

ORDINANCE NO. 2020-025

AN ORDINANCE OF THE CITY OF MAGNOLIA, TEXAS, ANNEXING 35.945 ACRES, MORE OR LESS, A COMMERCIAL PARCEL OF LAND WITHIN MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 174 IN MONTGOMERY COUNTY, TEXAS FOR CERTAIN LIMITED PURPOSES; APPROVING THE IMPOSITION OF SALES AND USE TAXES; MAKING FINDINGS OF FACT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Magnolia, Texas (the "City") is a general law type A municipality organized and existing under the constitution and the laws of the State of Texas authorized by State law to annex territory consistent with the provisions of Chapter 43 of the Texas Local Government Code (the "Code"); and

WHEREAS, on October 13, 2020, a Strategic Partnership Agreement (attached hereto as Exhibit "A," the "SPA") was entered into between the City and Montgomery County Municipal Utility District No. 174 (the "District"); and

WHEREAS, Section 2.02 of the SPA allows the anticipated 35.945 acres of commercial property located within the District's boundaries (as shown on Exhibit "B" attached hereto, the "Commercial Tract") to be annexed into the City via a limited purpose annexation for the purpose of the collection of the City's sales and use taxes within the Commercial Tract; and

WHEREAS, consistent with Section 43.0751 of the Code, the SPA sets for the terms acceptable to the City and the District pursuant to which the Commercial District shall be annexed for limited purposes by the City; and

WHEREAS, the City Council has met the notice and hearing requirements set forth in the SPA consistent with the Code; and

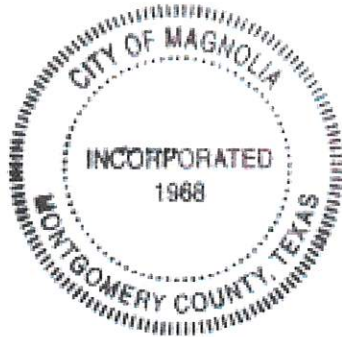
WHEREAS, the City intends to collect its sales and use taxes on the Commercial Tract per the SPA;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MAGNOLIA, TEXAS:

1. That all of the above premises and findings of fact are found to be true and correct and are incorporated into the body of this Ordinance as if copied in their entirety.
2. That the Commercial Tract (hereinafter referred to as the "Limited Purpose Annexed Property") more particularly described on Exhibit "B" is hereby annexed by the City for limited purpose of the imposition of the City's sales and use tax in the amount of 2% or the rate specified under future amendments to Chapter 321 of the Tax Code.

3. That the future owners and inhabitants of the Limited Purpose Annexed Property shall be entitled to all of the rights and privileges of the City as provided by law under the Code and are further bound by the imposition of the sales and use tax imposed in connection with this limited purpose annexation.
4. That if any provision of this Ordinance or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or application, and to this end the provisions of this Ordinance and declared to be severable.
5. That this Ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Texas Local Government Code.
6. That it is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

PASSED AND APPROVED on the 13th day of October, 2020.



THE CITY OF MAGNOLIA, TEXAS

By: [Signature]
Mayor, City of Magnolia

ATTEST:

By: [Signature: Diane Hurley]
City Secretary

APPROVED AS TO FORM:

By: [Signature]
City Attorney

Return to:
City of Magnolia
18111 Buddy Riley
Magnolia, Tx 77354

STRATEGIC PARTNERSHIP AGREEMENT BETWEEN
THE CITY OF MAGNOLIA AND
MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 174

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MONTGOMERY §

This Strategic Partnership Agreement ("Agreement") is made and entered into by and between the City of Magnolia, Texas, acting by and through its duly authorized City Council ("City"), and Montgomery County Municipal Utility District No. 174, a conservation and reclamation district created pursuant to Article XVI, Section 59 of the Texas Constitution and acting by and through its duly authorized Board of Directors ("District") under the authority of Section 43.0751 of the Texas Local Government Code ("Local Government Code").

RECITALS

1. The District is a municipal utility district created under the authority of Chapter 8066, Texas Special District Local Laws Code and generally operates under Chapters 49 and 54 of the Texas Water Code.
2. The City is a general law type A municipality organized and existing under the constitution and laws of the State of Texas.
3. The City and District are entering into this Strategic Partnership Agreement in accordance with Texas Local Government Code Section 43.0751 and Texas Special District Local Laws Code Section 8066.0305 to plan for the future full purpose annexation of the District by the City upon mutually acceptable terms.
4. The District conducted public hearings regarding this Agreement on Wednesday, October 7, 2020, and on Friday, October 9, 2020, with the second hearing being held within the boundaries of the District at 42520 FM 1774 Road, Magnolia, Texas 77355 as required by law, notice thereof having been given in accordance with the procedural requirements of Texas Local Government Code Section 43.0751.
5. The City conducted public hearings regarding this Agreement on Monday, October 12, 2020, and on Tuesday, October 13, 2020, in the City Council Chambers of the City Hall located at 18111 Buddy Riley Boulevard, Magnolia, Texas, notice thereof having been given in accordance with Texas Local Government Code Section 43.0751.
6. The District has, by formal action, after public hearings approved this Agreement on Friday, October 9, 2020, in open session at a meeting held in accordance with the Open Meetings Act.
7. The City has, by formal action, after public hearings approved this Agreement on Tuesday, October 13, 2020, in open session at a meeting held in accordance with the Open Meetings Act.

8. All procedural requirements imposed by state law for the adoption of this Agreement have been met.

NOW, THEREFORE, for and in consideration of the mutual agreements, covenants, and conditions contained in this Agreement, and other good and valuable consideration, the City and the District agree as follows:

ARTICLE I

DEFINITIONS, PURPOSE, AND LEGAL AUTHORITY

Section 1.01 Incorporation of Recitals.

The recitals to this Agreement are hereby agreed to and adopted by the Parties as findings of fact and are incorporated herein for all purposes.

Section 1.02 Terms Defined in this Agreement.

