AGREEMENT FOR THE FINANCING AND CONSTRUCTION OF ROAD IMPROVEMENTS BY AND BETWEEN FORT BEND COUNTY, TEXAS AND FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 216

This **Agreement for the Financing and Construction of Road Improvements** (this "Agreement") is made and entered into by and between **Fort Bend County, Texas**, a body corporate and politic under the laws of the State of Texas, by and through its Commissioners Court (the "County") and **Fort Bend County Municipal Utility District No. 216** (the "District"), being a body corporate and politic and a governmental agency of the State of Texas, operating under and governed by the provisions of Chapter 49 and 54, Texas Water Code, as amended, and Section 59 of Article 16 of the Texas Constitution. The County and the District are collectively referred to herein as the "Parties" and each individually as a "Party".

1) GENERAL SCOPE OF THE AGREEMENT

A) The Parties hereby agree to establish a program to finance and develop certain road improvements and improvements in aid of such road improvements or related to transportation, including public roads, rights-of-way, wheelchair ramps and/or landings contained within the right-of-way, traffic improvements, traffic control devices, safety enhancements, signage, bridges, and drainage (collectively, the "Road Improvements") and the estimated costs therefor are more fully described on Exhibit "A" and depicted on Exhibit "B" attached hereto and incorporated herein, in accordance with Chapter 381, Texas Local Government Code ("Chapter 381"), under which the County has the authority to use public funds for the public purposes of promoting local economic development and stimulating business and commercial activity within the County.

B) The District is a governmental agency created, organized and existing for the purpose of, among others, providing the Road Improvements to serve the land within and around its jurisdictional boundaries, and such Road Improvements may be financed and constructed in accordance with the terms and conditions of this Agreement.

C) The County and the District do hereby find and determine that the Road Improvements will be of benefit to the County and to the area being described in Exhibit "C" attached hereto and incorporated herein for all purposes (the "Economic Impact Area"), which includes all of the area within the jurisdictional boundaries of the District, as such Economic Impact Area may be expanded in the future to accommodate the inclusion of additional land within the jurisdictional boundaries of the District. In the event that the District boundary is hereafter expanded, such expansion must be provided in writing to the County and thereafter the additional area shall only be used in the calculation of the Assessed Value (as hereafter defined) of the Economic Impact Area by the County on and after January 1 of the year following the effective date of such District Boundary expansion.

D) The Road Improvements and the development of the land within the Economic Impact Area will bring positive economic impact to the County, the City of Fulshear (the "City"), the District and the Economic Impact Area by facilitating the timely development and diversification of the economy, the attraction of new businesses and the retention and growth of tax revenue.

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E) The County and the District do hereby find and determine that the Road Improvements will provide a public benefit to the County, the City, the District and the Economic Impact Area by improving mobility and public safety in the District, the Economic Impact Area and the region around the Economic Impact Area within the County. The Road Improvements will provide an alternative to Pool Hill Road. Pool Hill Road is within the floodplain for approximately one mile south of Rogers Road. The depth of the current road surface below the Base Flood Elevation makes it unlikely that Pool Hill Road could be reconstructed at a higher elevation without negatively impacting the water surface elevation.

F) The County and the District do hereby find and determine that this Agreement, and each and every one of the Road Improvements, promotes economic development in the County, City and the District, and, as such, meets the requirements of Chapter 381, and further is in the best interests of the County, the City, the District and the Economic Impact Area.

2) DEFINITIONS AND TERMS

A) "Annual Payment" means the sum of money payable by the County to the District each year, based upon the County's tax rates and Taxable Values for that year, equal to the result of the following formula:

Tax Increment x 70% x County's General Fund Ad Valorem Tax Rate per $100.00 of Assessed Value

All calculations shall be rounded to 4 decimal places with amounts rounded up if the fifth digit is a value of 5 or greater and amounts rounded down if the fifth digit is a value less than 5. Notwithstanding the foregoing, the final calculation of the Annual Payment shall be rounded to 2 decimal places to reflect the nearest whole cent with amounts rounded up if the third digit is a value of 5 or greater and amounts rounded down if the third digit is a value less than 5.

As an example, using the County's 2021 tax rate and a hypothetical Tax Increment value of $100,000,000:

$100,000,000 x 70% x $0.4383 per $100 of Assessed Value =$306,810.00

B) "Assessed Value" means the assessed value of the applicable real property which shall be calculated as the "Total Assessed" less only the "Personal Property" as established by the Fort Bend County Appraisal District in the Assessment Roll Grand Totals Report supplement (an example of which is shown on Exhibit "E" attached hereto) for the applicable tax year current as of October 1 of the year in which the Annual Payment is made.

C) "Base Value" means the Assessed Value of all real property within the Economic Impact Area as of January 1, 2022, which is shown to be Three Hundred Sixty-Six Thousand, Nine Hundred Fifty and No/100 dollars ($366,950.00) and which shall be subject to corrective adjustment, on an as needed basis, in accordance with the provisions of Section 4(c).

D) "Bonds" means the bonds, notes, or other evidences of indebtedness issued by the District from time to time, if any, for the specific purpose of paying for, financing and/or reimbursing the payment of the Road Improvement Costs (defined in Article 3.B. hereof) and are secured by, in part or in full, the Annual Payments, including any bonds, notes, or other obligations issued for the purpose of refunding such bonds.

E) "Developer" means Fulshear Lakes, Ltd., a Texas limited partnership, its subsidiaries, affiliates, successors and assigns.

F) "Reimbursement Cap" means Seven Million, Nine Hundred Twenty-Two Thousand, Seven Hundred and No/100 ($7,922,700.00).

G) "Tax Increment" means the total Assessed Value of all taxable real property located within the Economic Impact Area for the current year less the Base Value. The Tax Increment shall be determined without regard to any future tax abatement or rebate (pursuant to an economic development agreement, abatement or otherwise) of any portion of such value granted by the County.

3) ROAD IMPROVEMENTS AND ROAD IMPROVEMENT COSTS

A) *Road Improvements*. The District intends to finance and construct the Road Improvements listed in Exhibit "A", each of which may be constructed in phases. In coordination with the Developer, the District, in its sole discretion, will determine the timing, phasing and sequencing of the design, construction and financing of the Road Improvements. Upon request from the County, the District and/or Developer will provide progress updates on the design, construction and financing of the Road Improvements. Construction plans and specifications for the Road Improvements will be submitted to the County Engineer for approval as required by, and in accordance with, all applicable regulations and this Agreement. The District is only obligated to construct those Road Improvements (as may be modified as provided in Article 3.C. below) to the extent that sufficient funds are available for financing the Road Improvement Costs (as defined below) from the Annual Payments. Subject to the receipt of the requisite approvals from applicable regulatory authorities, the District shall commence construction of any portion of the Road Improvements that is included within, or immediately adjacent to, any section of the subdivision for which a plat has been recorded prior to completing the construction of all of the other roadways within such platted section.

