

UTILITY SERVICES AGREEMENT

This **UTILITY SERVICES AGREEMENT** (the "Agreement") is entered into as of _____, 20__, between **THE CITY OF TEXAS CITY, TEXAS**, a home rule municipality located in Galveston County, Texas (the "City"), **418 SOUTHLAKE, LTD.**, a Texas limited partnership (the "Developer"), and **GALVESTON COUNTY MUNICIPAL UTILITY DISTRICT NO. 53**, a political subdivision of the State of Texas (the "District").

Recitals

The City is a municipal corporation that provides a full-range of governmental services to its citizens. The City owns and operates water production and distribution and wastewater collection and treatment facilities, and provides other municipal services.

The Developer intends to develop a tract of land comprising approximately 436.62 acres, which is more particularly described in **Exhibit A** attached hereto and incorporated herein for all purposes (the "Property"). The Property shall also include any additional land annexed into the District with the City's consent. The Developer intends to cause the Property to be developed in phases as a majority single family residential subdivision and anticipates that each section of each phase will be platted separately.

The District intends to construct and finance an on-site water distribution system, an on-site wastewater collection system, on-site storm water drainage improvements, and the on-site wastewater lift station and force main infrastructure necessary to serve the Property.

In accordance with the terms and conditions of the Development Agreement entered into between the City and the Developer, the City shall approve the District's design and the District shall construct certain off-site improvements necessary to serve the Property and the Developer intends to finance such improvements to the extent that the City does not have adequate funds on hand.

The Developer and the District will contract with the City to obtain from the City permanent water supply and wastewater treatment services for the Property. The City will provide the permanent water supply and wastewater treatment services to the Property through City facilities. The City agrees that the Developer and the District will need water supply and wastewater treatment service capacity for the Property in excess of the capacity currently available from City facilities. Accordingly, the City agrees to cooperate with the Developer's and the District's efforts to construct or acquire additional facilities, or improve the City's existing facilities, for water supply and wastewater treatment services for the Property.

The Developer will contract with the District for the District to provide for the construction and financing of (i) water distribution, wastewater collection, and storm sewer drainage facilities to serve the Property, which may be transferred for ownership, operation, and maintenance by the City after completion and acceptance by the City, and (ii) lakes, ponds, and other detention facilities and open ditches, open drainage channels, canals and other open stormwater drainage improvements to serve the Property, to be owned, operated and maintained by someone other than the City, all subject to the terms of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, obligations, and benefits contained herein, the City, the Developer, and the District agree as follows:

ARTICLE 1. DEFINITIONS

Unless the context indicates otherwise, capitalized terms used in this Agreement shall have the following meanings:

City means the City of Texas City, Texas.

City Water System means all the water production pumps, lines, meters, components, facilities, and equipment owned and used by the City to pump, treat, monitor, convey, supply, and distribute water to the public.

City Wastewater System means all the wastewater treatment facilities, lines, components and equipment owned and used by the City to collect, convey, treat, monitor, regulate, and dispose of wastewater received from the public.

CIP Improvements means the on-site and off-site improvements to the City Water System and City Wastewater System that are necessary to serve, at a minimum, the needs of the Property, and any oversizing of such improvements for regional service purposes, if appropriate, ending at the Points of Water and Wastewater Connection, and that include, but are not limited to, the capital improvement plan, as shown on **Exhibit B**.

Consent Conditions means the conditions for consent to the creation of the District described in City Resolution No. 05-23, adopted March 2, 2005.

District means Galveston County Municipal Utility District No. 53, and all land to be included in the District at creation and in any annexation thereafter.

District System means the District Water System and the District Wastewater System and any storm sewer drainage facilities necessary to serve the Property.

District Water System means the on-site water distribution system that will be constructed by the Developer or the District for the distribution of potable water supplied by the City to serve the Property, ending at the Point of Water Connection.

District Wastewater System means the on-site wastewater collection system that will be constructed by the Developer or the District to serve the Property for the collection of wastewater received from customers on the Property, ending at the Point of Wastewater Connection, and will include any sewer force main, booster pumps, and lift stations that will be required to transport wastewater to the Point of Wastewater Connection.

Effective Date means the date of approval of this Agreement by the City Commission.

Equivalent Single-Family Connection or *ESFC* means that daily measure of Water and Wastewater that is attributed to a one single-family residential unit pursuant to the Impact Fee Schedule in effect as of the effective date of this Agreement.

Impact Fee Schedule means the Update to the Land-Use Assumptions, Capital Improvements Plan, and Impact Fees for Water and Sewer described in City Resolution No. 17-044, adopted August 2, 2017, as may be amended from time to time applicable to Zone 2.

Point of Water Connection means that point where the District Water System connects to the City Water System at the location designated as such on **Exhibit B**, attached hereto and incorporated herein for all purposes. Said location may be changed in connection with any updates to the City's Capital Improvement Plan as may be adopted by the City from time to time.

Point of Wastewater Connection means that point where the District Wastewater System connects to the City Wastewater System at the location designated as such on **Exhibit B**, attached hereto and incorporated herein for all purposes. Said location may be changed in connection with any updates to the City's Capital Improvement Plan as may be adopted by the City from time to time.

PUD means the Planned Unit Development for the Property to be adopted pursuant to the Revised Zoning Ordinance of the City of Texas City, in effect as of the effective date of this Agreement.

