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DOCKET NO. 53728

REQUEST OF CITY OF AMES	§	PUBLIC UTILITY COMMISSION
FOR EMERGENCY ORDER	§	
TO MAINTAIN SEWER SERVICE	§	OF TEXAS
FROM CITY OF LIBERTY	§	

**CITY OF AMES' RESPONSE TO
COMMISSION STAFF'S MOTION TO DISMISS**

TO THE PUBLIC UTILITY COMMISSION OF TEXAS:

COMES NOW, the City of Ames, Texas, ("Ames"), and files this Response to the Public Utility Commission of Texas ("Commission" or "PUC") Staff's Motion to Dismiss ("Motion") Ames' request for an emergency order to compel the City of Liberty ("Liberty") to maintain sewer service and, in support thereof, would show the following:

**I.
ADDITIONAL FACTS AFFECTING COMMISSION JURISDICTION**

Ames provided a detailed list of facts in its request for emergency order. *See* Ames' Amendment to Request for Emergency Order at 1-4. However, Ames believes there are additional facts that must be considered before the PUC rules on the Commission Staff's Motion.

The Liberty-Ames Wastewater Disposal Contract (As Amended) (the "Contract") provided the terms of Liberty's wholesale sewer service to Ames, but it also allowed Ames to provide retail sewer service within the Ames-Minglewood Water Supply Corporation ("WSC") water Certificate of Convenience and Necessity ("CCN"). Section 4.2 of the Contract states, "[t]he primary purpose of this contract is to provide sewer service to the CITY OF AMES and to allow AMES to provide sewer service within AMES' extraterritorial jurisdiction and the territory encompassed in the AMES-MINGLEWOOD WATER SUPPLY CORPORATION certificate of convenience and necessity." *See* Ames' Request for Emergency Order, Attachment A, Exhibit 2, Section 4.2. A large portion of the Ames-Minglewood WSC CCN is located within Liberty's

active sewer CCN No. 20056. *See* Exhibit A, Maps of Liberty’s CCN No. 20056. Specifically, one of Ames’ sewer system lines extends into Liberty’s CCN up to a large group of homes around Cardinal Drive and Bobwhite Drive in Liberty, directly adjacent to the Liberty Municipal Golf Course and Magnolia Ridge Country Club. *See* Exhibit B, Map of Ames’ Sewer System.

Liberty suspended the Contract effective July 1, 2022. *See* Ames’ Request for Emergency Order, Attachment B (Letter re: “Suspension of Services re: March 14, 2001 Contract between City of Ames and City of Liberty for Sewer Disposal, dated January 5, 2022). Liberty is only providing wholesale water service to Ames pursuant to the Texas Commission on Environmental Quality’s (“TCEQ”) Emergency Order dated June 29, 2022, associated with TCEQ Docket No. 2022-0763-UCR-E. The TCEQ Emergency Order is silent as to how Ames’ retail sewer service within Liberty’s CCN is to be maintained, resolved, or settled. Liberty has a legal obligation to provide retail sewer service to this area. *See* Tex. Water Code § 13.250 (Liberty is now required, by law, to “render continuous and adequate service” to those areas which are within its CCN). Liberty has given Ames no indication on how it intends to address retail sewer service of this area within its CCN.

II.

ARGUMENTS IN RESPONSE TO STAFF’S MOTION

The Commission Staff determined that Ames request was administratively complete, and that notice was sufficient under the PUC rules. *Id.* at 3-4. However, the Commission Staff moves for “dismissal of Ames application for emergency order in this docket.” PUC Staff’s Motion at 3. The Staff stated that, “this docket is an unnecessary duplication of the TCEQ’s proceedings to consider a request by Ames similar to the one in this docket.” *Id.* The PUC Staff also reasoned that, “the Commission’s primary mission with respect to sewer service is economic regulation whereas TCEQ’s primary mission with respect to sewer service is to ensure safe drinking water

and environmental protection.” *Id.* at 3.