B) *Road Improvement Costs*. "Road Improvement Costs" are defined as the actual costs of the Road Improvements listed in Exhibit "A". The Road Improvement Costs may include the costs of design, development, and construction of the Road Improvements, including, without limitation: (i) all costs of design, engineering, geotechnical, environmental, surveying, materials, labor, construction, testing, management, inspection, permitting, studies and other services arising in connection with the completion of the Road Improvements; (ii) all payments arising under any contracts entered into for the design or construction of the Road Improvements; and (iii) all costs incurred in connection with obtaining governmental approvals, certificates and permits required in connection with the Road Improvements, including the engineering and other consultant fees,

services and expenses related to the design and construction of the Road Improvements. Road Improvement Costs also include the reimbursement to the Developer for the Road Improvement Costs described above advanced to or on behalf of the District, provided that the District has entered into an agreement with Developer for repayment of all funds advanced on its behalf.

C) *Preliminary List of Public Improvements*. The actual Road Improvement Costs may be higher or lower than the line-item estimates provided in Exhibit A, and the District may reallocate the costs among the line items based on actual costs as required to complete the Road Improvements so long as any reallocation does not exceed the Reimbursement Cap. The Parties acknowledge and agree that the list of Road Improvements and estimated cost of Road Improvements set forth in Exhibit A and the location of the Road Improvements depicted on Exhibit B are preliminary and may be adjusted (including but not limited to alignments, substitutions, deletions and/or additions) to comply with the development plan of the District, topographic features, regulatory requirements, roadway access/crossing requirements (including those imposed by TxDOT), drainage and/or utility requirements and/or other design considerations including those that reduce and/or mitigate construction costs and/or that improve access. The Parties further agree that the District may make such adjustments to the Road Improvements provided any adjustment does not exceed the Reimbursement Cap. District shall consult with County (by and through County Commissioner of Pct. 1) in making any substitutions, deletions or additions to the list of Road Improvements, and the construction plans and specifications of the Road Improvements shall require the approval of the County Engineer, as required by, and in accordance with, all applicable regulations and this Agreement.

D) *Sales Tax Exemption*. Road Improvement Costs will be based on the actual costs to the District or the Developer, acting on behalf of the District, of the Road Improvements in accordance with Article 3.B. hereinabove. However, the County and the District are both political subdivisions under the laws of the State of Texas and may claim exemption from sales and use taxes under Section 151.309 of the Texas Tax Code, as amended. The County is neither liable for any personal property taxes, charges or fees assessed against the District or the Developer nor obligated to reimburse the District or the Developer for any taxes, charges or fees assessed against the District or the Developer for the supplies or materials provided or any services rendered.

E) *Site Costs*. The District shall, on behalf of the Parties and with the assistance of the County, use good faith efforts to negotiate to secure all sites, easements and rights-of-way not heretofore secured that are necessary for the construction of any of the Road Improvements across land owned by third parties, if any. If, despite such good faith efforts, the District is unable to obtain such sites, easements or rights-of-way necessary for any of the Road Improvements, the District shall submit a written request to the County to consider that the County enter into, on behalf of the Parties, negotiations and/or legal proceedings to obtain the interest in land required for the construction of such Roadway Improvements. If, after such written request is made by the District, the County does not obtain the interest in land required for the construction of the applicable Road Improvements, the District shall not be obligated to finance, design or build the subject Road Improvements planned for such land. At this time, it is not anticipated that any sites, easements or rights-of-way necessary for construction of the Road Improvements will need to be obtained from third-parties.

F) *Right-of-Way Abandonment.* The County shall, upon written request from the District (which request shall include a written acknowledgment that the District shall be responsible for the relocation of any existing utilities required in connection therewith), work to close, abandon and vacate all county public road right(s)-of-way required to be closed, abandoned and vacated for the completion of the Road Improvements and/or in the manner required by this Agreement, including, but not limited to, relinquishment of any and all rights (including but not limited to any prescriptive rights) for a portion of the existing Love Road right-of-way near Rogers Road as generally depicted on Exhibit "F" attached hereto ("Abandoned Love Road") directly to Developer (who is the fee simple owner of the land under Abandoned Love Road), all in accordance with the District's request and, if applicable, the provisions of Chapter 251 of the Texas Transportation Code, as amended. Pursuant to Section 251.058(b) of the Texas Transportation Code, as amended, title to any portions of the public road right-of-way owned by the County and closed, abandoned and vacated by the County as required by this Agreement shall, as of the date of the order closing, abandoning and vacating such public road right-of-way is signed by the County Judge, vest in the owner of the property that abuts the public road (or portion of public road) being closed, abandoned and vacated. In consideration of the conveyance of the Road Improvements to the County pursuant to the terms and conditions of Article 7 below, the County agrees that it will not require any owner of property abutting any public road right-of-way so closed, abandoned and vacated by the County pursuant to the terms and conditions of this Agreement, whether it be the District or any third party, including but not limited to the Developer, to pay: (i) any administrative costs in connection with such closing, abandoning, relinquishment and vacating, or (ii) the market value of any property interest conveyed to or otherwise vesting in such owner. As of the Effective Date, the fee simple title for existing Love Road is not owned by the County.

G) *Right of Way Dedication.* In order to promote regional mobility within the County, the District has previously dedicated approximately 6.901 acres of right of way (approximately 100' wide) within the District directly to the Fort Bend County Toll Road Authority ("FBCTRA") at no cost to FBCTRA. Said right of way is located along existing F.M. 1093 and was provided as a contribution by the District for the potential future expansion and extension of the West Park Toll Road under a Joint Project Agreement Regarding Road Right of Way dated effective August 27th, 2019 ("JP Agreement") between the District, the County, FBCTRA and Developer. After the Effective Date of this Agreement, and upon the written request of the County, the District (by and through its agreements with Developer) will convey to the FBCTRA (at no cost to the FBCTRA) an additional 1.095 acres of right of way for the future widening and extension of the Westpark Toll Road ("Westpark Toll Road ROW") as depicted on Exhibit "G". The conveyance instrument shall be in a form that is mutually agreeable to FBCTRA and the District and contain similar rights and terms as the JP Agreement. Upon the County's abandonment of and relinquishment of rights to Abandoned Love Road to Developer, the District (by and through its agreements with Developer) will convey to the County (at no cost to the County) the remaining portion of Love Road right of way as depicted on Exhibit "H" ("Dedicated Love Road"). The conveyance instrument shall be in a form that is mutually agreeable to the District and the County. In exchange for the contribution of Dedicated Love Road, the County agrees that it shall not require and/or impose upon the District, Developer or any other developer or landowner within the District, the requirement to design, build and/or fund any future public road improvements, and/or any financial obligation to maintain and/or improve the Dedicated Love Road or the Abandoned Love Road.

