



Control Number: 44621



Item Number: 1

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DOCKET NO. **44621** RECEIVED
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APPLICATION OF YES PREP PUBLIC §
SCHOOLS AND SUBURBAN UTILITY § PUBLIC UTILITY COMMISSION
CO TO DECERTIFY YES PREP §
PROPERTY FROM SUBURBAN WATER § OF TEXAS
COMPANY'S CERTIFICATED §
SERVICE AREA

**JOINT APPLICATION FOR DECERTIFICATION OF YES PREP PROPERTY FROM
SUBURBAN UTILITY CO.'S RETAIL WATER CERTIFICATED SERVICE AREA**

COMES NOW YES Prep Public Schools' (YES Prep) and Suburban Utility CO. (Suburban), and file this Joint Application for Removal of YES Property from Suburban's Retail Water Certificated Service Area (CCN No. 10835).

I. PROCEDURAL BACKGROUND

On January 15, 2015, YES Prep filed an application (Application) with the Public Utility Commission of Texas (Commission) for the issuance of an emergency order pursuant to 16 TEX. ADMIN. CODE § 24.14 to allow YES Prep to receive water service from the District, rather than its current water provider Suburban. On January 16, 2015, the Commission Administrative Law Judge (ALJ) issued Order No. 1, requiring Staff to file a response to the Application by January 22, 2015, including comments regarding sufficiency of the Application and propose a procedural schedule for processing this Application.

On January 22, 2015, Staff filed a response to Order No. 1, noting that Staff was in contact with YES Prep and Sunbelt FWSD and was working to ascertain additional details regarding the Application. On January 27, 2015, YES Prep amended the Application (Amended Application) for an emergency order¹ and later filed copies of the minutes of the District's December 4, 2014 meeting indicating that Sunbelt would serve YES Prep upon a showing of proper documentation.

On January 29, 2015, Suburban filed its response to YES Prep's Amended Application. The matter was considered at the January 30, 2015 Open Meeting. The Commissioners

¹ See *YES Prep Public School's Amendment to Emergency Order Application*, P.U.C. Docket No. 44322, January 27, 2015.

continued the matter until the February 12, 2015 Open Meeting to allow Staff time to provide its recommendation after consideration of the Amended Application and response. Staff filed its Second Response to Order No.1 on February 4, 2015.

On February 9, 2015, representatives of and counsel for Suburban, YES Prep, and Staff met at Commission offices to conduct settlement discussions. The general counsel for YES Prep and counsel for the District joined by conference call.

On February 26, 2015, Order No. 2 was issued granting the motion to admit evidence.

On March 6, 2015, the Emergency Order requested by YES Prep was approved by the PUC Commissioners at an Open Meeting.

On March 17, 2015, the Emergency Order requested by YES Prep was executed by the PUC Commissioners

II. JOINT APPLICATION

1. Suburban is a Texas corporation that operates as an investor-owned utility providing water service in the greater Houston area. Suburban possesses Certificate of Convenience and Necessity ("CCN") No. 10835 ("Suburban Certificate") originally issued by the Public Utility Commission of Texas ("PUC") and now regulated by the PUC. The Suburban Certificate requires Suburban to furnish continuous and adequate water utility service to the public at fair, just, and reasonable rates and grants to Suburban the exclusive right to furnish water service to a defined geographical area in Harris County ("Suburban Certificated Service Area"). Suburban owns and operates several public water systems in the Certificated Service Area, including the Castlewood Subdivision system (Public Water System ID #10101111), that provides water service to YES Prep's North Central Campus.
2. YES Prep is a Texas non-profit corporation that organized under the Texas Non-Profits Corporation Act and is a Texas Open Enrollment Charter School authorized by Chapter 12 of the Texas Education Code that has a campus located in the Aldine area known as the North Central Campus ("Property") that is currently located within Suburban Certificated Service Area and is receiving retail water service from Suburban. A map of

YES Prep's Property is attached as Exhibit A and a legal description of the Property is attached as Exhibit B.