In this Agreement, each of the following terms shall have the meaning indicated:

- a. "Agreement" means this Strategic Partnership Agreement between the City of Magnolia and Montgomery County Municipal Utility District No. 174.
- b. "City" means the City of Magnolia, Texas.
- c. "Code" or "the Code" means the provisions of Chapter 43 of the Texas Local Government Code in effect on the effective date of this Agreement.
- d. "Commercial Tract" means the portion of the District as more particularly described in **Exhibit "B"** attached to this Agreement to which the District and City agree shall be subject to the limited purpose annexation set forth herein.
- e. "Consent Conditions" means those conditions relative to the operation of the District contained in City Ordinance No. O-2019-005 dated February 12, 2019 and imposed as a condition of City's consent to the formation of the District.
- f. "District" means the Montgomery County Municipal Utility District No. 174 in Montgomery County, Texas.
- g. "District Boundaries" means the boundaries of the District as they currently exist, as well as property that may hereafter be annexed by the District with the City's consent, such current boundaries being more particularly described in **Exhibit "A"** attached to this Agreement.
- h. "District Facilities" means the water, wastewater, drainage, detention, recreational and road facilities, as well as such additional facilities which the District may now or in the future be authorized by law to construct, own, operate and maintain, which are necessary

to serve development within the boundaries of the District, to the extent such facilities are not conveyed to the City, including those necessary facilities located outside the boundaries of the District.

- i. "Full Purpose Annexation Conversion Date" means the date on which the territory of the District becomes subject to the full jurisdiction of the City of Magnolia.
- j. "Limited District" or "limited district" means the District after it is converted to a limited District pursuant to Section 3.02 below.
- k. "Notice" means any formal notice or communication required or authorized to be given by one Party to another by this Agreement.
- l. "Parties" means the City and the District.
- m. "Party" means the City, or the District, as the case may be.
- n. "Period of Limited Purpose Annexation" means that period commencing on the effective date of the limited purpose annexation of the District and ending upon the Full Purpose Annexation Conversion Date.
- o. "Sales and Use Tax" means the sales and use tax authorized to be imposed in the portion of the District subject to this Agreement by the Code and Chapter 321, Texas Tax Code, as amended.
- p. "Utility Agreement" means the Utility Agreement between the City, the District, and Magnolia Escondido, LLC, dated as of March 12, 2019.
- q. "Utility Facilities" means the water and wastewater facilities necessary to serve development within the District Boundaries.
- r. "90% build out" means that the public water, sewer, and drainage facilities and roads for 90% of the developable land in the District has been constructed and the District has fully reimbursed the Developer for such infrastructure. Only land that is located outside the boundaries of the 100 year flood plain as defined on the effective date of this Agreement is considered developable for the purposes of this definition.

Section 1.03 Purpose of the Agreement.

The purpose of this Agreement is to define and clarify, through contractual agreement, the terms and conditions of the annexation of the District by the City and the relationship between the City and the District, including taxation and the provision of services by the City and matters related to the issuance of debt by the District.

Section 1.04 General Location and Description of the District.

The portion of the District that is subject to this Agreement is currently located within the extraterritorial jurisdiction of the City in Montgomery County, Texas. The City recognizes and understands that a portion of the District is currently not located in the City's extraterritorial jurisdiction. As soon as practicable following the approval of this Agreement by City Council, the District agrees to petition the City for inclusion of the District property located outside of the City's extraterritorial jurisdiction into the City's extraterritorial jurisdiction. Such property shall automatically become subject to the terms of this Agreement following completion of the addition of the District property into the City's extraterritorial jurisdiction. The District's current boundaries, including the property to be added to the City's extraterritorial jurisdiction, are described by metes and bounds in **Exhibit "A"** attached to this Agreement.

Section 1.05 Effective Date of Agreement.

Under the provisions of Section 43.0751(c) of the Local Government Code, this Agreement becomes effective on the date of adoption by the City. Upon adoption, the Agreement shall be filed by the City in the Real Property Records of Montgomery County, Texas.

ARTICLE II **ANNEXATION PROVISIONS**

Section 2.01 Annexation Procedures Generally.

- a. Pursuant to Section 43.0751(s) of the Code, the City and the District have agreed that the annexation procedure established by this Agreement shall control over any other law and shall be the exclusive procedure applicable to the annexation of the District. The City shall annex the District by ordinance. Notice of a full purpose annexation shall be given by City to the governing body of the District in writing not less than 90 days prior to the proposed effective date of the annexation. Approval of this Agreement by the City shall serve as the notice to the governing body of the District that the City intends to proceed with the proposed limited purpose annexation.
- b. The Parties agree that as set forth in Section 43.121 of the Code, the notice provisions contained in Subchapter F related to limited purpose annexations do not apply to limited purpose annexations conducted under the provisions of Section 43.0751 of the Code. Recognizing the foregoing, the District hereby agrees that the only notices required in conjunction with the limited purpose annexation shall be those required by Section 43.0751(d) of the Code published in conjunction with consideration of this Agreement and the limited purpose annexation contemplated herein.
- c. As it relates to full purpose annexation, the City shall conduct two public hearings on the proposed full purpose annexation. The hearings shall be conducted on or after the 40th day but before the 20th day before the adoption of the annexation ordinance. Notice of the public hearings shall be published in a newspaper of general circulation within the boundaries of the City and the District. Notice of the hearings must be published at least

once on or after the 20th day but before the 10th day before the date of each public hearing. A single publication giving notice of both public hearings is sufficient provided that the date of publication falls within the notice period applicable to each hearing. Notice of the hearings must also be posted on the City's Internet website not later than the 10th day before the first public hearing and such notice must remain on the website through the completion of both public hearings. No additional notice of annexation shall be required. The notice and hearing requirements of this paragraph do not limit or qualify the District's consent to annexation as provided by this Agreement and the City shall not be required to obtain the additional consent of any other party.

