

ORDINANCE NO. 06-04

AN ORDINANCE AUTHORIZING THE CITY  
MANAGER TO EXECUTE A DEVELOPER  
PARTICIPATION CONTRACT BETWEEN THE  
CITY OF PORT ARTHUR AND PORT ARTHUR  
CAMELLIA ESTATE, L.P.

WHEREAS, the City desires to enter into a Developer  
Participation Contract with Port Arthur Camellia Estate, L.P.; and,

WHEREAS, Port Arthur Camellia Estate, L.P. plans to develop an  
approximately 22 acre subdivision west of West Port Arthur Road;  
and,

WHEREAS, the Developer Participation Contract between Port  
Arthur Camellia Estate, L.P. and the City of Port Arthur is  
attached hereto in substantially the same form as delineated in  
Exhibit "A".

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

Section 1. That the facts in the preamble are true and  
correct.

Section 2. That the City Manager is authorized to enter  
into the Developer Participation Contract with Port Arthur Camellia  
Estate, L.P., in substantially the same form as attached hereto as  
Exhibit "A".

Section 3. That Ordinance No. 50-90 authorizing an agreement with D.H.S. Camellia Estates, L.L.P. is herein rescinded.

Section 4. That a copy of the caption of this Ordinance be spread upon the Minutes of the City Council.

READ, ADOPTED and APPROVED this the 31<sup>st</sup> day of

January A.D., 2006, at a Regular Council Meeting of the City Council of the City of Port Arthur, Texas, by the

following vote: AYES: Mayor Ortiz; Mayor Pro Tem Thompson;  
Councilmembers Lewis, Barker, Henderson,  
Beard, Prince and Sinegal.

NOES: None.

ATTEST:

Evangelina Green  
CITY SECRETARY

Ortiz  
MAYOR

APPROVED AS TO FORM:

Paul Solomon  
CITY ATTORNEY

APPROVED FOR ADMINISTRATION:

Steve Fitzgibbons  
STEVE FITZGIBBONS, CITY MANAGER

**EXHIBIT "A"**

**to the Resolution**

STATE OF TEXAS

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COUNTY OF JEFFERSON

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**DEVELOPER PARTICIPATION CONTRACT**

**WHEREAS**, the City of Port Arthur and Port Arthur Camellia Estate, L.P. (hereinafter denoted as PACE) desire to enter into a Developer Participation Contract pursuant to Sections 212.071 to 212.074 Local Government Code, V.T.C.A.; and

**WHEREAS**, Port Arthur Camellia Estate, L.P. (hereinafter denoted as PACE) has an agreement to purchase the approximately twenty-two (22) acres described in Exhibit "A" as to facilitate the development of a subdivision; and,

**WHEREAS**, the improvements to be constructed by PACE will be the completion of a road or roads, water lines, sewer lines, lift station, storm sewer lines, and other improvements described in Exhibit "B"; and

**WHEREAS**, once these improvements are constructed to City specifications, they will be deeded to the City of Port Arthur as public improvements without any liens or encumbrances; and

**WHEREAS**, PACE is requesting that the City of Port Arthur participate in the cost of some of these improvements as to develop these lots so that at least eighty (80) single-family residential units will be built in the area described in Exhibit "A" by PACE or its assignees by December 1, 2012.

NOW THEREFORE, the City of Port Arthur and Port Arthur Camellia Estate, L.P. (hereinafter denoted as PACE) agree to the following:

**Section 1:** The facts and opinions in the preamble are true and correct.

**Section 2:** PACE will purchase the land described in Exhibit "A" by February 1, 2006. As a part of said purchase, any and all delinquent taxes, if any, on said property will be paid by the original owner or by PACE.

**Section 3:** The commencement date for the timetable for PACE improvements shall be on or before July 1, 2006.

**Section 4:** If required by Section 212.073 Local Government Code, PACE will obtain a performance bond for the construction of the improvements to ensure completion of the project. If required by Section 212.073 Local Government Code, the bond must be executed by a corporate surety in accordance with Chapter 2253 of the Government Code. The City will be a beneficiary of said performance bond. PACE will have liability insurance of \$1,000,000, and hold the City harmless from its construction activities.