4) ANNUAL PAYMENTS

A) *Annual Payments*. The County agrees to pay the Annual Payments to the District commencing November 1, 2023, and continuing each year thereafter until all the Road Improvement Costs have been paid in full or the Reimbursement Cap has been met. The County will pay to the District the Annual Payment, each year no later than November 1 from any funds that are or can be made lawfully available to the County. Any portion of the prior years' Annual Payments not previously paid to the District, shall be paid when the funds are or can be made lawfully available to the County.

In any year, the County, in its sole discretion and using any funds lawfully available to the County, may pay any amount in excess of the required Annual Payment. Any such excess payment shall be directly applied to the remaining balance of Road Improvement Costs and counted toward the Reimbursement Cap. Any excess payment made by the County in a given year shall not be construed to obligate the County to continue payments in excess of the required Annual Payments in future years.

The County is not required to make any Annual Payment unless and until Road Improvement Costs are expended or incurred by District or for so long as the total sum of Annual Payments exceeds the Road Improvements Costs expended.

If any funds remain in the possession of the District at the termination of this Agreement or after all the Road Improvements have been completed and all of the Road Improvement Costs have been paid, the District shall reimburse all such remaining amounts to the County within one hundred forty (140) days of the District's fiscal year end.

B) *County Audit Rights*. The County shall have the right to audit the books and records of the District related to the Road Improvement Costs upon thirty (30) days written notice to the District. At the discretion of the County, any such audit shall be performed by the County or by outside firms at the County's expense. The District shall cooperate with any such County audit, which cooperation shall include, but not be limited to, providing access to all District books, records, contracts, spreadsheets, correspondence, and documents, in whatever form, that are applicable to the Road Improvement Costs. Each year the District shall furnish complete copies of the audited financial statements of the District, including the auditor's opinion and footnotes, to the County within one hundred and forty (140) days of the District's fiscal year end.

C) *Review*. The County agrees to maintain adequate records and documentation supporting its calculation of the Annual Payments, and the District and its duly authorized representatives have the right, upon reasonable notice, to review such records at any reasonable time. The County and the District agree to negotiate in good faith to resolve any disputes, including but not limited to those regarding the accuracy of the Annual Payments. Notwithstanding anything contained in this Agreement to the contrary, the County and the District shall make timely corrections, as and when needed, to the calculation of Base Value, Tax Increment and Annual Payment if and when any errors are discovered.

5) USE OF ANNUAL PAYMENTS

A) *Bonds*. The District has the authority to issue, sell, and deliver Bonds from time to time, secured by the Annual Payments, as deemed necessary and appropriate by the Board of Directors of the District, subject to the terms of this Agreement, in such forms and manner and as permitted or provided by federal law and the general laws of the State of Texas.

To the extent permitted by applicable law, the District may pledge and assign all or any part of the Annual Payments to:

i) the owners and holders of the Bonds;
ii) lenders of money to the District; and
iii) the Developer pursuant to any utility development agreements with the District for all or a portion of the Road Improvements.

This Agreement shall not be construed as a limitation on the District's authority to levy an unlimited tax rate nor as a limitation on the District's authority to issue other forms of indebtedness as allowed by applicable law and regulation.

B) *Use of the Annual Payments*. Annual Payments may be used only to fund the Road Improvement Costs, to reimburse third parties, including but not limited to the Developer, for Road Improvement Costs expenditures, or to pay interest and debt service on the Bonds issued to finance the Road Improvement Costs.

C) *Annual Report*. During the term of this Agreement, the District agrees to provide to the County, on an annual basis within one hundred and forty (140) days of the District's fiscal year end, a copy of the District's annual fiscal audit and an annual report on the following information:

i) The amount of Road Improvement Costs paid by the District and/or advanced by third parties, including but not limited to the Developer, during the prior fiscal year and the date of such payment or advance, in the form of the letter provided in Exhibit "D"; and

ii) Any final report of the District's auditor relating to amounts owed by the District as reimbursement to the Developer for Road Improvement Costs that were received and approved by the District's Board of Directors during the prior fiscal year, which report will be determinative of the calculation of Road Improvement Costs for any amounts advanced by third parties, including but not limited to the Developer.

D) *Bonds as Obligation of the District*. The Bonds, if any, will be obligations solely of the District and not obligations or indebtedness of the County; provided, however, that nothing herein shall limit or restrict the District's ability to pledge or assign all or part of any Annual Payments, which may be made by the County to the District as provided herein, to the payment of the principal of or interest on the Bonds or other contractual obligations or the District for the Road Improvements.

E) *Obligations of the County to be Absolute*. The obligation of the County to make the Annual Payments is absolute and unconditional, and until such time as this Agreement has been terminated

as provided by Article 6 herein, the County will not suspend or discontinue the Annual Payment, and the County will not terminate this Agreement for cause, including, without limiting the generality of the foregoing, the failure of the District to perform or observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Agreement. Nothing contained in this paragraph may be construed to release the District from performance of any portion of the Agreement. In the event the District fails to perform any portion of the Agreement, the County may institute such action against the District as the County may deem necessary to compel performance so long as such action does not abrogate the obligations of the County to make the Annual Payments as set forth in this Agreement.

6) TIME FOR PERFORMANCE; TERMINATION, DEFAULT AND REMEDY

A) *Term*. This Agreement will be in full force and effect until the earlier of: (i) the date on which all Road Improvement Costs have been paid in full by the County, (ii) the date on which the total amount of all Annual Payments paid by the County to the District equals the Reimbursement Cap, or (iii) fifteen (15) years from the date of this Agreement.

B) *Time is of the Essence*. Time is of the essence in the performance of this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation, including, without limitation, and subject to the District's compliance with all applicable laws, expeditiously processing permits and approvals to facilitate the District's timely procurement of all entitlements required for the Road Improvements.

C) *Payment Default*. The County agrees that its failure to pay the Annual Payment when due is an event of default (a "Payment Default") and an express breach of this Agreement entitling the District to any and all of the remedies available in Section 6.D. below or otherwise at law or equity.

D) *Events of Default*. A Party will be deemed in default under this Agreement (which will be deemed a breach hereunder) if such Party fails to materially perform, observe or comply with any of its material commitments, covenants, agreements or obligations hereunder or if any of its representations and/or warranties contained in this Agreement are false (a "Performance Default").