- d. A limited purpose annexation ordinance may designate a date on which the status of the territory shall automatically be converted to full purpose annexation, or the ordinance may provide for the continuation of the limited purpose annexation status for an indefinite period. A service plan is not required for a limited purpose annexation.
- e. If a limited purpose annexation ordinance provides for conversion to full purpose annexation on a date certain, then at least ninety (90) days prior to the conversion date the City shall submit to the governing body of the District a proposed service plan for the delivery of full municipal services to the District following its conversion to full purpose annexation status. The service plan shall be adopted by ordinance prior to the conversion date. The notice and public hearing procedures applicable to the adoption of the full purpose annexation ordinance shall also be applicable to the adoption of the service plan ordinance. A copy of the proposed service plan shall be placed on the City's website at the same time that notice of the public hearing on the plan is posted on the website. Failure to timely adopt the service plan does not prevent conversion to full purpose annexation but the date of conversion shall be automatically extended to the date that is thirty (30) days following the date of adoption of the service plan ordinance.
- f. If a limited purpose annexation ordinance does not specify a full purpose annexation conversion date then prior to the adoption of a full purpose annexation ordinance the City shall comply with notice and hearing provisions of this section related to full purpose annexations and shall include a proposed service plan with the written notice provided to the governing body of the District prior to publication of the public hearing notice or notices. A copy of the proposed service plan shall be posted on the City's website at the same time as the public hearing notice and the service plan will be presented at the public hearings.

Section 2.02 Limited Purpose Annexation.

- a. As soon as practicable following the approval of this Agreement by City Council, the City shall annex the Commercial Tract for limited purposes as provided by Section 43.0751 of the Code. Pursuant to Section 43.0751(k) of the Code, the City shall impose a Sales and Use Tax within the Commercial Tract. The Sales and Use Tax shall be imposed on the receipts from the sale and use at retail of taxable items at the rate of 2% (for a total Sales and Use Tax rate of 8.25% to be imposed within the Commercial Tract) 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. The District hereby agrees that the City shall be entitled to receive all proceeds of the Sales and Use tax imposed pursuant to this Section 2.06, and the District shall have no right or claim thereto. The City shall send notice of this Agreement and the limited-purpose annexation of the Commercial Tract to the Comptroller within three days of the Implementation Date in the manner provided by Section 321.102 of the Texas Tax Code.

- b. Except as provided in this Article II, the territory of the District shall not be subject to property taxation by the City prior to the date of full purpose annexation and except as provided by the District Consent Conditions or Utility Agreement or otherwise provided herein, the territory of the District shall not be subject to ordinances, rules, or regulations of the City that are not ordinarily applied within the extraterritorial jurisdiction of the City, nor shall the City be required to provide any service within the District that is not ordinarily provided by City within the City's extraterritorial jurisdiction, except as otherwise provided by previous or future agreement, including but not limited to the Utility Agreement.
- c. District territory that is located within the extraterritorial jurisdiction of the City need not be contiguous to City in order to be annexed for limited purposes and the District expressly consents to such discontinuous limited purpose annexation as authorized by Section 43.0751(r) of the Code. To the extent not prohibited by law such consent also extends to the full purpose annexation of the discontinuous territory on a full purpose annexation conversion date specified in the limited purpose annexation ordinance or by a separate full purpose annexation ordinance if no automatic conversion date is established by the limited purpose annexation ordinance.

Section 2.03 Full Purpose Annexation.

The District hereby consents to full purpose annexation of the District by the City at any time on or after the tenth anniversary of the effective date of this Agreement, and City agrees not to annex the District for full municipal purposes prior to such date. A full purpose annexation conversion date specified in an ordinance providing for limited purpose annexation may not specify a conversion date earlier than the date provided by this paragraph.

Section 2.04 Service Plan for the Provision of Full Municipal Services.

- a. Prior to full purpose annexation, the City shall prepare a service plan that provides for the extension of full municipal services to the territory of the District upon full purpose annexation. The annexation service plan may provide for the conversion of the District to a limited district as hereinafter authorized and may provide for the continued operation and maintenance of all or a portion of the Utility Facilities by the limited district for so long as the limited district continues to exist. The service plan may also provide for the City to assume the responsibility for operation and maintenance of Utility Facilities in which case the City shall provide such utility services upon the same basis as they are provided by the City elsewhere in the municipality, but without obligating the City to the

limited district for payment of capacity charges, capital recovery fees or any other consideration for the use or possession of such Utility Facilities. As consideration for the operation and maintenance of such Utility Facilities the service plan may provide that the City shall have and may retain all revenues resulting from the provision of service to customers of the utility system.

- b. The service plan shall be attached to and adopted by the full purpose annexation ordinance unless full purpose annexation occurs automatically on a conversion date established by a limited purpose annexation ordinance. In such case the service plan shall be adopted by separate ordinance as provided in Section 2.01(d) of this Agreement.

Section 2.05 Notice to Landowners.

The following notice, with appropriate modifications, shall be included in the notice to purchasers of real property in the District Information Form required to be recorded in the Real Property Records of Montgomery County, Texas, pursuant to Section 49.455 of the Texas Water Code:

All or a portion of the Property within the boundaries of Montgomery County Municipal Utility District No. 174 of Montgomery County, Texas (the "District"), as described in Exhibit A attached hereto, is subject to the terms and conditions of a Strategic Partnership Agreement between the District and the City of Magnolia ("City"), which was effective on October 13, 2020. The Strategic Partnership Agreement allows full purpose municipal annexation of the District by the City at any time on or after tenth anniversary of the effective date of the Strategic Partnership Agreement and permits limited purpose annexation of the District at any time. A copy of the Strategic Partnership Agreement may be obtained by contacting the offices of the District.

Any land subsequently annexed into the District shall be included within District's notice obligation as set forth above.

ARTICLE III **STATUS OF DISTRICT FOLLOWING FULL PURPOSE ANNEXATION**

Section 3.01 Status of the District following full purpose annexation.

Upon full purpose annexation the City may, subject to the limitation hereafter provided, (1) abolish the District and assume its debts and obligations pursuant to Local Government Code Section 43.075, or (2) continue the District as a limited district upon the terms hereinafter provided. The District shall not be abolished but shall continue to exist as a limited district until at least 90% build out.

Section 3.02 Limited district option.

