

## UTILITY AGREEMENT

This Utility Agreement (this "Agreement") is entered into as of July 15, 2024 (the "Effective Date") by and between **Harris County Municipal Utility District No. 391**, a conservation and reclamation district and a political subdivision of the State of Texas, organized as a municipal utility district under the provisions of Article XVI, Section 59, Texas Constitution ("MUD 391"), and **MAK Development Group** ("MAK"), on behalf of proposed **Harris County Municipal Utility District No. 592**, a conservation and reclamation district and a political subdivision of the State of Texas, to be created and organized as a municipal utility district under the provisions of Article XVI, Section 59, Texas Constitution ("MUD 592"). MUD 391 and MUD 592 are referred to individually herein as a "District" and collectively as the "Districts."

### RECITALS

MAK proposes to develop the land described on **Exhibit A** (the "MAK Tract") and is in the process of creating MUD 592 over the MAK Tract for the provision of water, sewer, drainage, road, and park facilities to serve the MAK Tract.

MUD 391 was created to, in part, provide water and sanitary sewer facilities to serve the land within its boundaries.

MAK, acting on behalf of proposed MUD 592, and MUD 391 desire to share certain MUD 391 facilities which include the Water Plant and the Wastewater Treatment Plant (defined below), to serve the MAK Tract as well as MUD 391.

MUD 391 currently has surplus capacity in the Water Plant and Wastewater Treatment Plant to serve the MAK Tract.

MAK, on behalf of proposed MUD 592, and MUD 391 desire to enter into this Agreement (i) for the sale of capacity in the Water Plant and the Wastewater Treatment Plant from MUD 391 to MUD 592; and (ii) to provide the terms and conditions for the joint operation and maintenance of the Water Plant and the Wastewater Treatment Plant after such sale.

Upon creation and confirmation by the voters of MUD 592, MAK will assign its rights, duties and obligations under this Agreement to MUD 592, and MUD 592 will provide a copy of such executed assignment to MUD 391. All references in this Agreement to MUD 592 shall refer to either MAK or MUD 592, as applicable, and all references in this Agreement to the Districts shall refer to MUD 391 and either MAK or MUD 592, as applicable.

The Districts have determined that they are authorized to enter into this Agreement by the Constitution and laws of the State of Texas.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, obligations, and benefits herein set forth, the Districts contract and agree as follows:

### ARTICLE I

#### DEFINITIONS

**Section 1.1. Recitals Confirmed.** The recitals set forth above are declared true and correct and are hereby incorporated as part of this Agreement.

**Section 1.2. Definitions.** In addition to the terms defined elsewhere in this Agreement and unless the context requires otherwise, the following terms and phrases used in this Agreement shall have meanings as follows:

(a) **"Active Water Connection"** means an ESFC once it has been connected to the MUD 391 Water Distribution System, whether active or not.

(b) **"Active Wastewater Connection"** means an ESFC once it has been connected to the MUD 391 Wastewater Collection System, whether active or not.

(c) **"MAK Tract"** means the land described on **Exhibit A**.

(d) **"Construction Costs"** means all costs attributable to the acquisition or construction of a facility, including, but not limited to, the costs of construction or acquisition; costs of acquiring necessary licenses, permits, or amendments thereto; costs of acquiring necessary interests in real property and/or easements; costs of preparing plans and specifications and observing construction; costs of engineering and material-testing; fiscal, legal, administrative, advertising, and contingencies costs; platting; costs of legal proceedings or judgment; and all other costs and expenses of a similar or different nature reasonably required for the acquisition or construction of a facility.

(e) **"Current Wastewater Treatment Plant Capacity"** means the capacity of the Wastewater Treatment Plant as described in **Exhibit B**.

(f) **"Current Water Plant Capacity"** means the capacity of the Water Plant as described in **Exhibit C**.

(g) **"ESFCs"** means equivalent single family connections.

(h) **"General Plan"** means the conceptual land use plan for the proposed development of the MAK Tract, a copy of which is attached to this

Agreement as **Exhibit J**, as it may be revised from time to time in accordance with Section 13.5.

- (i) **"gpd"** means gallons per day, average daily flow.
- (j) **"Joint Facilities Account"** means the Joint Water Plant Facilities Account and the Joint Wastewater Treatment Plant Facilities Account.
- (k) **"Joint Wastewater Treatment Plant Facilities Account"** means a separate operating account for the Operation and Maintenance Expenses related to the Wastewater Treatment Plant to be shared by the Districts, to be administered by MUD 391.
- (l) **"Joint Water Plant Facilities Account"** means a separate operating account for the Operation and Maintenance Expenses related to the Water Plant to be shared by the Districts, to be administered by MUD 391.
- (m) **"Major Expenditure"** means an Operation and Maintenance Expense estimated to cost \$25,000 or more.
- (n) **"MUD 391 Bookkeeper"** means McLennan & Associates, LP, or its successor duly engaged by MUD 391.
- (o) **"MUD 391 Engineer"** means R. G. Miller Engineers, Inc., or its successor duly engaged by MUD 391.
- (p) **"MUD 391 Operator"** means Inframark Water & Infrastructure Services, or its successor duly engaged by MUD 391.
- (q) **"MUD 391 Wastewater Collection System"** means the Wastewater Collection System owned by MUD 391 to collect and transport wastewater to the Wastewater Treatment Plant, together with all extensions thereof and additions thereto.
- (r) **"MUD 391 Water Distribution System"** means the Water distribution system owned by MUD 391 to receive and distribute Water from the Water Plant, together with all extensions thereof and additions thereto.
- (s) **"MUD 592 Bookkeeper"** means the bookkeeper to be duly engaged by MUD 592 and any successor duly engaged by MUD 592.
- (t) **"MUD 592 Engineer"** means the engineer to be duly engaged by MUD 592 and any successor duly engaged by MUD 592.
- (u) **"MUD 592 Operator"** means the operator to be duly engaged by MUD 592 and any successor duly engaged by MUD 592.

(v) **"MUD 592 Wastewater Collection System"** means the Wastewater collection system to be constructed and owned by MUD 592, including the Wastewater Connection Facility, together with all extensions thereof and additions thereto, to collect and transport Wastewater from the MAK Tract to the Wastewater Point of Connection.

(w) **"MUD 592 Wastewater Treatment Plant Capacity"** means capacity in the Wastewater Treatment Plant sufficient to serve 755 ESFCs, as follows: 755 ESFCs of permanent Wastewater treatment capacity in the Wastewater Treatment Plant to be owned in equity by MUD 592 upon payment of the Wastewater Treatment Plant Capacity Payment, subject to the conditions of Section 6.1 of this Agreement and subject to the provision of the Wastewater Treatment Services by MUD 391 in accordance with Article VI of this Agreement. Subject to the provisions of Section 6.2(c), the MUD 592 Wastewater Treatment Plant Capacity has been determined assuming Wastewater treatment capacity of 220 gpd per ESFC; the actual number of ESFCs in the MUD 592 Wastewater Treatment Plant Capacity may be decreased by the MUD 391 Engineer if actual wastewater treatment usage within the MAK Tract exceeds 220 gpd per ESFC for more than 6 consecutive months.

(x) **"MUD 592 Water Distribution System"** means the water distribution system to be constructed and owned by MUD 592, including the Water Connection Facility, together with all extensions thereof and additions thereto, to receive and distribute Water from the Water Point of Connection to the MAK Tract.

(y) **"MUD 592 Water Plant Capacity"** means capacity in the Water Plant sufficient to supply 755 ESFCs, as follows: 755 ESFCs of permanent Water supply capacity in the Water Plant to be owned in equity by MUD 592 upon payment of the Water Plant Capacity Payment, subject to the conditions of Section 2.1 of this Agreement and the provision of the Water supply capacity by MUD 391 in accordance with Article III of this Agreement. The MUD 592 Water Plant Capacity has been determined based upon Water usage of 360 gpd per ESFC, and the number of ESFCs in the MUD 592 Water Plant Capacity may be decreased by the MUD 391 Engineer if actual Water usage within the MAK Tract exceeds 360 gpd per ESFC for more than 6 consecutive months.

(z) **"Operation and Maintenance Expenses"** means all costs and expenses, excluding Major Expenditures, reasonably incurred in or allocable to the operation and maintenance of the Water Plant and the Wastewater Treatment Plant, including, without limitation, contractual payments for the services of a utility operator and/or an independent contractor performing maintenance or repair functions on the facilities, supervision, chemicals, the purchase and carrying of stores, power, material and supplies, sludge disposal and handling charges, permit fees, including costs of renewals of the permits, legal fees, auditing, engineering consultations, testing, insurance, costs of billing MUD 592, repairs and replacements of damaged or worn-out



parts, administrative fines or penalties imposed regarding the operation of the facilities, water consumption charges or assessments, the costs of leasing any components, pumpage fees imposed by the North Harris County Regional Water Authority, mowing, seeding, de-silting, and all other items and expenses of a like nature which may be reasonably required for the efficient maintenance and operation of the facilities, and improvements, betterments, and modifications to keep the Water Plant and the Wastewater Treatment Plant in proper operation to render adequate services and to comply fully with all Regulatory Requirements.

(aa) **"Plans"** means the plans and specifications signed and sealed by a Texas registered professional engineer and approved by all regulatory authorities with jurisdiction for the respective facilities described in this Agreement.

(bb) **"Proportionate Share"** means each District's equitable share, as it may be adjusted from time to time under the terms of this Agreement, of the Water Plant as set forth in Section 4.1 and the Wastewater Treatment Plant as set forth in Section 8.1.

(cc) **"Regulatory Requirements"** means the requirements and provisions of any local, state, or federal law, and any permits, rules, orders, ordinances, or regulations issued or adopted from time to time by any local, state, federal, or other regulatory authority having jurisdiction.

(dd) **"TCEQ"** means the Texas Commission on Environmental Quality or its successor.

(ee) **"Wastewater"** means liquid and water-carried sanitary sewage discharged from commercial or residential buildings connected to a District's wastewater collection system and other wastes discharged in accordance with MUD 391's rate order, as may be amended from time to time, and any rules or regulations governing such discharges which have been or may be adopted by MUD 391.

(ff) **"Wastewater Point of Connection"** means the point at which the MUD 391 Wastewater Collection System connects to the MUD 592 Wastewater Collection System as shown on the attached **Exhibit D**.

(gg) **"Wastewater Connection Facility"** means the manhole constructed, maintained and owned by MUD 592 and located at the Wastewater Point of Connection.

(hh) **"Wastewater Permit"** means the means the permit to discharge wastes issued by the TCEQ for the Wastewater Treatment Plant and includes any other regulatory permit or permits required for the lawful operation of the Wastewater Treatment Plant in accordance with the standards of this Agreement, as they may be amended and renewed from time to time.

(ii) **"Wastewater Treatment Plant"** means MUD 391's wastewater treatment plant, including, without limitation, bar screens, aeration basins, a re-aeration basin, clarifiers, digesters and chlorine contact chambers, electrical controls, site work improvements, a chlorine system, an air compressor, filtration system, lift stations, and related appurtenances, as described in **Exhibit B**, as it may be expanded from time to time.

(jj) **"Wastewater Treatment Plant Capacity Payment"** means the amount of \$1,684,473.79, to be paid by MUD 592 to MUD 391 pursuant to Subsection 6.1.

(kk) **"Wastewater Treatment Plant Service Area"** means the areas served by the Wastewater Treatment Plant. Areas currently served by the Wastewater Treatment Plant are shown on **Exhibit F** attached hereto and may be expanded from time to time in accordance with Section 13.2 hereof.

(ll) **"Wastewater Treatment Services"** means any Wastewater receiving, treating, testing, and disposal services furnished or made available by the Wastewater Treatment Plant.