Before a Performance Default is deemed to be a breach of this Agreement, the Party claiming such Performance Default must notify the Party alleged to have committed such Performance Default, in writing, of the alleged Performance Default and demand performance. No breach of this Agreement, except a Payment Default, may be found to have occurred if performance by the defaulting Party has commenced to the reasonable satisfaction of the complaining Party within thirty (30) days of the receipt by the defaulting Party of such notice of a Performance Default.

Upon a breach of this Agreement, the non-defaulting Party, in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained, may be awarded damages for failure of performance, or both. Except as otherwise set forth herein, no action taken by a Party pursuant to the provisions of this Section or pursuant to the provisions of any other section of this Agreement will constitute an election of remedies; and all remedies set forth in this Agreement will be cumulative and non-

exclusive of any other remedy either set forth herein or available to any Party at law or in equity. Each of the Parties has the affirmative obligation to mitigate its damages in the event of a default by the other Party.

Notwithstanding anything in this Agreement which is or may appear to be to the contrary, if the performance of any covenant or obligation to be performed hereunder by any Party (except for a Payment Default) is delayed as a result of circumstances which are beyond the reasonable control of such Party (which circumstances may include, without limitation, pending or threatened litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions [such as, by way of illustration and not limitation, severe rain storms, below freezing temperatures, or tornadoes], labor actions, strikes, or similar acts) the time for such performance shall be extended by the amount of time of such delay ("Force Majeure").

In addition to any other right or remedy available to the Parties under this Agreement, in the event of a default or breach by any Party under this Agreement which continues for thirty (30) days after written notice to the Party alleged to have defaulted or breached, and the failure of the Party alleged to have defaulted or breached to cure or diligently proceed to cure such breach to the complaining Party's reasonable satisfaction, the complaining Party shall have the right (but not the obligation), in its sole discretion, to exercise its rights with regard to mandamus, specific performance, or mandatory or permanent injunction to require the Party alleged to have defaulted or breached to perform.

7) OWNERSHIP, OPERATION AND MAINTENANCE OF ROAD IMPROVEMENTS

A) *Conveyance to the County*. As the acquisition and construction of each integral stage of the Road Improvements is completed and each integral stage of the Road Improvements becomes operational, the District will convey such Road Improvements to the County for ownership, operation and maintenance (including rights-of-way), if not already dedicated or conveyed to the County for ownership, operation and maintenance by Developer or another third-party. As construction of each integral stage of the Road Improvements is completed, in accordance with Section 6 of the County's Regulations of Subdivision, County representatives shall inspect such portion of the Road Improvements and, if the County finds that such portion has been completed in accordance with the final plans and specifications for same, or any modifications thereof, and in accordance with all applicable laws, rules and regulations, the County shall, immediately following such completion, accept ownership of same, whereupon such portion of the Road Improvements shall be operated and maintained by the County at its sole expense.

Maintenance by the District. The District shall, directly or through third-parties, maintain certain enhancements to the Road Improvements or enhancements within the rights-of-way of such Road Improvements, specifically including, storm sewer, drainage swales, upgraded portions of crosswalks and intersections, pedestrian improvements, upgraded decorative portions of street name signs, subdivision signs, parking areas, upgraded decorative portions of bridges, street lighting, irrigation, landscaping, and any enhancements required by any applicable storm water management guidelines or criteria of the County.

8) REPRESENTATIONS AND WARRANTIES

A) *The District*. The District represents and warrants to the County that:

i) It is a municipal utility district duly organized, validly existing and operating under the laws of the State of Texas;

ii) It has full power, authority and legal right to execute and deliver this Agreement and to perform and observe the terms and provisions hereof;

iii) The form, execution, delivery and performance by the District of this Agreement have been duly authorized by all necessary action and do not violate or contravene any law or any order of any court or governmental agency or any agreement or other instrument to which the District is a party or by which it or any of its properties may be bound; and

iv) This Agreement is a legal, valid and binding obligation of the District enforceable against the District in accordance with its terms except that enforceability of the District's obligations hereunder may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights in general and is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

B) *The County*. The County represents and warrants to the District that:

i) It is a political subdivision duly organized, validly existing and operating under the laws of the State of Texas;

ii) It has full power, authority and legal right to execute and deliver this Agreement and to perform and observe the terms and provisions hereof;

iii) The form, execution, delivery and performance by the County of this Agreement have been duly authorized by all necessary action and do not violate or contravene any law or any order of any court or governmental agency or any agreement or other instrument to which the County is a party or by which it or any of its properties may be bound; and

iv) This Agreement is a legal, valid and binding obligation of the County enforceable against the County in accordance with its terms except that enforceability of the County's obligations hereunder may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights in general and is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

9) APPLICABLE LAW AND VENUE

A) This Agreement is subject to the state and federal laws, orders, rules and regulations relating to the subject matter hereof.

B) This Agreement is governed by the laws of the State of Texas.

C) The forum for any action under or related to this Agreement is exclusively in a state or federal court of competent jurisdiction in the State of Texas.

D) The exclusive venue for any action under or related to this Agreement is in a state or federal court of competent jurisdiction in Fort Bend County, Texas.

10) NO PERSONAL LIABILITY; NO WAIVER OF IMMUNITY

A) Nothing in this Agreement shall be construed as creating any personal liability on the part of any officer, director, employee or agent of any public body that may be a Party hereto, and the Parties expressly agree that the execution of this Agreement does not create any personal liability on the part of any officer, director, employee or agent of the County or the District.

B) The Parties agree that no provision of this Agreement extends the County's or the District's liability beyond the liability provided in the Texas Constitution and the laws of the State of Texas.

C) Neither the execution of this Agreement nor any other conduct of any Party relating to this Agreement shall be considered a waiver by the County or the District of any right, defense or immunity under the Texas Constitution or the laws of the State of Texas.

D) No Party hereto agrees to binding arbitration, nor does any Party hereto waive its right to a jury trial.

11) CONTRACT CONSTRUCTION

A) The essential purpose of this Agreement is to facilitate the financing, design, construction, completion and delivery of the Road Improvements by the District to the County and the accomplishment of the public purposes and the realization of the public benefits of such project. This Agreement shall be liberally construed to accomplish such purpose and intent.

B) This Agreement shall not be construed against or in favor of any Party hereto based upon the fact that the Party did or did not author this Agreement.

C) The headings in this Agreement are for convenience or reference only and shall not control or affect the meaning or construction of this Agreement.

D) Where terms are used in the singular or plural, the meaning shall apply to both.

E) When either the male or female gender is used, the meaning shall apply to both.

F) Nothing in this Agreement shall be construed to violate any state or federal statutory or constitutional provision, and all acts taken pursuant to this Agreement shall be performed in such manner as to conform thereto whether expressly provided or not.

