

ORDINANCE NO 2014-40

AN ORDINANCE OF THE CITY COUNCIL OF LEAGUE CITY, TEXAS, APPROVING THE SECOND AMENDMENT TO THE SERVICE AND ASSESSMENT PLAN FOR CITY OF LEAGUE CITY PUBLIC IMPROVEMENT DISTRICT NUMBER ONE (MAGNOLIA CREEK)

WHEREAS, the City of League City (the "City") is authorized pursuant to TEX. LOCAL GOV'T CODE, ch. 372, as amended ("Chapter 372") to create public improvement districts for the purposes described therein; and

WHEREAS, the City having received a petition (the "Petition") requesting the creation of the City of League City Public Improvement District Number One (the "PID"), held a public hearing, and created the PID in accordance with the applicable provisions of Chapter 372; and

WHEREAS, the City Council passed and adopted Resolution No. 97-66 on November 18, 1997 establishing Public Improvement District Number One; and

WHEREAS, on December 14, 1999 the City Council approved a Service and Assessment Plan for the Public Improvement District Number One; and

WHEREAS, the City Council passed and adopted Ordinance No. 2013-37 on August 27, 2013 approving an amendment to the Service and Assessment Plan for the Public Improvement District Number One; and

WHEREAS, the City Council wishes to adopt a second Amendment to the Service and Assessment Plan;

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

Section 1. The facts recited in the preamble hereto are found to be true and correct.

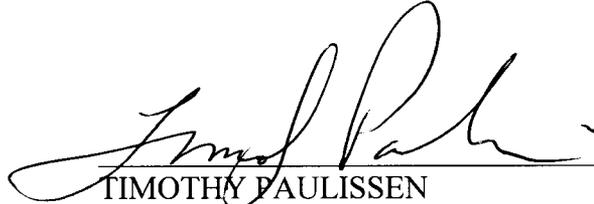
Section 2. The Second Amendment to the Service and Assessment Plan attached to this Ordinance as Exhibit A is hereby approved and adopted on behalf of the PID, and the mayor, city secretary and any other appropriate officials of the City are hereby authorized to take all necessary actions on behalf of the City to implement the terms thereof in accordance therewith.

Section 3. It is hereby found, determined and declared that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, Chapter 551, Texas Government Code, and that this meeting has been open to the public as required by law at all times during which this Ordinance and the subject matter thereof has been discussed, considered and formally acted upon. City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

PASSED first reading the 2nd day of December, 2014.

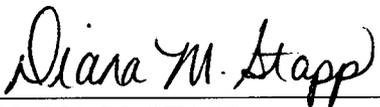
PASSED second reading the ____ day of _____, 2014.

PASSED AND ADOPTED the 2nd day of December, 2014.



TIMOTHY PAULISSEN
Mayor

ATTEST:



DIANA M. STAPP
City Secretary

SUSPENDED THE RULE AND ADOPTED ON FIRST AND FINAL READING

**ORDINANCE NO. 2014-40
EXHIBIT "A"**

**Magnolia Creek Master Planned Community
2nd Amendment to Approved
Service and Assessment Plan
Public Improvement District Number One
League City, Galveston County, Texas**

1. Introduction

This 2nd Amendment to the Approved Service and Assessment Plan (the "Plan") is prepared and adopted in conformance with the Public Improvement District Assessment Act, codified as Chapter 372, Texas Local Government Code (the "Act"), and pursuant to Resolution No. 97-65 creating the League City Public Improvement District Number One (the "PID" or "PID No. 1" or the "District"), League City (the "City"), Galveston County, Texas. On December 14, 1999, the City adopted the Magnolia Creek Master Planned Community, Public Improvement District Number One Service and Assessment Plan attached as Exhibit "A". The approved plan was amended on August 27, 2013 by Ordinance 2013-37.

2. Amendment

All of the Approved Service and Assessment Plan attached as Exhibit "A" and Amended Plan attached as Exhibit "B" are valid and still in effect with the exception of the following changes.

