County Deed Records (H.C.D.R.), and further being out of and a portion of that certain call 70 acres described in a deed to E. L. Bender and F. V. Bender in Volume 882, Page 54, of the H.C.D.R., said 21.453 Acre tract being more particularly described by metes and bounds as follows: (All bearings are referenced to Texas State Plane Coordinates, South Central Zone)

**COMMENCING** at a 5/8 inch iron rod found for an angle point in the westerly right-of-way (R.O.W.) line of Townson Road (width varies) as described in a deed to the City of Humble recorded in Harris County Clerk's File (H.C.C.F.) Number U865373, and from which a 5/8 inch iron rod found for an angle point in the westerly right-of-way (R.O.W.) line of Townson Road bears North 82 Degrees 33 Minutes 40 Seconds West, a distance of 14.98 feet;

**THENCE**, with said westerly R.O.W. line, North 07 Degrees 27 Minutes 58 Seconds East, a distance of 126.71 feet to a 5/8 inch iron rod with plastic cap stamped "BENCHMARK ENGR." set for the southeast corner of the proposed extension of Townson Road;

**THENCE**, through and across the T.F. Pinckney Survey, Abstract 1588, the following three (3) courses:

- 1) North 82 Degrees 32 Minutes 02 Seconds West, a distance of 711.47 feet to a 5/8 inch iron rod with plastic cap stamped "BENCHMARK ENGR." set for the beginning of a curve to the right;
- 2) 1132.53 feet along the arc of said curve to the right having a radius of 1600.00 feet, a central angle of 10 Degrees 33 Minutes 21 Seconds, and a chord that bears North 62 Degrees 15 Minutes 21 Seconds West, a distance of 1109.04 feet to a 5/8 inch iron rod with plastic cap stamped "BENCHMARK ENGR." set;
- 3) North 41 Degrees 58 Minutes 41 Seconds West, at 6.14 feet pass the upper southeast corner of a call 3.78 acre R.O.W. easement described in a deed to Houston Lighting and Power Company in H.C.C.F. Number H184618, and continue, in all, a distance of 163.18 feet to a 5/8 inch iron rod with plastic cap stamped "S & V" SURVEY" found in the recognized common line of said Pinckney Survey and Hobby Survey for the upper southeast corner of a call 48.814 acre tract described in a deed to Appaloosa Land Company, L.P. in H.C.C.F. Number W739931, and the south corner and **POINT OF BEGINNING** of the herein described tract;

**THENCE**, through and across the Hobby Survey, and with the northeasterly line of said 48.814 acre tract, North 41 Degrees 58 Minutes 41 Seconds West, a distance of 1461.52 feet to a 5/8 inch iron rod with plastic cap stamped "S & V" SURVEY" found for an angle point in said 48.814 acre tract and the herein described tract;

21.53 Acres  
October 10, 2005

HENCE, continuing with the northeasterly line of said 48.814 acre tract, North 62 Degrees 25 Minutes 27 Seconds West, a distance of 17.89 feet to a point on the meanders of the gradient boundary line of Spring Creek for the northwest corner of the herein described tract;

HENCE, with the meanders of the gradient boundary line of Spring Creek, the following twenty (20) courses:

- 1) North 24 Degrees 07 Minutes 35 Seconds East, a distance of 59.95 feet;
- 2) North 17 Degrees 40 Minutes 08 Seconds East, a distance of 36.16 feet;
- 3) North 42 Degrees 08 Minutes 53 Seconds East, a distance of 96.95 feet;
- 4) North 40 Degrees 35 Minutes 54 Seconds East, a distance of 38.56 feet;
- 5) North 39 Degrees 20 Minutes 03 Seconds East, a distance of 37.65 feet;
- 6) North 49 Degrees 23 Minutes 25 Seconds East, a distance of 45.50 feet;
- 7) North 46 Degrees 44 Minutes 52 Seconds East, a distance of 46.70 feet;
- 8) North 31 Degrees 06 Minutes 01 Second East, a distance of 32.38 feet;
- 9) North 05 Degrees 49 Minutes 46 Seconds West, a distance of 10.92 feet;
- 10) North 30 Degrees 28 Minutes 14 Seconds East, a distance of 4.25 feet;
- 11) North 57 Degrees 31 Minutes 43 Seconds East, a distance of 48.82 feet;
- 12) North 54 Degrees 36 Minutes 22 Seconds East, a distance of 39.80 feet;
- 13) North 59 Degrees 07 Minutes 01 Second East, a distance of 100.92 feet;
- 14) North 64 Degrees 51 Minutes 37 Seconds East, a distance of 71.87 feet;
- 15) North 63 Degrees 04 Minutes 47 Seconds East, a distance of 56.39 feet;
- 16) North 67 Degrees 00 Minutes 41 Seconds East, a distance of 79.82 feet;
- 17) North 67 Degrees 12 Minutes 51 Seconds East, a distance of 79.46 feet;
- 18) North 65 Degrees 16 Minutes 12 Seconds East, a distance of 99.94 feet;
- 19) North 64 Degrees 44 Minutes 40 Seconds East, a distance of 106.53 feet;
- 20) North 64 Degrees 25 Minutes 51 Seconds East, a distance of 103.97 feet to the intersection of the meanders of the gradient boundary line of Spring Creek with the recognized common line of said Pinckney Survey and Hobby Survey for the northeast corner of the herein described tract;

21.453 Acres  
October 10, 2005

**TITENCE**, with the recognized common line of said Pincney Survey and Hobby Survey, South 02 Degrees 25 Minutes 30 Seconds East, at 1217.57 feet pass the proposed northeasterly R.O.W. line of said Townsen Road, and continue, in all, a distance of 1,795.45 to the **POINT OF BEGINNING** and containing 21.453 Acres (934,482 Square Feet) of land.

This description is based on a survey made on the ground and is issued in conjunction with a Boundary Survey prepared by Benchmark Engineering Corporation dated December 2004 through January 2005.



Michael Hoover, R.P.L.S.  
Texas Registration No. 5423



William E. Merten, R.P.L.S.  
Texas Registration No. 50  
Licensed State Land Surveyor



EXHIBIT "B"