12) WAIVER OF BREACH

A) No course of dealing on the part of either Party nor any failure or delay by either Party with respect to exercising any right, power or privilege pursuant to this Agreement shall operate as a waiver thereof, except as otherwise provided in this Article 12.

B) Any provision of this Agreement may be amended or waived if such amendment or waiver is in writing and is approved by the County and the District. It is the intent of the Parties that any such amendment may include an alternative more economical and/or expeditious means to construct and/or finance any of the Road Improvements if such an alternative becomes available which would accomplish the purposes of this Agreement.

13) SUCCESSORS AND ASSIGNS

A) Each Party to this Agreement binds itself and its successors, executors, administrators, and assigns to the other Party to this Agreement and to the successors, executors, administrators, and assigns of such other Party, in respect to all covenants, terms and conditions of this Agreement.

B) Except as specifically provided herein below, in Article 5.A., and in other provisions of this Agreement, neither the County nor the District shall assign, sublet or transfer its interest in this Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. As a condition for giving consent, the County may require that any assignee of the District agree to comply with all competitive bidding requirements contained in any procurement or purchasing statute to which the District is subject.

14) SURVIVAL OF TERMS

Any provision of this Agreement that, by its plain meaning, is intended to survive the expiration or earlier termination of this Agreement, including, but not limited to the provisions concerning indemnification and the Act (as defined below), shall survive such expiration or earlier termination. If an ambiguity exists as to survival, the provision shall be deemed to survive.

15) ENTIRE AGREEMENT; MODIFICATIONS

A) This instrument, including all exhibits and attachments which are hereby incorporated by reference, contains the entire Agreement between the Parties relating to the rights herein granted and obligations herein assumed.

B) Any oral or written representations or modifications concerning this instrument shall not be effective excepting a subsequent written modification signed by both Parties, including, but not limited to, those written modifications contemplated in Article 12 and Article 18 of this Agreement.

16) TEXAS PUBLIC INFORMATION ACT

A) The Parties expressly acknowledge that this Agreement is subject to the Texas Public Information Act, Chapter 552, Texas Government Code, as amended (the "Act"). Each Party expressly understands and agrees that any other Party shall release any and all information necessary to comply with Texas law without the prior written consent of the other Party.

B) It is expressly understood and agreed that the County or the District, and their respective officers and employees, may request advice, decisions and opinions of the Attorney General of Texas (the "Attorney General") in regard to the application of the Act to any software, or any part thereof, or other information or data furnished to the County or the District, whether or not the same is available to the public. It is further understood that each Party, its officers and employees shall have the right to rely on the advice, decisions and opinions of the Attorney General, and that each Party, its officers and employees shall have no liability or obligations to the other Party for the disclosure to the public, or to any person or persons, of any software, or a part thereof, or other information or data furnished to the County or the District in reliance on any advice, decision or opinion of the Attorney General.

C) In the event a Party receives a written request for information pursuant to the Act that affects the other Party's rights, title to or interest in any information or data or a part thereof, furnished to one Party by the other under this Agreement, then such Party shall promptly notify the other of such request. The affected Party may, at its own option and expense, prepare comments and submit information directly to the Attorney General stating why the requested information is exempt from disclosure pursuant to the requirements of the Act. Such Party is solely responsible for submitting the memorandum brief and information to the Attorney General within the time period prescribed by the Act. Such Party is solely responsible for seeking any declaratory or injunctive relief regarding the disclosure of information that it deems confidential or privileged.

D) *Electronic Mail Addresses*. The District affirmatively consents to the disclosure of its electronic mail addresses that are provided to the County, including any agency or department of the County. This consent is intended to comply with the requirements of the Act, and shall survive termination of this Agreement. This consent shall apply to electronic mail addresses provided by the District and its agents and shall apply to any electronic mail addresses provided in any form for any reason whether related to this Agreement or otherwise.

17) NOTICE

A) Any notice required to be given under the provisions of this Agreement shall be in writing and shall be duly served when it shall have been delivered in person or deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to a Party at the following addresses. If mailed, any notice or communication shall be deemed to be received three (3) business days after the date of deposit in the United States Mail. Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:

To the District: Fort Bend County
Municipal Utility District No. 216
c/o Schwartz, Page & Harding, L.L.P.
1300 Post Oak Blvd., Suite 2400
Houston Texas 77056
Attention: Joseph M. Schwartz

To the County: Fort Bend County
Attention: KP George
301 Jackson Street
Richmond, Texas 77469

With a copy to: Fort Bend County Attorney's Office
301 Jackson Street
Richmond, Texas77469
Attention: Bridgette Smith-Lawson

With a copy to: Fort Bend County Tax Assessor-Collector
1317 Eugene Heimann Circle
Richmond, Texas 77469

B) Any Party may designate a different address by giving the other Party ten (10) calendar days' written notice.

18) SEVERABILITY

A) In the event that all or any part of the provisions contained in this Agreement shall ever be finally determined by a court of competent jurisdiction to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision of this Agreement and, to that end, all provisions, covenants, agreements or portions of this Agreement are declared to be severable, and this Agreement shall be applied and interpreted in the absence of such severed provision(s), to accomplish the essential purpose and intent of this Agreement.

B) In the event of any such partial or whole invalidity or unenforceability of this Agreement, the Parties agree to promptly and in good faith negotiate, prepare, authorize, execute and deliver such supplements, reforms or replacements for such invalid or unenforceable provisions as may be necessary to give effect to the purpose and intent of the Parties, as set forth herein.

C) Notwithstanding the foregoing, nothing herein shall be deemed or construed to obligate the County to make payment to the District in an amount in excess of the Annual Payment then due and owing pursuant to this Agreement or to make payment of a total of the Annual Payments that exceeds the Reimbursement Cap.

19) APPROVAL BY THE PARTIES

Wherever this Agreement requires or permits approval or consent to be hereafter given by either of the Parties, the Parties agree that such approval or consent shall not be unreasonably withheld, conditioned or delayed.

20) CONFLICTS WITH ORDINANCES AND/OR AGREEMENTS

The District and the County agree that, in the event of a conflict between the provisions of this Agreement and any agreement, ordinance, order, plan, resolution, rule or regulation entered into or adopted by the District or the County (or any other agency over which the County has control), whether heretofore or hereafter entered into or adopted, except any written agreement entered into by and between the District and the County (or any agency over which the County has control) prior to the Effective Date, the provisions of this Agreement shall govern all matters addressed by this Agreement, including the location of the Road Improvements. Without limiting the foregoing, the terms and conditions of this Agreement specifically control over any conflicting county plans for the location of any road improvements or any provisions of any County ordinance, resolution or order which heretofore established or hereafter establishes a separate Chapter 381 program not applicable to the program provided in this Agreement.