TCEQ means the Texas Commission on Environmental Quality and any successor agencies exercising any of its duties and functions related to municipal utility districts.

Wastewater means the water-carried wastes, exclusive of ground, surface, and incidental storm waters, normally discharged from the sanitary conveniences of dwellings, including apartments, houses, hotels, office buildings, and institutions, of a domestic, not industrial, nature, meeting the requirements of the City set forth in the City's Code of Ordinances, as may be amended or superseded by the City from time to time.

Wastewater Services means the services provided by the City in receiving, treating, testing, and disposing of Wastewater from the District Wastewater System to the City Wastewater System in accordance with this Agreement.

Water means potable water that meets federal and state standards for consumption by humans.

Water Services means the services provided by the City in producing, supplying, and distributing Water from the City Water System to the District Water System in accordance with this Agreement.

ARTICLE 2.
DISTRICT SYSTEM AND DETENTION

2.1 Construction of District System, Open Drainage, and Detention.

a. The Developer or the District will finance, design, and construct the District System as required to serve the Property pursuant to plans and specifications approved by the City in accordance with the Consent Conditions and applicable laws and ordinances. The District Water System shall include all facilities necessary to convey Water from the Point of Water Connection to the customers located on the Property. All Water shall be supplied by the City and the District shall not be required to supply any additional Water. The District Wastewater System will include all facilities necessary to transport Wastewater from the customers located on the Property to the Point of Wastewater Connection. If the District System is constructed by the District rather than the Developer, the Developer will advance to the District all funds necessary to finance the District System. In financing the District System, the District shall comply with all TCEQ rules, regulations, and requirements, particularly the “economic feasibility” rules.

Consistent with the Consent Conditions, the plans and specifications for the District System, as well as any extensions, additions, or modifications thereto, shall be submitted to the City for review and approval prior to the installation or construction of same by the Developer or the District. The District System, or modifications thereto, shall be designed and constructed in accordance with City standards and specifications, the requirements of Galveston County, the TCEQ, and any other governmental agency having or acquiring jurisdiction over such systems. All easements in which any part of the District System is to be constructed or installed shall be dedicated to the public for installation of public utilities.

The Developer and the District agree that all construction contracts for the District System that will be ultimately conveyed to the City shall require standard payment and performance bonds for public projects and a one-year warranty/maintenance bond to the Developer or the District, assignable to the City, in compliance with the bonding requirements of the City then applicable to the construction of public facilities. The Developer shall assign its rights under such bonds and warranties to the City upon conveyance of the District System, or any components thereof, to the City.

b. Upon completion of facilities comprising a component of the District System in accordance with all permits and approvals and upon acceptance thereof by the City, the Developer or the District, as applicable, or both, will convey such facilities to the City, free and clear of all liens and encumbrances (but subject to the Developer’s rights of reimbursement from the District for funds advanced by the Developer to the District, if any, with respect thereto) for ownership, operation, and maintenance by the City. The Property shall have reserved to it all capacity funded by the Developer or the District in any conveyed facilities; provided that any excess capacity not required to serve the Property following full build-out within the Property shall be available to the City to serve other areas. The conveyance instrument shall be in the form attached hereto as **Exhibit C**. The City shall at all times maintain, at its sole cost, the conveyed facilities or cause the same to be maintained, in good condition and working order and will operate the same, or cause the same to be operated, in an efficient and economical manner,

and the City will comply with all valid rules, regulations, directions or orders by any governmental, administrative or judicial body promulgating the same. The City shall incorporate the conveyed facilities into the City System and shall serve the Property with water production and wastewater treatment capacity as reasonably required to complete the development of the Property, subject to the payment of water and wastewater impact fees by the Developer, the District, or any homebuilder in the District, as applicable. The City shall bill and collect for services from its customers, including customers located on the Property. All revenues from conveyed facilities shall be the property of the City.

c. The Developer or the District will finance and construct all lakes, ponds, and other storm water detention facilities and open ditches, open drainage channels, canals, and other open storm water drainage improvements developed to serve the Property (the "Non-City Improvements") and the City will have no responsibilities with respect thereto. The Non-City Improvements, if any, will be constructed in accordance with the requirements of the City, Galveston County, and any applicable drainage district. The City acknowledges and agrees that one or more of such detention facilities may be conveyed to the City of League City, Texas, or another entity in fee simple for the purposes of implementing regional drainage and detention improvements, including for grant eligibility purposes. Any such conveyance shall require written consent from the City, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that the City may require any reasonable terms and conditions it determines, in its sole discretion, necessary to protect the property interests and values of property within Texas City be applied to any such conveyance as a condition to granting its consent. The Developer or District may enter into a maintenance cost-sharing agreement with the City of League City, Texas, or other applicable entity for its portion of the maintenance expenses. The Developer and the District acknowledge and agree that the Non-City Improvements will be maintained by the District, the property owners' association(s) serving the Property, or other entity sharing in regional improvements as permitted above, as appropriate, and that the City shall never have the responsibility to own, operate or maintain the Non-City Improvements. The Developer agrees to form one or more property owners' associations, which shall have as one of their stated purposes to permanently maintain through assessments all Non-City Improvements to the extent that the District, or other entity as appropriate, is not responsible for maintaining such Non-City Improvements.