**Section 5:** The City of Port Arthur will pay for 30% of the costs on the improvements as delineated in Exhibit "B", with the total reimbursement by the City not to exceed \$413,070.

The City's share of these costs will be paid within thirty (30) days after these improvements, these studies, and after completion of the roads, water lines, sewer lines, and other public improvements described in Exhibit "B" by PACE in accordance with the City's Code of Ordinances. The City will receive a copy of all of the studies. PACE will complete these improvements by December 1, 2006.

**Section 6:**

PACE will enter into construction agreements to perform the improvements delineated in this agreement. If PACE uses its own resources or a related construction company, it must provide information and documentation that the costs thereof are equal to or less than if it was bid out, as to avoid the undue loading of costs, collusion or fraud as prohibited by Section 212.074 Local Government Code. Also, all plans and specifications for public improvements will need to be approved by the City as is required of other developers.

**Section 7:**

If PACE or affiliated companies, do not build (construction completed and certificate of occupancy issued) at least eighty (80) single family residences on the tract described in Exhibit "A" by December 1, 2012, then PACE will repay the City as follows:

Amount to be repaid equals the number of homes not built divided by 80 times the amount of moneys that the City has paid for improvements and studies.

**Section 8:**

Pursuant to Section 212.072 Local Government Code, the total participation of the City shall not exceed thirty percent (30%) of the total contract price for the proposed public improvements as described in Exhibit "A" for said subdivision. The parties estimate the total contract price for the proposed public improvements for the development of the 80 lot subdivision to be \$1,376,900. Notwithstanding, the City's total reimbursement shall not exceed \$413,070. The City shall also make reimbursement for the relocation and oversizing of the lift station and force main in an amount not to exceed \$100,000 as to anticipate other future developments east of West Port Arthur Road Spur 93. The details of the oversizing and projected costs is delineated in Exhibit "C".

**Section 9:**

All of PACE's books and other records, as they pertain to this project and public improvements that the City participates in,

shall be available for inspection by the City, all as provided for by Section 212.074(b) Local Government Code.

**Section 10:** This agreement will be construed in accordance with the laws of Texas, as well as the Ordinances of the City of Port Arthur.

**Section 11:** The venue of all causes of action will be in Jefferson County, Texas.

**Section 12:** The homes to be built shall be sold to homebuyers without regard to race, religion or national origin, and PACE will comply with the fair housing laws, as delineated under Chapter 46 of the Code of Ordinances of the City of Port Arthur and as described by State and Federal Law. Subject to the availability of funds, the City may provide down payment assistance to qualified buyers in accordance with HUD guidelines and as determined in the discretion of the City and HUD.

**Section 13:** Reasonable delays (not to exceed thirty(30) days) in the performance of this agreement may be approved by the City Manager, so long as the delays are not caused by the acts or omissions of PACE.

**Section 14:** Notice to the parties shall be as follows:

**TO: CITY OF PORT ARTHUR**  
**ATTN:** Stephen Fitzgibbons  
City Manager  
444 Fourth Street  
P. O. Box 1089  
Port Arthur, TX 77641-1089

**TO: PORT ARTHUR CAMELLIA ESTATE, L.P.**  
**ATTN:** Douglas Lam  
9707 Chipstead Cir.  
Spring, TX 77379

**Section 15:** The City makes no representation as to the marketability of said tracts or the suitability of them as single family residences. Port Arthur Camellia Estate, L.P. has relied on its own feasibility studies thereon and its own inspection as to

the condition and existence of the utilities on or adjacent to the property.