Ames neither disagrees with the PUC Staff’s analysis of each agency’s jurisdiction nor does it wish to create unnecessarily duplicative proceedings. Although the TCEQ’s Emergency Order does address Ames’ main concern, suspended wholesale wastewater service, there are other issues Ames contends can only be addressed by the PUC. In this case, the issue of retail sewer service within Liberty’s CCN and the Ames-Minglewood WSC CCN creates multiple questions associated with economic regulation that should be addressed by the Commission and not the TCEQ. Which city is now required to provide retail sewer service to this area? Can (or must) Ames discontinue service to this area? Should Ames be compensated for its infrastructure in the area? Can Liberty suspend wholesale sewer service when that suspension effectively cuts off retail sewer service to Ames’ current customers located within Liberty’s own sewer CCN? These questions may remain even if the “safe drinking water and environmental protection” concerns that are the focus of the TCEQ Emergency Order pursuant to Section 13.041(h) of the Texas Water Code are addressed. For example, Liberty’s focus seems to be forcing Ames to find an alternative wholesale wastewater provider. Even if Ames successfully finds an alternative wholesale provider, all of the issues associated with Ames’ service within Liberty’s CCN remain. The TCEQ issues would be addressed, but none of the economic regulation related questions would be resolved.

Ames requested that the PUC issue an emergency order to avoid suspension of wastewater service by Liberty. Specifically, Ames seeks an emergency order pursuant to Tex. Water Code § 13.041(d), which provides as follows:

- (d) In accordance with Subchapter K-1, the utility commission may issue emergency orders, with or without a hearing:
 - (1) to compel a retail public utility that has obtained or is required to obtain a certificate of public convenience and necessity to provide continuous and adequate water service, sewer service, or both, if the discontinuance of the service is imminent or has occurred because of the retail public utility's actions or failure to act; and
 - (2) to compel a retail public utility to provide an emergency interconnection with a neighboring retail public utility for the provision of temporary water or sewer service, or both, for not more than 90 days if service discontinuance or serious impairment in service is imminent or has occurred.

Here, Liberty's action falls squarely within the PUC's jurisdiction. Liberty's threatened "discontinuance of the service is imminent or has occurred because of the retail public utility's actions." Liberty's suspension has not only discontinued wholesale wastewater service to Ames, but it has also effectively discontinued retail wastewater service to customers located within its own CCN.

III. REQUEST TO PUC FOR EMERGENCY ORDER

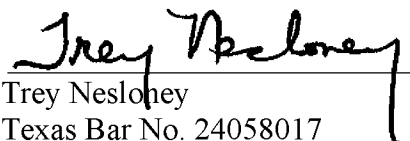
Based on the issues noted above and the recent TCEQ Emergency Order issued, Ames now requests an emergency order from the PUC beginning on the day the TCEQ Emergency Order ends. This PUC emergency order, granted pursuant to Tex. Water Code § 13.041(d), could be contingent on Liberty addressing the issues associated with Ames' retail sewer service of customers located within the Ames-Minglewood WSC CCN and Liberty's active sewer CCN No. 20056. The term of the PUC emergency order could be for 180 days after the TCEQ Emergency Order ends. *See* 16 Tex. Admin. Code § 24.14(f).

IV.
CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Ames respectfully requests that the PUC deny the Commission Staff's Motion and, without a hearing, issue an emergency order under Tex. Water Code § 13.041(d) compelling Liberty to continue to provide adequate sewer service to Ames and its customers beginning on the date the TCEQ Emergency Order ends. This PUC order could be for a term of 180 days and be contingent on Liberty addressing the issues associated with Ames' retail sewer service of customers located within the Ames-Minglewood WSC CCN and Liberty's active sewer CCN No. 20056. Ames also requests any such further relief to which it may be entitled.

Respectfully submitted,

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ATTORNEYS FOR CITY OF AMES

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent on this the 18th day of July, 2022 to the legal counsel for the City of Liberty and the City of Hardin as listed below:

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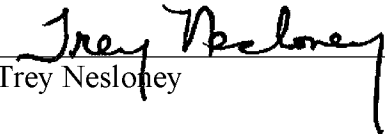
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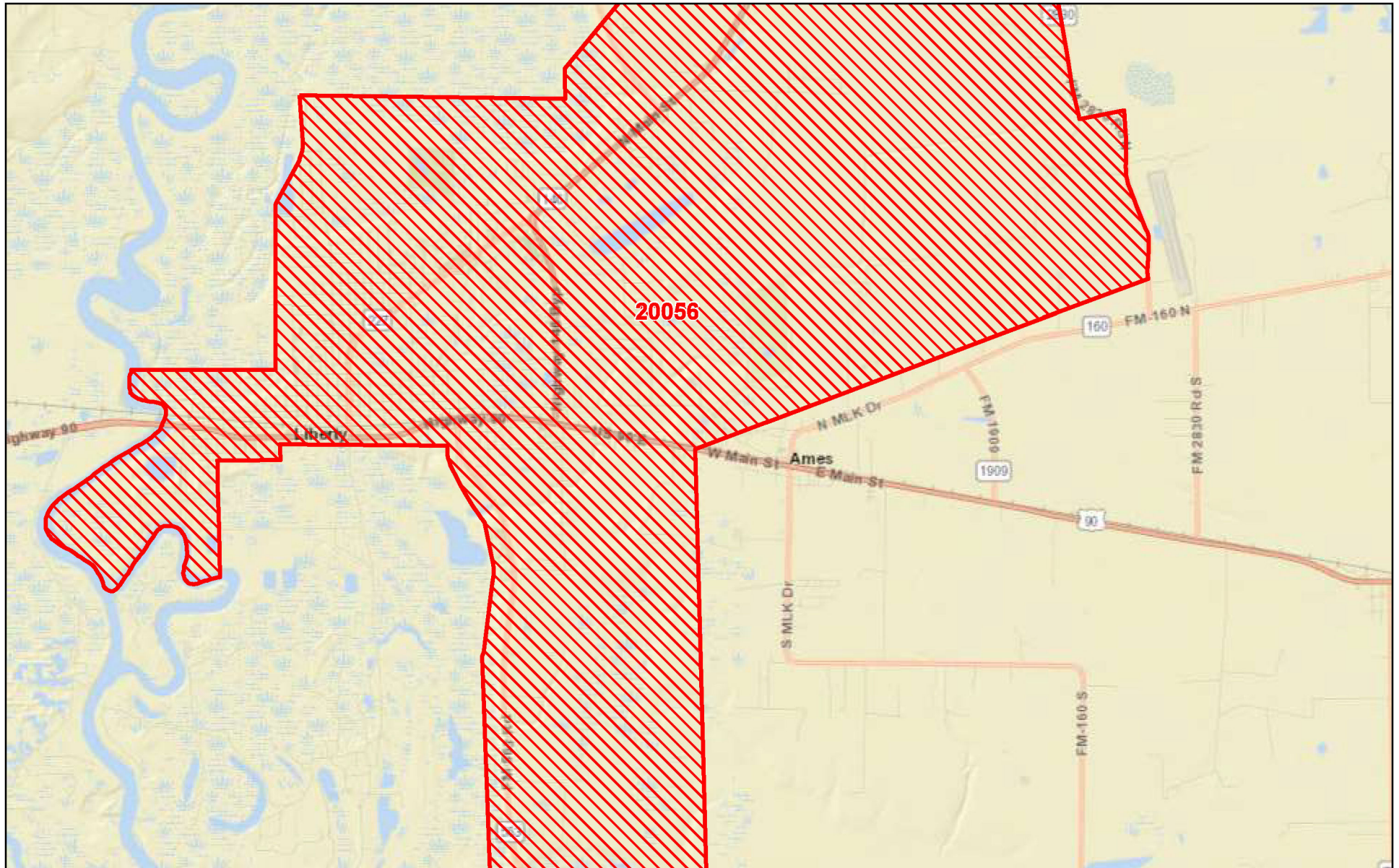