3. YES Prep currently has an eight (8) inch water line that connects the North Central Campus to the distribution system of a nearby water utility, Sunbelt Fresh Water Supply District ("Sunbelt"), for fire flow purposes, and YES Prep believes it will be able to obtain continuous and adequate water service for the Property from Sunbelt.
4. YES Prep and Suburban entered into a Settlement Agreement dated February 25, 2015 attached hereto as Exhibit C.
5. Section 2.02 of the Settlement Agreement provides that Suburban hereby agrees to release YES Prep's North Central Campus from Suburban's Certificated Service Area in exchange for a payment by YES Prep of sixteen thousand two hundred and fifty and no/100 dollars (\$16,250) to be made by YES Prep upon PUC issuing an Agreed Emergency Order and a second payment by YES Prep of sixteen thousand two hundred and fifty and no/100 dollars (\$16,250) to be made by YES Prep upon the PUC issuing and Agreed CCN Decertification Order.
6. YES Prep desires to be decertified or have its Property removed from Suburban's retail water certificated service area (CCN No. 10835).
7. In compliance with Ordering Paragraph No. 4 of the Emergency Order, YES Prep and Suburban submit this joint application to decertify YES Prep's Property from Suburban's retail water certificated service area (CCN No. 10835).

III. CONCLUSION

The parties recommend that an order be issued granting the joint application for decertification. The parties understand that the joint application was not filed within the seven (7) days following the date of the emergency order as provided in the Emergency Order but the parties worked diligently to prepare this joint application and respectfully ask for the Commission to find the filing of this joint application in compliance with the Commission's Emergency Order.

DATED: APRIL 8, 2015

Respectfully Submitted,

YES PREP PUBLIC SCHOOLS



Ty H. Embrey
Lloyd, Gosselink, Rochelle, and Townsend, PC
816 Congress Avenue, Suite 1900
Austin, Texas 78701
(512) 322-5829
(512)-472-0532 (facsimile)

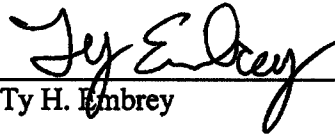
SUBURBAN UTILITY CO.



Les Romo
Law Offices of Les Romo
307 Shannon Lane
Georgetown, Texas 78626
(512) 868-5600
(512) 591-7815 (facsimile)

DOCKET NO. 44322
CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on April 8, 2015, in accordance with P.U.C. Procedural Rule 22.74.



Ty H. Embrey

EXHIBIT A – MAP OF YES PREP’S NORTH CENTRAL CAMPUS



EXHIBIT B –
LEGAL DESCRIPTION OF YES PREP'S NORTH CENTRAL CAMPUS PROPERTY

Exhibit B – Legal Description of YES Prep's North Central Campus Property

Tract I

Lots One Hundred Sixty (160), One Hundred Sixty-One (161), and that part of Lot One Hundred Sixty-Two (162) that lies West of Houston Spring Creek Road (Aldine Westfield Road), in Magnolia Gardens, a subdivision out of the W.S. Novell Survey, in Harris County, Texas, according to the map or plat thereof, recorded in Volume 50, Page 640 of the Deed Records of Harris County, Texas, SAVE AND EXCEPT that certain 0.06 acre tract conveyed to the County of Harris by Deed dated December 16, 1935, filed for record in Volume 1009, Page 62 of the Deed Records of Harris County, Texas.

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Lot One Hundred Seventy-Five (175) of the Magnolia Gardens Subdivision, being out of the W.S. Novell Survey, in Harris County, Texas, according to the map or plat thereof recorded in Volume 50, Page 640 of the Deed Records of Harris County, Texas, SAVE AND EXCEPT a 0.1136 acre tract of land, being the South fifteen (15) feet of Lot One Hundred Seventy-Five (175), conveyed by Raymond C. Johnson, a single man, to County of Harris, recorded in Volume 6328, Page 216 of the Deed Records of Harris County, Texas.