- a. The Table on Page 8 titled "Magnolia Creek Estimated Budget – PID Phase Four Residential" is hereby changed to the following:

Total PID Costs for Phase Four Residential	<u>\$3,600,324.00</u>
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Ordinance No. 2014-40 (Exhibit A-B to Amendment)

**PUBLIC IMPROVEMENT DISTRICT
DEVELOPMENT AND FINANCING AGREEMENT**

By and Between

THE CITY OF LEAGUE CITY, TEXAS

**BOARD OF DIRECTORS,
REINVESTMENT ZONE NUMBER ONE,
CITY OF LEAGUE CITY, TEXAS**

and

MAG CREEK L.P.

**PUBLIC IMPROVEMENT DISTRICT
DEVELOPMENT AND FINANCING AGREEMENT
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PUBLIC IMPROVEMENT DISTRICT
DEVELOPMENT AND FINANCING AGREEMENT

This Public Improvement District Development and Financing Agreement ("Agreement") is made by and among the CITY OF LEAGUE CITY, TEXAS ("City"), a municipal corporation and home-rule city of the State of Texas, acting by and through its governing body, the City Council; the BOARD OF DIRECTORS OF REINVESTMENT ZONE NUMBER ONE, CITY OF LEAGUE CITY, TEXAS (the "Board"), which Board is acting as administrator and manager of a Public Improvement District created by the City known as LEAGUE CITY PUBLIC IMPROVEMENT DISTRICT NUMBER ONE; and MAG CREEK L.P. (the "Developer"), a limited partnership organized under the laws of the State of Texas.

RECITALS

Pursuant to Chapter 311 of the Texas Tax Code, as amended, the City Council of the City created Reinvestment Zone Number One, City of League City, Texas (the "Zone") by Ordinance No. 97-65, and established a Board of Directors for the Zone consisting of nine members.

Pursuant to Chapter 372 of the Texas Local Government Code, as amended (the "Act"), the City Council of the City created League City Public Improvement District Number One (the "District") by Resolution No. 97-65.

Ordinance No. 97-65 states that the Board of Directors of the Zone shall also manage and administer the District.

The Board adopted a service and assessment plan on December 6, 1999 (the "Plan") which provides for the construction and financing of certain improvements within the District pursuant to the Plan, payable from assessments levied against property within the District as more specifically provided for in the Plan.

The Board submitted the Plan to the City Council of the City for approval, and on December 14, 1999, the City Council approved the Plan.

The City and the Board have determined that it is in the best interest of the District, the Zone and the City to contract with the Developer to initially fund on behalf of the City the planning for and the construction of the Project, which will result in the efficient and effective implementation of the Plan.

AGREEMENT

For and in consideration of the mutual promises, covenants, obligations, and benefits of this Agreement, the City, the Board and the Developer contract and agree as follows:

ARTICLE 1.
GENERAL TERMS

1.1. Definitions. The term "Act," "Agreement," "City Developer," "District," and "Zone" have the above stated meanings, and the following terms have the following meanings:

"Assessments" mean the special assessments levied by the City Council on property in the District pursuant to the Plan.

"Board" means the Board of Directors of Reinvestment Zone Number One, City of League City, Texas, acting as administrator and manager of the District pursuant to Ordinance No. 97-65 of the City.

"Business Day" means a day other than a Saturday, Sunday or legal holiday in the State of Texas or the City.

"City Administrator" means the City Administrator of the City or his or her designee.

"City Attorney" means the City Attorney of the City or his or her designee.

"City Council" means the City Council of the City.

"City Staff" means those employees and officers of the City designated by the City Administrator to administer this Agreement.

"Developer" means Mag Creek L.P., or the authorized representative of Mag Creek L.P., and which representative until further notice to the City, by the Developer shall be Lynn Watkins.

"Director of Finance" means the Director of Finance of the City or his or her designee.

"Insurer" means an entity which insures municipal bonds and by virtue of such insurance, such bonds are rated at least "AA" by at least one nationally recognized rating agency.

"Master Project Improvement" means a project listed as a Master Drainage Project Improvement or Water, Sewer and Drainage Infrastructure in the Service and Assessment Plan.

"Neighborhood Project Improvements" means a project listed as Neighborhood Water, Neighborhood Sewer or Neighborhood Drainage Improvements in the Service and Assessment Plan.

"PID Bonds" mean bonds issued by the City which are payable from the Assessments.

"Person" means any individual, corporation, partnership, joint venture, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof, or any other form of entity.