The City's full purpose annexation ordinance may require that the District retain all obligation for any indebtedness of the District and continue to exist as a limited district for so long as may be necessary for the limited district to fully discharge all such indebtedness, including any landowner or developer reimbursement payments that the City would otherwise be obligated to pay upon annexation or dissolution of the District. The limited district shall continue to be known as "Montgomery County Municipal Utility District No. 174." The limited district shall continue until the City dissolves the District pursuant to Section 3.04 hereof. The limited district may not be dissolved without the consent of the City.

Section 3.03 Powers of limited district.

Subject to the express terms of this Agreement and the Consent Conditions, the limited district shall have and may continue to exercise all powers of the District in the same manner as authorized prior to the conversion of the District to a limited district, except none of the District Facilities may be transferred to another party without the consent of the City. The limited district is expressly authorized and required to levy and collect taxes sufficient to meet the outstanding debt service requirements for debt previously issued by the District and to pay necessary operating expenses associated therewith.

Section 3.04 Dissolution of Limited District.

The City may dissolve the limited district by ordinance at any time after 90% build out. Upon dissolution the city shall (1) take over all the property and other assets of the limited district, (2) assume all the debts, liabilities, and obligations of the limited district, and (3) perform all functions of the limited district, including the provision of services.

Section 3.05 Audit; Review of District Records.

The District, at its sole expense, shall conduct an annual audit each year to the extent required by the Texas Water Code and the rules of the Texas Commission on Environmental Quality to be performed by an independent certified public accountant. The District shall make its financial records available to the City for inspection during normal business hours and with prior reasonable notice.

ARTICLE IV **MISCELLANEOUS PROVISIONS**

Section 4.01 Duplicate Counterparts.

This Agreement may be executed in duplicate counterparts but shall not be effective unless executed by the City and the District.

Section 4.02 Entire Agreement.

- a. Except as expressly set forth in this Agreement, this Agreement is not intended to waive or limit the applicability of laws, regulations and ordinances applicable to the District or the City, nor does it waive the jurisdiction or sovereignty of any governmental body with respect to the District or the City. Notwithstanding the foregoing, City may not adopt an ordinance or resolution annexing the District for full or limited purposes which contains terms inconsistent with this Agreement, unless this Agreement has been previously terminated as provided herein.
- b. As of this date there are no agreements, oral or written, between the Parties which are in conflict with this Agreement. Except as expressly provided by this Agreement, this Agreement, together with all of the attachments to this Agreement, constitutes the entire agreement between the Parties with respect to the terms and conditions governing the annexation of the District. No representations or agreements other than those specifically included in this Agreement shall be binding on either the City or the District.

Section 4.03 Notice.

- a. It is contemplated that the Parties will contact each other concerning the subject matter of this Agreement. However, any Notice shall be given at the addresses below for each of the Parties.
- b. Notice may be given by:
 - i. delivering the Notice to the Party to be notified;
 - 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; or
 - iii. by sending the Notice by telefax with confirming copy sent by mail to the Party to be notified.
- c. Notice deposited in the United States mail in the manner hereinabove described shall be deemed effective from and after the earlier of the date of actual receipt or three (3) days 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.
- d. For purposes of Notice, the addresses of the Parties shall, until changed as provided in this Section, be as follows:

City of Magnolia: Don Doering
City Administrator
City of Magnolia
18111 Buddy Riley Blvd.
Magnolia, TX 77354

With a copy to: Leonard Schneider
c/o Liles Parker PLLC
2261 Northpark Drive, Suite 445
Kingwood, Texas 77339

The District: Montgomery County MUD No. 174
c/o Allen Boone Humphries Robinson LLP
Attn: Mr. David Oliver
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027

- e. The Parties may change their addresses for Notice purposes by providing ten (10) days written notice of the changed address to the other Party.
- f. If any date or period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating Notice is extended to the first business day following the Saturday, Sunday, or legal holiday.

Section 4.04 Time.

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

Section 4.05 Severability or Modification of Agreement as a Result of Modification of the State Code and Statutory Authority for the Agreement.

- a. If any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement, or the application of the word, phrase, clause, sentence, paragraph, section or other part of this Agreement to any person or circumstance is held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the Parties agree that they will amend or revise this Agreement to accomplish to the greatest degree practical the same purpose and objective of the part determined to be invalid or unconstitutional, including without limitation amendments or revisions to the terms and conditions of this Agreement pertaining to or affecting the rights and authority of the Parties in areas of the District annexed by the City pursuant to this Agreement, whether for limited or full purposes.
- b. If any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement is modified in whole or in part as a result of amendments to the underlying state code and statutory authority for this Agreement, the Parties agree and understand that such modification may frustrate the purpose of this Agreement. The parties agree that they will

attempt to amend or revise this Agreement to accomplish to the greatest degree practical (i) the same purpose and objective of the part of this Agreement affected by the modification of the underlying state code and statutory authority and (ii) the original intent and purpose of this Agreement. If the Parties cannot agree on any such amendment or revision within ninety (90) days from the effective date of amendment of the state code and statutory authority for this Agreement, then this Agreement shall terminate (except for the provisions of Article III which shall specifically survive such termination for the remaining term set forth in Section 4.13 below), unless the Parties agree to an extension of time for negotiation of the modification.

Section 4.06 Waiver.

Any failure by a Party to the Agreement to insist upon strict performance by the other Party of any provision of this Agreement shall not be deemed a waiver of the provision or of any other provision of the Agreement. The Party has the right at any time to insist upon strict performance of any of the provisions of the Agreement.

Section 4.07 Applicable Law and Venue.

The construction and validity of the Agreement shall be governed by the laws of the State of Texas. Venue shall be in Montgomery County, Texas.

Section 4.08 Reservation of Rights.

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

Section 4.09 Further Agreement and Documents.

Both Parties agree that at any time after execution of this Agreement, they will, upon request of the other Party, exchange any other documents necessary to effectuate the terms of this Agreement. Both Parties also agree that they will do any further acts or things as the other Party may reasonably request to effectuate the terms of this Agreement.

Section 4.10 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 4.11 Assignability, Successors, and Assigns.

This Agreement shall not be assignable by the either party without the prior written consent of the other party, which consent shall not be unreasonably withheld, delayed or conditioned. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective representatives, successors and assigns.