Tract III

That part of Lot 176 West of Aldine-Westfield Rd., being the same land conveyed by Olga R. Shrake et al, to S.S. McClendon, Jr., Trustee by Deed filed May 28, 1956, recorded in Vol. 3161, Page 320, of the Deed Records, containing 3.33 acres of land; save and except a 0.0812 acre tract conveyed to Harris County by instrument recorded in Volume 6293, Page 148, of the Deed Records of Harris County, Texas.

- **Permitted Exceptions:**

An easement ten (10) feet in width and 256.8 feet in length, an unobstructed aerial easement five (5) feet wide from a plane twenty (20) feet above the ground upward, located on both sides of and adjoining said ten (10) feet wide easement, as set forth and defined in instrument granted to Houston Lighting & Power Company, recorded under Harris County Clerk's File No. G407671, exact location of which is shown on Sketch No. N79-104 attached thereto and made a part thereof. (As to Tract II only).

EXHIBIT C – SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT

The parties to this Settlement Agreement (collectively, the "Parties") are YES Prep Public Schools Inc. ("YES Prep"), a Texas non-profit corporation and a Texas Open-Enrollment Charter School, Suburban Utility CO, a Texas corporation ("Suburban"). Staff of the Public Utility Commission of Texas (Staff) ("PUC") is not a party to this settlement agreement, but does not oppose it.

SECTION 1

RECITALS

1.01 Suburban is a Texas corporation that operates as an investor-owned utility providing water service in the greater Houston area. Suburban possesses Certificate of Convenience and Necessity ("CCN") No. 10835 ("Suburban Certificate") originally issued by the Texas Commission on Environmental Quality ("TCEQ") and now regulated by the Public Utility Commission of Texas ("PUC"). The Suburban Certificate requires Suburban to furnish continuous and adequate water utility service to the public at fair, just, and reasonable rates and grants to Suburban the exclusive right to furnish water service to a defined geographical area in Harris County ("Suburban Certificated Service Area"). Suburban owns and operates several public water systems in the Certificated Service Area, including the Castlewood Subdivision system (Public Water System ID #10101111), that provides water service to YES Prep's North Central Campus.

1.02 YES Prep is a Texas non-profit corporation that organized under the Texas Non-Profits Corporation Act and is a Texas Open Enrollment Charter School authorized by Chapter 12 of the Texas Education Code that has a campus located in the Aldine area known as the North Central Campus that is currently located within Suburban Certificated Service Area and is receiving retail water service from Suburban. 1.03.

1.03 YES Prep currently has an eight (8) inch water line that connects the North Central Campus to the distribution system of Sunbelt Fresh Water Supply District ("Sunbelt") for fire flow purposes.

1.04 On January 15, 2015, YES Prep filed an application ("Application") with the PUC for the issuance of an emergency order pursuant to 16 TEX. ADMIN. CODE § 24.14 to allow YES Prep's North Central Campus to receive retail water service from Sunbelt. On January 27, 2015, YES Prep amended its Application for an emergency order.

1.05 The Application was considered at the January 30, 2015 Open Meeting of the PUC and the PUC Commissioners continued the matter until the February 12, 2015 Open Meeting.

1.06 On February 9, 2015, representatives of and counsel to Suburban, YES Prep, Sunbelt and PUC staff conducted settlement discussions.

1.07 As a result of the settlement discussion, the Parties filed a Joint Motion of Continuance with the PUC Commissioners. The PUC Commissioners did not take any action on the Application at the February 12, 2015 Open Meeting.

1.08 It is the agreement of the Parties that this Settlement Agreement provide for the full and final settlement of all regulatory and litigation matters and claims asserted or that could have been asserted by and between YES Prep and Suburban at the PUC and in State or Federal court related to the provision of water service to YES Prep's North Central Campus.

1.09 The Parties desire to avoid the further annoyance, cost, delay, and uncertainty associated with the regulatory and litigation matters and to evidence that settlement by executing this formal Settlement Agreement. It is the intent of the Parties that this Settlement Agreement resolves all disputed issues between YES Prep and Suburban.