2.2 Capacity Reservation. Upon approval and acceptance of this Agreement, the City shall reserve and make 225 ESFCs available to the Property immediately for the initial connection of the District System to the Points of Water and Wastewater Connection; provided, however, the City shall not be obligated to reserve such 225 ESFCs for the Property if the District has not commenced construction of the District System within two (2) years of the date of Master Plan Approval for the Property. The City also agrees to provide a minimum of an additional 975 ESFCs of both water and wastewater capacity to serve the Property, subject to the payment of the applicable water and wastewater impact fees and the provisions set forth in Section 2.8. Water and wastewater impact fees will be paid at the time of issuance of a building permit for the applicable residential lot or commercial property.

2.3 Standard of Service. After dedication or conveyance of any component of the District System to the City, services that are provided by the City to the Property under this Agreement shall be substantially equivalent in quality to the water and wastewater services the

City provides to other City customers not located on the Property. Charges, fees, and rates of City customers on the Property shall be the same as similarly situated customers within the City as a whole. Customers will be required to request service, taps, and other service requirements from the City. The City shall at all times maintain the District System, or cause the District System to be maintained, in good condition and working order at the same standard as for any other water and wastewater facilities maintained by the City and in compliance with all applicable laws and ordinances and all applicable regulations, rules, policies, standards, and orders of any governmental entity with jurisdiction over same.

2.4 Inspection by the City. The Developer and the District shall be responsible for providing inspections of the construction of the District System and the CIP Improvements. However, consistent with the Consent Conditions, the City shall have access at all reasonable times to inspect the construction of the District System and the CIP Improvements as the City deems necessary to verify compliance with this Agreement. The District shall pay the City for the City's actual reasonable costs associated with such inspections, including the use of a qualified private contractor to carry out the City's inspections; provided, however, that the Developer, its successors and assigns, shall not be obligated to pay for any City inspection of the District System or the CIP Improvements in an amount that would exceed one percent (1%) of the cost of the applicable construction contract. Notwithstanding the foregoing, the City agrees to accept such inspections as performed by the District's engineer, subject to approval by the City, which approval shall not be unreasonably withheld, conditioned, or delayed.

2.5 No Tax Rebate. The City does not have any ad valorem tax that overlaps the services to be financed by the Developer with its own funds or the District with its ad valorem taxes; therefore, the City will not rebate any of its ad valorem taxes to the Developer or the District as contemplated in the rules of the TCEQ. The District is authorized to assess, levy and collect ad valorem taxes upon all taxable properties within the District to provide for (i) the payment in full of the District's debt obligations, including principal, redemption premium, if any, or interest on bonds issued by the District, and to establish and maintain any interest and sinking fund, debt service fund or reserve fund and (ii) for administration, operation, and maintenance purposes, all in accordance with applicable law. The parties agree that nothing herein shall be deemed or construed to prohibit, limit, restrict or otherwise inhibit the District's authority to levy ad valorem taxes as the Board of Directors of the District may determine to be necessary from time to time. The City and the District recognize and agree that all ad valorem tax receipts and revenues collected by the District, together with all required annual payments shall become the property of the District and may be applied by the District to the payment of all or any designated portion of the principal or redemption premium, if any, or interest on any bonds or otherwise in accordance with applicable law.

2.6 Projection of New Improvements. To enable the City to effectively manage its water and wastewater system capacities, the Developer or the District shall provide to the City by September 30 of each year during the term of this Agreement, a written projection of the new improvements within the District expected to be connected to the City Water System and the City Wastewater System within the following year and such other related information as the City may reasonably require.

2.7 Letter of Capacity Assurance. The City agrees that the City Engineer shall, promptly upon preliminary plat approval and thereafter upon the reasonable request from the owner of platted property within the District, confirm water and wastewater utility availability for such platted property. Any provision of capacity by the City directly to any third-party (instead of to the District) to land outside the District shall not be allocated out of or in any way reduce the total number of ESFCs the City has agreed to provide to the District hereunder or obligate the District to pay the City for such third-party ESFCs in any manner. Capacity reserved pursuant to Section 2.2 above shall be for the benefit of and run with the land within the District.

2.8 City Capital Improvement Projects and Impact Fees.

a. **Wastewater Capacity.** The Property shall have reserved to it 1200 ESFCs of wastewater capacity.

b. **Water Capacity.** The Property shall have reserved to it 225 ESFCs of water capacity, as well as a commitment from the City to provide an additional 975 ESFCs of water capacity. To the extent the City is unable to provide out of existing City facilities any of such additional 975 or more ESFCs of additional water capacity, and the City does not timely construct the necessary CIP Improvements to provide such service, the Developer or the District may fund and construct all necessary CIP Improvements pursuant to the terms and conditions of this Section 2.8 to provide the additional water capacity that may be reasonably required to complete the development of the Property; provided that any excess out of such additional capacity which is not required to serve the Property following full build-out shall be available to the City to serve other areas. The City shall be responsible for timely dedicating or acquiring, at no cost to the Developer or the District, any easements necessary for the construction of any off-site CIP Improvements under this section; provided, however, the District may also acquire any easements necessary for the construction of any off-site CIP Improvements under this section, subject to impact fee credit for all related easement acquisition costs as provided in this Section 2.8.