Section 4.12 Amendment.

This Agreement may only be amended in writing upon the approval of the governing bodies of the City and the District. To the extent allowed by law, the Parties do not intend to conduct additional hearings pursuant to Local Government Code Section 43.0751 prior to amending this Agreement.

Section 4.13 Term.

Except as it may otherwise be terminated as set forth herein, this Agreement shall remain in effect until the earlier date to occur of the following: (i) forty (40) years from the effective date of this Agreement, or (ii) the date the District (including the Limited District as applicable) shall cease to exist for any purpose pursuant to the terms of this Agreement. Notwithstanding the foregoing, in the event that City has not commenced the full purpose annexation contemplated by this Agreement at the expiration of the term set forth in this Section 4.13, the Agreement shall automatically extend for an additional ten (10) year period without further action by the City and the District. If the District is annexed for limited purposes prior to the expiration or termination of the Agreement, then upon such expiration or termination of the Agreement the territory of the District shall be automatically included within the full purpose territory of the City.

Section 4.14 Future Annexations by District during term of Agreement.

In addition to the annexation of additional District property into the City's extraterritorial jurisdiction as set forth in Section 1.04, the District may make application to the City to annex additional tracts into its boundaries in the future and, following such annexation(s), those tracts shall be considered part of the District and covered by this Agreement. The City agrees to consider in good faith any applications for consent to annexation of additional tracts into the District.

ARTICLE V **DEFAULT AND REMEDIES FOR DEFAULT**

Section 5.01 Default.

- a. Upon the occurrence, or alleged occurrence, of an event of default under or violation of this Agreement, the non-defaulting Party shall send the defaulting Party Notice of its default or violation or alleged default or violation. Except as otherwise specifically provided in this Agreement, the defaulting Party must cure its default or violation within seventy-five (75) days following receipt of the Notice of default or violation unless curing such default in such time period is not reasonably possible and the Party who is alleged to be in default is taking all actions necessary to promptly cure the default. However, a Party is not considered in default of the terms contained herein unless Notice is actually given by the non-defaulting Party, and the alleged default has not be cured during the seventy-five (75) day cure period.

- b. If the default or violation is not cured by the defaulting Party within seventy-five (75) days of receiving the Notice, the non-defaulting Party may sue for enforcement or cancellation of this Agreement. However, prior to bringing any proceeding in a court of law or before a court of competent jurisdiction, the Parties may resolve the issue through mediation. If the Parties agree to seek mediation, they must participate in good faith. However, none of the Parties shall be obligated to pursue mediation that does not resolve the issue in dispute within seven (7) days after the mediation is initiated or within fourteen (14) days after the mediation is requested.
- c. If the Parties are unable to resolve their dispute through mediation, the non-defaulting Party shall have the right to enforce the terms and provisions of this Agreement by specific performance or by such other legal or equitable relief to which the non-defaulting Party may be entitled. Any remedy or relief described in this Agreement shall be cumulative of, and in addition to, any other remedies and relief available at law or in equity.
- d. If the defaulting Party fails to abide by these deadlines, the non-defaulting Party shall have all rights and remedies available in law and equity and all rights and remedies provided in this Agreement. The Parties acknowledge that the City's remedies shall include the right, in the City's sole discretion, to terminate this Agreement and proceed with full purpose annexation of the District, or any portion thereof, pursuant to the requirements otherwise applicable for such annexation as if this Agreement had never been entered into.
- e. All of these rights and remedies shall be cumulative.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, this Agreement is executed in duplicate counterparts.

CITY OF MAGNOLIA, TEXAS

By: _____

Mayor, City of Magnolia

Attest:

Diane Hurley
City Secretary

THE STATE OF TEXAS

COUNTY OF MONTGOMERY

This instrument was acknowledged before me on the 13 day of October, 2020, by Todd Kana, Mayor of the City of Magnolia, Texas, for and on behalf of said city.

Diane L. Hurley
Notary Public in and for the State of Texas
My Commission Expires 7-23-21



**MONTGOMERY COUNTY
MUNICIPAL UTILITY DISTRICT NO. 174**

By: [Signature]
President, Board of Directors

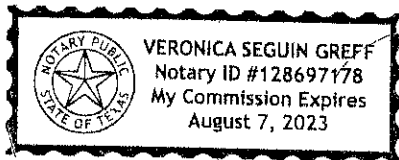
Attest:

[Signature]
Secretary, Board of Directors

THE STATE OF TEXAS

COUNTY OF MONTGOMERY

This instrument was acknowledged before me on the 9th day of October, 2020, by Andy Mersmann, President of Montgomery County Municipal Utility District No. 174, for and on behalf of said district.



[Signature]
Notary Public in and for the State of Texas
My Commission Expires: 8/7/2023

EXHIBIT A
DISTRICT BOUNDARIES

County: Montgomery
Project: MCMUD 174
Job No.: 205201
M&B No.: 20-467

**FIELD NOTES FOR 148.435 ACRES
MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT 174**

Being a tract containing 148.435 acres of land situated in the W.T. Dunlavy Survey, Abstract No. 168, the W. Hillhouse Survey, Abstract No. 260 and the J. Pierpont Survey, Abstract No. 426, in Montgomery County, Texas. Said 148.435 acres being that same 148.435 acre tract of land recorded in the name of Magnolia Escondido, LLC under Montgomery County Clerk's File (M.C.C.F.) No. 2018120024. Said 148.435 acres being more particularly described by metes and bounds as follows (bearings are referenced to said M.C.C.F. No. 2018120024):

BEGINNING at the southwest corner of said 148.435 acres, same being on the north Right-of-Way line of F.M. 1774 (width varies) and the east line of a call 12.15 acre tract of land recorded in the name of James Lamar O'Neal in Volume 745, Page 775 of the Montgomery County Deed Records (M.C.D.R.);

THENCE, with said east line and the east line of a call 12.15 acre tract of land recorded in the name of Edgar Leon O'Neal in Volume 745, Page 783 of the M.C.D.R., North 01 degrees 28 minutes 01 seconds West, a distance of 1,583.43 feet;