“Plan” means the District Service and Assessment Plan, as adopted by the District Board and approved by the City Council on December 14, 1999, as amended, provided, however, such Plan shall not include any amendments to the Plan due to land added to the District unless this Agreement is specifically amended in accordance with Section 8.7 of this Agreement.

“Project” means one or more public improvements included in the Plan, as approved by the City.

“Project Costs” means any of the acquisition, design, construction, assembly, installation, implementation and financing costs of one or more of the projects and activities included in the Plan for the District approved by the City, with associated costs, including but not limited to, the fees and expenses of Project Mangers, engineers, lawyers and other consultants related to the Project and the administrative and operating costs of the District.

“Project Manager” means the agent of the Developer for carrying out the responsibilities enumerated in Article 6 hereof and other responsibilities delegated by the Developer.

“Public Improvement District Fund” means the separate fund in the City Treasury established by the City under that name.

1.2. Singular and Plural. Words used herein in the singular, where the context so permits, also include the plural and vice versa. The definitions of words in the singular herein also apply to such words when used in the plural where the context so permits and vice versa.

ARTICLE 2. POWERS AND DUTIES

2.1. Delegation of Powers. The City hereby delegates to the Board the power to recommend to the City Council for final approval (i) the selection of one or more Project Managers to assist in the implementation of the Plan or to contract with the Developer to do so; and (ii) the approval of plans and specifications, the advertisement for contracts, and the award and approval of contracts and change orders in accordance with this Agreement. The Board is delegated the power to approve all pay estimates for contracts approved by City Staff. The City also authorizes the use of its staff pursuant to the direction of the Board (except where such direction may conflict with the City charter, directives of the City Council or policies of the City) to implement the Plan.

ARTICLE 3. DUTIES OF THE BOARD

3.1. Efforts Required. The Board will use reasonable efforts to implement the Plan, causing each part of the Project to be acquired and installed in accordance with this Agreement.

3.2. Dedication of Property. The Board will require the Developer to dedicate to the City or the public all right-of-way and sites needed to construct and operate the Project, subject

to the approval of the City Engineer, provided the City continues to accept and operate and maintain such facilities.

3.3. Plans and Specifications Approval. Following approval by City Staff, the Board will review plans and specifications for all construction proposed by the Developer and will either approve such within forty-five (45) days of the date of submission or will indicate in writing any deficiencies found in such plans or specifications within such period within forty-five (45) days of submission to the City and the Board. The Board shall note and reject plans and specifications with deficiencies including (1) plans for a project which are not included in the Plan or (2) plans not designed in accordance with applicable City or other applicable regulations or sound professional practices. The Developer shall correct any deficiencies identified by the Board which plans and specifications shall either be approved or noted for deficiencies within an additional forty-five (45) day period. Such process shall be repeated until the plans and specifications are acceptable to the Board. If the Board fails to act on a set of plans and specifications within forty-five (45) days, such plans and specifications shall be deemed to be approved by the Board. The City Staff shall note any Board recommendation that is the result of inaction by the Board at the time the City Council considers the approval of such plans and specifications. Submittal is deemed to occur when the City and Board certify in writing that they have received plans and specifications for a particular portion of the Project. The City and Board shall designate an employee to receive copies of such plans and specifications.

3.4. Construction Contract Award. The Board or the Developer on behalf of the Board will advertise for and award contracts in accordance with applicable statutory, city charter, city ordinances and department policies of the City. The Board will require the Developer to cause construction to be inspected by an engineer or other professional approved by the City Engineer and will require the Developer to require the engineer or other professional to issue a completion certificate in the form normally utilized by the engineer or other professional performing the inspection. The Board will require the Developer to use reasonable efforts to cause any contractor to correct construction deficiencies brought to its attention by the engineers or other professionals, though neither the Board nor the Developer will warrant the Project or work performed under any such contract or by the engineer or other professional.

3.5. Evidence of Title. The Board agrees to execute such additional evidence of transfer of title as may be required by the City and also, if requested by the City prior to the execution of a contract with the Developer or any contractor for construction of any part of the Project, to require any such parties to execute any such additional evidence of ownership as may reasonably be requested by the City.

3.6. Use of Property. All personal property to be incorporated into the Project, and all consumables (other than machinery and equipment) purchased in connection with and to be used solely for the Project, will become property of the City as delivered to the job site and before incorporation into the realty. All other portions of the Project will become property of the City as constructed and installed, free and clear of any lien in favor of the Developer or any contractor. The Developer will maintain insurance in a form and coverage acceptable to City

Staff, of all personal property incorporated into the Project, prior to acceptance of ownership by the City.