(mm) **"Water"** means potable water meeting the minimum drinking water standards for human consumption and other domestic use established by all regulatory agencies with jurisdiction.

(nn) **"Water Connection Facility"** means the 12-inch valve constructed, maintained and owned by MUD 592 and located at the Water Point of Connection.

(oo) **"Water Point of Connection"** means the point at which the MUD 391 Water Distribution System connects to the MUD 592 Water Distribution System as shown on the attached **Exhibit E**.

(pp) **"Water Plant"** means MUD 391's water plant, including, without limitation, water wells, pressure tanks, ground storage tanks, booster pumps, and related appurtenances, as described in **Exhibit C**, as it may be expanded from time to time.

(qq) **"Water Plant Capacity Payment"** means the amount of \$1,266,525.97, to be paid by MUD 592 to MUD 391 pursuant to Section 2.1.

(rr) **"Water Plant Service Area"** means the areas served by the Water Plant. Areas currently served by the Water Plant are shown on **Exhibit G** attached hereto and may be expanded from time to time in accordance with Section 13.2 hereof.

(ss) "Water Services" means any water supply, storage pressurization, distribution, delivery, or related services furnished or made available by the Water Plant.

(tt) "Water Well Permit" means the water well permit issued by Harris-Galveston Subsidence District for or including the Water Plant, and includes any other regulatory permit or permits required for the lawful operation of the Water Plant in accordance with the standards of this Agreement.

## ARTICLE II

### CONVEYANCE OF WATER PLANT CAPACITY

**Section 2.1. Sale and Price of Capacity.** MUD 391 hereby agrees to sell and MUD 592 hereby agrees to purchase capacity in the Water Plant sufficient to supply 755 ESFCs (the "MUD 592 Water Plant Capacity") according to the terms and conditions of this Agreement. Subject to Section 3.4, the total consideration to be paid by MUD 592 to MUD 391 for the purchase of the MUD 592 Water Plant Capacity is \$1,266,525.97 (the "Water Plant Capacity Payment"), calculated as shown on **Exhibit H**. The Water Plant Capacity Payment has been calculated based upon the best information available with regard to current market conditions, and MUD 592 and the Board of Directors for MUD 391 have each found, in their discretion, that the Water Plant Capacity Payment represents a fair and reasonable price for the MUD 592 Water Plant Capacity. The Water Plant Capacity Payment may be paid by MUD 592 to MUD 391 pursuant to the following schedule, or sooner, at the discretion of MUD 592:

- (i) 20% of the Water Plant Capacity Payment shall be due and payable upon the date which MUD 592 connects to the MUD 391 Water Distribution System (such portion of the Water Plant Capacity Payment, the "Initial Water Plant Capacity Payment").
- (ii) Upon sections becoming platted on the MAK Tract such that more than 151 ESFCs are required to serve the aforementioned platted sections, the remaining 80% of the Water Plant Capacity Payment (such portion of the Water Plant Capacity Payment, the "Deferred Water Plant Capacity Payments") shall become due and payable by MUD 592 to MUD 391 in installments as development of the MAK Tract progresses. The Deferred Water Plant Capacity Payments will become due and payable by MUD 592 to MUD 391 within thirty (30) days of the date such platting is recorded in the real property records of Harris County, with the Deferred Water Plant Capacity Payment(s) equaling the cost of the number of ESFCs required to serve the platted sections not already paid for by MUD 592, calculated as shown on **Exhibit H**.

**Section 2.2. Current Water Plant Capacity.** The Districts acknowledge and agree that:

(a) The Current Water Plant Capacity is sufficient to supply capacity to serve MUD 391 at full development and provide the MUD 592 Water Plant Capacity.

(b) As of the Effective Date of this Agreement, MUD 592's ownership in the Water Plant is zero (0) ESFCs; *provided, however*, that MUD 592's ownership of ESFCs in the Water Plant shall equal the portion of the Water Plant Capacity Payment then-paid for by MUD 592 pursuant to the schedule set forth in Section 2.01 and calculated as shown on **Exhibit H**. By way of example, upon MUD 592's payment of the Initial Water Plant Capacity Payment, MUD 592 shall own 151 ESFCs of capacity in the Water Plant. Upon MUD 592's timely payment of the entire Water Plant Capacity Payment, MUD 592 shall own a total of 755 ESFCs of capacity in the Water Plant.

**Section 2.3. Connections.** Subject to MUD 592's timely payments of the Water Plant Capacity Payment, as described in Section 2.1, MUD 592 will allow Active Water Connections within its boundaries pursuant to Section 2.2(b). The Districts hereby agree that the number of Active Water Connections allowed within MUD 592's boundaries will not exceed the number of ESFCs then-owned by MUD 592 pursuant to Section 2.2(b). MUD 592 shall ensure that all connections made to the MUD 592 Water Distribution System, including connections which serve common areas within the MAK Tract, are metered and otherwise are made in compliance with Regulatory Requirements. For each connection that is not a single-family residential connection, the MUD 391 Engineer shall determine how many ESFCs shall be allocated to such connection, based upon commonly accepted engineering standards for Houston area water districts, and shall report such determination in writing to MUD 391 and to MUD 592. MUD 592 shall provide the MUD 391 Engineer with any reasonably available information requested by the MUD 391 Engineer in order to make the determination.

**Section 2.4. Sale or Encumbrance of Water Plant.** MUD 391 will not sell, dispose of, or encumber the Water Plant; *provided, however*, that this provision shall not prevent MUD 391 from selling capacity in, disposing of, or leasing any portion of the Water Plant which may become surplus or no longer needed or useful for the proper operation of the Water Plant, exclusive of the MUD 592 Water Plant Capacity.

**Section 2.5. Permits.** MUD 391 has obtained the Water Well Permit. MUD 391 shall diligently apply for and use its best efforts to obtain renewals of and amendments to the Water Well Permit at the times required to permit continued operation of the Water Plant and expansions of the Water Plant as needed to provide the Water Services in accordance with the terms of this Agreement and the Regulatory Requirements.



**Section 2.6. Elevated Storage Tank Waiver.** MUD 391 has obtained a waiver from the TCEQ from the requirement to build an elevated storage tank based on the number of ESFCs within MUD 391. MUD 391 agrees to take such actions to maintain such waiver and the cost to any application for renewal of such waiver shall be considered a standard operating cost of the Water Plant. If TCEQ determines that MUD 391 is required to build an elevated storage tank or made modifications to the Water Plant in order to maintain the waiver of the elevated storage requirements, then MUD 391 and MAK (or MUD 592 as appropriate) agree that the cost to design and construct the elevated storage tank or any necessary modifications to the Water Plant to maintain the waiver shall be considered a Major Expenditure and will be allocated among the Parties in accordance with Article XII of this Agreement.

### **ARTICLE III**

#### **WATER PLANT CAPACITY ALLOCATION MATTERS**

**Section 3.1. Notification of Rate of Development and Delivery of Operator Reports.** MUD 391 shall cause the MUD 391 Operator to deliver, electronically or otherwise, its monthly operations report to MUD 592 throughout the term of this Agreement. MUD 592 shall cause the MUD 592 Operator to deliver its monthly operations report to the MUD 391 Engineer, the MUD 391 Operator, and the MUD 391 Bookkeeper throughout the term of this Agreement. Each District shall provide its monthly operations report to the other District in accordance with this Section 3.1 at or prior to the providing District's Board of Director's meeting at which such report will be presented. The MUD 391 Operator shall include the number of Active Water Connections served by the Water Plant in the monthly operations report provided in accordance with this Section. The MUD 592 Operator shall include the number of Active Water Connections within the MAK Tract in the monthly operations report provided in accordance with this Section. Until substantial build-out of the MAK Tract has occurred, within 30 days of the Effective Date and no later than January 15 of each year thereafter, MUD 592 will provide the MUD 391 Engineer with a written estimate of the projected Active Water Connections to be added within the MAK Tract during the next 12 months.

**Section 3.2. Reserved.**

**Section 3.3. Reserved.**

**Section 3.4. Final Payment.** The Districts acknowledge and agree that the Water Plant Capacity Payment is intended to be the complete and final payment by MUD 592 to supply 755 ESFCs in the Water Plant to MUD 592. MUD 391 shall not be obligated to construct any Water Plant expansions so long as the MUD 391 Engineer has determined that MUD 391 has adequate capacity in the Water Plant to supply MUD 592 with the portion of the MUD 592 Water Plant Capacity needed to serve actual development within the MAK Tract in accordance with Regulatory Requirements.

**Section 3.5. Reserved.**

**Section 3.6. Capacity Allocation.** Upon MUD 592's payment of the Water Plant Capacity Payment to MUD 391, capacity in the Water Plant shall be allocated between the Districts based on the following percentages:

<u>District</u>	<u>Percentage</u>	<u>ESFCs</u>
MUD 391	83.3%	3,765
MUD 592	16.7%	755
TOTAL	100%	4,520

**ARTICLE IV**

**OWNERSHIP OF WATER PLANT**

**Section 4.1. Ownership of Water Plant.** The Districts acknowledge and agree that MUD 391 holds and shall continue to hold legal title to the Water Plant for the benefit of the Districts on the terms and conditions provided in this Agreement. Subject to the provisions of Section 2.1 above, MUD 391 and MUD 592 shall own an undivided, equitable interest in the Water Plant and the Water Plant capacity in the amount of each party's Proportionate Share. MUD 592's Proportionate Share shall be calculated as a fraction, the numerator of which fraction will be the portion of the MUD 592 Water Plant Capacity for which MUD 391 has been paid the Water Plant Capacity Payment and which MUD 391 has made available to MUD 592 in accordance with Section 2.2(b), and the denominator of which fraction will be the total capacity of the Water Plant. MUD 391's Proportionate Share shall be calculated as a fraction, the numerator of which fraction will be the total capacity in the Water Plant minus the portion of the MUD 592 Water Plant Capacity for which MUD 391 has been paid the Water Plant Capacity Payment and which MUD 391 has made available to MUD 592 in accordance with Section 2.2(b), and the denominator of which fraction will be the total capacity of the Water Plant. Notwithstanding anything to the contrary set forth herein, prior to MUD 592 reaching 755 Active Water Connections, each District's Proportionate Share shall be calculated as follows with respect to Operation and Maintenance Expenses: MUD 592's Proportionate Share shall be calculated as a fraction, the numerator of which fraction will be the total number of Active Water Connections within the MAK Tract, and the denominator of which fraction will be the total number of Active Water Connections served by the Water Plant. MUD 391's Proportionate Share shall be calculated as a fraction, the numerator of which fraction will be the total number of Active Water Connections within MUD 391, and the denominator of which fraction will be the total number of Active Water Connections served by the Water Plant.

## ARTICLE V

### OPERATION OF WATER PLANT

**Section 5.1. Operation.** MUD 391 shall use its best efforts to operate, maintain, and repair the Water Plant to meet the Water supply needs of the Water Plant Service Area and all Regulatory Requirements, subject to the terms and conditions of this Agreement. MUD 391 shall operate the Water Plant, or cause it to be operated, in accordance with accepted good practices for operation of similar type and size water supply plants. MUD 391 is expressly authorized to enter into operating agreements with any person or entity to operate the Water Plant. Such person or entity shall be licensed and qualified as required under the rules and regulations of the TCEQ to operate water supply plants of a type and size similar to the Water Plant and shall carry statutorily required workmen's compensation insurance. As between the Districts, MUD 391 shall be solely responsible for managing the operation of the Water Plant to produce and supply Water to the Districts, and MUD 391 shall be an independent contractor in the operation of the Water Plant. The Districts recognize that the obligations of MUD 391 to operate the Water Plant as provided in this Agreement are subject to all Regulatory Requirements, and the Districts agree to cooperate to make such applications and to take such action as may be desirable to obtain compliance therewith.