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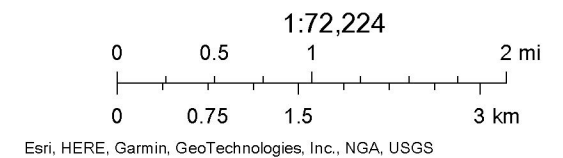
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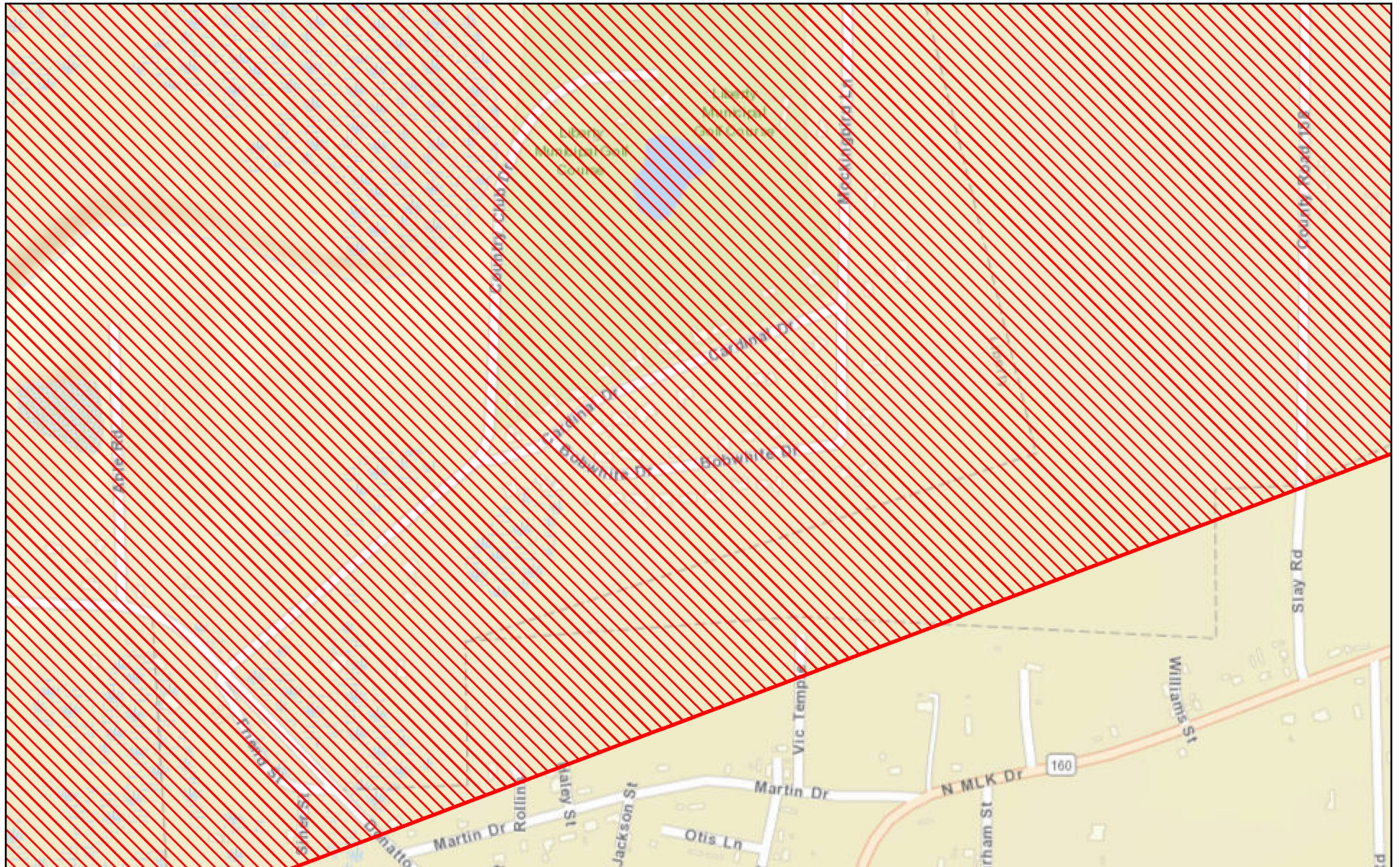
City of Liberty CCN 20056