c. The City and the Developer agree that certain CIP Improvements may need to be constructed in order for the City to provide water and wastewater service to the Property, which may include (i) expansion of the existing water plant, which may include, but is not limited to, the addition of a ground storage tank, hydropneumatics tank, generator, booster pumps, piping, or other appurtenances or (ii) oversizing the lift station or force main of the City Wastewater System. Neither the Developer nor the District shall be responsible for providing any additional sources of water, except to the extent required as a CIP Improvement. The Developer and the City agree that to the extent the Developer or the District fund and construct any CIP Improvements, such CIP Improvements shall be designed by the District's engineer, subject to approval by the City, which approval shall not be unreasonably withheld, conditioned, or delayed. The Developer, the District, or their designee shall be entitled to a dollar for dollar credit against City water or wastewater impact fees, as appropriate, to the extent of any funds advanced by the Developer or the District for CIP Improvements, including the cost of acquiring any easements for the construction of off-site CIP Improvements. The Developer or the District, as appropriate, agree and acknowledge that they may be required to advance funds for improvements to the City's water and wastewater treatment capacity in excess of the total amount of City water or wastewater impact fees owed for the Property. To the extent allowed by

law and the Impact Fee Schedule, any City water or wastewater impact fees generated from development in the City outside of the Property and within the service area served by the CIP Improvements financed by the Developer or the District, may be used to reimburse the Developer or the District for funds advanced for CIP Improvements to the extent that the Developer or the District advanced funds in excess of the total amount of City water or wastewater impact fees owed for the Property, promptly as such funds are available to the City.

d. In the event the City requires the Developer to oversize or otherwise improve the CIP Improvements to allow for regional service, the City will provide Developer with estimated additional ESFCs that City would like to include along with an exhibit showing the general location for those ESFCs within three (3) months of City approval of this Agreement. Provided the City timely provides the Developer with such oversizing specifications, the Developer will construct the CIP Improvements to allow for regional service; provided that the City will issue dollar for dollar water and wastewater impact fee credits, as appropriate, to the Developer, the District, or their designee equal to the increased costs of such oversizing. Any funds advanced by the Developer or the District pursuant to this subsection in excess of the impact fees owed for the Property shall be reimbursed by the City as described in Subsection c above. The Developer and the City agree that any such oversizing of the CIP Improvements that will be funded and constructed by the City or the Developer shall be designed by the District's engineer, subject to approval by the City, which approval shall not be unreasonably withheld, conditioned, or delayed.

e. In the event the City elects to cause another land developer or special purpose district to oversize or otherwise improve the CIP Improvements for regional service, the Developer or the District shall have the right to elect to participate in such improvements. The City shall use its best efforts to secure the participation of other land developers and special purpose districts in the region, and the Developer and the City agree to work cooperatively with all of such participants in the financing and construction of any such oversizing of the CIP Improvements. The City agrees that any cost sharing agreement among the participants shall allocate capacity in such oversizing of the CIP Improvements based on the proportionate share of funds provided to construct such CIP Improvements. The parties agree that participants in such cost sharing agreement shall be responsible for providing funds for the cost of designing and constructing the applicable CIP Improvements. Any such agreement shall provide the terms and conditions under which one or more of the participating special purpose districts (including the District) shall bid and award the contract(s) for the applicable CIP Improvements.

ARTICLE 3. DISTRICT INDEBTEDNESS

3.1 Generally. Bonds will be issued by the District only for the purpose of purchasing and constructing, or purchasing or constructing under contract with the City, or otherwise acquiring waterworks systems, wastewater systems, storm sewer systems, drainage facilities, canals, fire-fighting facilities, parks and recreational facilities, street, road and bridge facilities, or parts of any such systems or facilities, and to make any and all necessary purchases, construction, improvements, extensions, additions, and repairs thereto, and to purchase or acquire all necessary land, right-of-way easements, sites, equipment, buildings, plants, structures,

and facilities therefor, and to operate and maintain same, and to sell water, wastewater, and other services within or without the boundaries of the District.

3.2 Bond and Other Financial Information Provided to City. The District shall provide the City with copies of all submittals to the TCEQ related to the approval of bonds issued by the District at the same time such information is submitted to the TCEQ. The District shall also provide the City with copies of the Preliminary Official Statement and Official Statement related to any bonds issued by the District at such time as such statements are approved by the District. The District will provide the City with a copy of the District's annual audit report at such time as the audit is approved by the District.

3.3 City Consent To Bonds. The City granted its consent, as evidenced by the Consent Conditions, for the District to issue bonds, in multiple series, in an aggregate principal amount not to exceed the amount of the District's initial voted bond authorization and the District shall be required to obtain the City's prior written consent for the issuance of any bonds in excess of such amount.

3.4 Refunding Bond Requirements. Any refunding bonds of the District must provide for a minimum of three percent (3%) net present value savings and no maturity of the refunding bonds may extend beyond the latest maturity of the refunded bonds, unless approved by the City in writing prior to the sale thereof.

3.5 Dissolution of District Prior to Retirement of Bonded Indebtedness. The City and the District recognize that, as provided in the laws of the State of Texas and the Consent Ordinance, the City has the right to abolish and dissolve the District and to acquire the District's assets and assume the District's obligations. Notwithstanding the foregoing, the City agrees that it will not dissolve the District until the developer(s) developing the CIP Improvements has/have been reimbursed by the District to the maximum extent permitted by the rules of the TCEQ.