**Section 5.2. Reports on Metered Water Usage.** MUD 592 shall cause the MUD 592 Operator to provide the MUD 391 Operator and MUD 391 Engineer with a monthly report of metered Water usage within the MAK Tract. Such report shall be provided within 10 days of the date on which the meters within the MAK Tract are read by the MUD 592 Operator.

**Section 5.3. Rules and Regulations.** In regard to the operation of the Water Plant, the Districts agree that MUD 391 shall have the authority to adopt and amend rules and regulations, applicable to both Districts, from time to time necessary to comply with all permits and licenses relating to the Water Plant. MUD 592 shall enforce such rules and regulations relative to the Water Plant on its customers, to the extent MUD 391 lacks the jurisdiction to do so. In no case may these rules and regulations contradict any provision of this Agreement.

**Section 5.4. Operation and Maintenance of Water Distribution Systems.** MUD 592 shall operate and maintain the MUD 592 Water Distribution System in good working order and in accordance with all Regulatory Requirements relating to the MUD 592 Water Distribution System at its sole cost and expense. In the event a leak, rupture, or other defect occurs within the MUD 592 Water Distribution System which could either endanger or contaminate the MUD 391 Water Distribution System or prejudice MUD 391's ability to provide water service to its in-district customers, MUD 391 shall provide written notice to MUD 592 to repair such leak, rupture, or other defect. In the event MUD 592 fails to immediately repair or proceed with the repairs of such leak, rupture, or defect,

MUD 391 may, at its option, repair same and charge MUD 592 its actual cost of such repair (including, but not limited to, engineering fees, operator fees, legal fees, and contractor costs). Notwithstanding anything to the contrary contained herein, if MUD 391 makes the finding that a repair to a leak, rupture or other defect is necessary due to an emergency condition that has created or is likely to create a serious and imminent threat to public health and welfare or an unreasonable and severe economic loss to the Districts, MUD 391 may proceed with such repair without providing written notice to MUD 592 and charge MUD 592 its actual cost of such repair (including, but not limited to, engineering fees, operator fees, legal fees, and contractor costs). Likewise, MUD 391 shall operate and maintain the MUD 391 Water Distribution System in good working order and in accordance with all Regulatory Requirements relating to the MUD 391 Water Distribution System at its sole cost and expense. In the event a leak, rupture or other defect occurs within the MUD 391 Water Distribution System which could either endanger or contaminate the MUD 592 Water Distribution System or prejudice MUD 592's ability to provide water service to its in-district customers, MUD 592 shall provide written notice to MUD 391 to repair such leak rupture, or other defect. In the event MUD 391 fails to immediately repair or proceed with the repairs of such leak, rupture, or defect, MUD 592 may, at its option, repair same and charge MUD 391 its actual cost of such repair (including, but not limited to, engineering fees, operator fees, legal fees, and contractor costs). Notwithstanding anything to the contrary contained herein, if MUD 592 makes the finding that a repair to a leak, rupture or other defect is necessary due to an emergency condition that has created or is likely to create a serious and imminent threat to public health and welfare or an unreasonable and severe economic loss to the Districts, MUD 592 may proceed with such repair without providing written notice to MUD 391 and charge MUD 391 its actual cost of such repair (including, but not limited to, engineering fees, operator fees, legal fees, and contractor costs).

**Section 5.5. Construction/Extension of Water Distribution Systems.** Each District has or will acquire, construct, operate and maintain, at its sole cost and expense, a Water distribution system appropriate for serving such District, as such system may be altered from time to time. Any extensions to the Water distribution systems and/or connections thereto shall be designed and constructed in accordance with sound engineering principles, Harris County's standards and specifications, and the requirements of the TCEQ and any other governmental agency having or acquiring jurisdiction. Extensions to the Water distribution systems and/or connections thereto shall be constructed and maintained in such a manner that no reasonably avoidable leaks or ruptures will occur.

Each District will require that construction contract documents for the extension of its Water distribution system and/or connections thereto contain specific requirements that all points of interconnection of the extension to the existing Water distribution system will be plugged and will remain plugged until the proposed improvements are completed and inspected and approved by TCEQ. Each District and its contractor shall



be held liable for any damage or expense resulting from unreasonable Water loss resulting from such construction.

**Section 5.6. Inspection During Construction.** Each District agrees to provide inspection by its engineer of any portion of its Water distribution system that is under construction to assure that such construction is being performed in accordance with the terms hereof. Each District likewise agrees to provide reasonable access to the other District's engineer for inspection of any portion of its Water distribution system that is under construction to assure that such construction is being performed in accordance with the terms hereof.

## ARTICLE VI

### CONVEYANCE OF WASTEWATER TREATMENT PLANT CAPACITY

**Section 6.1. Sale and Price of Capacity.** MUD 391 hereby agrees to sell and MUD 592 hereby agrees to purchase capacity in the Wastewater Treatment Plant sufficient to supply 755 ESFCs (the "MUD 592 Wastewater Treatment Plant Capacity") according to the terms and conditions of this Agreement. Subject to Section 7.4, the total consideration to be paid by MUD 592 to MUD 391 for the purchase of the MUD 592 Wastewater Treatment Plant Capacity is \$1,684,473.79 (the "Wastewater Treatment Plant Capacity Payment"), calculated as shown on **Exhibit I**. The Wastewater Treatment Plant Capacity Payment has been calculated based upon the best information available with regard to current market conditions, and MUD 592 and the Board of Directors for MUD 391 have each found, in their discretion, that the Wastewater Treatment Plant Capacity Payment represents a fair and reasonable price for the MUD 592 Wastewater Treatment Plant Capacity. The Wastewater Treatment Plant Capacity Payment may be paid by MUD 592 to MUD 391 pursuant to the following schedule, or sooner, at the discretion of MUD 592:

- (i) 20% of the Wastewater Treatment Plant Capacity Payment shall be due and payable upon the date which MUD 592 connects to the MUD 391 Wastewater Collection System (such portion of the Wastewater Treatment Plant Capacity Payment, the "Initial Wastewater Treatment Plant Capacity Payment").
- (ii) Upon sections becoming platted on the MAK Tract such that more than 151 ESFCs are required to serve the aforementioned platted sections, the remaining 80% of the Wastewater Treatment Plant Capacity Payment (such portion of the Wastewater Treatment Plant Capacity Payment, the "Deferred Wastewater Treatment Plant Capacity Payments") shall become due and payable by MUD 592 to MUD 391 in installments as development of the MAK Tract progresses. The Deferred Wastewater Treatment Plant Capacity Payments will become due and payable by MUD 592 to MUD 391 within thirty (30) days of the date such platting is recorded in the real

property records of Harris County, with the Deferred Wastewater Treatment Plant Capacity Payment(s) equaling the cost of the number of ESFCs required to serve the platted sections not already paid for by MUD 592, calculated as shown on **Exhibit I**.

**Section 6.2. Current Wastewater Treatment Plant Capacity.** The Districts acknowledge and agree that:

(a) The Current Wastewater Treatment Plant Capacity is sufficient to supply capacity to serve MUD 391 at full development and provide the MUD 592 Wastewater Treatment Plant Capacity, subject to Section 6.6 below.

(b) As of the Effective Date of this Agreement, MUD 592's ownership in the Wastewater Treatment Plant is zero (0) ESFCs; *provided, however*, that MUD 592's ownership of ESFCs in the Wastewater Treatment Plant shall be equal to the portion of the Wastewater Treatment Plant Capacity Payment then-paid for by MUD 592, calculated as shown on **Exhibit I**. By way of example, upon MUD 592's payment of the Initial Wastewater Treatment Plant Capacity Payment, MUD 592 shall own 151 ESFCs of capacity in the Wastewater Treatment Plant. Upon MUD 592's timely payment of the entire Wastewater Treatment Plant Capacity Payment, MUD 391 shall allocate and MUD 592 shall be entitled to 755 ESFCs of capacity in the Wastewater Treatment Plant.

(c) In the event the TCEQ confirms a flow factor less to be applied to the Wastewater Treatment Plant that is less than the flow factor applied to the Wastewater Treatment Plant as of the Effective Date, any and all additional capacity in the Wastewater Treatment Plant resulting from the application of such reduced flow factor shall be owned by and allocated to MUD 391 and MUD 391 shall be entitled to use or dispose of such capacity in accordance with Section 6.4 hereof; *provided, however*, that MAK and/or MUD 592, in its discretion, may be allocated ownership of up to 50 additional Active Wastewater Connections that become available in the Wastewater Treatment Plant due to such reduced flow factor and, in such event, shall pay additional capital charges to MUD 391 for such purchased additional Active Wastewater Connections in the same manner as provided for in this Article VI and Article VII of this Agreement. Notwithstanding the foregoing, in no event shall MUD 592 own more than 805 ESFCs of capacity in the Wastewater Treatment Plant, using the then-current flow factor per ESFCs.

**Section 6.3. Connections.** Subject to MUD 592's timely payments of the Wastewater Treatment Plant Capacity Payment, as described in Section 6.1, MUD 592 may allow Active Wastewater Connections within its boundaries pursuant to Section 6.2(b) hereinabove. The Districts hereby agree that the number of Active Wastewater Connections allowed within MUD 592's boundaries will not exceed the number of ESFCs then-owned by MUD 592 pursuant to Section 6.2(b). MUD 592 shall ensure that all

connections made to the MUD 592 Wastewater Collection System are made in compliance with Regulatory Requirements. For each connection that is not a single family residential connection, the MUD 391 Engineer shall determine how many ESFCs shall be allocated to such connection, based upon commonly accepted engineering standards for Houston area water districts, and shall report such determination in writing to MUD 391 and to MUD 592. MUD 592 shall provide the MUD 391 Engineer with any reasonably available information requested by the MUD 391 Engineer in order to make the determination.

**Section 6.4. Sale or Encumbrance of Wastewater Treatment Plant.** MUD 391 will not sell, dispose of, or encumber the Wastewater Treatment Plant; provided, however, that this provision shall not prevent MUD 391 from selling capacity in, disposing of or leasing any portion of the Wastewater Treatment Plant which may become surplus or no longer needed or useful for the proper operation of the Wastewater Treatment Plant, exclusive of the MUD 592 Wastewater Treatment Plant Capacity.

**Section 6.5. Permits.** MUD 391 has obtained the Wastewater Permit. MUD 391 shall diligently apply for and use its best efforts to obtain renewals of and amendments to the Wastewater Permit at the times required to permit continued operation of the Wastewater Treatment Plant and expansions of the Wastewater Treatment Plant as needed to provide the Wastewater Treatment Services in accordance with the terms of this Agreement and the Regulatory Requirements. MUD 592 shall be responsible for and pay to MUD 391 its Proportionate Share of the cost of preparation of applications for expanded or renewal permits.

**Section 6.6. Costs Associated with Operation at Maximum Capacity.** MUD 391 and MAK recognize and agree that the MUD 592 Wastewater Treatment Plant Capacity at the flow factor currently recognized by TCEQ will cause the Wastewater Treatment Plant to operate at one-hundred percent of permitted capacity. MUD 391 agrees to apply to TCEQ for a waiver (or waivers) from any requirement to design and construct additional wastewater treatment capacity at given percentages of wastewater plant capacity usage. MAK (or MUD 592 as appropriate) and MUD 391 agree that the costs of such application or applications shall be borne by the Parties based on each Party's Proportionate Share of the Wastewater Treatment Plant. To the extent that TCEQ requires additional facilities or plant modifications in order to obtain such waiver or waivers, MUD 391 and MAK (or MUD 592 as appropriate) agree that the costs of such additional facilities or plant modifications necessary in order to obtain such waiver or waivers shall be borne by the Parties based on each Party's Proportionate Share of the Wastewater Treatment Plant. To the extent that operation of the Wastewater Treatment Plant at or near one-hundred percent of capacity causes MUD 391, due to TCEQ rules and requirements, to make modifications to the Wastewater Treatment Plant in order to address odor control or other complications, the costs of such modifications shall be considered a Major Expenditure and shall be allocated among the Parties as otherwise provided in accordance with Article XII of this Agreement.