3.7. Quarterly Reports. The Board agrees to prepare and forward a report at the end of each calendar quarter to the City Council for information purposes which lists the contracts or Projects in progress and the funds expended or owing on any such contracts or projects, together with a projection of Projects or contracts which the Board reasonably Projects to be entered into during the upcoming quarter.

3.8. Administrative Fees. The Board agrees to incur only reasonable and necessary fees and expenses for administration of the District.

ARTICLE 4. DUTIES AND RESPONSIBILITIES OF THE DEVELOPER

4.1. Selection and Retention of Consultants, Design of the Project. The Developer shall select and retain the engineers, architects, landscape architects, and land planners for the Project. The Developer shall cause to be prepared all plans and specifications and shall cause to be performed all investigatory work and materials acquisition for the Project. The Developer shall review such plans and specifications and then shall submit them to the Board for approval as herein provided and to the City Engineer for approval as herein provided. The Developer may elect to construct the Project in stages, as determined by the Developer.

4.2. Payments to Contractors, Vendors, and Consultants. The Developer hereby agrees to promptly advance sufficient funds for the account of the City to pay for all costs of the Project specified in the Plan. Provided, however, the Developer shall not be obligated to advance funds pursuant to this Section for any Project that is not being financed pursuant to this Agreement or for any contract or expense not approved in writing in advance by the Developer.

4.3. Award of Construction Contract. The Developer shall be responsible for the review of all contract and bid documents related to the Project, and shall make appropriate recommendations to the Board and to the City. Prior to authorizing the advertisement for bids, the Developer shall submit all contract and bid documents to the City Engineer in accordance with Section 4.5 of this Agreement. Upon authorization of the Board and the City Engineer, the Developer shall advertise for, review and tabulate bids. The Developer shall competitively bid all contracts in compliance with all policies of the City, as they may be in effect from time to time, deemed necessary and applicable by the City Engineer or his or her designee. A Project may be bid in separate contracts pursuant to the recommendation of the Developer and the authorization of the Board and City Engineer. The Developer shall make a recommendation to the Board and the City regarding the award of the bid to the lowest responsible bidder. The Board and City shall approve the award of the construction contract to the lowest responsible bidder.

4.4. Change Orders. The Developer shall be responsible for the review of all change orders related to the Project, and will make appropriate recommendations to the Board and the

City. All change orders shall be presented to the City Engineer in accordance with Section 4.05 of this Agreement prior to approval by the Board.

4.5. Approval of the City Engineer. Following the approval of City Staff, the Developer shall, in accordance with the City Charter, city ordinances and state law, submit all designs, plans, specifications, construction contracts, bid documents and change orders to the City Engineer for approval, conditional approval, or disapproval. The Developer shall simultaneously send a copy of all such submissions to the Director of Finance. The City Engineer will use reasonable efforts to provide written approval, conditional approval or disapproval to the Developer of all designs, plans and specifications within thirty (30) Business Days from receipt of such documents. The City Engineer shall provide to the Developer written approval, conditional approval, or disapproval of all construction contracts, bid documents and change orders within fifteen (15) Business Days from receipt of such documents. Any conditional approval or disapproval by the City Engineer shall be accompanied by a written statement of the reasons for such conditional approval or disapproval, and the Developer shall be entitled to resubmit the documents for approval pursuant to this Section.

4.6. Reimbursement of Expenditures. The Developer will be paid for the advances the Developer makes for the account of the City pursuant to Section 4.2 of this Agreement out of the Public Improvement District Fund (which will contain Assessments and proceeds of PID Bonds) in accordance with this Agreement. The Developer reserves the right to make expenditures for projects not included in the Plan or not approved in accordance with this Agreement; provided, however, that such expenditures shall not be for the account of the City unless specifically agreed to by it.