1.10 Therefore, in order to fully and finally compromise and settle all claims that have been asserted or that could have been asserted in the Application and other regulatory and litigation matters by and between YES Prep and Suburban, the Parties hereby enter into this Settlement Agreement.

SECTION 2

TERMS OF AGREEMENT

In full consideration of the mutual promises and agreements contained in this Settlement Agreement, including the Recitals set forth in Section 1 above, the Parties agree as follows:

2.01 **Intent and Agreement of Parties to Settle Regulatory and Litigation Matters.** It is the intent and hereby agreement of YES Prep and Suburban that this Settlement Agreement provide for full and final settlement of all matters and claims, of any kind and nature, asserted or that could have been asserted or that could be asserted in the future by and between YES Prep or Suburban in the Application, other regulatory matters, and litigation related to the provision of water service to the YES Prep's North Central Campus.

2.02 **Release of YES Prep's North Central Campus from Suburban's Retail Water CCN Service Area.** Suburban hereby agrees to release Yes Prep's North Central Campus as identified on the map attached hereto as Exhibit "A" and legal description attached hereto as Exhibit "B" as may be amended from time to time from Suburban's Certificated Service Area in exchange for an initial payment of sixteen thousand two hundred and fifty and no/100 dollars (\$16,250) to be made by YES Prep to Suburban by certified mail or overnight delivery within seven (7) calendar days of the PUC issuing an Agreed Emergency Order as provided in Section 2.04 of this Agreement and a second payment of sixteen thousand two hundred and fifty and no/100 dollars (\$16,250) to be made by YES Prep to Suburban by certified mail or overnight delivery within seven (7) calendar days of the PUC issuing an Agreed CCN Decertification Order officially decertifying YES Prep's North Central Campus from Suburban's Certificated Service Area as provided in Section 2.03.

2.03 **Effort by Parties to File a Joint Petition to Decertify.** The Parties hereby agree to work cooperatively to file a joint petition or equivalent with the PUC within seven days of issuance of the emergency order that requests decertification of YES Prep's North Central Campus from Suburban's Certificated Service Area.

2.04 **Joint Effort by Parties to Obtain Agreed Emergency Order.** The Parties hereby agree to work cooperatively to obtain an agreed emergency order that enables YES Prep's North Central Campus to obtain water service from Sunbelt on an emergency basis. A Proposed Agreed Emergency Order that has been hereby agreed-to by the Parties is attached hereto as Exhibit "D".

2.05 **YES Prep authorized to seek retail water service from Sunbelt.** The Parties hereby agree that YES Prep will be authorized to seek service from Sunbelt, per the agreement of YES Prep and Suburban in accordance with the orders or equivalents issued by the PUC and subject to Sunbelt obtaining any necessary regulatory authorizations from TCEQ or other local regulatory agencies.

2.06 **YES Prep will withdraw from Suburban's Pending Application for Water Rate/Tariff Change.** YES Prep hereby agrees to submit its withdrawal in writing to the PUC from Suburban's water rate/tariff change currently pending at the State Office of Administrative Hearings (SOAH Docket No. 473-14-5141 / PUC Docket No. 42859) within seven (7) days of the Effective Date of this Agreement.

2.07 **YES Prep will not file a lawsuit, join as a party in any pending lawsuits, or make any other legal claims against Suburban related to water service to North Central Campus.** Yes Prep agrees to not file any lawsuits, join as a party in any pending lawsuits, or make any other legal claims against Suburban related to the provision of water service to YES Prep's North Central Campus nor intervene in any pending lawsuits against Suburban for the same reasons, including the Application for Emergency Order, Suburban's pending rate case, and pending case filed by the State of Texas against Suburban filed in the District Court in Travis County, 353rd Judicial District (Cause No. D-1-GN-14-003376).