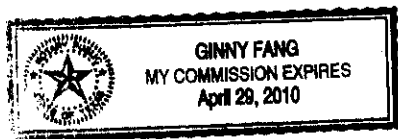
**Section 16.**

- (a) If the City does not comply with the terms of this Agreement, then Port Arthur Camellia Estate, L.P. may terminate this agreement with thirty (30) days written notice.
- (b) If Port Arthur Camellia Estate, L.P. does not comply with the terms of this Agreement, then the City may terminate his agreement with thirty (30) days written notice.

SIGNED AND AGREED TO on this the 20 day of June, 2006.

PORT ARTHUR CAMELLIA ESTATE, L.P.

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



DOUGLAS LAM  
(Printed Name)

**ACKNOWLEDGMENT**

STATE OF TEXAS

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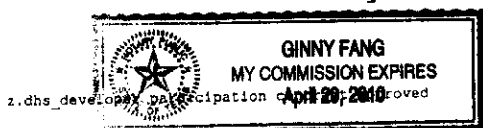
COUNTY OF JEFFERSON

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BEFORE ME, the undersigned Notary Public, on this day, personally appeared DOUGLAS KHANH LAM known to me to be the person whose name is described in the foregoing instrument, and acknowledged to me that he/she executed the same as the act and deed of Port Arthur Camellia Estate, L.P., for the purposes and considerations therein expressed, and the capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 20<sup>TH</sup> day of

JUNE, 2006.



Ginny Fang  
Notary Public, State of Texas  
GINNY FANG



SIGNED AND AGREED TO on this the 21<sup>st</sup> day of June,

2006.

CITY OF PORT ARTHUR

By:

  
STEPHEN FITZGIBBONS  
CITY MANAGER

ACKNOWLEDGMENT

STATE OF TEXAS

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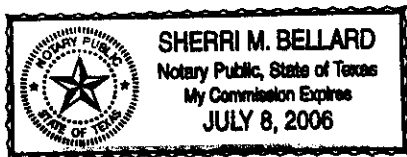
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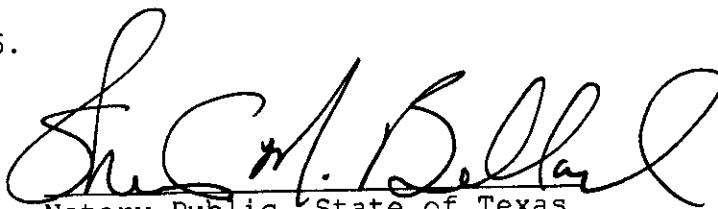
COUNTY OF JEFFERSON

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BEFORE ME, the undersigned Notary Public, on this day, personally appeared Stephen Fitzgibbons, City Manager, known to me to be the person whose name is described in the foregoing instrument, and acknowledged to me that he/she executed the same as the act and deed of the City of Port Arthur, for the purposes and considerations therein expressed, and the capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 21<sup>st</sup> day of June, 2006.