21) EFFECTIVE DATE

The "Effective Date" of this Agreement will be the date this Agreement is approved by the Fort Bend County Commissioners Court, as shown on the signature page attached hereto.

22) EXECUTION

Multiple Counterparts. This Agreement may be executed in several counterparts. Each counterpart is deemed an original. All counterparts together constitute one and the same instrument. Each Party warrants that the undersigned is a duly authorized representative with the power to execute this Agreement.

[A separate execution page follows]

IN TESTIMONY OF WHICH this instrument has been executed in multiple counterparts, each of equal dignity and effect, on behalf of the District and the County.

FORT BEND COUNTY, TEXAS

County Judge KP George

KP George, County Judge

Date: March 7, 2023

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 216

President, Board of Directors

Date: 12-05-2022

ATTEST:

Secretary, Board of Directors

Exhibit A

Road Improvement Costs

Road Improvement Cost [1]	
Description	**Cost Estimate**
Construction	$5,595,127
Professional Services (18%)	$1,007,123
Contingency/Interest (20%)	$1,320,450
Total	**$7,922,700**

[1] **Road Improvement Costs** include, but are not limited to, all design, construction, engineering, geotechnical, environmental, surveying, materials, labor, traffic control (i.e., signals, traffic signs, deceleration lanes, lane markings, basic crosswalks, typical wheelchair ramps), paving, drainage, bridges, culverts, storm water pollution prevention, testing, management, inspection, permitting, studies, and other legal and/or professional services and construction items arising in connection with or in aid of and/or located within the dedicated right of way of the Road Improvements. Road Improvement Costs shall specifically exclude sidewalks, upgraded portions of crosswalks and intersections, pedestrian improvements, upgraded decorative portions of street name signs, subdivision signs, parking areas, upgraded decorative portions of bridges, street lighting, irrigation and landscaping. Interest shall accrue at a rate of 6.0% per annum commencing from the payment by Developer of each respective Road Improvement Cost through the date of payment of the Annual Payment from the County to the District which includes such Road Improvement Cost.

Exhibit B

Road Improvement Depiction (in **Green** Highlight)