If requested by the District, the City shall afford the District the opportunity to discharge any remaining obligations by either (i) authorizing the District to sell bonds before or during a transition period prior to the effective date of dissolution as established by the City, (ii) pursuant to Local Government Code Section 43.080, as amended, issuing and selling bonds of the City in at least the amount necessary to discharge the District's obligations, including those under any development and reimbursement agreements with developers in the District, or (iii) providing written notice to the District that the City has sufficient funds available from other sources to discharge the District's obligations, including those under the development and reimbursement agreements with developers in the District. Upon dissolution of the District, the City shall acquire the District's assets and shall assume the District's obligations

ARTICLE 4. MISCELLANEOUS

4.1 Compliance with Laws and Regulations. The Developer and the District will promptly, at no cost to the City, take whatever action is necessary relating to the construction of the District System in compliance with any federal or state law or regulation.

4.2 Records and Reports. The Developer and the District will promptly provide to the City upon its reasonable request, and without charge, copies of any records or documents relating to the District System.

4.3 Term. This Agreement shall be effective as of the date of its approval by the City Commission (the "Effective Date") and shall remain in effect for an initial term of thirty (30) years from the Effective Date and shall automatically renew for consecutive one-year terms thereafter unless otherwise terminated as provided for herein. Further, in the event that the PUD is not approved within ninety (90) days of the Effective Date of this Agreement, the Developer may elect to terminate this Agreement upon written notice to the City.

4.4 Termination for Default. Any party to this Agreement who believes that the other party to this Agreement has defaulted in the performance of any condition, term, or obligation owed to that party under the Agreement shall give written notice of the default to the defaulting party, specifying in detail the provision or provisions of the Agreement that have been breached and specifying what action must be taken to cure or correct the default. Should the party receiving the notice fail to correct the default within sixty (60) days following receipt of the written notice, if such corrective action is within the power of the defaulting party, the party giving the notice of default may terminate this Agreement by giving a written termination notice to the defaulting party specifying the termination date.

4.5 Waiver of Immunity. The City and the Developer acknowledge and agree that this Agreement constitutes an agreement for providing goods and/or services to a local government entity, and is subject to the provisions of Subchapter I of Chapter 271, Texas Local Government Code, as amended, and any successor statute(s).

4.6 Remedies Cumulative. The parties expressly agree that the remedy of specific performance of this Agreement is an appropriate and necessary remedy and agree that either party may employ the remedy of specific performance in the event of a breach of this Agreement. It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default, but all remedies, including specific performance and mandamus, may be availed of by any party and shall be cumulative of any other remedy herein specified.

4.7 Successors. Subject to Section 4.14 hereof, this Agreement shall be binding upon the successors or assigns of the parties hereto.

4.8 Force Majeure. If any party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, except the obligation to pay amounts owed or required to be paid pursuant to the terms of this Agreement, then the obligations of such party, to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. As soon as reasonably possible after the occurrence of the force majeure relied upon, the party whose contractual obligations are affected thereby shall give notice and full particulars of such force majeure to the other party. Such cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure," as used herein, shall include, without limitation of the

generality thereof, acts of God, weather, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States or the State of Texas or any civil or military authority other than a party to this Agreement, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, floods, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, and any other incapacities of any party, whether similar to those enumerated or otherwise, which are not within the control of the party claiming such inability, which such party could not have avoided by the exercise of due diligence and care. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party when such settlement is unfavorable to it in the judgment of the party experiencing such difficulty.

4.9 Applicable Law. This Agreement shall be governed by the law of the State of Texas and no lawsuit shall be prosecuted on this Agreement except in a court of competent jurisdiction located in Galveston County.

4.10 No Additional Waiver Implied. No waiver or waivers of any breach or default (or any breaches or defaults) by any party hereto of any term, covenant, condition, or liability hereunder, or the performance by any party of any duty or obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, under any circumstances.

4.11 Addresses and Notice. Unless otherwise provided in this Agreement, any notice, communication, request, reply, or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made, or accepted by any party to the other (except bills), must be in writing and may be given or be serviced by (a) by delivering the same in person, (b) by depositing the same in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed to the party to be notified; or (c) by depositing the same with Federal Express or another nationally recognized courier service guaranteeing "next day delivery," addressed to the party to be notified. Notice deposited in the United States mail in the manner herein above described shall be deemed effective from and after three (3) days after the date of such deposit. Notice given in any such other manner shall be effective when received by the party to be notified. For the purpose of notice, addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to the City, to:

City of Texas City, Texas
1801 9th Avenue N
Texas City, Texas 77590
Attn: Mayor

If to the District, to:

Galveston County Municipal Utility
District No. 53
c/o: Sanford Kuhl Hagan Kugle Parker Kahn
LLP
1980 Post Oak Boulevard, Suite 1380
Houston, Texas 77056
Attn: Julianne B. Kugle/Joshua J. Kahn
Email: kugle@sklaw.us;
kahn@sklaw.us

If to Developer, to:

418 Southlake, Ltd.
1301 Municipal Way, Suite 200
Grapevine, TX 76051
Attn: Becky Collins/Jeff Gilpatrick/Brandon
Jester
Email: BCollins@UMTH.com;
JGilpatrick@UMTH.com;
BJester@UMTH.com

The parties shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify any other address by written notice to the other parties at least fifteen (15) days prior to the effective date thereof.

4.12 Merger and Modification; Prevailing Terms. This Agreement, including the exhibits, and the Consent Conditions embody the entire agreement between the parties relative to the subject matter hereof. This Agreement shall be subject to change or modification only with the written mutual consent of the parties. To the extent of any conflict between the exhibits and Consent Conditions and the terms of this Agreement, the terms of this Agreement shall prevail. Notwithstanding the foregoing, to the extent of any conflict between this Agreement and that certain Development Agreement entered into between the City and the Developer entered into concurrently herewith, the terms of this Agreement shall control.