ARTICLE 5. OBLIGATIONS OF THE CITY

5.1. Public Improvement District Fund. The City hereby covenants and agrees that it will establish and maintain a Public Improvement District Fund for the District as a separate fund in the City's Treasury. The City agrees to deposit all Assessments into the Public Improvement District Fund during the term of this Agreement. The City shall establish subaccounts for Assessments arising from each assessment roll. After the funding of the debt service and reserve funds described in Section 5.9, the City agrees to deposit the remainder of the proceeds from a series of PID Bonds into the Public Improvement District Fund. The City shall establish a subaccount for the bond proceeds for each series of PID Bonds.

5.2. Payments to the Developer. The City acknowledges that the Developer will pay Project Costs, as such costs are incurred and payable. Upon acceptance by the City of the improvements constructed by the Developer, the City agrees to acquire such improvements from the Developer solely from funds received from (1) Assessments and (2) the proceeds of PID Bonds payable from Assessments, all in accordance with the terms hereof. The cost to the City to acquire such improvements from the Developer shall be the sum of all Project Costs payable to the Developer under the terms and conditions of this Agreement.

5.3. Interest Rate. The outstanding amounts due the Developer pursuant to this Agreement shall bear interest on the unpaid principal amount thereof outstanding from time to time at the rate of eight percent (8%) per annum. Interest will accrue from the date of each borrowing to pay Project Costs. The maximum interest that will be paid to the Developer under this Agreement with respect to a Neighborhood Improvement Project is the interest that accrues from the date of each borrowing to pay Project Costs for the Neighborhood Improvement Project to the date which is five (5) years after substantial completion of the Neighborhood Improvement Project. The maximum interest that will be paid to the Developer under this Agreement with respect to a Master Project Improvement is the interest that accrues from the date of each borrowing to pay Project Costs for the Master Project Improvement to the date which is ten (10) years after substantial completion of the Master Project Improvement.

5.4. Special Obligations. Any payment to be made under this Agreement is a special obligation of the City payable solely from the Public Improvement District Fund, as and to the extent provided in this Agreement. This Agreement does not give rise to a charge against the general credit or taxing powers of the City or any other taxing unit and is not payable except as provided in this Agreement. The Developer and its successors and assigns shall never have the right to demand payment thereof out of any funds of the City other than the Public Improvement District Fund.

5.5. Assessments. The City agrees to levy Assessments on property in the District in accordance with the Plan, as the same may be amended from time to time. It is contemplated that each Assessment shall consist of two components: an Assessment for master drainage and water, sewer and drainage infrastructure and an Assessment for neighborhood improvements, and that Assessments will be levied on portions of the District as each such portion is developed with vertical improvements.

5.6. Collection of Assessments. The City covenants and agrees that it will, as authorized under the Act and other applicable laws, continuously collect Assessments levied pursuant to the Plan during the term of this Agreement in the manner and to the maximum extent permitted by applicable law. To the extent the City may legally do so and subject to the rights of third parties, over which the City has no control, the City covenants and agrees that it will not permit a reduction, abatement, or exemption in the Assessments due on property in the District until the Developer has been paid in full. The City will use good and sound practices pursuant to the City's policies and standard practices to collect the Assessments.

5.7. PID Bonds. Subject to the provisions of Section 5.8 below, the Developer complying with the terms and conditions of this Agreement and the written recommendation of the City's Financial Advisor, the City will make reasonable efforts to issue one or more series of PID Bonds, proceeds of which will be utilized to (1) provide for a reserve in an amount not to exceed a reasonable reserve as determined under federal tax law, (2) pay costs of issuance, and (3) make payments to the Developer under this Agreement. The principal amount of each series of PID Bonds shall be determined by the City Council.

5.8. Time of Issuance. The City agrees to use its best efforts to issue the first series of PID Bonds when 180 single-family homes in section 1 of Phase I of the District are

completed and the City has levied Assessments on the property on which the homes are located. If the Board is unsuccessful in obtaining a commitment to insure with an Insurer acceptable to the City for the payment of principal and interest on a subsequent series of PID Bonds, the City agrees, subject to the provisions of Section 5.7 to use its best efforts to issue additional series of PID Bonds when 200 additional homes in the District are completed and the City has levied Assessments on the property on which the homes are located.

