

**OUT-OF-DISTRICT  
WATER AND WASTEWATER  
SERVICE AGREEMENT**

This Out-of-District Water and Wastewater Service Agreement (the "Agreement") is entered into by and between **Sienna Plantation Management District**, a body politic and corporate operating under the provisions of Chapters 49 and 54, Texas Water Code, as amended, and Article XVI, Section 59 of the Texas Constitution (the "District"), and **Fort Bend County, Texas** (the "User"), effective as of \_\_\_\_\_, 2016.

**RECITALS**

The User owns approximately 11.754 acres adjacent to Sienna Springs Way and Sienna Springs Boulevard in Fort Bend County, Texas, described previously as H.C.C.S. Campus Sienna Plantation, Section 1 of the Plat Records of Fort Bend County, Texas and currently as the Fort Bend County Sienna Plantation Campus (the "Property"). The Property lies outside the boundaries of the District. An exhibit of the property is attached as **Exhibit "A."**

The User has purchased the Property as the Sienna Plantation Fort Bend County, Texas complex (the "Improvements"), and when the property was initially developed there were no water and wastewater facilities available to provide services to the Property. The previous user requested the District to provide water supply and wastewater treatment for the Property sufficient to serve up to twenty-two (22) equivalent single-family residential connections. The current User has represented to the District that these water and wastewater amounts will be sufficient to serve the Property and Improvements.

The District presently has water supply and wastewater treatment capacity available to serve the Property and Improvements.

**AGREEMENT**

For and in consideration of the premises and the mutual obligations, covenants, and benefits set forth in this Agreement, the District and the User agree as follows:

**DEFINITIONS**

**Definitions.** Unless the context requires otherwise, and in addition to terms defined elsewhere in this Agreement, the following terms and phrases used in this Agreement shall have the respective meanings set out below:

- (a) "City" means City of Missouri City, Texas.

- (b) "Commission" means the Texas Commission on Environmental Quality, or any successor or successors exercising any of its duties and functions related to water conservation and reclamation districts.
- (c) "Construction Costs" means the total costs necessary to construct the Facilities, in accordance with the provisions of Article II below, including, without limitation, the design, engineering, materials, labor, construction, inspection, and contingency costs, as well as costs incurred in connection with obtaining governmental approvals, certificates, permits, surveys, geotechnical borings, and any real estate rights and interests.
- (d) "District Engineer" means LJA Engineering, Inc., or its successor duly engaged by the District to provide professional engineering services regarding the District's water and wastewater facilities.
- (e) "ESFC" means equivalent single family connection which is 455 gallons per day of water and 350 gallons per day of wastewater.
- (f) "On-Site Facilities" means the water and wastewater facilities that were within the Property.
- (g) "Wastewater Point of Interconnect" means the point of connection between the On-Site Facilities and the Wastewater Line as shown on Exhibit "A."
- (h) "Water Points of Interconnect" means the point of connection between the On-Site Facilities and the User Water Line, as shown on Exhibit "B."

## ARTICLE I.

### **WATER AND WASTEWATER SERVICE; CHARGES FOR CONNECTION AND SERVICE**

Section 1.01: Maximum Water and Wastewater Service. The District shall provide potable water supply service not to exceed the amount of 10,010 gallons per day daily average flow to the Property and sewer treatment service in the amount of 7,700 gallons per average daily flow (such amount of utility service herein being collectively called the "Maximum Service Amount"). Except as may be agreed by the parties, the District will provide no more than the Maximum Service Amount to the Property, and the Service Amount is only for use by the User to serve the Property.

Section 1.02: Capital Connection Charge. The previous user purchased 22 connection fees for the Property and the Improvements (the "Purchased Capacity"). If the User needs to purchase additional connection charges, the User will pay the

District's capital connection charge at the then-existing rate. The User has no guarantee or reservation of service except in the amounts actually paid for by the User.