  
Notary Public, State of Texas

**EXHIBIT "A"**  
**TO THE AGREEMENT**

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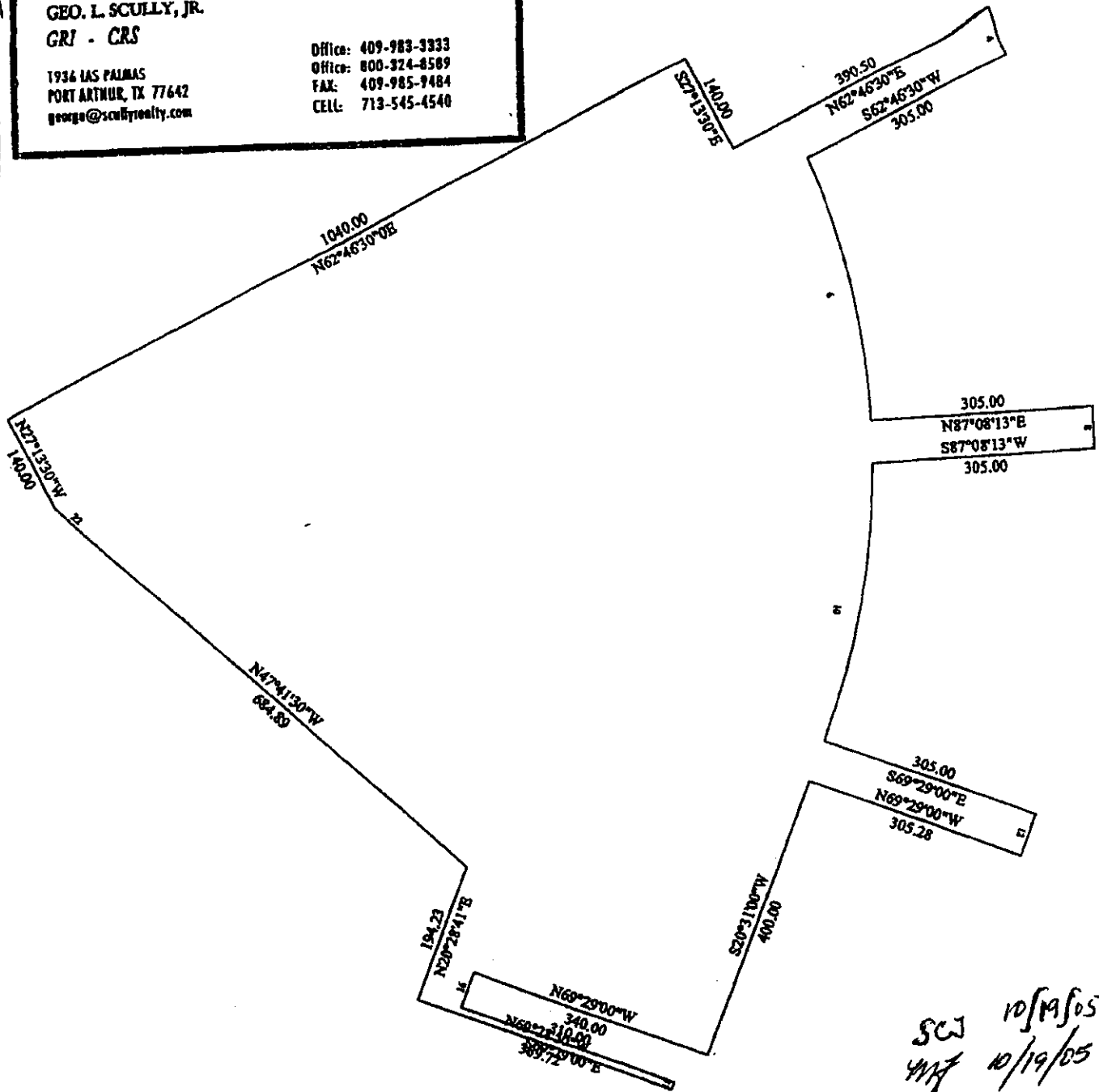
**GEO. L. SCULLY**  
REALTOR

**COMMERCIAL-INDUSTRIAL**  
Established 1934

GEO. L. SCULLY, JR.  
GRI - CRS

1934 IAS PALMAS  
PORT ARTHUR, TX 77642  
george@scullyrealty.com

Office: 409-983-3333  
Office: 800-324-8589  
FAX: 409-985-9484  
CELL: 713-545-4540



Title:

Date: 07-09-2004

Scale: 1 inch = 200 feet

File: 22.632 acres Hwy 93 Pt Acres.des

EXHIBIT "A"

**THIS IS NOT A SURVEY  
THIS IS FOR  
ILLUSTRATION PURPOSES ONLY**

**EXHIBIT “B”**

**TO THE AGREEMENT**

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**DHS Camilla Estates LLC**

**Development Cost of  
Public Utilities**

<b>ITEMS</b>	<b><u>TOTAL COST OF DEVELOPMENT</u></b>
Water	\$ 182,000.00
Sewer	\$ 213,000.00
Drainage	\$ 213,800.00
Lift Station & Forced Main	\$ 113,600.00
Pavement	\$ 502,200.00
Engineering / Professional	\$ <u>152,300.00</u>
<b>Total</b>	<b>\$ 1,376,900.00</b>
	<b>X 30% = \$413,070.00</b>