2.08 **YES Prep's comments to media regarding Suburban.** When YES Prep representatives are contacted by media regarding the water service provided by Suburban to YES Prep's North Central Campus, YES Prep and Suburban agree that YES Prep representatives can tell the media that YES Prep and Suburban have worked together to find a solution that works for both YES Prep and Suburban and that YES Prep is confident that the water needs of YES Prep's North Central Campus will be met based on the agreed-to solution that enables YES Prep to obtain retail water service from Sunbelt. Further, YES Prep representatives will not make any negative statements or claims about Suburban and its water service to YES Prep's North Central Campus, nor will YES Prep initiate any press coverage nor any press releases or statements that make negative claims about Suburban and its water service to YES Prep's North Central Campus.

2.09 **Effective Date.** This Settlement Agreement shall be effective on the date that this Settlement Agreement is executed by the last of the authorized representatives of all Parties hereto.

SECTION 3

ADDITIONAL TERMS OF AGREEMENT

3.01 This Settlement Agreement is solely for the benefit of the Parties hereto. There are no third party beneficiaries of this agreement.

3.02 Any reference to a state or federal administrative agency in this Settlement Agreement, such as the PUC includes the named agency's predecessor and successor agencies, if any.

3.03 In executing this Settlement Agreement, the Parties acknowledge that they are not relying on any statement or representation of any other Party regarding the matters in dispute. Each of the Parties is relying on their own judgment and each is represented by attorneys in this matter.

3.04 This Settlement Agreement is a compromise of disputed claims. Nothing in this Settlement Agreement is an admission of liability by any of the Parties hereto, and nothing in this Settlement Agreement may be interpreted as an admission of liability. Each of the Parties to this Settlement Agreement expressly denies liability to the other Parties to this Settlement Agreement.

3.05 This Settlement Agreement is to comply with the laws of the State of Texas and the laws of the United States. The Parties agree that this Settlement Agreement is governed by, and will be construed and enforced in accordance with Texas law and United States law where applicable. Exclusive venue for any lawsuit related to this Settlement Agreement shall be in Harris County, Texas, except that:

(a) to the extent required or permitted by law, venue is in Travis County, Texas, for any lawsuit related to PUC enforcement of CCN holder obligations required by the water CCNs issued to Suburban to effect the terms of this Settlement Agreement;

3.06 This Settlement Agreement is binding on and inures to the benefit of the Parties and their respective administrators, legal representatives, officers, agents, employees, successors and assigns. Neither Party may assign this Settlement Agreement, or any right or interest herein, without the express written permission of the other party.

3.07 This Settlement Agreement contains the entire agreement between the Parties and it supersedes any and all prior agreements, arrangements or understandings between the Parties on the Administrative Proceeding or in this Settlement Agreement. No oral understandings, statements, promises or inducements contrary to or inconsistent with the terms of this Settlement Agreement exist. This Settlement Agreement is not subject to any oral modification, waiver, addition or deletion, and any modification, waiver, addition or deletion of any provision in this Settlement Agreement must be made in writing and signed by the Parties affected by the modification, waiver, addition or deletion.

3.08 For purposes of notice, the addresses, telephone numbers and fax numbers of the Parties are as follows:

YES Prep Public Schools Inc.

YES Prep Public Schools
Attn: Nicole Montgomery, General
Counsel
6201 Bonhomme Road, Suite 168N

Suburban Utility CO

Suburban Utility CO
Attn: Mitchell M. Martin, Jr.,
President
27493 Hanna Road #2

Houston, Texas 77036
Telephone: (713) 967-9075
Fax:

Conroe, Texas 77385
Telephone: (281) 367-4065

With copy to:

Ty Embrey
Lloyd Gosselink Rochelle &
Townsend, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701
Telephone: (512) 322-5829
Fax: (512) 472-0532

With copy to:

Les Romo
Law Offices of Les Romo
307 Shannon Lane
Georgetown, Texas 78626
Telephone: (512) 868-5600
Fax: (512) 591-7815

For purposes of notice under this Settlement Agreement, any Party that changes its address, email address or fax number must give the other Party at least seven (7) days' notice of the change.