Section 1.03: Charges for Water and Wastewater Services. The District shall have one account in the name of the User for the provision of water and wastewater services to the Property. For the water and wastewater services provided to the Property, the User shall pay the same rates for water and wastewater services that would be charged to the Property if it were located within the boundaries of the District under the District's order governing the provision of water and wastewater services, which rates may be adjusted (in a manner that is not arbitrarily discriminatory to the User) by the District in its sole discretion from time to time. Any other fees, charges, or costs that would be due from the User under the terms of the District's rules and regulations that are not arbitrarily discriminatory to the User governing the provision of water and wastewater services shall be due from User. If the User's water usage in any month exceeds the Purchased Capacity, the User will be charged a surcharge equivalent to four times the standard rates for the excess usage.

Section 1.04: Payments Unconditional. All sums payable to the District under this Agreement shall be paid by the User without set-off, counterclaim, abatement, suspension, or diminution. If the User disputes an amount to be paid to the District, the User shall nonetheless promptly make payment, and if it is subsequently determined by agreement or otherwise that such disputed payment was improperly computed, the District will make proper adjustment by credit to the User's account or otherwise act to correct the error.

## **ARTICLE II.**

### **CONNECTION TO THE DISTRICT'S SYSTEM; WATER AND WASTEWATER RULES OF SERVICE**

Section 2.01: Locations and Design of Connections. The service shall be provided by the District to User at the Water Points of Interconnect and the Wastewater Point of Interconnect (collectively the "Interconnects"), at which point title to water shall pass to User and title to waste will pass to the District. User shall be responsible for the design and construction of the lines, valves and any other facilities required to provide service to the Property from the Interconnects (the "Facilities"), such facilities to be designed by a registered, professional engineer. References to design or construction of the Facilities are intended to refer to any repair, alteration, replacement or other change thereto. User shall pay all costs relating to design and construction of the Facilities. The Facilities require a meter at the point that the District's water line connects to the User's Facilities.

Section 2.02: Construction of the Facilities. Any actual connection of the Facilities to the District's water or wastewater system must be made only by the

District's operator in accordance with the District's rate order. Service from the District to the Property shall not be initiated until the District Engineer and District Operator have approved in writing the construction and installation of the Facilities and the connection to the Interconnects. No other parties, other than User, shall be allowed to tie into the Interconnects. Prior to commencing any additional construction of Facilities, User must obtain written approval of the plans for the Facilities from the District Engineer, as well as any other regulatory authorities with jurisdiction. The User shall pay all costs of design and construction of the Facilities, including permits, inspection and rights of way, without reimbursement from the District.

Section 2.03: Point of Delivery for Water. The point of delivery of water from the District's water supply system to the Property shall be the Water Points of Interconnect. The District will have title to, possession, and control of water on the District's side of the Water Points of Interconnect and the User will have title to, possession, and control of water on the User's side of the Water Points of Interconnect.

Section 2.04: Point of Entry for Wastewater. The point of entry of wastewater from the Property to the District's wastewater collection system shall be the Wastewater Point of Interconnect. The User will have title to, possession, and control of wastewater on the User's side of the Wastewater Point of Interconnect and, so long as the User has complied with the District's rules and regulations regarding the quality of wastewater from the Property, the District will have title to, possession, and control of wastewater on the District's side of the Wastewater Point of Interconnect.

Section 2.05: No Service Outside the Property. The User shall not have the right pursuant to this Agreement and agrees not to provide the water and wastewater services provided by the District to the Property pursuant to this Agreement to any area outside the boundaries of the Property or to any connections other than the Improvements.

Section 2.06: District Rules.

- (a) *Domestic Wastewater.* All wastewater discharges from the Property must be solely domestic in nature and must comply with all the District's and the City's orders, ordinances, rules, and regulations, and with any amendments hereafter to such orders, ordinances, rules, and regulations that are not arbitrarily discriminatory to the User. Discharge of industrial or chemical waste, wastewater in septic condition, or any other waste other than ordinary domestic waste is prohibited, and the District reserves the right at any time to require the User to install grease traps and/or sampling wells at the User's own expense and/or to pretreat its wastewater discharge at its own expense if the District's engineer or the

District's operator determines that such procedures are necessary to avoid the discharge of industrial or chemical waste, wastewater in septic condition, or any other waste other than ordinary domestic waste. The District shall be entitled to collect samples of waste from the Property at or near the point of entry of such waste into the District's wastewater system and to cause the samples to be analyzed by American Public Health Association standard methods or other appropriate methods, at the expense of the User, to determine if the waste is within the qualities required by the District.