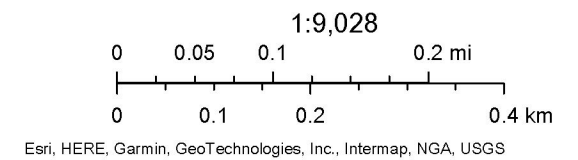
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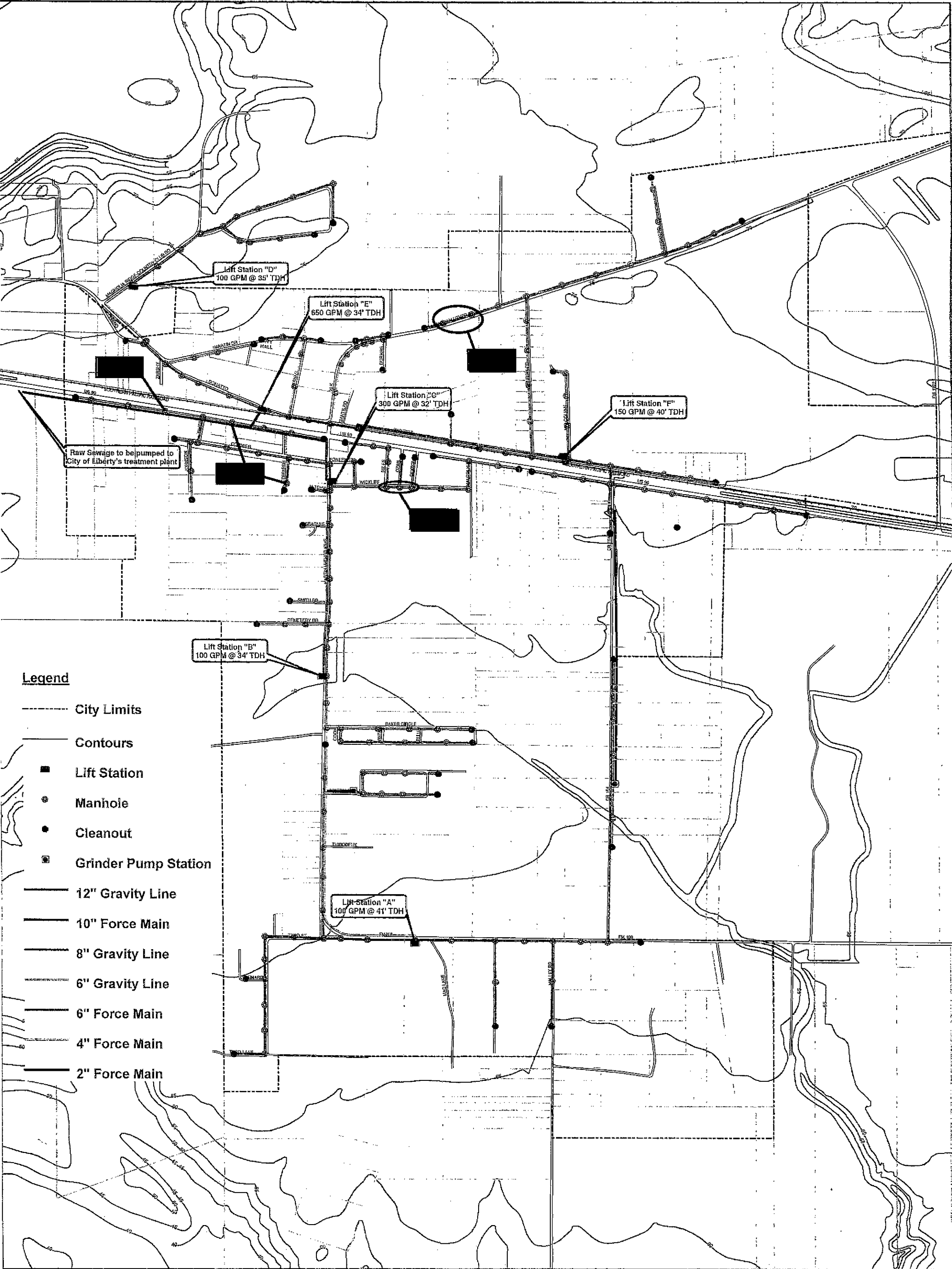


City of Liberty CCN 20056



July 15, 2022





Legend

- City Limits
- Contours
- Lift Station
- Manhole
- Cleanout
- Grinder Pump Station
- 12" Gravity Line
- 10" Force Main
- 8" Gravity Line
- 6" Gravity Line
- 6" Force Main
- 4" Force Main
- 2" Force Main

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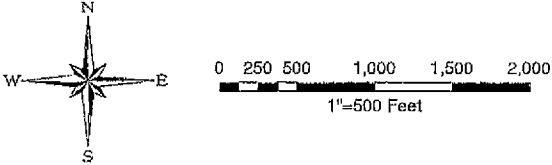


EXHIBIT "L"
2007
CITY OF AMES, TEXAS
EXISTING WASTEWATER
COLLECTION SYSTEM