5.9. Public Improvement District Fund. Subject to the provisions of the City Ordinances hereafter enacted to authorize the issuance of PID bonds, the parties agree that upon the issuance of the first series of PID Bonds, the City will hold the proceeds of each series of PID Bonds which are devoted to a reserve fund. The remainder of the PID bond proceeds will be deposited to the Public Improvement District Fund. After payment of costs of issuance, the City will pay the remainder of the PID Bond proceeds from a series of PID Bonds to the Developer until all obligations under this Agreement are discharged. At least annually, or more often at the City's discretion, the City shall transfer to a designated subaccount in the Public Improvement District Fund the Assessments deposited to the Public Improvement District Fund, less administrative costs. Such amounts will be used to pay debt service on the PID Bonds (including principal calls) and, if necessary, to replenish the reserve. Once the City has received Assessments in an amount equal to that year's debt service on a series of PID Bonds and provided the reserve is fully funded, the City shall pay any remaining Assessments (other than prepayments) to the Developer. Prepayments of Assessments will be deposited in such accounts established by the ordinance authorizing the issuance of the PID Bonds.

5.10. Acceptance of Property and Facilities. The City agrees to accept title to, to maintain, operate and repair when the construction specified in the Plan has been completed, any property or facilities proposed to be dedicated hereunder by the Developer to the City, subject to City policy, as such policy is in effect from time to time.

ARTICLE 6. PROJECT MANAGER

6.1. General Powers. The Developer's authorized agent, Lynn Watkins, shall act as Project Manager and shall act as an agent of the District and shall be responsible for the supervision and inspection of the acquisition, design, construction, assembly, installation and implementation of the Project or phases thereof, as designated by the Board in accordance with Section 3.2 of this Agreement, and in accordance with this Agreement and the Plan. The grant of specific powers, duties and responsibilities to a Project Manager pursuant to this Agreement shall not be construed to limit the general powers granted by this Section to the Developer to hire and utilize Project Managers.

6.2. Designation. The Developer may change its designation of a Project Manager for the Project or any phase thereof at any time upon written notification to the Board and the City and subject to the approval of the City Engineer, whose approval shall not be unreasonably withheld.

ARTICLE 7.
INSURANCE AND INDEMNITY

7.1. Insurance and Indemnity. The Board shall require all contractors to provide such indemnities to the Board and the City and to secure and maintain insurance as would be required for similar City contracts, pursuant to applicable City ordinances or policies.

ARTICLE 8.
MISCELLANEOUS

8.1. Personal Liability of Public Officials. To the extent permitted by State law, no public official shall be personally responsible for any liability arising under or growing out of the Agreement.

8.2. Liability of Mag Creek L.P., its Successors and Assignees. Any obligation or liability of Mag Creek L.P. whatsoever which may arise at anytime under this Agreement or any obligation or liability which may be incurred by Mag Creek L.P. pursuant to any other instrument, transaction or undertaking contemplated hereby shall be satisfied, if at all, out of the assets of Mag Creek L.P. only. No obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, the property of any of partners, officers, employees, shareholders or agents of Mag Creek L.P., regardless of whether such obligation or liability is in the nature of contract, tort or otherwise.

8.3. Default.

(a) A party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if such party fails to materially perform, observe or comply with any of its covenants, agreements or obligations hereunder or breaches or violates any of its representations contained in this Agreement.

(b) Before any failure of any party to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within 30 days of the receipt of such notice, subject, however, to the terms and provisions of Section 8.3(c). 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. 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 shall be deemed to constitute an election of remedies and all remedies set forth in this Agreement shall 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 shall have the affirmative obligation to mitigate its damages in the event of a default by the other Party.

(c) 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 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 or tornadoes, labor action, strikes or similar acts) the time for such performance shall be extended by the amount of time of such delay. The Party claiming delay of performance as a result of any of the foregoing "force majeure" events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven days after the claiming Party becomes aware of the same, and if the claiming Party fails to so notify the other Party of the occurrence of a "force majeure" event causing such delay, the claiming Party shall not be entitled to avail itself of the provisions for the extension of performance contained in this Section.

(d) In addition to any other right or remedy available to Developer pursuant to this Agreement, in the event of a material breach by the City under this Agreement which continues for 30 days after written notice to the City thereof and the City's failure to cure or diligently proceed to cure such breach to Developer's reasonable satisfaction, Developer shall have the right (but not the obligation), in its sole discretion, to exercise its rights hereunder, with regard to mandamus, specific performance or mandatory permanent injunction to require the City to do so.