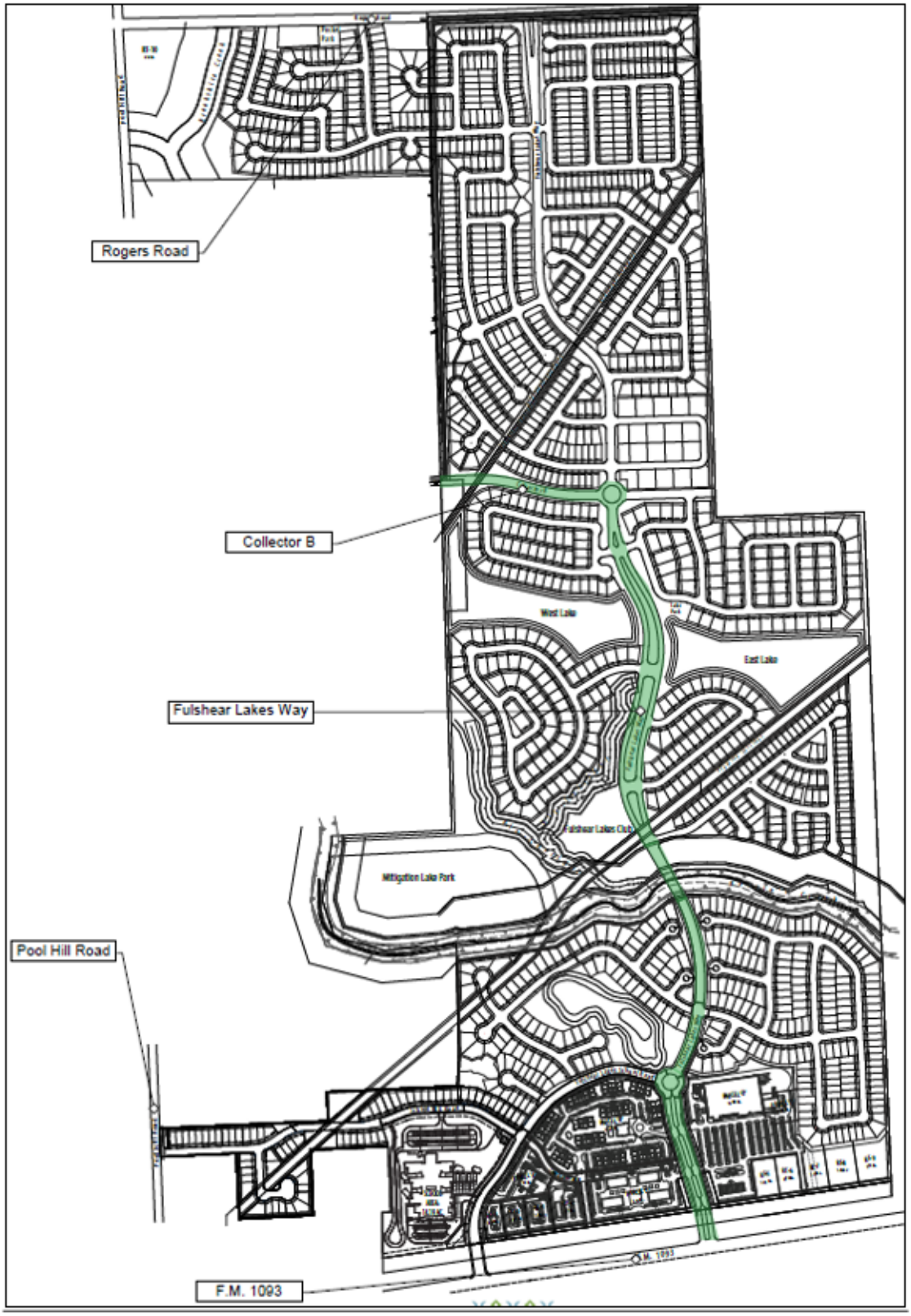


Exhibit C

Economic Impact Area

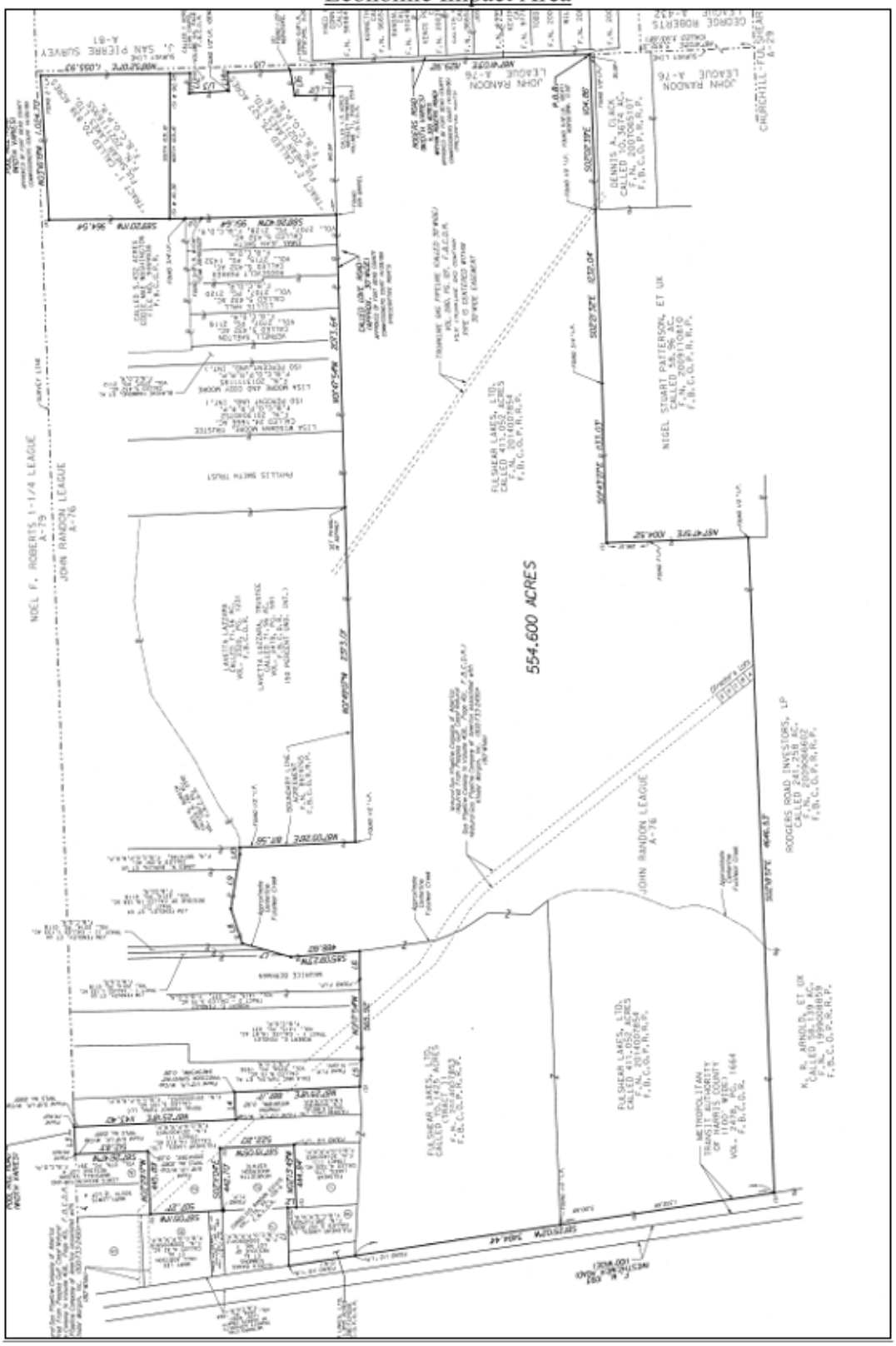


Exhibit D

Form of Annual Letter Regarding Payments and Advances

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 216
1300 Post Oak Boulevard, Suite 2400
Houston, Texas 77056

[Date]

Fort Bend County Commissioners Court
301 Jackson Street
Richmond, Texas 77469

Re: Fort Bend County Municipal Utility District No. 216 (the "District"); District Payments of or Developer Advances for Road Improvement Costs

Dear Commissioners:

Capitalized terms used but not defined herein shall have the respective meanings ascribed to them in the Agreement between Fort Bend County (the "County") and the District dated effective _____, 202_ (the "Agreement"). In compliance with the Agreement, this letter is to evidence the District's payment(s) of Road Improvement Costs or the advance(s) of Road Improvement Costs by any third parties, including but not limited to the Developer, during the District's prior fiscal year (ending _____ __, 20__). Such payments or advances are described below. Additional documentation of expenses and payments will be provided upon request.

	Date	Project	Amount
1.			
2.			
3.			
4.			

I hereby certify that the procurements associated with the above expenditures were made in compliance with the laws applicable to the District relative to same.

Very truly yours,

_____

Cc: Bridgette Smith-Lawson, Fort Bend County Attorney's Office

Exhibit E

Assessment Roll Grand Totals Report

Assessment Roll Grand Totals Report

FT. BEND CENTRAL APPRAISAL DISTRICT

Tax Year: **2022** As of: **Certification**

M284 - Fort Bend MUD 216 (ARB Approved Totals) **Number of Properties: 12**

Land Totals

Land - Homesite	(+)	$0				
Land - Non Homesite	(+)	$267,450				
Land - Ag Market	(+)	$8,217,750				
Land - Timber Market	(+)	$0				
Land - Exempt Ag/Timber Market	(+)	$0				
Total Land Market Value	**(=)**	**$8,485,200**	**(+)**	**$8,485,200**		

Improvement Totals

Improvements - Homesite	(+)	$0				
Improvements - Non Homesite	(+)	$33,980				
Total Improvements	**(=)**	**$33,980**	**(+)**	**$33,980**		

Other Totals

Personal Property (0)		$0	(+)	$0		
Minerals (0)		$0	(+)	$0		
Autos (0)		$0	(+)	$0		
Total Market Value			**(=)**	**$8,519,180**		**$8,519,180**
Total Homestead Cap Adjustment (0)					(-)	**$0**
Total Exempt Property (2)					(-)	**$600**

Productivity Totals

Total Productivity Market (Non Exempt)	(+)	$8,217,750				
Ag Use (3)	(-)	$66,120				
Timber Use (0)	(-)	$0				
Total Productivity Loss	**(=)**	**$8,151,630**			**(-)**	**$8,151,630**
Total Assessed					**(=)**	**$366,950**

Exemptions

			(HS Assd		**0)**	
Total Exemptions	**(=)**	**$0**			**(-)**	**$0**
Net Taxable (Before Freeze)					**(=)**	**$366,950**

Exhibit F

Abandoned Love Road

Exhibit G

Westpark Toll Road R.O.W (in **Green** Highlight)