Upon full execution, this Agreement replaces, in its entirety, any prior utility service agreements, including that certain Utility Services Agreement dated March 15, 2006 by and between Marlin Atlantis White, Ltd., a Texas limited partnership ("MAW"), the previous owner of the Property, and the City (the "Original Agreement"), whereupon the Original Agreement is unconditionally terminated and of no further force and effect. The parties acknowledge that upon execution of this Agreement there are no events of default under the Original Agreement and no facts or circumstances which with the giving of notice or passage of time would constitute an event of default under the Original Agreement. The City unconditionally and fully releases the Developer from any and all claims that the City had or may have against the Developer, as successor in interest to MAW, directly or indirectly arising under or related to the Original Agreement.

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

4.14 Assignability. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors. The Developer may assign its duties and obligations under this Agreement or any interest herein. Any such assignment shall be acknowledged in writing by the assignor and assignee, and said acknowledgement will be delivered to the City within ten (10) days of the assignment . The Developer may make a collateral assignment in favor of a lender without consent. This section shall not be construed to prevent the Developer from selling lots, parcels, or other portions of the Property in the normal course of business. If such assignment of the obligations by the Developer hereunder is effective, the Developer shall be deemed released from such obligations. If any assignment of the obligations by the Developer hereunder is deemed ineffective or invalid, the Developer shall remain liable hereunder.

4.15 Benefits of Agreement. This Agreement is for the benefit of the City, the District, and the Developer and their successors and assigns and shall not be construed to confer any benefit on any other person or entity except as expressly provided for herein.

4.16 Consents and Approvals. Whenever this Agreement provides for the approval or consent of one of the parties, such consent or approval shall not be unreasonably withheld, conditioned, or delayed.

4.17 District Exercise of Eminent Domain Powers. The District shall not exercise its eminent domain powers without first obtaining the City's written consent to such exercise.

4.18 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which shall constitute, together, one and the same document.

[EXECUTION PAGES FOLLOW]

AGREED AND ACCEPTED as of the date first written above.

418 SOUTHLAKE, LTD.,
a Texas limited partnership

By: NEHC Properties, Inc.,
a Texas corporation,
its General Partner

By: _____
Joseph H. Fogarty, President

AGREED AND ACCEPTED as of the date first written above.

**GALVESTON COUNTY MUNICIPAL
UTILITY DISTRICT NO. 53**

By: _____
President, Board of Directors

By: _____
Secretary, Board of Directors

(SEAL)

AGREED AND ACCEPTED as of the date first written above.

CITY OF TEXAS CITY, TEXAS

Mayor

ATTEST:

City Secretary

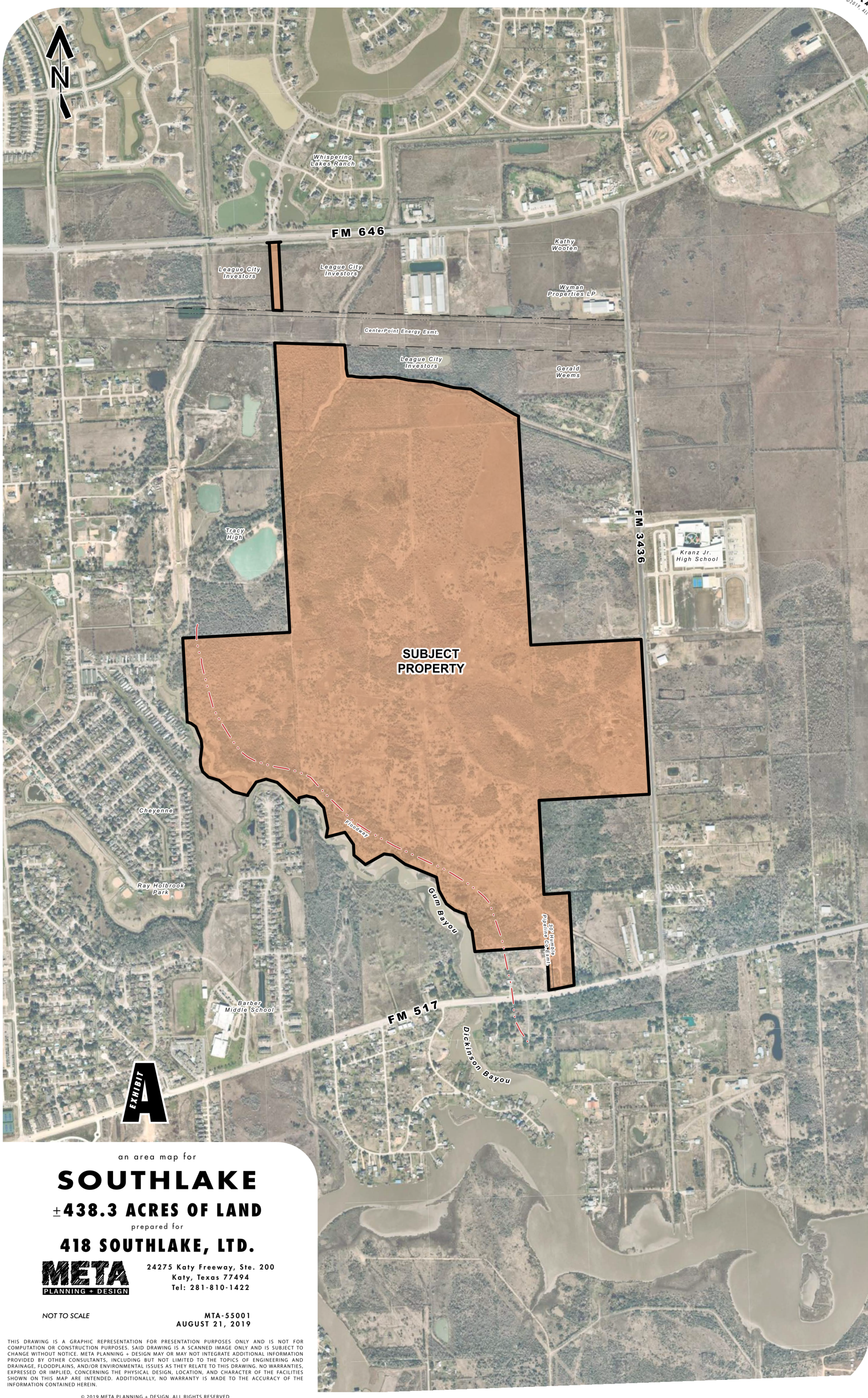
(SEAL)