8.4. Notices. Any notice sent under this Agreement (except as otherwise expressly required) shall be written and mailed, or sent by rapid transmission confirmed by mailing written confirmation at substantially the same time as such rapid transmission, or personally delivered to an officer of the receiving party at the following addresses:

City of League City
Director of Finance
City of League City
City Hall
300 West Walker
League City, Texas 77573
RE: PUBLIC IMPROVEMENT DISTRICT NUMBER ONE

Board of Directors,
Reinvestment Zone Number One
c/o Director of Finance
City of League City
City Hall
300 West Walker
League City, Texas 77573

Mag Creek L.P.
Lynn B. Watkins
Magnolia Creek L.P.
8121 Broadway, Suite 103
Houston, Texas 77061

Each party may change its address by written notice in accordance with this Section. Any communication addressed and mailed in accordance with this Section shall be deemed to be given when so mailed, any notice so sent by rapid transmission shall be deemed to be given when receipt of such transmission is acknowledged, and any communication so delivered in person shall be deemed to be given when received for by, or actually received by, an authorized officer of the City, Board or Developer, as the case may be.

8.5. Amendments and Waivers. Any provision of this Agreement may be amended or waived if such amendment or waiver is in writing and is signed by the City, the Board and the Developer. No course of dealing on the part of the City, the Board or the Developer nor any failure or delay by the City, the District Board or the Developer with respect to exercising any right, power or privilege pursuant to the Agreement shall operate as a waiver thereof, except as otherwise provided in this Section.

8.6. Invalidity. In the event that any of the provisions contained in this Agreement shall be held unenforceable in any respect, such unenforceability shall not affect any other provisions of this Agreement.

8.7. Successors and Assigns. No party to this Agreement shall have the right to assign its rights under this Agreement or any interest herein, without the prior written consent of the other parties, except that (1) the Developer may assign the right to receive payments from the Public Improvement District Fund without consent of any party, and (2) the Developer may assign its rights and responsibilities hereunder to any entity which acquires all or part of the Developer's assets subject to approval by the City, which approval cannot be unreasonably withheld if the transferee has the financial ability to perform. The City is allowed forty-five (45) days from the date it is notified in writing by the Developer of a proposed transfer (accompanied with sufficient materials to allow the City a basis for consenting to the proposed transfer) to consent thereto or to reasonably determine that such proposed transferee does not then have or cannot acquire in the reasonably near future, the financial ability to perform the obligations of the Developer under this Agreement.

8.8. Exhibits, Titles of Articles, Sections and Subsections. Any exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail. All titles or headings are only for the convenience of the parties and shall not be construed to have any effect or meaning as to the agreement between the parties hereto. Any reference herein to a Section or Subsection shall be considered a reference to such Section or Subsection of this Agreement unless otherwise stated. Any reference herein to an exhibit shall be considered a reference to the applicable exhibit attached hereto unless otherwise stated.

8.9. Applicable Law. This Agreement is a contract made under and shall be construed in accordance with and governed by the laws of the United States of America and the State of Texas, as such laws are now in effect.

8.10. Entire Agreement. THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES REGARDING THE DISTRICT.

8.11. Term. This Agreement shall terminate on the earlier of December 31, 2023, or the date on which the City discharges its obligations hereunder and dissolves the District.

8.12. Approval by the Parties. Whenever this Agreement requires or permits approval or consent to be hereafter given by any of the parties, the parties agree that such approval or consent shall not be unreasonably withheld or delayed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed as of the 15th day of December, 1999.

THE CITY OF LEAGUE CITY, TEXAS

Tommy Frankovich
Mayor

ATTEST:

By: Barbara Nugent
Name: BARBARA NUGENT
Title: City Secretary

**THE BOARD OF DIRECTORS,
REINVESTMENT ZONE NUMBER ONE,
CITY OF LEAGUE CITY, TEXAS, as
manager and administrator for League City
Public Improvement District Number One**

By: A. Jeff Harrison
Name: A. JEFF HARRISON
Title: CHAIRMAN OF THE BOARD

ATTEST:

By: Barbara Nugent
Name: BARBARA NUGENT
Title: City Secretary

MAG CREEK L.P.