## ARTICLE VII

### WASTEWATER TREATMENT PLANT CAPACITY ALLOCATION MATTERS

**Section 7.1. Notification of Rate of Development and Delivery of Operator Reports.** MUD 391 shall cause the MUD 391 Operator to deliver its monthly operations report, electronically or otherwise, to the MUD 592 Engineer, the MUD 592 Operator, and the MUD 592 Bookkeeper throughout the term of this Agreement. MUD 592 shall cause the MUD 592 Operator to deliver its monthly operations report to the MUD 391 Engineer, the MUD 391 Operator, and the MUD 391 Bookkeeper throughout the term of this Agreement. Each District shall provide its monthly operations report to the other District in accordance with this Section 7.1 at or prior to the providing District's Board of Director's meeting at which such report will be presented. The MUD 391 Operator shall include the number of Active Wastewater Connections in the monthly operations report provided in accordance with this Section. The MUD 592 Operator shall include the number of Active Wastewater Connections within the MAK Tract in the monthly operations report provided in accordance with this Section. Until substantial build-out of the MAK Tract has occurred, within 30 days of the Effective Date and no later than January 15 of each year thereafter, MUD 592 will provide the MUD 391 Engineer with a written estimate of the projected Active Wastewater Connections to be added within the MAK Tract during the next 12 months.

**Section 7.2. Reserved.**

**Section 7.3. Reserved.**

**Section 7.4. Final Payment.** The Districts acknowledge and agree that the Wastewater Treatment Plant Capacity Payment is intended to be the complete and final payment by MUD 592 to supply 755 ESFCs in the Wastewater Treatment Plant to MUD 592. MUD 391 shall not be obligated to construct any Wastewater Treatment Plant expansions so long as the MUD 391 Engineer has determined that MUD 391 has adequate capacity in the Wastewater Treatment Plant to supply MUD 592 with the portion of the MUD 592 Wastewater Treatment Plant Capacity needed to serve actual development within the MAK Tract in accordance with Regulatory Requirements.

**Section 7.5. Reserved.**

**Section 7.6. Capacity Allocation.** Upon MUD 592's payment of the Wastewater Treatment Plant Capacity Payment to MUD 391, capacity in the Wastewater Treatment Plant shall be allocated between the Districts based on the following percentages:

<u>District</u>	<u>Percentage</u>	<u>ESFCs</u>
MUD 391	82.5%	3,563



MUD 592	17.5%	755
TOTAL	100%	4,318

## ARTICLE VIII

### OWNERSHIP OF WASTEWATER TREATMENT PLANT

**Section 8.1. Ownership of Wastewater Treatment Plant.** The Districts acknowledge and agree that MUD 391 holds and shall continue to hold legal title to the Wastewater Treatment Plant for the benefit of the Districts on the terms and conditions provided in this Agreement. Subject to the provisions of Section 6.1 above, the Districts shall each own an undivided, equitable interest in the Wastewater Treatment Plant and the Wastewater Treatment Plant Capacity in the amount of each party's Proportionate Share. MUD 592's Wastewater Treatment Plant Proportionate Share shall be calculated as a fraction, the numerator of which fraction will be portion of the MUD 592 Wastewater Treatment Plant Capacity for which MUD 391 has been paid the Wastewater Treatment Plant Capacity Payment and which MUD 391 has made available to MUD 592 in accordance with Section 6.2(b), and the denominator of which fraction will be the total capacity of the Wastewater Treatment Plant. MUD 391's Proportionate Share shall be calculated as a fraction, the numerator of which fraction will be the total capacity in the Wastewater Treatment Plant minus the portion of the MUD 592 Wastewater Treatment Plant Capacity for which MUD 391 has been paid the Wastewater Treatment Plant Capacity Payment and which MUD 391 has made available to MUD 592 in accordance with Section 6.2(b), and the denominator of which fraction will be the total capacity of the Wastewater Treatment Plant. Notwithstanding anything to the contrary set forth herein, prior to MUD 592 reaching 755 Active Wastewater Connection, each District's Proportionate Share shall be calculated as follows with respect to Operation and Maintenance Expenses: MUD 592's Wastewater Treatment Plant Proportionate Share shall be calculated as a fraction, the numerator of which fraction will be the total number of Active Wastewater Connections within the MAK Tract, and the denominator of which fraction will be the total number of Active Wastewater Connections served by the Wastewater Treatment Plant. MUD 391's Proportionate Share shall be calculated as a fraction, the numerator of which fraction will be the total number of Active Wastewater Connections within MUD 391, and the denominator of which fraction will be the total number of Active Wastewater Connections served by the Wastewater Treatment Plant.

## ARTICLE IX

### OPERATIONS OF WASTEWATER TREATMENT PLANT

**Section 9.1. Operation.** MUD 391 shall use its best efforts to operate, maintain, and repair the Wastewater Treatment Plant to meet the Wastewater treatment needs of the Wastewater Treatment Plant Service Area and all Regulatory Requirements, subject

to the terms and conditions of this Agreement. MUD 391 shall operate the Wastewater Treatment Plant, or cause it to be operated, in accordance with accepted good practices for operation of similar type and size wastewater treatment plants. MUD 391 is expressly authorized to enter into operating agreements with any person or entity to operate the Wastewater Treatment Plant. Such person or entity shall be licensed and qualified as required under the rules and regulations of the TCEQ to operate wastewater treatment plants of a type and size similar to the Wastewater Treatment Plant and shall carry statutorily required workmen's compensation insurance. As between the Districts, MUD 391 shall be solely responsible for operation of the Wastewater Treatment Plant to receive and treat Wastewater from the Districts, and MUD 391 shall be an independent contractor in the operation of the Wastewater Treatment Plant. The Districts recognize that the obligations of MUD 391 to operate the Wastewater Treatment Plant as provided in this Agreement are subject to all Regulatory Requirements, and the Districts agree to cooperate to make such applications and to take such action as may be desirable to obtain compliance therewith.

**Section 9.2. Rules and Regulations.** In regard to the operation of the Wastewater Treatment Plant, the Districts agree that MUD 391 shall have the authority to adopt and amend rules and regulations, applicable to both Districts, from time to time necessary to comply with all permits and licenses relating to the Wastewater Treatment Plant. MUD 592 shall enforce such rules and regulations relative to the Wastewater Treatment Plant within its boundaries, to the extent MUD 391 lacks the jurisdiction to do so. In no case may these rules and regulations contradict any provision of this Agreement.

**Section 9.3. Operation and Maintenance of Wastewater Collection Systems.** MUD 592 shall operate and maintain the MUD 592 Wastewater Collection System in good working order and in accordance with all Regulatory Requirements relating to the MUD 592 Wastewater Collection System at its sole cost and expense. In the event a leak, rupture, or other defect occurs within the MUD 592 Wastewater Collection System which could endanger the MUD 391 Wastewater Collection System or prejudice MUD 391's ability to provide Wastewater Treatment Service to its in-district customers, MUD 391 shall provide written notice to MUD 592 to repair such leak, rupture, or other defect. In the event MUD 592 fails to immediately repair or proceed with the repairs of such leak, rupture, or defect, MUD 391 may, at its option, repair same and charge MUD 592 its actual cost of such repair (including, but not limited to, engineering fees, operator fees, legal fees, and contractor costs). Notwithstanding anything to the contrary contained herein, if MUD 391 makes the finding that a repair to a leak, rupture or other defect is necessary due to an emergency condition that has created or is likely to create a serious and imminent threat to public health and welfare or an unreasonable and severe economic loss to the Districts, MUD 391 may proceed with such repair without providing written notice to MUD 592 and charge MUD 592 its actual cost of such repair (including, but not limited to, engineering fees, operator fees, legal fees, and contractor costs).

Likewise, MUD 391 shall operate and maintain the MUD 391 Wastewater Collection System in good working order and in accordance with all Regulatory Requirements relating to the MUD 391 Wastewater Collection System at its sole cost and expense. In the event a leak, rupture or other defect occurs within the MUD 391 Wastewater Collection System which could endanger the MUD 592 Wastewater Collection System or prejudice MUD 592's ability to provide Wastewater Collection Service to its in-district customers, MUD 592 shall provide written notice to MUD 391 to repair such leak rupture, or other defect. In the event MUD 391 fails to immediately repair or proceed with the repairs of such leak, rupture, or defect, MUD 592 may, at its option, repair same and charge MUD 391 its actual cost of such repair (including, but not limited to, engineering fees, operator fees, legal fees, and contractor costs). Notwithstanding anything to the contrary contained herein, if MUD 592 makes the finding that a repair to a leak, rupture or other defect is necessary due to an emergency condition that has created or is likely to create a serious and imminent threat to public health and welfare or an unreasonable and severe economic loss to the Districts, MUD 592 may proceed with such repair without providing written notice to MUD 391 and charge MUD 391 its actual cost of such repair (including, but not limited to, engineering fees, operator fees, legal fees, and contractor costs).

**Section 9.4 Quality of Wastewater.** In order to permit the proper treatment and disposal of each District's Wastewater, to protect the public health, to permit cooperation with other entities for the protection of the physical, chemical and bacteriological quality of public waters and water courses, and to protect the properties of the Wastewater Treatment Plant, the Districts agree that the quality and strength of all Wastewater collected by the Wastewater collection system of each District and discharged into the Wastewater Treatment Plant must be regulated. The Districts agree to regulate the quality and strength of Wastewater to be discharged into the Wastewater Treatment Plant as may be required to protect the Wastewater Treatment Plant, and MUD 391 agrees to use its best efforts to operate the Wastewater Treatment Plant so as to treat and dispose of Wastewater in compliance with the orders, rules, regulations or permits issued or adopted from time to time by any regulatory body having jurisdiction. Wastewater discharged into the Wastewater Treatment Plant shall consist only of Wastewater which is amenable to biological treatment.

MUD 391 shall be entitled to collect samples of Wastewater at or near the point(s) of discharge into each District's wastewater collection system and cause the same to be analyzed by American Public Health Association standard methods or other appropriate methods to determine if such Wastewater is within the qualities specified above. If analysis discloses that the Wastewater does not comply with the qualities specified, it will be the obligation of each District to require the offending originator to cease discharging such Wastewater into its Wastewater collection system or to pre-treat such Wastewater. Any District's failure to regulate its Wastewater which results in damage to the Wastewater Treatment Plant's treatment processes or results in violations of the Permit

or Regulatory Requirements, shall cause such fines, penalties, costs associated with repairing the Wastewater Treatment Plant's treatment process, and other costs to be paid in accordance with Article IX hereof.

MUD 592 shall adopt provisions related to industrial waste in its rate order in substantially similar form to the provisions related to industrial waste that are included in the MUD 391 rate order, as may be amended from time to time.

**Section 9.5 Construction/Extension of Wastewater Collection Systems.** Each District has or will acquire, construct, operate and maintain, at its sole cost and expense, a Wastewater collection system appropriate for serving such District, as such system may be altered from time to time. Any extensions to the Wastewater collection systems and/or connections thereto shall be designed and constructed in accordance with sound engineering principles, Harris County's standards and specifications, and the requirements of the TCEQ and any other governmental agency having or acquiring jurisdiction. Extensions to the Wastewater collection systems and/or connections thereto shall be constructed and maintained in such a manner that no reasonably avoidable leaks or ruptures will occur.