ENGINEERS  
SURVEYORS  
PLANNERS

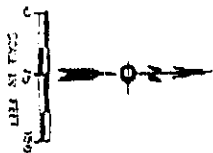
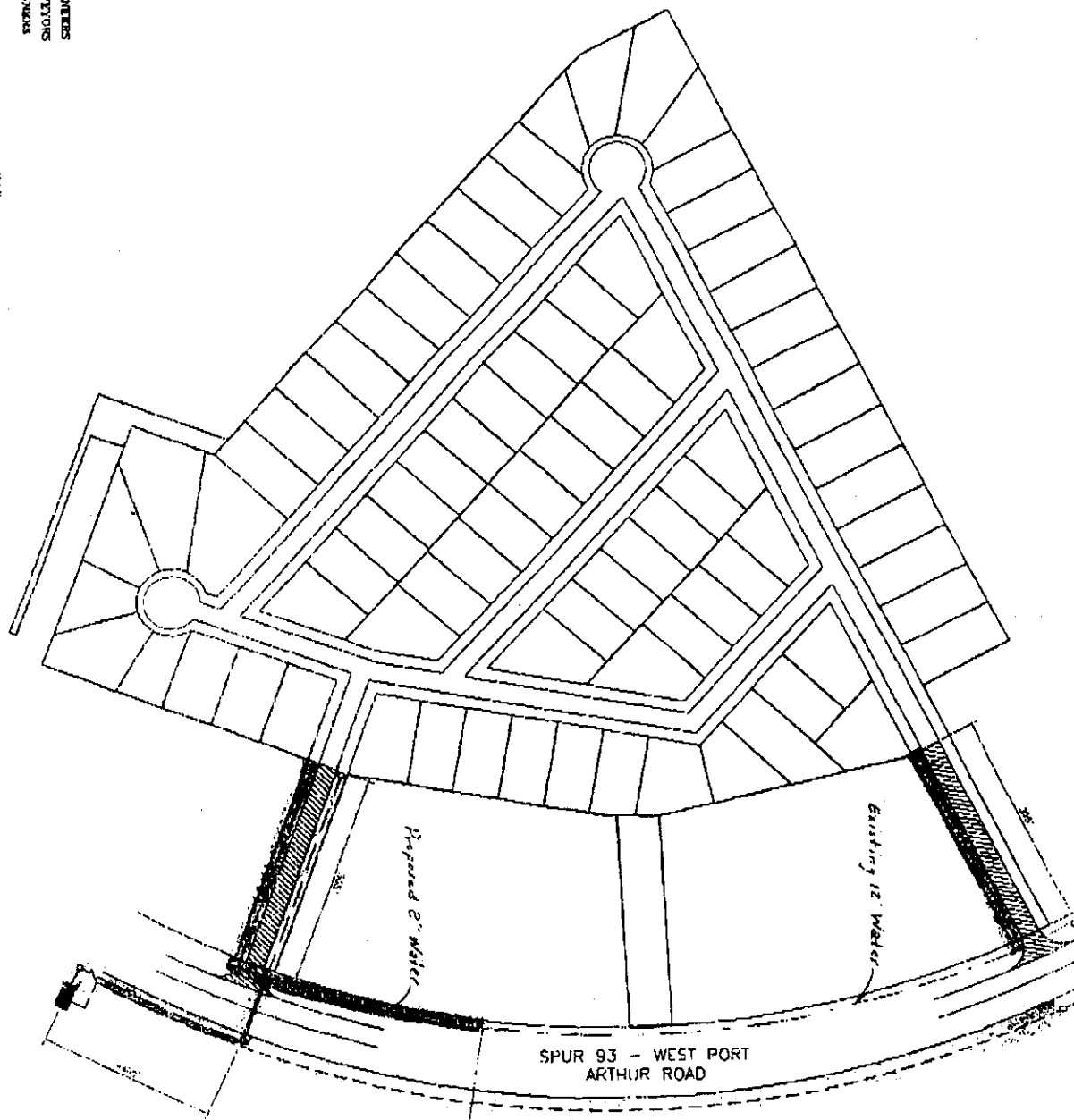