By: Alan B. Walker
Name: Alan B. Walker
Title: MANAGING DIRECTOR

ORDINANCE NO. 2013-37

AN ORDINANCE OF THE CITY COUNCIL OF LEAGUE CITY, TEXAS, APPROVING AN AMENDMENT TO THE SERVICE AND ASSESSMENT PLAN FOR CITY OF LEAGUE CITY PUBLIC IMPROVEMENT DISTRICT NUMBER ONE (MAGNOLIA CREEK)

WHEREAS, the City of League City (the "City") is authorized pursuant to TEX. LOCAL GOV'T CODE, ch. 372, as amended ("Chapter 372") to create public improvement districts for the purposes described therein; and

WHEREAS, the City received a petition (the "Petition") requesting the creation of the City of League City Public Improvement District Number One (the "PID"), held a public hearing, and created the PID in accordance with the applicable provisions of Chapter 372; and

WHEREAS, the City passed and adopted Resolution No. 97-66 on November 18, 1997 establishing Public Improvement District Number One; and

WHEREAS, on December 14, 1999, the City Council approved a Service and Assessment Plan for the Public Improvement District Number One; and

WHEREAS, the city council wishes to adopt an Amendment to the Service and Assessment Plan; NOW THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEAGUE CITY, TEXAS, that:

Section 1. The facts recited in the preamble hereto are found to be true and correct.

Section 2. The Amendment to the Service and Assessment Plan attached to this Ordinance as Exhibit A is hereby approved and adopted on behalf of the PID, and the mayor, city secretary and any other appropriate officials of the City are hereby authorized to take all necessary actions on behalf of the City to implement the terms thereof in accordance therewith.

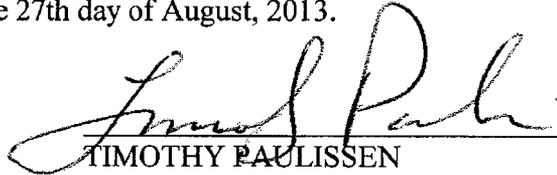
Section 3. It is hereby found, determined and declared that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, Chapter 551, Texas Government Code, and that this meeting has been open to the public as required by law at all times during which this Ordinance and the subject matter thereof has been discussed, considered and formally acted upon. City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

Section 4. All ordinances and resolutions, and parts of ordinances and resolutions in conflict herewith, are hereby repealed.

PASSED first reading the 27th day of August, 2013.

PASSED second reading the ____ day of _____, 2013.

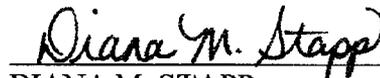
PASSED AND ADOPTED the 27th day of August, 2013.



TIMOTHY PAULISSEN

Mayor

ATTEST:



DIANA M. STAPP,
City Secretary

SUSPENDED THE RULE AND ADOPTED ON FIRST AND FINAL READING

EXHIBIT "A"

**Magnolia Creek Master Planned Community
Amendment to Approved
Service and Assessment Plan
Public Improvement District Number One
League City, Galveston County, Texas**

1. Introduction

This Amendment to the Approved Service and Assessment Plan (the "Plan") is prepared and adopted in conformance with the Public Improvement District Assessment Act, codified as Chapter 372, Texas Local Government Code (the "Act"), and pursuant to Resolution No. 97-65 creating the League City Public Improvement District Number One (the "PID" or "PID No. 1" or the "District"), League City (the "City"), Galveston County, Texas. The City Council approved the Magnolia Creek Master Planned Community, Public Improvement District Number One Service and Assessment Plan attached as Exhibit "1".

2. Amendment

All of the Approved Service and Assessment Plan attached as Exhibit "1" is valid and still in effect with the exception of the following changes.

- a. The Tables on Page 3 & 4 titled "Magnolia Creek Estimated Budget – PID Phase One Residential" and "Magnolia Creek Estimated Budget – PID Phase One Commercial" are hereby changed to the following:

Total PID Costs for Phase One Residential & Commercial \$1,881,074.00

- b. The Table on Page 5 titled "Magnolia Creek Estimated Budget – PID Phase Two Residential" is hereby changed to the following:

Total PID Costs for Phase Two Residential \$1,785,808.00

- c. The Phase One Residential and Commercial and Phase Two assessments in Section 11 on Page 9 are hereby amended to the following:

Phase One Residential \$0.90 per square foot of property
Phase One Commercial \$0.90 per square foot of property
Phase Two Residential \$1.11 per square foot of property