- (b) *Rate Order.* The User shall comply with and be subject to the District's Rate Order which may be amended from time to time. Connections on the Property to the Facilities shall be subject to and made in accordance with all fees, policies, charges, rules, and regulations, that are not arbitrarily discriminatory to the User, established and/or amended from time to time by the District, in its sole discretion, regarding the provision of water and wastewater services and/or connection to the District's systems.
- (c) *City Annexation.* The User is aware and acknowledges that the District lies within the city limits of the City and that the City has the legal authority to annex the District into the boundaries of the City and to dissolve the District as a separate legal entity. The District makes no representation regarding whether or when such annexation of the District might occur or what the effect of such annexation might be upon the terms and conditions of this Agreement.

Section 2.07: Surplus Capacity. If, upon completion of the Improvements and full use of the Improvements, the District Engineer determines that the Service Amount amounts exceed the needs of the Improvements and thus there is excess capacity reserved to the Improvements, the Reservation of such excess capacity shall terminate and such excess capacity shall revert to the District and may be utilized by the District to serve areas other than the Property, subject to the User's opportunity to review and comment to the District's Board of Directors upon the District Engineer's determination prior to such termination and reversion.

Section 2.08: Access Easements and Water, Sewer, and Drainage Easements. User agrees to provide any access easements or water, sewer, and drainage easements needed by the District, Sienna Plantation Municipal Utility District No. 10, Sienna Plantation Municipal Utility District No. 12 or a developer in Sienna Plantation. The User will provide the easements free of any lien and free of any costs associated with the easements.

**ARTICLE III.**  
**MISCELLANEOUS PROVISIONS**

Section 3.01: Term. Unless sooner terminated by other provisions of this Agreement or by mutual agreement of the parties, this Agreement shall continue in force and effect for ten (10) years from the effective date of this Agreement; provided, however, that the User may terminate this Agreement sooner by providing ninety (90) days prior written notice to the District of the User's intent to terminate this Agreement. After its initial ten (10) year term, this Agreement shall automatically renew upon its anniversary for successive one-year terms unless at any time either party hereto gives ninety (90) days' prior written notice to the other party of the notifying party's intent to terminate this Agreement. Notwithstanding the foregoing, this Agreement shall terminate upon the sale of the Property or the conversion of the use of any part of the Property to a taxable purpose.

Section 3.02: Regulatory Agencies. This Agreement shall be subject to all present and future valid laws, orders, rules, and regulations of the United States of America, the State of Texas, and of any regulatory body having jurisdiction. Without limiting the generality of the foregoing, it is specifically agreed that the District's obligation to provide water and wastewater service to the User for the Property shall be subject to the District's ability to obtain any required permits or approvals from any regulatory authority having jurisdiction. The District is not presently aware of any such laws, orders, rules, or regulations that would impede the District's ability to provide water and wastewater services to the Improvements in accordance with the terms and conditions of this Agreement.

Section 3.03: Remedies. If the User fails to perform any of its obligations under this Agreement and such failure continues for thirty (30) days after the User's receipt of written notice of such failure, the District shall have the right, in its sole discretion, to terminate the Reservation; to terminate water and wastewater service to the Property; and/or to pursue any other legal and equitable remedies, which shall include the recovery of reasonable attorneys' fees from the User, available to the District.

Section 3.04: Merger. This Agreement, together with the exhibits attached to and made a part of the Agreement for all purposes, constitutes the entire agreement between the parties relative to the subject matter of the Agreement and supersedes any previous oral or written agreement.

Section 3.05: No Additional Waiver Implied. The failure of the District to insist upon strict performance of any provision of this Agreement shall not constitute a waiver of, or estoppel against asserting, the right to require that performance in the future, nor shall a waiver or estoppel in any one instance constitute a waiver or estoppel with respect to a later breach.

Section 3.06: Modification. This Agreement shall be subject to change or modification only with the mutual written consent of the parties, except as expressly provided otherwise in this Agreement.

Section 3.07: Parties in Interest. This Agreement shall be for the sole and exclusive benefit of the User and the District, and shall not be construed to confer any benefit or right upon any other person or entity.