EXHIBIT "B"



80 RESIDENTIAL LOTS

PROPOSAL OF  
D.H.S. CAYLIA ESTATES, L.L.C.  
22.632 ACRES OUT OF  
PALOMAR SEC. 1, PORT ACRES

- LEGEND
- PROPOSED 27" WIDE CONCRETE STREET W/ CURB & GUTTER
  - PROPOSED SEWER LIFT STATION
  - PROPOSED FURD. MAIN
  - PROPOSED GRAVITY SEWER
  - PROPOSED WATER LINE

**EXHIBIT “C”**

**TO THE AGREEMENT**

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One Turtle Creek Square  
3501 Turtle Creek Drive, Ste. 102  
Port Arthur, Texas 77642  
409-724-7888 Fax 409-724-1447  
Email: [ron@ageng.com](mailto:ron@ageng.com)

**ARCENEUX & GATES**  
**Consulting Engineers, Inc.**

## Memo

**To:** George Scully  
**From:** Ron Arceneaux, PE, PLS  
**CC:**  
**Date:** Friday, December 02, 2005  
**Re:** Costs for Developer/City Agreement

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George,

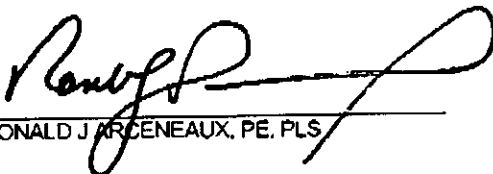
I have reviewed the estimated construction costs considering the relocation of the sanitary sewer lift station and force main, as well as the cost for oversizing the facilities as we discussed yesterday. I believe it is in the City's best interest to pay for the entire cost of relocating and oversizing the lift station and force main to the east side of the road in order to facilitate the expected commercial development at SH 73 and Spur 93 (aka West Port Arthur Road).

The estimated lift station capacity required for the residential subdivision is 125 gpm. The required capacity and depth for serving the adjacent 27 acres of commercial property is estimated at 150 gpm for a station total of 275 gpm. The relocation to the east side will require a bore under Spur 93 for a gravity sewer line serving the residential subdivision. It is assumed that the lift station will be located on a site within 450 feet south of the planned location from which other estimates were made. The force main oversizing was estimated at one standard pipe size increase at an added cost of \$4 per foot.

The earlier prepared construction costs are still valid for the purposes of the proposed agreement being considered by Council if they agree that the relocation expense and oversizing expense are for the City's convenience. On this basis, then, the estimated costs are:

<b>Public Infrastructure improvements subject to cost sharing:</b>	<b>\$1,376,900</b>
<b>30% Participation Cap by City:</b>	<b>\$ 413,070</b>
<b>Lift Station Relocation and Facility Oversizing (100% City Cost):</b>	<b>\$ 100,000</b>

If you have any questions or need additional information, please contact me.

  
RONALD J. ARCENEUX, PE, PLS



**Exhibit "C"****DHS Camellia Estates, LLP****Estimated Costs for Lift Station  
Relocation and System Capacity Oversizing  
December 2, 2005**

Increase Lift Station Capacity from 125 GPM to 275 GPM, including pumps, motors, larger wetwell sizing and depth, electrical	\$16,000
Add 450 ft. of 8" PVC Sewer and 2 Manholes	\$19,600
Add 100 ft. 8" bore and jack under Spur 93	\$20,000
Add 450 ft. of sewer force main	\$12,600
Oversize 2,500 ft. of force main by one (1) nominal pipe size	\$10,000
Lift Station Site acquisition	\$ 2,400
Engineering, Surveys, Contingencies, etc.	<u>\$19,400</u>
<b>TOTAL</b>	<b>\$100,000</b>