3.09 This Settlement Agreement may be executed in multiple counterparts, including scanned electronic copies, each of which shall be deemed an original for all purposes.

3.10 This Settlement Agreement has been prepared and drafted by the joint efforts of the respective attorneys for each of the Parties and thus shall be construed equally against all Parties.

3.11 If any provision of this Settlement Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Settlement Agreement, such provision(s) shall be fully severable.

3.12 The Parties agree to cooperate fully and to execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Settlement Agreement.

3.13 This Settlement Agreement contains the entire agreement by and between the Parties with respect to any disputes between the Parties related to the provision of water service by Suburban to YES Prep's North Central Campus.

3.14 Each of the Parties shall be responsible for paying its own legal costs and expenses including, without limitation, attorney's fees, expert witness fees, professional services fees, court costs and related expenses incurred in connection with any litigation or with this Settlement Agreement.

3.15 The attached Exhibits to this Settlement Agreement are incorporated herein by reference for all purposes as if set forth verbatim.

3.16 **Default:** In the event that either party shall fail to comply with any of its obligations under this agreement, and shall fail to remedy its default/failure to comply within thirty (30) calendar days or ten (10) calendar days for any obligation associated with the Agreed Emergency Order following a written notice of default served by the non-defaulting party upon the defaulting party that specifies with particularity what the default/failure to comply comprises, then in that event, the non-defaulting party shall be entitled to the following remedies which shall be *cumulative* and non-exclusive:

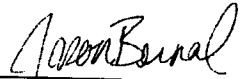
(a) In the event the non-defaulting party engages legal counsel to enforce the provisions of this Settlement Agreement, the non-prevailing party in such enforcement action/proceeding shall pay all of the prevailing party's reasonable legal expense plus all reasonable litigation expense (including expert witness fees, costs, and the like).

(b) The non-defaulting party shall be entitled, in addition to any remedies it is entitled to at law (i.e. for damages for breach), shall be further entitled to the remedy of specific performance.

SIGNED AND EXECUTED by the Parties on the dates shown by their signatures.

DATE: 2/25/2015

YES PREP PUBLIC SCHOOLS INC.

By: 
Jason Bernal, President & CEO

DATE: FEB. 25, 2015

SUBURBAN UTILITY CO

By: Mitchell M. Martin Jr.
Mitchell Martin, Jr., President

DATE: Feb 25, 2015

STAFF OF THE PUBLIC UTILITY
COMMISSION OF TEXAS, *does not*
oppose the Settlement Agreement or entry of
an Emergency Order