Each District will require that construction contract documents for the extension of its Wastewater collection system and/or connections thereto contain specific requirements that all points of interconnection of the extension to the existing Wastewater system will be plugged and will remain plugged until the proposed improvements are completed and inspected and approved by TCEQ. Each District and its contractor shall be held liable for any damage or expense resulting from Wastewater leakage resulting from such construction.

**Section 9.6 Inspection During Construction.** Each District agrees to provide inspection by its engineer of any portion of its Wastewater collection system that is under construction to assure that such construction is being performed in accordance with the terms hereof. Each District likewise agrees to provide reasonable access to the other District's engineer for inspection of any portion of its Wastewater collection system that is under construction to assure that such construction is being performed in accordance with the terms hereof.

## **ARTICLE X**

### **RESERVED**



## ARTICLE XI

### BILLING AND PAYMENT OF EXPENSES

**Section 11.1. Agreement to Pay Operation and Maintenance Expenses and Establishment of Joint Facilities Account.** In consideration of the mutual benefits to be derived from the operation and maintenance of the Water Plant and the Wastewater Treatment Plant, the Districts agree that each shall pay, at the time and in the manner set forth in this Agreement, their respective shares of Operation and Maintenance Expenses. MUD 391 shall establish the Joint Water Plant Facilities Account and Joint Wastewater Treatment Plant Facilities Account, both of which shall be managed by MUD 391. All funds received in payment of Operation and Maintenance Expenses for a facility shall be placed in the related Joint Facilities Account, and all Operation and Maintenance Expenses for a facility shall be paid from the related Joint Facilities Account. Funds in a Joint Facilities Account shall only be applied to payment of Operation and Maintenance Expenses for the facilities related to such account, and shall be kept separate from any other funds owned or managed by MUD 391. Any funds in a Joint Facilities Account may be invested by MUD 391 and shall be continuously secured as required by the laws of the State of Texas applicable to the Districts, as such laws may be amended from time to time. MUD 391 shall maintain a monthly accounting of all revenues to and expenditures from each Joint Facilities Account, which reports shall be provided to the Districts each month. MUD 391 is expressly authorized to enter into an agreement or agreements with any qualified bookkeeper to maintain the financial records of each Joint Facilities Account.

**Section 11.2. Initial Deposit - Joint Facilities Account.** In order to establish an initial balance in each Joint Facilities Account with which to pay Operation and Maintenance Expenses for the facilities related to such account, MUD 592 shall provide initial deposits as follows, no later than the date upon which MUD 592 connects to the MUD 391 Water Distribution System: (i) \$10,000 to the Joint Water Plant Facilities Account; and (ii) \$10,000 to the Joint Wastewater Treatment Plant Facilities Account. Likewise, no later than the date upon which MUD 592 connects to the MUD 391 Water Distribution System, MUD 391 shall provide initial deposits as follows: (i) \$10,000 to the Joint Water Plant Facilities Account; and (ii) \$10,000 to the Joint Wastewater Treatment Plant Facilities Account.

**Section 11.3. Deposit Accounting.** MUD 391 shall separately account for the deposits received from each District. To the extent that a District's payment of its share of any expenditure is deducted from that District's deposits, in accordance with provisions of the Agreement, as amended, MUD 391 shall report such deduction in the bookkeeping reports to the Districts. To the extent that interest or earnings accrue to a District's deposits amount, MUD 391 shall report such increase in the bookkeeping reports to the Districts.

**Section 11.4. Deposit Adjustment.** If MUD 391 determines, from time to time, in its sole discretion, that the collective amount of the Districts' individual deposits should be increased, for effective payment of Operation and Maintenance Expenses, or decreased, if unnecessary surplus funds accumulate, MUD 391 shall either invoice each District for an additional amount (which shall be based on the then-Active Water Connections and Active Wastewater Connections for each District) or shall reimburse each District for its share of any surplus amount. Any invoice submitted to the Districts under this Section 11.4 shall be due and payable as provided in Sections 11.5 and 11.6 below.

**Section 11.5 Billing.** Except as set forth in Article XII with regard to Major Expenditures, each month, MUD 391 shall prepare a written invoice to MUD 592 to bill for its Proportionate Share of Operation and Maintenance Expenses that were paid from a Joint Facilities Account in the prior month and shall submit such invoice to the MUD 592. Such invoice shall be due and payable 45 days after deposit into the United States mail properly stamped and addressed to MUD 592. The bill shall reflect the Operation and Maintenance Expenses attributable to MUD 592 for the previous month and shall include copies of all invoices supporting the bill. The bill shall also reflect the calculation of each District's Proportionate Share.

**Section 11.6 Delinquency in Payment.** MUD 592 shall pay interest on its past due bills to MUD 391 at the lesser of ten percent (10%) per annum or the highest rate allowable by law, together with reasonable attorney's fees incurred in the collection thereof. If MUD 592 fails to pay any bills on or before their due date, MUD 391 may give notice of such delinquent bills to MUD 592 in writing, and if all bills due and unpaid are not paid within thirty (30) days after deposit of such notice in the United States mail, properly stamped and addressed to MUD 592, then MUD 391 shall be authorized to institute legal proceedings for the collection thereof and to pursue any other available legal remedy which may be appropriate, including suspension of the right of MUD 592 to make additional connections within the MAK Tract, but excluding suspension of Water Services and Wastewater Treatment Services at existing quantities, until all bills have been paid in full. MUD 592 shall be liable to MUD 391 and responsible for all reasonable and necessary costs of collection incurred by MUD 391 as a result of such delinquency in payment.

**Section 11.7 Covenant to Maintain Sufficient Income.** Each District recognizes its duty to, and covenants and agrees that at all times it will, establish and maintain, and from time to time adjust, the rates, fees, and charges for its services to its customers, to the end that the gross revenues and funds received from such rates, fees, and charges and any other lawfully available funds will be sufficient at all times to pay the District's share of the Operation and Maintenance Expenses as set forth in this Agreement.

**Section 11.8 Books and Records.** MUD 391 shall preserve the books, records, test data, charges, and other records relating to the rendering of and billing for Operation and

Maintenance Expenses and MUD 592 shall have the right during reasonable business hours to examine the books, records, and charts of MUD 391 to the extent necessary to verify the accuracy of any statement, charge or computation made pursuant to the provisions of any section in this Agreement. If any such examination reveals any inaccuracy in such billings heretofore made, the necessary adjustment in such billing shall be promptly made by MUD 391; provided that no adjustment for any billing shall be made later than two years from its rendition.

**Section 11.9 Audit.** MUD 391 shall engage an independent accountant to audit and report annually on the books and records relating to the Water Plant and the Wastewater Treatment Plant. The cost of such audit(s) shall be shared equally by MUD 391 and MUD 592. To the extent available, copies of such audit reports shall be provided to MUD 592 within 135 days of MUD 391's fiscal year end.

## **ARTICLE XII**

### **MAJOR EXPENDITURES**

**Section 12.1 General Statement.** MUD 391 shall determine from time to time the work and/or acquisitions necessary to maintain the Water Plant and the Wastewater Treatment Plant in a condition to provide services in accordance with the standards of this Agreement. Whenever MUD 391 determines that work and/or acquisitions for the Water Plant and/or the Wastewater Treatment Plant should be undertaken and such work and/or acquisitions constitute a Major Expenditure, the Major Expenditure shall be allocated between and funded by the Districts as provided in this Article XII. In consideration of the mutual benefits to be derived from the operation and maintenance of the Water Plant and the Wastewater Treatment Plant, the Districts agree that each shall pay, at the time and in the manner set forth in this Agreement, their respective shares of Major Expenditures.

**Section 12.2 Invoice and Payment.** When MUD 391 determines that a Major Expenditure is necessary, as described in Section 12.1, MUD 391 shall notify MUD 592 in writing of the work and/or acquisitions to be undertaken, the justification or need for the work and/or acquisitions, and the total estimated cost of the Major Expenditure.

Subject to the provisions of Section 12.4, MUD 592 shall have 45 days from the date of receipt of the notice from MUD 391 to comment upon the proposed Major Expenditure. MUD 391 shall consider any comments received from MUD 592 prior to deciding whether to proceed with the Major Expenditure; provided, however, that MUD 391 shall be solely responsible for making the ultimate decision as whether to proceed with the Major Expenditure and the nature and extent of the work and/or acquisitions necessitating same. After expiration of the 45-day comment period and if the determination to proceed with the Major Expenditure is made, MUD 391 shall invoice MUD 592 for a portion of the estimated amount of the Major Expenditure, based upon



MUD 592's Proportionate Share and MUD 592 shall deposit funds in such amount with MUD 391. Payment of this invoice is due from MUD 592 within 45 days of the date of the invoice. MUD 592's failure to timely pay an invoice for its share of a Major Expenditure pursuant to this Section 12.2 shall constitute a delinquency in payment and shall be handled in accordance with Section 11.6 above.

**Section 12.3 Final Accounting.** Upon receipt of payment as described in Section 12.2 above, MUD 391 shall authorize the work and/or acquisitions constituting the Major Expenditure. If at any time during such work and/or acquisitions, actual costs of the Major Expenditure exceed the estimated costs, MUD 592 shall provide additional funds to MUD 391's construction account upon written notification of such requirement from MUD 391 upon the same basis as funds were initially advanced by MUD 592 for the Major Expenditure. If upon completion of such work and/or acquisitions, the actual costs of the Major Expenditure are less than the estimated costs, MUD 391 shall return any surplus funds deposited by MUD 592 upon the same basis such funds were initially provided to MUD 391 by MUD 592 for the Major Expenditure.

**Section 12.4 Emergency Condition.** If MUD 391 makes the finding that a Major Expenditure is necessary due to an emergency condition that has created or is likely to create a serious and imminent threat to public health and welfare or an unreasonable and severe economic loss to the Districts, MUD 391 may proceed with the Major Expenditure without regard to the procedure set forth in Section 12.2 above, but shall as soon as practicably possible notify MUD 592 of the emergency condition and the Major Expenditure. In such case, MUD 592 shall provide its Proportionate Share of the Major Expenditure within thirty (30) days of being notified by MUD 391 of the emergency condition and MUD 592's estimated share of such Major Expenditure. MUD 391 shall act in good faith in the finding of an emergency condition under this Section 12.4.

## **ARTICLE XIII**

### **MISCELLANEOUS**

**Section 13.1 Term.** Unless terminated by mutual agreement of the Districts, this Agreement shall continue in force and effect for a period of 50 years from the Effective Date. Notwithstanding the preceding sentence, this Agreement will terminate in the event that MAK has not commenced substantial construction toward completed lots within the MAK Tract within five years of the Effective Date of this Agreement.

**Section 13.2 Service Outside the Service Areas; Expansion of Service Areas.** In addition to providing Water Services within the Water Plant Service Area and Wastewater Treatment Services within the Wastewater Treatment Plant Service Area, MUD 391 may provide Water Services and Wastewater Treatment Services to areas outside its boundaries and within annexed areas, so long as MUD 391 does not exceed its Proportionate Share of the Water Plant and the Wastewater Treatment Plant, as



applicable, and no consent from MUD 592 or MAK shall be required to provide such Water Services and Wastewater Treatment Services. MUD 391 may expand the Water Plant Service Area or Wastewater Treatment Plant Service Area as it deems appropriate, and no consent from MUD 592 or MAK shall be required for such expansions. In the event MUD 592 desires to expand the Water Plant Service Area or Wastewater Treatment Plant Service Area to include land other than that reflected in **Exhibits F or G**, such Service Area expansion is subject to the written approval of MUD 391. MUD 592 shall submit a written request to MUD 391 detailing the proposed service area expansion, the proposed development in the additional tract(s), and the amount of capacity to be allocated for use within each tract. MUD 391 shall be under no obligation to approve any service area expansion(s) sought by MUD 592 or MAK.