Section 3.08: Force Majeure. In the event any party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, other than the payment of money, then the obligations of that party, to the extent affected by the force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided, but for no longer period. As soon as reasonably possible after the occurrence of the force majeure relied upon, the party whose contractual obligations are affected by the force majeure shall give notice and full particulars of the force majeure to the other parties. The cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure," as used in this Agreement, shall mean acts of God; strikes; lockouts, or other industrial disturbances; acts of the public enemy; orders of any kind of the government of the United States or the State of Texas or any civil or military authority other than a party to this Agreement; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; washouts; droughts; arrests; civil disturbances; explosions; breakage or accidents to machinery, pipelines, or canals; partial or entire failure of water supply; and any other incapacities of any party, similar to those enumerated, that are not within the control of the party claiming the inability and which the party could not have avoided by the exercise of due diligence and care. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when settlement is unfavorable to the party having the difficulty, in the judgment of that party.

Section 3.09: Severability. The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or its application to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of

this Agreement and the application of the word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstances shall not be affected.

Section 3.10: Addresses and Notice. The addresses of the parties are as follows:

The District:

Sienna Plantation Management District  
c/o Allen Boone Humphries Robinson LLP  
Attn: Angela Lutz  
3200 Southwest Freeway, Suite 2600  
Houston, Texas 77027

The User:

Fort Bend County  
Attention: County Attorney  
301 Jackson Street, Room 101  
Richmond, TX 77469

All notices required or permitted to be given under this Agreement from one party to the other shall be given in writing and shall be served by depositing the notice in the United States mail, postage prepaid, addressed to the party to be notified, with return receipt requested, or by delivery of the notice, or by telefacsimile. Notice given in any manner shall be effective only upon receipt. The parties have the right from time to time and at any time to change their respective addresses, and each shall have the right to specify as its address any other address by providing at least fifteen (15) days' written notice to the other party.

Section 3.11: Captions. The captions appearing at the first of each numbered section in this Agreement are inserted and included solely for convenience of reference and shall never be considered or given an effect in construing this Agreement, or any provision hereof, or in ascertaining intent, if any question should arise.

Section 3.12: Construction of Agreement. The parties agree that this Agreement shall not be construed in favor of or against either party on the basis that the party did or did not author this Agreement.

Section 3.13: Records and Recordkeeping. The parties shall comply with all applicable laws regarding project records including, but not limited to, the Family Educational and Privacy Rights Act ("FERPA"), the Freedom of Information Act



("FOIA"), the Texas Public Information Act ("PIA"), and the Texas Records Retention Laws ("RR LAWS").

All records and reports either generated, prepared, assembled, or maintained by the District in relation to the Project will be available for review, inspection, and audit by the HCC and its auditors at all times during this agreement. Copies will be made available upon request and in conformity with FERPA, the FOIA, the PIA, and the RR laws. The District shall maintain records under this Agreement for a period of up to three (3) years after the expiration of this Agreement and provide access to HCC and its auditors to those records, including providing copies if requested by HCC or its representatives during the three (3) year period after expiration of this Agreement.

Section 3.14: Jurisdiction; Venue. The Parties irrevocably and unconditionally consent to the jurisdiction of the State of Texas, and agree that any court of competent jurisdiction location in Fort Bend County, Texas, shall be an appropriate and convenient place of venue, and shall be the sole and exclusive place of venue, to resolve any dispute with respect to this Contract.

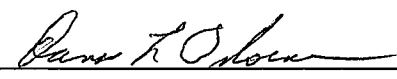
**[EXECUTION PAGE FOLLOWS]**

IN WITNESS WHEREOF, the parties to this Agreement have caused this Agreement to be duly executed in multiple copies, each of equal dignity, as of the date on the first page of this Agreement.