By: Christine Marmora
Staff, Public Utility Commission

Exhibit A – Map of YES Prep’s North Central Campus Property

Q time Viersfeld Rd; Houston, TX X

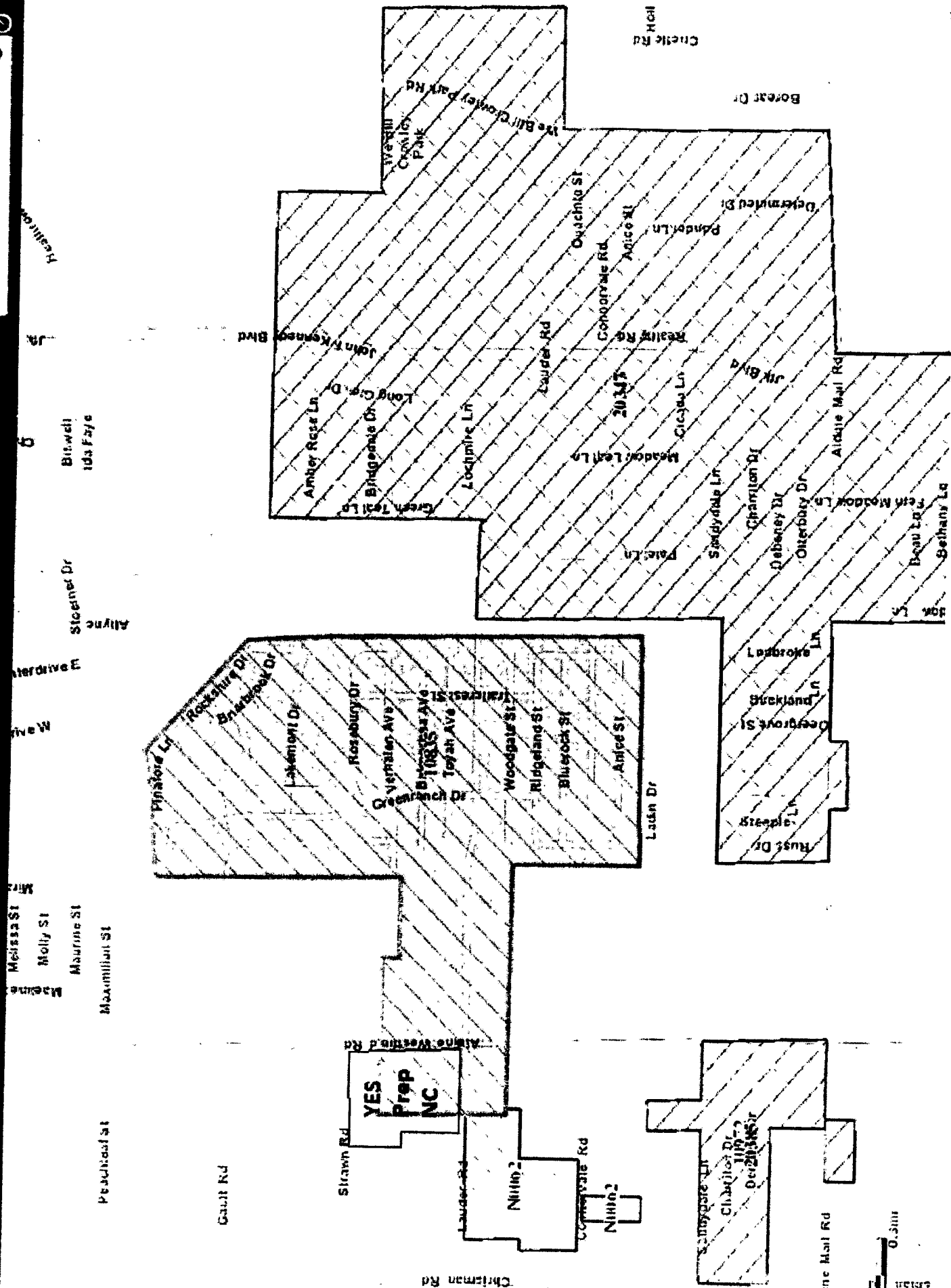


Exhibit B – Legal Description of YES Prep's North Central Campus Property

Tract I

Lots One Hundred Sixty (160), One Hundred Sixty-One (161), and that part of Lot One Hundred Sixty-Two (162) that lies West of Houston Spring Creek Road (Aldine Westfield Road), in Magnolia Gardens, a subdivision out of the W.S. Novell Survey, in Harris County, Texas, according to the map or plat thereof, recorded in Volume 50, Page 640 of the Deed Records of Harris County, Texas, SAVE AND EXCEPT that certain 0.06 acre tract conveyed to the County of Harris by Deed dated December 16, 1935, filed for record in Volume 1009, Page 62 of the Deed Records of Harris County, Texas.

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- **Permitted Exceptions:**

An easement ten (10) feet in width and 256.8 feet in length, an unobstructed aerial easement five (5) feet wide from a plane twenty (20) feet above the ground upward, located on both sides of and adjoining said ten (10) feet wide easement, as set forth and defined in instrument granted to Houston Lighting & Power Company, recorded under Harris County Clerk's File No. G407671, exact location of which is shown on Sketch No. N79-104 attached thereto and made a part thereof. (As to Tract II only).