**Section 13.3 Oversized Facilities.** MUD 592 may determine from time to time that the Water Plant and/or the Wastewater Treatment Plant should be sized to provide Water Service or Wastewater Service, respectively, to the MAK Tract in excess of the MUD 592 Water Plant Capacity or MUD 592 Wastewater Treatment Plant Capacity (collectively, the "Oversized Facilities"). In such an event, MUD 592 shall provide written notice to MUD 391 detailing: (i) the proposed construction of the Oversized Facilities; and (ii) the amount of capacity in the Water Plant and/or the Wastewater Treatment Plant that will result from the Oversized Facilities. Subject to the terms and conditions set forth in this Agreement, MUD 391 hereby agrees to cooperate with MUD 592 to design and construct the Oversized Facilities as required by MUD 592. MUD 592, in turn, hereby agrees that as between MUD 592 and MUD 391, MUD 592 shall fund its share of the Construction Costs of the Oversized Facilities by delivering such funds to MUD 391 within 45 days of receipt of written notification from MUD 391 of the amount owed to MUD 391. In order to carry out the design and construction of the Oversized Facilities, the Districts hereby agree that: (i) MUD 592 and/or MAK, as appropriate, shall have the right to review, comment on, and approve the design and construction plans for the Oversized Facilities prior to finalization; and (ii) the Oversized Facilities will be designed, bid, and constructed in accordance with applicable TCEQ rules and regulations governing municipal utility districts. The Construction Costs of the Oversized Facilities shall be determined in accordance with TCEQ rules and regulations so that the Construction Costs will be shared by MUD 391 and MUD 592 on the basis of benefits received, which are generally the design capacities in the Oversized Facilities for MUD 391 and MUD 592, respectively. The Districts hereby agree that each District will have an equitable ownership in the capacity of the Oversized Facilities based on each District's proportionate share of the Construction Costs of the Oversized Facilities. Notwithstanding the foregoing, MUD 592 agrees that in no event will any such Oversized Facilities result in MUD 592 obtaining more than 805 Active Water Connections in the Water Plant and/or 805 Active Wastewater Connections in the Wastewater Treatment Plant.

**Section 13.4 Sale of Surplus Capacity.** Subject to the conditions set forth in this Agreement, the Districts hereby agree that, as between the Districts, MUD 391 shall have an equitable ownership interest in (i) all capacity of the Water Plant in excess of the MUD 592 Water Plant Capacity required by MUD 592 to serve actual development within the MAK Tract, and (ii) all capacity of the Wastewater Treatment Plant in excess of the MUD 592 Wastewater Treatment Plant Capacity required by MUD 592 to serve actual development within the MAK Tract and shall be entitled to dispose of its surplus capacity in its sole discretion. Unless otherwise agreed to by MUD 391 pursuant to Section 13.2, MUD 592 shall only be permitted to use its capacity in the Water Plant and the Wastewater Treatment Plant to serve the MAK Tract.

**Section 13.5 MUD 592 General Plan and Amendments Thereto.** The Districts acknowledge that the General Plan is the preliminary plan for the development of the MAK Tract, as shown on **Exhibit J** attached hereto. MUD 391 and MAK acknowledge and agree that the General Plan may be revised and refined by MAK or as required by applicable regulatory authorities; provided, however, that MAK agrees that it will not amend the General Plan to: (i) increase the amount of the smallest single-family residential lots more than five percent (5%) of the total amount of lots shown on the General Plan included in this Agreement; (ii) relocate the largest lot sizes within the General Plan away from that portion of the lots in Villages of Cypress Lakes that abut the MAK Tract along Cypress Links Trail (but would not apply to lots that abut the MAK Tract along Russell Bend Lane or Cypresswood Drive); or (iii) provide for commercial or multi-family development on any property other than the site designated as "UNRESTRICTED RESERVE" as shown on **Exhibit J** attached hereto.

**Section 13.6 MUD 592 Masonry Fence Installation.** MAK agrees to install a masonry fence of at least seven feet in height along the road identified for such installation in the General Plan, as shown on attached hereto. The aesthetics of the installed masonry fence will be consistent with the development standards of the MAK Tract. The installed masonry fence will be of equal or greater quality than the existing masonry fence along those portions of Cypress-Rosehill or Huffmeister that abut Villages of Cypress Lakes.

**Section 13.7 Landscape Buffer and Walking Trail Access.** MAK agrees to install a landscape buffer including vegetation and irrigation between the boundaries of MUD 592 and MUD 391 of no less than 30 feet. MAK agrees to install a walking trail within the landscape buffer and to plant trees and other vegetation within the landscape buffer consistent with the landscaping plan attached hereto as **Exhibit K**. MAK agrees to use reasonable efforts, subject to drainage requirements of the Harris County Flood Control District, to provide that the lot elevation with the MUD 592 area are at the same grade or lower than the lots within Villages of Cypress Lakes. The Districts agree that the landscape buffer and trail will be maintained by either MUD 592 or the homeowner's association to be created to serve the MAK Tract. The Districts agree further that access to the walking trail within the landscape buffer will be provided to adjacent subdivisions

via landscape reserves or easements, subject to the owner of such easements or reserves granting permission for such access. The Districts acknowledge and agree that neither MUD 592 nor the homeowner's association to be created to serve the MAK Tract will maintain the aforementioned portions of the easements or reserves that allow for access to the walking trail.

**Section 13.8 Village of Cypress Lakes Parking Lot Contribution.** MAK agrees to contribute to the paving portion of the construction project for the Village of Cypress Lakes Parking Lot, in an amount not to exceed \$85,000.00 or to build the Village of Cypress Lakes Parking Lot on designs approved by MUD 391 at its cost.

**Section 13.9 Approval or Consent.** Except as otherwise specifically set forth herein, whenever this Agreement requires or permits approval or consent to be hereafter given by any District, the Districts agree that such approval or consent shall not be unreasonably withheld.

**Section 13.10 No Additional Approval Needed.** Except as otherwise may be specifically set forth in this Agreement, MUD 391 shall not be required to obtain any approvals from MUD 592 or MAK with respect or prior to proceeding with construction of facilities and improvements to serve development within MUD 391, nor shall any provision in this Agreement be construed to require MUD 391 to seek or obtain such approvals.

**Section 13.11 Force Majeure.** In the event any District is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, except the obligation to pay amounts owed or required to be paid pursuant to the terms of this Agreement, then the obligations of such District, to the extent affected by such 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 District whose contractual obligations are affected thereby shall give notice and full particulars of such force majeure to the other Districts. Such cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure," as used herein, shall include without limitation of the generality thereof, 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, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, drought, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of water supply resulting in an inability of MUD 391 to provide services from the Water Plant, or any other incapacities of any District, whether similar to those enumerated or otherwise, which are not within the control of the District claiming such inability, which such District 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 District 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 District when such settlement is unfavorable to it in the judgment of the District experiencing such difficulty.

**Section 13.12 Regulatory Agencies.** This Agreement is subject to all rules, regulations and laws which may be applicable of the United States, the State of Texas, and any regulatory agency having jurisdiction.

**Section 13.13 No Additional Waiver Implied.** No waiver or waivers of any breach or default (or any breaches or defaults) by any District hereto of any term, covenant, condition, or liability hereunder, or the performance by any District of any duty of obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, under any circumstances.

**Section 13.14 Insurance.** MUD 391 shall keep insured such parts of the Water Plant and the Wastewater Treatment Plant as are customarily insured by municipal corporations and political subdivisions in Texas operating like properties in similar locations under the same circumstances with a responsible insurance company or companies against risks, accidents or casualties against which and to the extent insurance is customarily carried by such municipal corporations and political subdivisions, including boiler and machinery coverage. MUD 391's cost to provide insurance of the Water Plant and the Wastewater Treatment Plant as required by this Section 13.8, shall be reported and treated as an Operation and Maintenance Expense and shared between the Districts in accordance with the provisions of Article XI. Further, the Districts shall carry insurance with a responsible insurance company or companies insuring against liability for bodily or personal injury or death of any person or damage to any property (including, but not limited to, persons employed by the Districts). If possible, such insurance obtained by either District shall include the other District as an additional insured. In the event of either District's failure to purchase and maintain such insurance, the other District shall have the right but not the obligation, upon providing thirty (30) days written notice to the other District, to purchase such required insurance and thereafter receive credit for any premiums so paid against bills for Operation and Maintenance Expenses.

**Section 13.15 Addresses and Notice.** Any notice provided or permitted to be given under this Agreement must be in writing and may be served by (a) depositing same in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested; (b) by delivering the same in person to such party; or (c) by sending same electronic mail. Notice given by mail shall be effective three (3) days after deposit in the United States mail and notice delivered in person or sent by electronic mail shall be effective upon receipt. For the purpose of notice, addresses of the Districts shall, until changed as hereinafter provided, be as follows:



If to MUD 391, to:

Harris County Municipal Utility District No. 391  
c/o Allen Boone Humphries Robinson LLP  
3200 Southwest Freeway, Suite 2600  
Houston, Texas 77027  
Attention: Mr. Greer Pagan  
E-mail: [gpagan@abhr.com](mailto:gpagan@abhr.com)

If to MUD 592, to:

Harris County Municipal Utility District No. 592  
c/o Allen Boone Humphries Robinson LLP  
3200 Southwest Freeway, Suite 2600  
Houston, Texas 77027  
Attention: Mr. Robert A. Seale  
E-mail: [rseale@abhr.com](mailto:rseale@abhr.com)

With a Copy to:

MAK Development Group  
410 W. Grand Parkway South, Suite 395  
Katy, Texas 77494  
Attention: Mr. Michael Kim  
E-mail: [mkim@makdevelopmentgroup.com](mailto:mkim@makdevelopmentgroup.com)

Either District may designate another address for all purposes of this Agreement by giving the other District not less than fifteen (15) days advance written notice of such change of address.

**Section 13.16 Assignability.** This Agreement shall bind and benefit the Districts hereto and their successors but shall not otherwise be assignable, in whole or in part, by either District, subject to the rights of the Districts set forth in Section 13.3 and to the right of MAK to assign its rights, duties and obligations under this Agreement to MUD 592 as set forth herein.

**Section 13.17 Modification.** This Agreement shall be subject to change or modification only with the written mutual consent of the Districts.

**Section 13.18 Parties in Interest.** This Agreement shall be for the sole and exclusive benefit of the Districts, their legal successors and assigns, and shall not be construed to confer any rights upon any third party. Nothing herein shall be construed to confer standing to sue upon any party who did not otherwise have such standing and

it is expressly agreed that nothing herein shall be construed to create any duty or obligation on the part of one District to the customers of another.

**Section 13.19 Severability.** The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person or circumstances 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 such provision or part of this Agreement to other persons or circumstances shall not be affected thereby.

**Section 13.20 Merger.** This Agreement, including the exhibits that are attached hereto and incorporated herein for all purposes, embodies the entire agreement between the Districts and MAK relative to the subject matter hereof.

**Section 13.21 Remedies.** It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default, but all remedies, other than termination of this Agreement or suspension of Water Services or Wastewater Treatment Services at present quantities, existing at law or in equity, including specific performance and mandamus, may be availed of by any District and shall be cumulative.