APPROVED AS TO FORM:

City Attorney

Exhibit A

The Property



**SUBJECT
PROPERTY**

**EXHIBIT
A**

an area map for
SOUTHLAKE
± 438.3 ACRES OF LAND
prepared for
418 SOUTHLAKE, LTD.



24275 Katy Freeway, Ste. 200
Katy, Texas 77494
Tel: 281-810-1422

NOT TO SCALE

MTA-55001
AUGUST 21, 2019

THIS DRAWING IS A GRAPHIC REPRESENTATION FOR PRESENTATION PURPOSES ONLY AND IS NOT FOR COMPUTATION OR CONSTRUCTION PURPOSES. SAID DRAWING IS A SCANNED IMAGE ONLY AND IS SUBJECT TO CHANGE WITHOUT NOTICE. META PLANNING + DESIGN MAY OR MAY NOT INTEGRATE ADDITIONAL INFORMATION PROVIDED BY OTHER CONSULTANTS, INCLUDING BUT NOT LIMITED TO THE TOPICS OF ENGINEERING AND DRAINAGE, FLOODPLAINS, AND/OR ENVIRONMENTAL ISSUES AS THEY RELATE TO THIS DRAWING. NO WARRANTIES, EXPRESSED OR IMPLIED, CONCERNING THE PHYSICAL DESIGN, LOCATION, AND CHARACTER OF THE FACILITIES SHOWN ON THIS MAP ARE INTENDED. ADDITIONALLY, NO WARRANTY IS MADE TO THE ACCURACY OF THE INFORMATION CONTAINED HEREIN.

Exhibit B

Capital Improvement Plan

SOUTHLAKE PROPOSED IMPROVEMENTS

MAY 2020

SOUTHLAKE
BOUNDARY

LS Lift Station

WATER PLANTS Water Plant

EXISTING WATER Supply
LINES

PROPOSED WATER Supply
LINES

EXISTING SANITARY Wastewater
FORCE MAINS

PROPOSED Wastewater
SANITARY FORCE
MAINS

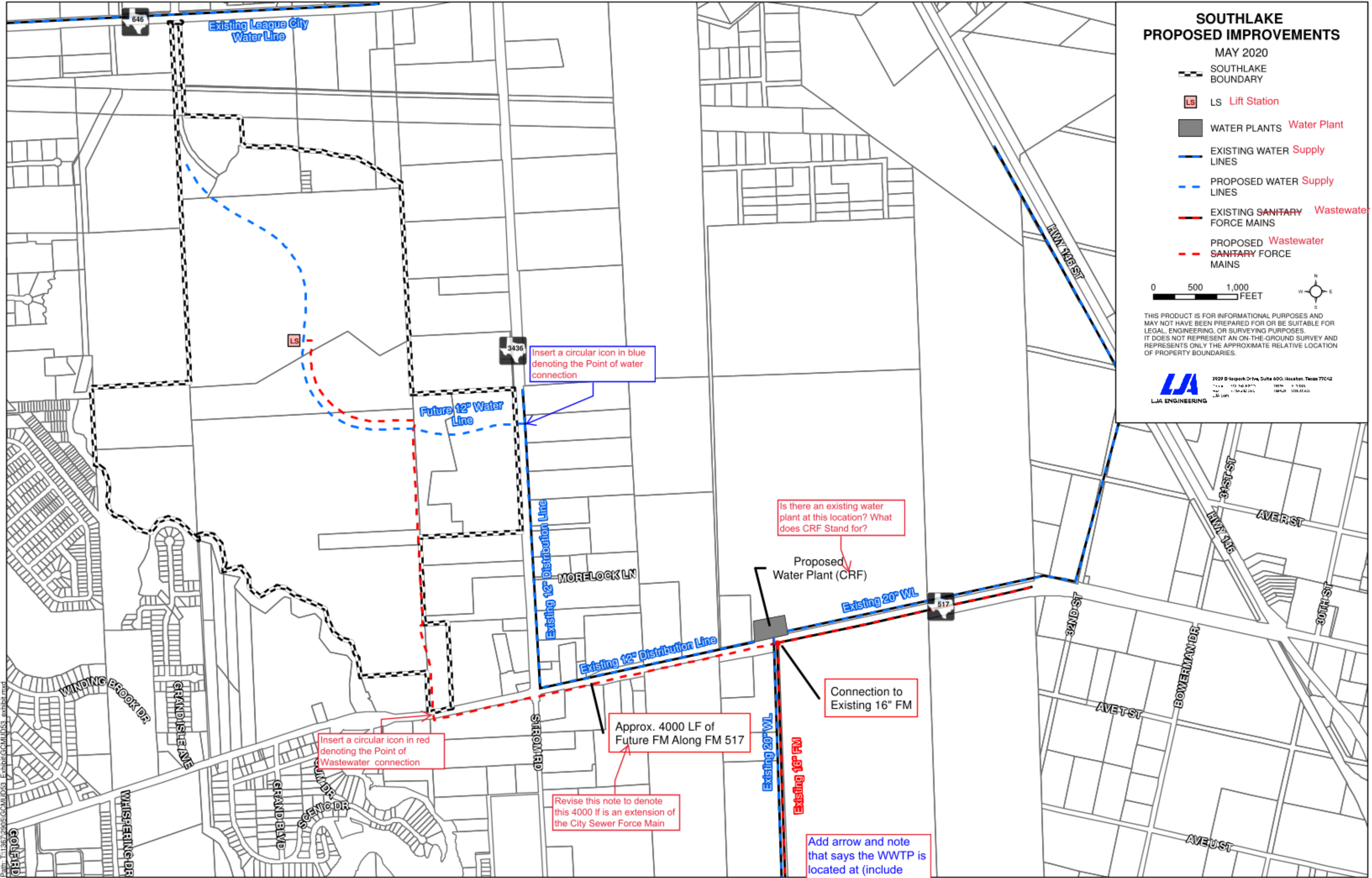
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FEET