**SIENNA PLANTATION MANAGEMENT  
DISTRICT**

  
\_\_\_\_\_  
~~Vice~~ President, Board of Directors

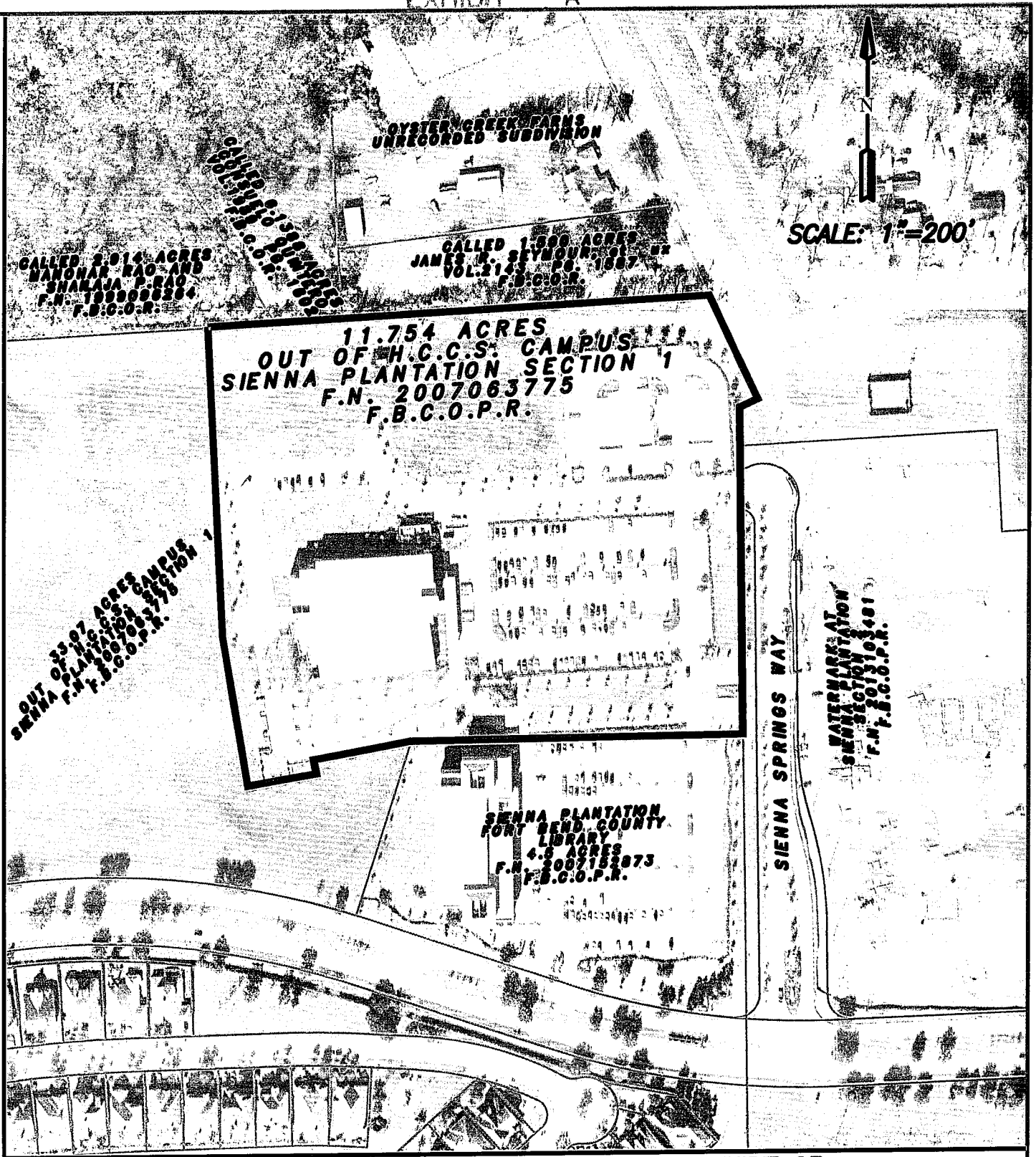
ATTEST:

  
\_\_\_\_\_  
~~Secretary, Board of Directors~~  
~~Vice president~~  
(SEAL)



**FORT BEND COUNTY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**EXHIBIT OF  
OUT OF DISTRICT SERVICE AGREEMENT  
FOR 11.754 ACRES TRACT**