The Districts agree that alternative dispute resolution, as provided in Texas Civil Practice and Remedies Code, Chapter 54, as amended, is the preferable and most economical way to settle disputes and is an appropriate means for the parties to an ongoing contract such as this Agreement to resolve their differences. When any controversy, dispute, or claim arises out of or relates to the Agreement or when the breach of any provision of this Agreement is alleged, the Districts agree to pursue alternative dispute resolution in good faith to attempt to resolve these differences before pursuing other legal or equitable remedies. Moreover, the parties agree to pursue voluntary agreement forms of alternative dispute resolution before submitting the dispute to the judicial system or to a non-party or parties for resolution.

**Section 13.22 Right of Entry.** Each District shall have a right of entry at reasonable times and upon reasonable notice in, over, and across the lands, properties, and facilities comprising the other District's Water Distribution System and Wastewater Collection System for the purpose of making any inspections permitted by this Agreement and for the purpose of performing any other functions or duties authorized by this Agreement. In addition, MUD 592 shall have a right of entry at reasonable times and upon reasonable notice in, over, and across the lands, properties, and facilities comprising the Water Plant and the Wastewater Treatment Plant for the purpose of making any inspections permitted by this Agreement and for the purpose of performing any other functions or duties authorized by this Agreement.

**Section 13.23 No Liability for General Obligations.** Nothing in this Agreement shall have the effect of causing MUD 391 to assume, guarantee, or become in any way liable upon any bond, warrant, indebtedness, or other obligation of MUD 592 or to undertake any obligation of MUD 592 to the inhabitants of MUD 592. Likewise, nothing in this Agreement shall have the effect of causing MUD 592 to assume, guarantee, or become in any way liable upon any bond, warrant, indebtedness, or other obligation of MUD 391 or to undertake any obligation of MUD 592 to the inhabitants of MUD 391.

**Section 13.24 Special Conditions.** When receiving Water pursuant to this Agreement and supplying such Water to its own residents and other water users, the receiving District acts in the capacity of an owner/operator of a "public water system" as that term is used in the Federal Safe Drinking Water Act, and in that regard, is solely responsible for complying with all Regulatory Requirements relating to the protection of the health and welfare of such users, including, but not limited to, keeping all necessary records and performing all necessary testing, monitoring and treatment and the supplying District will have no responsibility with respect thereto; provided, however, that the supplying District shall provide to the receiving District the information required for preparation of the receiving District's "Consumer Confidence Report" under applicable regulations of the United States Environmental Protection Agency and TCEQ on or before April 1, or other required date, each year.

**Section 13.25 Water Analysis.** If requested by either District, each District will obtain a bacteriological water analysis on a sample of water taken from its Water distribution system at least once per month and shall submit the results of said analysis to the other District.

**Section 13.26 Applicable Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas and venue shall be in Harris, Texas.

**Section 13.27 Counterpart Execution.** This Agreement may be executed in any number of counterparts with the same effect as if the Districts signed the same document. All counterparts shall be construed together and shall constitute one and the same instrument.

**Section 13.28 Reimbursement Under Agreements with the Districts.** The Districts acknowledge and agree that neither MAK nor MUD 592 shall receive any reimbursement from MUD 391 for the Water Plant Capacity Payment or the Wastewater Treatment Plant Capacity Payment, and MAK shall seek reimbursement from MUD 592 for such payments and costs pursuant to a separate written agreement between MAK and MUD 592.

**Section 13.29 Legal Representation.** The parties have requested Allen Boone Humphries Robinson LLP ("ABHR") to represent them in connection with the preparation and review of this Agreement. ABHR has discussed with the parties the

advantages and disadvantages of the parties engaging independent counsel to represent the parties in connection with the preparation and review of this Agreement because of the potential conflict of interest in ABHR's representation of the parties in this matter. ABHR has informed the parties that it reasonably believes that its representation of one party will not be affected by its representation of the other party, and that ABHR is fully able and willing to represent the parties fairly and adequately in connection with this matter. With a full understanding of the parties' options to retain independent counsel or to have ABHR represent them with respect to the matters described above, and the advantages and disadvantages of either choice, the parties requested that ABHR represent the parties with respect to the matters described above. The parties understand that there may be complete disclosure to the parties of all information and communications that ABHR receives from the parties in the course of ABHR's representation in this matter.

**[EXECUTION PAGES FOLLOW]**



IN WITNESS WHEREOF, the Districts have executed this Agreement in multiple counterparts, each of which shall be deemed to be an original, as of the date and year first written above.

ATTEST:

HARRIS COUNTY MUNICIPAL  
UTILITY DISTRICT NO. 391

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

Secretary, Board of Directors

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

President, Board of Directors



MAK DEVELOPMENT GROUP

By: 

Name: MICHAEL KIM

Title: PRESIDENT

### Schedule of Exhibits

- Exhibit A -- Legal Description of the MAK Tract
- Exhibit B -- Description of Wastewater Treatment Plant and Wastewater Treatment Plant Capacity
- Exhibit C -- Description of Water Plant and Water Plant Capacity
- Exhibit D -- Diagram of Wastewater Point of Connection
- Exhibit E -- Diagram of Water Point of Connection
- Exhibit F -- Map of Wastewater Treatment Plant Service Area
- Exhibit G -- Map of Water Plant Service Area
- Exhibit H -- Calculation of Water Plant Capacity Payment
- Exhibit I -- Calculation of Wastewater Treatment Plant Capacity Payment
- Exhibit J -- General Plan
- Exhibit K -- Buffer Landscaping Plan

County: Harris  
Project: Cypress Lakes Golf Course  
M&B No: 231091  
Job Number: 4577-AltA

### FIELD NOTES FOR 187.387 ACRES

Being a tract of land containing 187.387 acres (8,162,552 square feet) located in the Houston Tap and Brazoria Railroad Company Survey, Abstract Number (No.) 403 and the Henry Radz Survey, Abstract Number (No.) 675 and the Milford Buress Survey Abstract Number (No.) 1733, Harris County, Texas; Said 187.387 acre tract being all of a called 184.2447 acre tract recorded in the name of Cypress Lakes Investments, LTD. in Harris County Clerk File Number (H.C.C.F. No.) 20120216892, a portion of Cypress Lakes Golf Course Reserve, a subdivision of record in Film Code Number (F.C. No.) 429038 of the Harris County Map Records (H.C.M.R.), and all of those certain Tracts 1 through 8 of an Abstract of Judgement recorded in H.C.C.F. No. 20120308193; Said 187.387 acre tract being more particularly described by metes and bounds as follows (all bearings are based on the Texas Coordinate System of 1983 (NAD83), South Central Zone, per GPS observations):

**BEGINNING** at an "X" cut in concrete found on the north Right-Of-Way (R.O.W.) line of Cypresswood Drive (100 feet wide per FC Nos. 352146 and 352147, H.C.M.R.), at the southwest corner of a 140 feet wide Harris County Flood Control District Fee Tract recorded in H.C.C.F. No. K184430, being the southeast corner of said 184.2447 acre tract, the southeast corner of said Cypress Lakes Golf Course, and the southeast corner of the herein described tract, at the beginning of a curve to the right;

**THENCE**, with the north R.O.W. line of said Cypresswood Drive, being the south line of said 184.2447 acre tract and said Cypress Lakes Golf Course, the following three (3) courses:

1. 828.34 feet along the arc of said curve to the right, having a radius of 1950.00 feet, a central angle of 24 degrees 20 minutes 20 seconds and a chord that bears North 80 degrees 20 minutes 13 seconds West, a distance of 822.13 feet to a 3/4-inch capped iron rod found at a point of tangency;
2. North 68 degrees 09 minutes 45 seconds West, a distance of 535.64 feet to a 3/4-inch capped iron rod found at the beginning of a curve to the left;
3. 608.26 feet along the arc of said curve to the left, having a radius of 2050.00 feet, a central angle of 17 degrees 00 minutes 01 seconds and a chord that bears North 70 degrees 39 minutes 43 seconds West, a distance of 606.03 feet to a 3/4-inch iron rod found at the southeast corner of Villages of Cypress Lakes, Sec. 5, Partial Replat Number 1, a subdivision of record in F.C. No. 615046, H.C.M.R., for the southwest corner of Tract 8 (call 1.8398 acres) of said H.C.C.F. No. 20120308193 and the herein described tract;

**THENCE**, with the line common to said Tract 8 and said Sec. 5, Partial Replat Number 1, and continuing with the northeasterly line of said Sec. 5, Partial Replat Number 1, the following five (5) courses:

1. North 37 degrees 44 minutes 30 seconds West, a distance of 217.79 feet to a 3/4-inch capped iron rod found at an angle point;



2. North 23 degrees 16 minutes 26 seconds West, a distance of 327.01 feet to a 3/4-inch iron rod found at an angle point;
3. North 13 degrees 45 minutes 29 seconds West, a distance of 298.51 feet to a 3/4-inch capped iron rod found at an angle point;
4. North 16 degrees 40 minutes 14 seconds East, a distance of 277.76 feet to a 3/4-inch capped iron rod found at an angle point;
5. North 69 degrees 04 minutes 53 seconds West, a distance of 396.78 feet to a 5/8-inch iron rod with a Miller Survey cap set at the north corner of Lot 15, Block 2 of said Sec. 5, Partial Replat Number 1, and being the east corner of Lot 12, Block 1 of Villages of Cypress Lakes, Sec. 18, a subdivision of record in FC No. 616056;

**THENCE**, with the east line of said Lot 12, North 52 degrees 58 minutes 03 seconds West, a distance of 67.48 feet to a 5/8-inch capped iron rod found at the east corner of a called 0.2094 acre tract recorded in the name of Richard Rue and Kathy Rue in H.C.C.F. No. 20080256904, being the north corner of said Lot 18, for an angle point in the herein described tract;

**THENCE**, with the northeast line of said 0.2094 acre tract, North 41 degrees 09 minutes 30 seconds West, a distance of 74.18 feet to a 5/8-inch capped iron rod found at the east corner of Lot 11, Block 1 of said Sec. 18, same being the southwest corner of Tract 7 (call 0.8138 acres) of said H.C.C.F. No. 20120308193, for an angle point in the herein described tract;

**THENCE**, with the line common to said Tract 7, the northeast line of said Sec. 18 and the southerly line of Villages of Cypress Lakes, Sec. 19, Partial Replat No. 1, a subdivision of record in F.C. No. 647019, H.C.M.R., and Villages of Cypress Lakes Sec 19, a subdivision of record in F.C. No. 622292, H.C.M.R., the following three (3) courses:

1. North 29 degrees 59 minutes 08 seconds West, a distance of 748.53 feet to a 3/4-inch capped iron rod found at an angle point;
2. North 21 degrees 45 minutes 04 seconds East, a distance of 88.55 feet to a 5/8-inch iron rod with a MS cap set at an angle point;
3. North 50 degrees 24 minutes 53 seconds East, a distance of 614.76 feet to a 3/4-inch capped iron rod found at the east corner of said Tract 7, same being the west corner of Tract 2 (call 0.1982 acres) of said H.C.C.F. No. 20120308193, for an angle point in the herein described tract;

**THENCE**, with the line common to said Tract 2 and said Sec. 19, the following two (2) courses:

1. North 64 degrees 28 minutes 05 seconds East, a distance of 320.26 feet to a 3/4-inch capped iron rod found at an angle point;
2. North 75 degrees 01 minutes 58 seconds East, a distance of 292.34 feet to a 3/4-inch capped iron rod found at the east corner of said Tract 2, for an angle point in the herein described tract;

**THENCE**, continuing with the southerly line of said Sec. 19, South 86 degrees 29 minutes 28 seconds East, a distance of 260.00 feet to a 3/4-inch capped iron rod found at the southwest corner of Tract 1 (call 0.0067 acre) of said H.C.C.F. No. 20120308193, for an angle point in the south line of said Sec. 19, and the herein described tract;