THENCE, with the upper south line of said Edgar Leon O'Neal 12.15 acre tract, North 87 degrees 53 minutes 08 seconds East, a distance of 132.46 feet;

THENCE, with aforesaid east line, the east line of those two (2) call 5.756 acre tracts of land recorded in the names of Leon Charles O'Neal and Norman Leslie O'Neal under M.C.C.F. No. 2003039490, and the east line of a call 2.2817 acre tract of land recorded in the name of Alice Law Johnson under M.C.C.F. No. 98102399, North 01 degrees 56 minutes 32 seconds West, a distance of 1,355.78 feet to the common line between aforesaid Pierpont and Hillhouse Surveys and being at the northeast corner of said 2.2817 acre tract;

THENCE, North 03 degrees 15 minutes 53 seconds West, a distance of 454.86 feet to the southwest corner of a call 7.505 acre tract of land recorded in the name of Rondle L. Hartley and Pat A. Hartley under M.C.C.F. No. 2000012801;

THENCE, with the south line of said 7.505 acre tract and a call 7.500 acre tract of land recorded in the name of Edmond R. Shanks and Amanda D. Shanks under M.C.C.F. No. 2000012802, North 87 degrees 16 minutes 27 seconds East, a distance of 1,315.32 feet to the southeast corner of said 7.500 acre tract;

THENCE, with the east line of said 7.500 acre tract, North 03 degrees 14 minutes 39 seconds West, a distance of 496.57 feet to the northeast corner of said 7.500 acre tract, the southwest corner of a call 3.0445 acre tract of land recorded in the name of Magnolia Castland, Inc. under M.C.C.F. No. 99019783, and being at the centerline terminus of Sandra Dee Lane, a 60 foot road easement;

THENCE, with the south line of said 3.0445 acre tract, North 87 degrees 14 minutes 28 seconds East, at a distance of 30 feet passing the east line of said Sandra Dee Lane, and continuing for a total distance of 437.37 feet to the southeast corner of said 3.0445 acre tract and being on the west line of a call 12.4782 acre tract of land recorded in the name of Charles W. Tatom and Barbara D. Tatom under M.C.C.F. No. 9805419;

THENCE, with said west line and the west line of a call 3.0690 acre tract of land recorded in the name of Jessica Manwaring under M.C.C.F. No. 2017101365, South 03 degrees 19 minutes 34 seconds East, a distance of 496.83 feet;

THENCE, continuing with the west line of said 3.0690 acre tract, South 03 degrees 06 minutes 29 seconds East, a distance of 457.74 feet to the northwest corner of a call 17.845 acre tract of land recorded in the name of Diane M Daleo under M.C.C.F. No. 2011008721 and being on the common line between aforesaid Pierpont and Dunlavy Surveys;

THENCE, with the west line of said 17.845 acre tract and a call 8.6122 acre tract of land (styled "Tract 2") recorded in the name of DMJ Kachel, LLC under M.C.C.F. No. 2016105309, South 02 degrees 08 minutes 18 seconds East, a distance of 1,117.06 feet to a point in Kachel Lake, said point being the common corner between aforesaid 149.849 acre tract, 8.6122 acre tract, and a call 35.151 acre tract of land recorded in the name of Christopher H. Osborne and Gail J. Osborne under M.C.C.F. No. 2012070459;

THENCE, through and across said Kachel Lake and with a north line of said 35.151 acre tract, South 75 degrees 12 minutes 08 seconds West, a distance of 181.21 feet to a point in said Kachel Lake;

THENCE, with the west line of said 35.151 acre tract, South 02 degrees 28 minutes 35 seconds West, a distance of 1,125.43 feet to the southwest corner of said 35.151 acre tract and the northwest corner of Undesignated Reserve "A", Block 1 of Final Plat of Magnolia Road Investments, a subdivision recorded in M.C.C.F. No. 2018013113 (Cabinet 00Z, Sheet 4961);

THENCE, with the west line of said Undesignated Reserve "A", South 07 degrees 40 minutes 10 seconds East, a distance of 1,225.58 feet to the southwest corner of said Undesignated Reserve "A" and being on the aforesaid north R.O.W. line of F.M. 1774;

THENCE, with said north R.O.W. line, the following two (2) courses:

- 1.) North 74 degrees 45 minutes 48 seconds West, a distance of 733.80 feet;

2.) North 75 degrees 03 minutes 25 seconds West, at a distance of 136.05 feet passing the common line between aforesaid Dunlavy and Hillhouse Surveys, and continuing for a total distance of 1,107.06 feet to the **POINT OF BEGINNING** and containing 148.435 acres of land, more or less.

NOTE: THIS DOCUMENT WAS PREPARED UNDER 22 TAC §663.21, DOES NOT REFLECT THE RESULTS OF AN ON THE GROUND SURVEY, AND IS NOT TO BE USED TO CONVEY OR ESTABLISH INTERESTS IN REAL PROPERTY EXCEPT THOSE RIGHTS AND INTERESTS IMPLIED OR ESTABLISHED BY THE CREATION OR RECONFIGURATION OF THE BOUNDARY OF THE POLITICAL SUBDIVISION FOR WHICH IT WAS PREPARED.