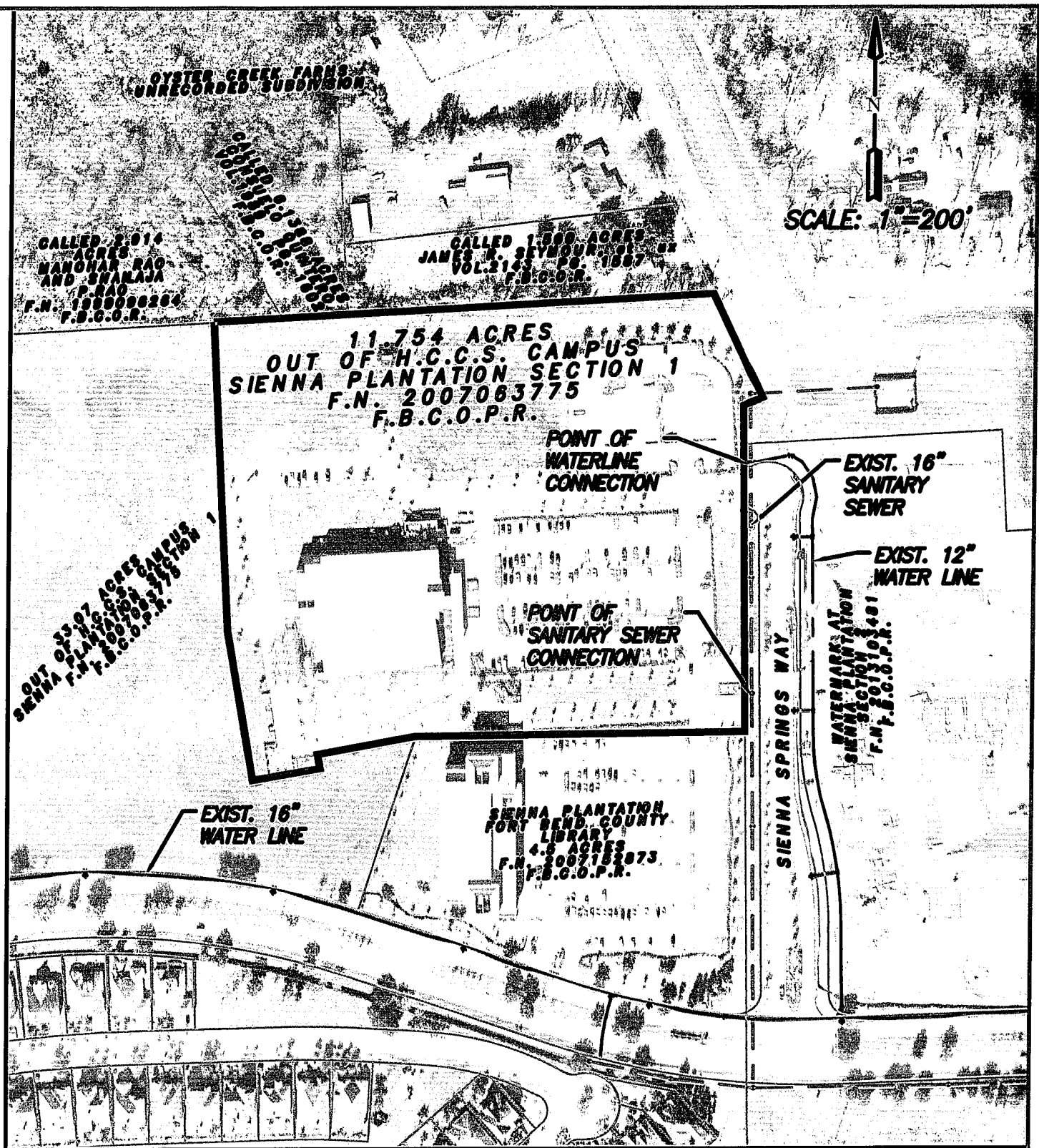
DATE	REVISION	BY:

**LJA Engineering, Inc.**

2929 Briarpark Drive  
Suite 600  
Houston, Texas 77042



Phone 713.953.5200  
Fax 713.953.5026  
FRN - F-1386



**EXHIBIT OF**  
**OUT OF DISTRICT SERVICE AGREEMENT POINT OF**  
**INTERCONNECTION FOR 11.754 ACRES TRACT**

DATE	REVISION	BY:

**LJA Engineering, Inc.**

2929 Briarpark Drive  
Suite 600  
Houston, Texas 77042

Phone 713.953.5200  
Fax 713.953.5026  
FRN - F-1386