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.



2029 B-16 Park Drive, Suite 600, Houston, Texas 77042
LJA ENGINEERING



Insert a circular icon in blue
denoting the Point of water
connection

Is there an existing water
plant at this location? What
does CRF Stand for?

Proposed
Water Plant (CRF)

Existing 20" WL

Connection to
Existing 16" FM

Approx. 4000 LF of
Future FM Along FM 517

Revise this note to denote
this 4000 If is an extension of
the City Sewer Force Main

Add arrow and note
that says the WWTP is
located at (include
address)

Insert a circular icon in red
denoting the Point of
Wastewater connection

Path: T:\1872\1872\GIS\MapDocs_ Exhibit\COM\053_ exhibit.mxd

Exhibit C

UTILITY CONVEYANCE AND SECURITY AGREEMENT

STATE OF TEXAS	§	
	§	KNOW ALL BY THESE PRESENTS
COUNTY OF GALVESTON	§	

[418 Southlake, Ltd., a Texas limited partnership (the “Developer”)] [Galveston County Municipal Utility District No. 53 (the “District”)] has acquired certain improvements, structures, and facilities designed to provide water, wastewater, and drainage to serve certain areas (the “Property”) in the City of Texas City, Texas (the “City”), as more fully described on Exhibit “A” hereto. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the [Developer] [District] hereby conveys, transfers, and delivers to the City, its successors and assigns, subject to a security interest therein, those certain facilities described as follows:

Those certain facilities constructed by or on behalf of the [Developer] [District] pursuant to the construction contract with _____, dated _____, for [describe project] _____, and together with any improvements, structures, storm sewer mains, plants, service pumps, storage reservoirs, electrical equipment, plant equipment, distribution lines, collection lines, water mains, lift stations, meters, valves, pipes, fittings, connections, meter boxes, laterals, easements, rights-of-way, licenses, operating rights and all other property therein whether real, personal or mixed, owned by the [Developer] [District] in connection with the facilities being conveyed hereby (the “Facilities”).

The [Developer] [District] has constructed the Facilities and is conveying the Facilities to the City pursuant to the Utility Services Agreement, dated _____, 20____, between the City, the District and Developer (the “Agreement”). This conveyance is made subject to the terms of the Agreement.

The [Developer] [District] hereby assigns to the City all rights, maintenance bonds, warranties and manufacturer’s warranties, if any, owned or acquired by the [Developer] [District] for the Facilities.

The City hereby agrees by its acceptance of this conveyance to operate and maintain the Facilities in accordance with the terms of the Agreement.

IN WITNESS WHEREOF, this conveyance is executed on _____.

418 SOUTHLAKE, LTD.,
a Texas limited partnership

By: NEHC Properties, Inc.,
a Texas corporation,
its General Partner

By: _____
Name: _____
Title: _____

GALVESTON COUNTY MUNICIPAL
UTILITY DISTRICT NO. 53

By: _____
President, Board of Directors]

In accordance with the Agreement, the City hereby accepts this Utility Conveyance and Security Agreement on _____.

CITY OF TEXAS CITY, TEXAS

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on _____, 20__
by [_____, _____ of NEHC Properties, Inc., a Texas
corporation, the General Partner of 418 Southlake, Ltd., a Texas limited partnership,
_____, President of the Board of Directors of Galveston County Municipal
Utility District No. 53, a political subdivision of the State of Texas,] on behalf of said [limited
partnership] [political subdivision].

Notary, State of Texas

(NOTARY SEAL)