GBI Partners
TBPLS Firm #10130300
Ph: 281.499.4539
October 5, 2020

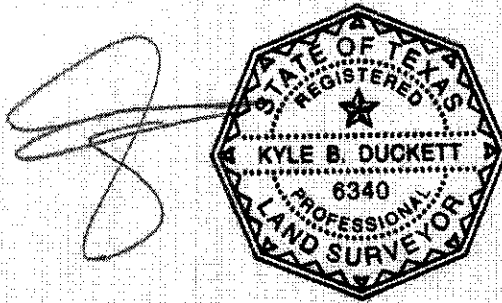


EXHIBIT B
COMMERCIAL TRACT

County: Montgomery
Project: Escondido City Annexation
Job No.: 205203
M&B No.: 20-326

FIELD NOTES FOR 35.945 ACRES

Being a tract containing 35.945 acres of land located in the W.T. Dunlavy Survey, Abstract No. 168, and the W. Hillhouse Survey, Abstract No. 260, in Montgomery County, Texas. Said 35.945 acres being a portion of a call 148.435 acre tract of land recorded in the name of Magnolia Escondido, LLC under Montgomery County Clerk's File (M.C.C.F.) No. 2018120024 and a call 20.00 acre tract of land recorded in the name of JAJWK, LP and Gregory Lloyd Miller, Trustee of the Gregory Lloyd Miller Trust, under M.C.C.F. No. 2018120023. Said 35.945 acres being more particularly described by metes and bounds as follows (bearings are referenced to the Texas Coordinate System of 1983, Central Zone, based on GPS observations):

BEGINNING at a TXDOT disc found at the southwest corner of said 148.435 acre tract and northwest corner of a call 1.420 acre tract of land recorded in the name of State of Texas under M.C.C.F. No. 2010040292, same being on the north Right-of-Way (R.O.W.) line of F.M. 1774 (width varies) and the east line of a call 12.15 acre tract of land recorded in the name of James Lamar O'Neal in Volume 745, Page 775 of the Montgomery County Deed Records (M.C.D.R.);

THENCE, with the common line between said 148.435 acre and 12.15 acre tracts, North 01 degrees 28 minutes 01 seconds West, a distance of 1,002.48 feet to a point from which a found 1/2 inch square iron rod bears North 01 degrees 28 minutes 01 seconds West, a distance of 580.96 feet;

THENCE, through and across said 148.435 acre tract, the following three (3) courses:

- 1.) North 89 degrees 41 minutes 09 seconds East, a distance of 878.82 feet;
- 2.) South 52 degrees 32 minutes 13 seconds East, a distance of 56.31 feet to the beginning of a non-tangent curve to the left;
- 3.) 64.72 feet along the arc of said curve having a radius of 970.00 feet, a central angle of 03 degrees 49 minutes 23 seconds and a chord which bears North 35 degrees 33 minutes 06 seconds East, a distance of 64.71 feet;

THENCE, through and across said 148.435 acre and aforesaid 20.00 acre tracts, South 56 degrees 21 minutes 36 seconds East, a distance of 60.00 feet;

THENCE, through and across said 20.00 acre tract, the following two (2) courses:

- 1.) South 70 degrees 24 minutes 30 seconds East, a distance of 96.99 feet;
- 2.) South 77 degrees 10 minutes 37 seconds East, a distance of 78.48 feet;

THENCE, through and across said 20.00 acre and 148.435 acre tracts, South 87 degrees 31 minutes 26 seconds East, a distance of 469.21 feet to a point on the east line of said 148.435 acres and west line of a call 35.151 acre tract of land recorded in the name of Christopher H. Osborne and Gail J. Osborne under M.C.C.F. No. 2012070459, from which point a found 1 inch iron pipe for reference bears North 02 degrees 28 minutes 35 seconds East, a distance of 688.66 feet;

THENCE, with the common line between said 148.435 acre and 35.151 acre tracts, South 02 degrees 28 minutes 35 seconds West, a distance of 185.79 feet to a 5/8 inch iron rod found at the southwest corner of said 35.151 acres and northwest corner of Magnolia Road Investments, a subdivision recorded under M.C.C.F. No. 2018013113 (Cabinet 00Z, Sheet 4961 of the Montgomery County Map Records);

THENCE, with the common line between said 148.435 acre tract and said Magnolia Road Investments, South 07 degrees 40 minutes 10 seconds East, a distance of 25.26 feet to a point from which a found 5/8 inch capped iron rod stamped "GBI Partners" at the upper southeast corner of aforesaid 20.00 acre tract bears South 07 degrees 40 minutes 10 seconds East, a distance of 2.68 feet;

THENCE, through and across said 20.00 acre tract, the following three (3) courses:

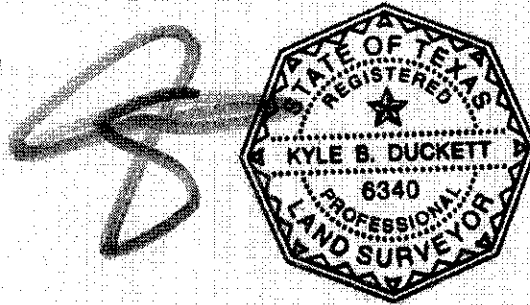
- 1.) South 42 degrees 44 minutes 09 seconds West, a distance of 330.44 feet to a point of curvature to the left;
- 2.) 426.20 feet along the arc of said curve having a radius of 888.00 feet, a central angle of 27 degrees 29 minutes 57 seconds and a chord which bears South 28 degrees 59 minutes 11 seconds West, a distance of 422.12 feet to a point of tangency;
- 3.) South 15 degrees 14 minutes 12 seconds West, a distance of 402.54 feet to a point on the south line of said 20.00 acres and aforesaid north R.O.W. line of F.M. 1774, from which point a found 5/8 inch capped iron rod stamped "GBI Partners" at the lower southeast corner of said 20.00 acres bears South 74 degrees 45 minutes 48 seconds East, a distance of 5.67 feet;

THENCE, with said south line and said R.O.W., North 74 degrees 45 minutes 48 seconds West, a distance of 13.71 feet to a TXDOT disc found;

THENCE, continuing with said R.O.W. and the south line of said 20.00 acre tract and aforesaid 148.435 acre tract, North 75 degrees 03 minutes 25 seconds West, at 670.85 feet pass a 5/8 inch capped iron rod stamped "GBI Partners" found at the southwest corner of said 20.00 acre tract and southeast corner of said 148.435 acre tract, and continuing for a total distance of 1,107.06 feet to the **POINT OF BEGINNING** and containing 35.945 acres of land, more or less.