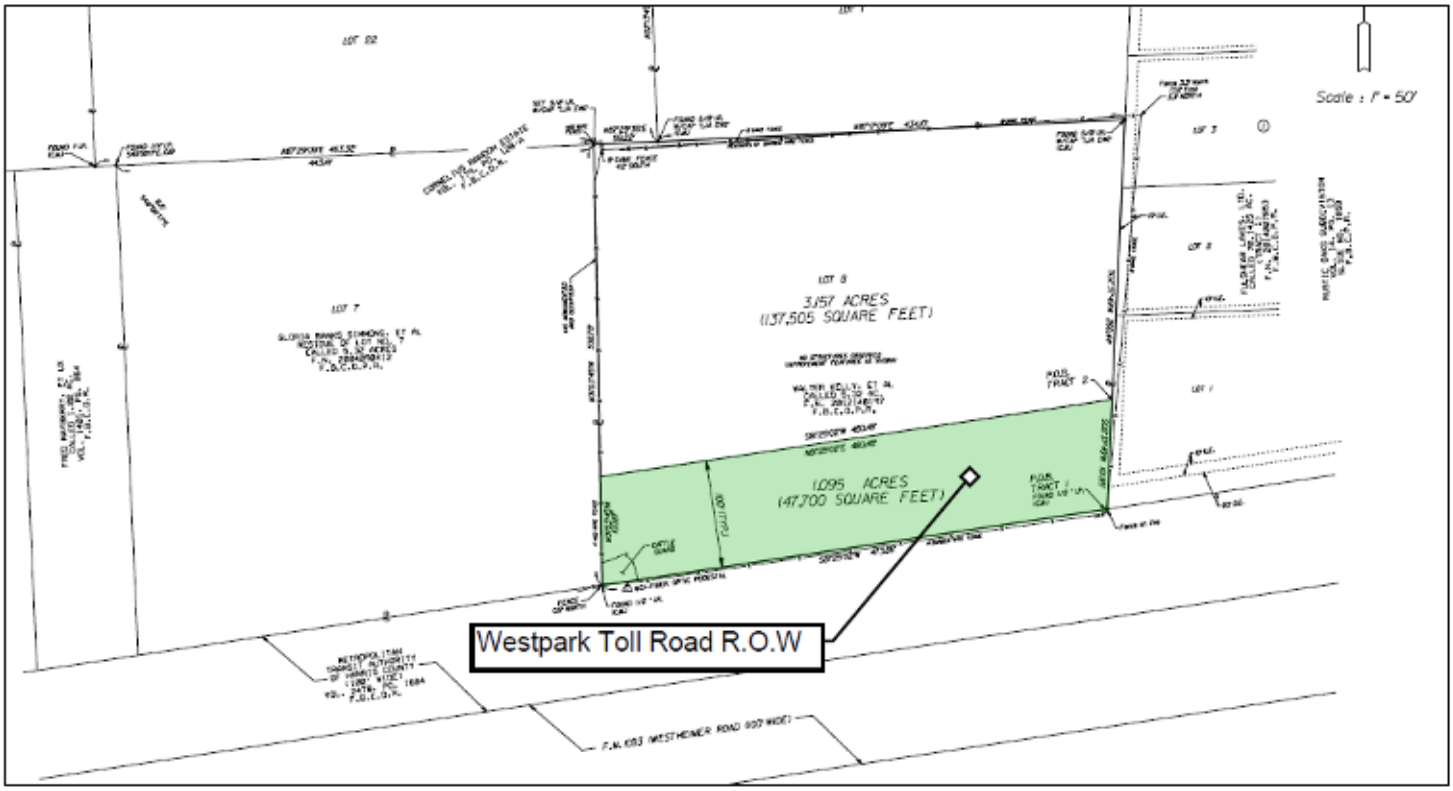
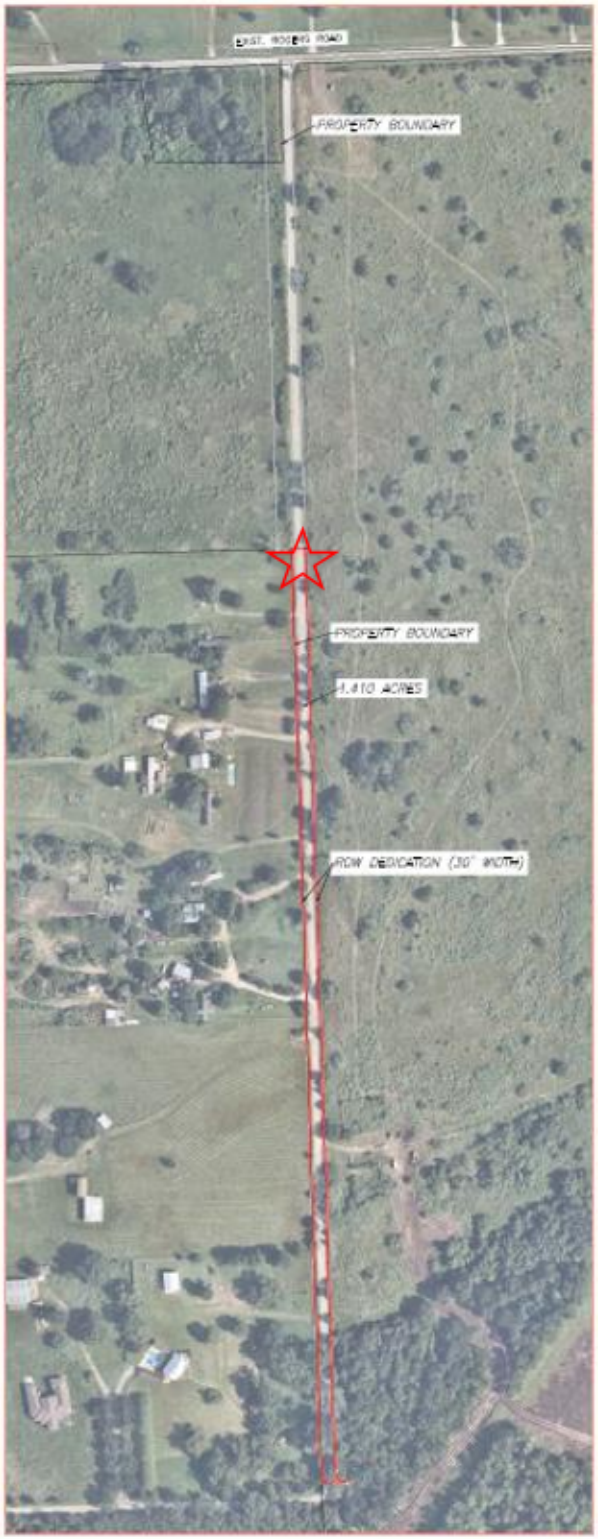


Exhibit H

Dedicated Love Road



☆ In the approximate location generally depicted herein, at the sole discretion of the Developer, Developer shall, on behalf of District, either (i) construct a future cul-de-sac near the end of Love Road or (ii) connect Love Road to another future public road that will be constructed within the boundaries of the District.