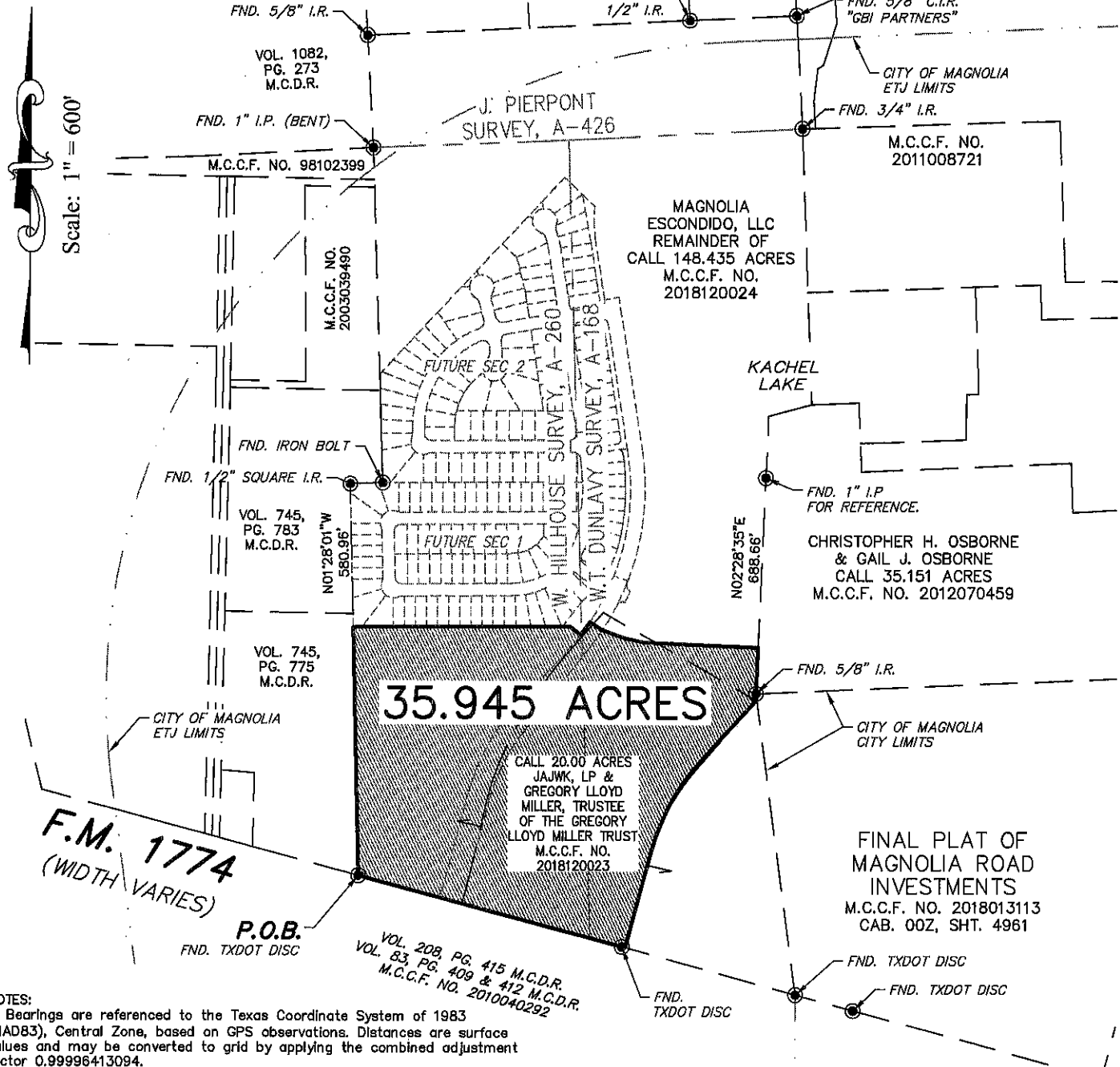
NOTE: THIS DOCUMENT WAS PREPARED UNDER 22 TAC §663.21, DOES NOT REFLECT THE RESULTS OF AN ON THE GROUND SURVEY, AND IS NOT TO BE USED TO CONVEY OR ESTABLISH INTERESTS IN REAL PROPERTY EXCEPT THOSE RIGHTS AND INTERESTS IMPLIED OR ESTABLISHED BY THE CREATION OR RECONFIGURATION OF THE BOUNDARY OF THE POLITICAL SUBDIVISION FOR WHICH IT WAS PREPARED.

GBI Partners, L.P.
TBPELS Firm #10130300
Ph: 281.499.4539
July 22, 2020



LEGEND

C.I.R. CAPPED IRON ROD
 FND. FOUND
 M.C.C.F. MONTGOMERY COUNTY CLERKS FILE
 M.C.D.R. MONTGOMERY COUNTY DEED RECORDS
 I.P. IRON PIPE
 I.R. IRON ROD
 P.O.B. POINT OF BEGINNING
 R.O.W. RIGHT-OF-WAY



NOTES:

1. Bearings are referenced to the Texas Coordinate System of 1983 (NAD83), Central Zone, based on GPS observations. Distances are surface values and may be converted to grid by applying the combined adjustment factor 0.999996413094.
2. This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.
3. See Pages 1-3 of 4 Pages for metes and bounds description.

EXHIBIT

35.945 ACRES OF LAND LOCATED IN THE W.T. DUNLAVY SURVEY, A-168 AND THE W. HILLHOUSE SURVEY, A-260, IN MONTGOMERY COUNTY, TEXAS



GBI PARTNERS

LAND SURVEYING CONSULTANTS

4724 VISTA ROAD • PASADENA, TX 77505

PHONE: 281-499-4539 • GBIsurvey@GBIsurvey.com

TBPELS FIRM #10130300 • www.GBIsurvey.com

SCALE: 1" = 600'

JOB NO. 205203

DATE: 07/22/2020

CREW CHIEF: C.A./J.A.

FIELD BOOK: 18110

DWG.: 20-326EX

FILED FOR RECORD
11/13/2020 09:49AM

Mark Turnbull

COUNTY CLERK
MONTGOMERY COUNTY, TEXAS

STATE OF TEXAS,
COUNTY OF MONTGOMERY

I hereby certify that this instrument was filed in the file number
sequence on the date and time stamped herein
by me and was duly RECORDED in the Official Public
Records of Montgomery County, Texas.

11/13/2020



Mark Turnbull

County Clerk
Montgomery County, Texas