**THENCE**, with the south lines of said Tract 1 and said Sec. 19, North 77 degrees 55 minutes 23 seconds East, a distance of 35.87 feet to a 3/4-inch capped iron rod found at the southeast corner of said Tract 1, and said Sec. 19, for an angle point of the herein described tract;

**THENCE**, with the east lines of said Tract 1 and said Sec. 19, being the west lines of Tract 6 (call 0.5117 acre) of said H.C.C.F. No. 20120308193, North 08 degrees 23 minutes 20 seconds West, a distance of 337.19 feet to a 5/8-inch iron rod with a Miller Survey cap set at the north corner of said Tract 6, same being the south corner of Tract 5 (call 0.4916 acres) of said H.C.C.F. No. 20120308193, being on the east line of Villages of Cypress Lakes Sec. 23, a subdivision of record in F.C. No. 637211, H.C.M.R., for an angle point of the herein described tract;

**THENCE**, with the line common to said Tract 5 and said Sec. 23, the following two (2) courses:

1. North 01 degrees 57 minutes 42 seconds West, a distance of 771.56 feet to a 3/4-inch capped iron rod found at an angle point;
2. North 16 degrees 23 minutes 09 seconds East, a distance of 175.75 feet to a 5/8-inch capped iron rod found at the north corner of said Tract 5, same being on the south R.O.W. line of Dahlia Glen Lane (60 feet wide per F.C. Nos. 637211 and 622020, H.C.M.R.), for the northerly northwest corner of said 184.2447 acre tract, said Cypress Lakes Golf Course Reserve and the herein described tract;

**THENCE**, with the south R.O.W. line of said Dahlia Glen Lane, North 76 degrees 03 minutes 10 seconds East, a distance of 379.62 feet to a 5/8-inch iron rod with a Miller Survey cap set at the north corner of Tract 4 (called 0.2422 acres) of said H.C.C.F. No. 20120308193, being on the west line of Villages of Cypress Lakes, Sec. 14, a subdivision of record in F.C. No. 602231, for an angle point in the herein described tract;

**THENCE**, with the line common to said Tract 4, and said Sec. 14, the following two (2) courses:

1. South 13 degrees 42 minutes 08 seconds East, a distance of 574.96 feet to a 3/4-inch capped iron rod found at an angle point;
2. South 02 degrees 06 minutes 13 seconds West, a distance of 403.49 feet to a 3/4-inch capped iron rod found at the south corner of said Tract 4, for an angle point in the herein described tract;

**THENCE**, with the south line of said Sec. 14, the following two (2) courses:

1. South 67 degrees 08 minutes 44 seconds East, a distance of 127.00 feet to a 3/4-inch iron rod found at an angle point;
2. North 89 degrees 42 minutes 31 seconds East, a distance of 75.00 feet to a 3/4-inch capped iron rod found at the west corner of Tract 3 (called 0.2116 acres) per said H.C.C.F. No. 20120308193, for an angle point in the herein described tract.

**THENCE**, with the common line to said Tract 3 and said Sec. 14, the following three (3) courses:

1. North 44 degrees 15 minutes 37 seconds East, a distance of 154.78 feet to a 3/4-inch iron rod found at an angle point;
2. North 86 degrees 57 minutes 49 seconds East, a distance of 268.28 feet to a 5/8-inch iron rod with a MS cap set at an angle point;
3. South 88 degrees 40 minutes 24 seconds East, a distance of 605.08 feet to a point that falls in a drainage ditch on the west line of Villages of Cypress Lakes, Sec. 6, a subdivision of record in F.C. No. 548050, same being the southeast corner of said Sec. 14, for the northeast corner of said 184.2447 acre tract, said Cypress Lakes Golf Course Reserve and the herein described tract;

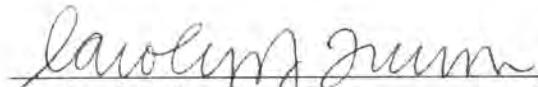
**THENCE**, with the line common to said Sec. 6, Cypress Mill Park, Sec. 1, a subdivision of record in F.C. No. 404098, H.C.M.R, said 184.2447 acre tract and said Cypress Lakes Golf Course Reserve, the following two (2) courses:

1. South 02 degrees 30 minutes 22 seconds East, a distance of 1,424.39 feet to an angle point;
2. South 01 degrees 02 minutes 01 seconds East, a distance of 972.16 feet to a 3/4-inch capped iron rod found at the northeast corner of said 140 feet wide H.C.F.C.D. Fee Tract, for an angle point of the herein described tract;

**THENCE**, with the lines common to said 140 feet wide H.C.F.C.D. Fee Tract and said 184.2447 acre tract and said Cypress Lakes Golf Course Reserve, the following two (2) courses:

1. South 88 degrees 14 minutes 17 seconds West, a distance of 140.01 feet to a 3/4-inch capped iron rod found at an angle point;
2. South 02 degrees 30 minutes 22 seconds East, a distance of 1,138.95 feet to the **Point of Beginning** and containing 187.387 acre of land.

An ALTA/NSPS Land Title Survey of the subject tract has been prepared by Miller Survey and accompanies this description.

  
Carolyn J. Quinn, R.P.L.S.  
Texas Registration No. 6033



**MILLER SURVEY | DCCM**  
Texas Firm Registration No. 10047100  
Ph: (713) 413-1900  
M&B No. 231091  
Dwg No.: 4577-ALTA  
Date: March 31, 2023

**EXHIBIT "B"**

**DESCRIPTION OF WASTEWATER TREATMENT PLANT & CAPACITY**

Existing HCMUD391 WWTP Facility:	950,000 GPD	
Flow Factor <sup>(1)</sup> :	220 GPD/ESFC	
Total Capacity Provided:	4,318 ESFC	
HCMUD391 Share	3,563 ESFC =	82.5% Pro-Rata Share Percentage
HCMUD592 Share	755 ESFC =	17.5% Pro-Rata Share Percentage

**Notes:**

1. On January 26, 2023 TCEQ approved a request for a reduced wastewater flow factor based on the development projections.



**EXHIBIT "C"**  
**DESCRIPTION OF WATER PLANT & CAPACITY**

	Design Criteria	Water Plant No. 1 and 2 Capacity			
		Size		Capacity	
Water Well	0.6 gpm/ESFC	2,712	gpm	4,520	ESFC
Ground Storage Tank	200 gal/ESFC	1,023,921	gal	5,120	ESFC
Booster Pump	1.295 gal/ESFC	7,750	gpm	5,019	ESFC
Pressure Tanks	15.8 gal/ESFC	87,500	gal	5,538	ESFC

Total Capacity Provided: 4,520 ESFC

HCMUD391 Share	3,765 ESFC =	83.3% Pro-Rata Share Percentage
HCMUD592 Share	755 ESFC =	16.7% Pro-Rata Share Percentage

**Notes:**

1. Using the latest criteria, the service pumps are as follows:
  - a. Average Daily Demand  
420 gpd/ESFC
  - b. Maximum Daily Demand is 2.4 times Average Daily Demand  
 $(2.4)(420\text{gpd/ESFC}) = 1,008 \text{ gpd/ESFC}$
  - c. Peak Hourly Demand is 1.85 times Maximum Daily Demand  

$$\frac{(1.85)(1,008\text{gpd/ESFC})}{(1,440 \text{ min/day})} = 1.295 \text{ gpm/ESFC}$$
- 2) The District has two (2) 1,250 gpm booster pumps and seven (7) 750 gpm pumps. The capacity is based on one (1) 1,250 gpm booster pump out of service.
- 3) TCEQ approved the ACR on November 8, 2016 waiver which allows us to calculate our pressure tank capacity at 15.8 gallons per connection.
- 4) Based on G-M Services report dated June 13, 2023 (1,212gpm) for Well # 2 and Projected Rehab gpm for Well #1 in August 2023 (1,500gpm).





Vicinity Map  
1:800,000

**Legend**

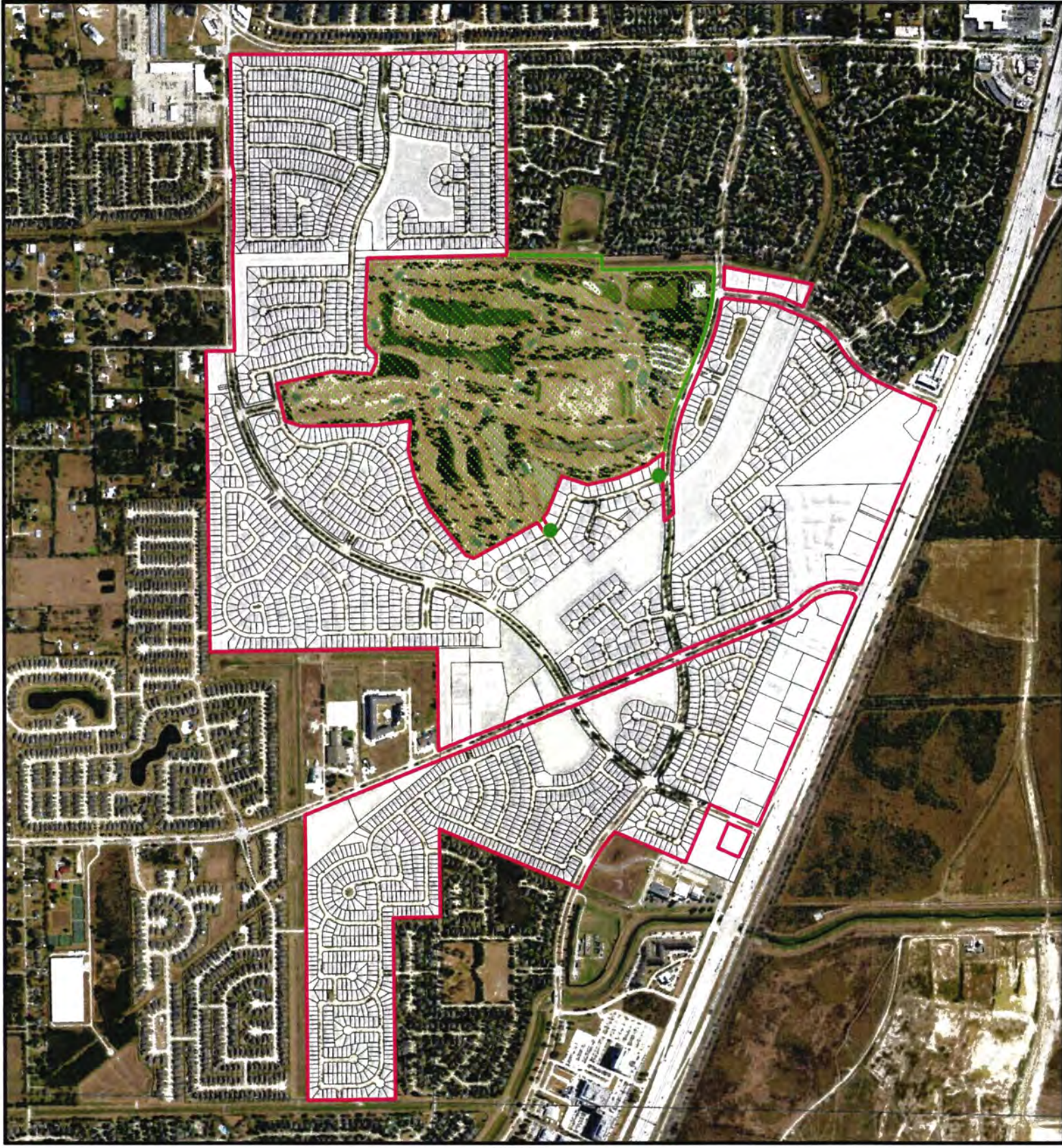
- HCMD 391 Boundary
- HCMD 592 Service Area
- WWTP Connection Points

Diagram of Wastewater Connection

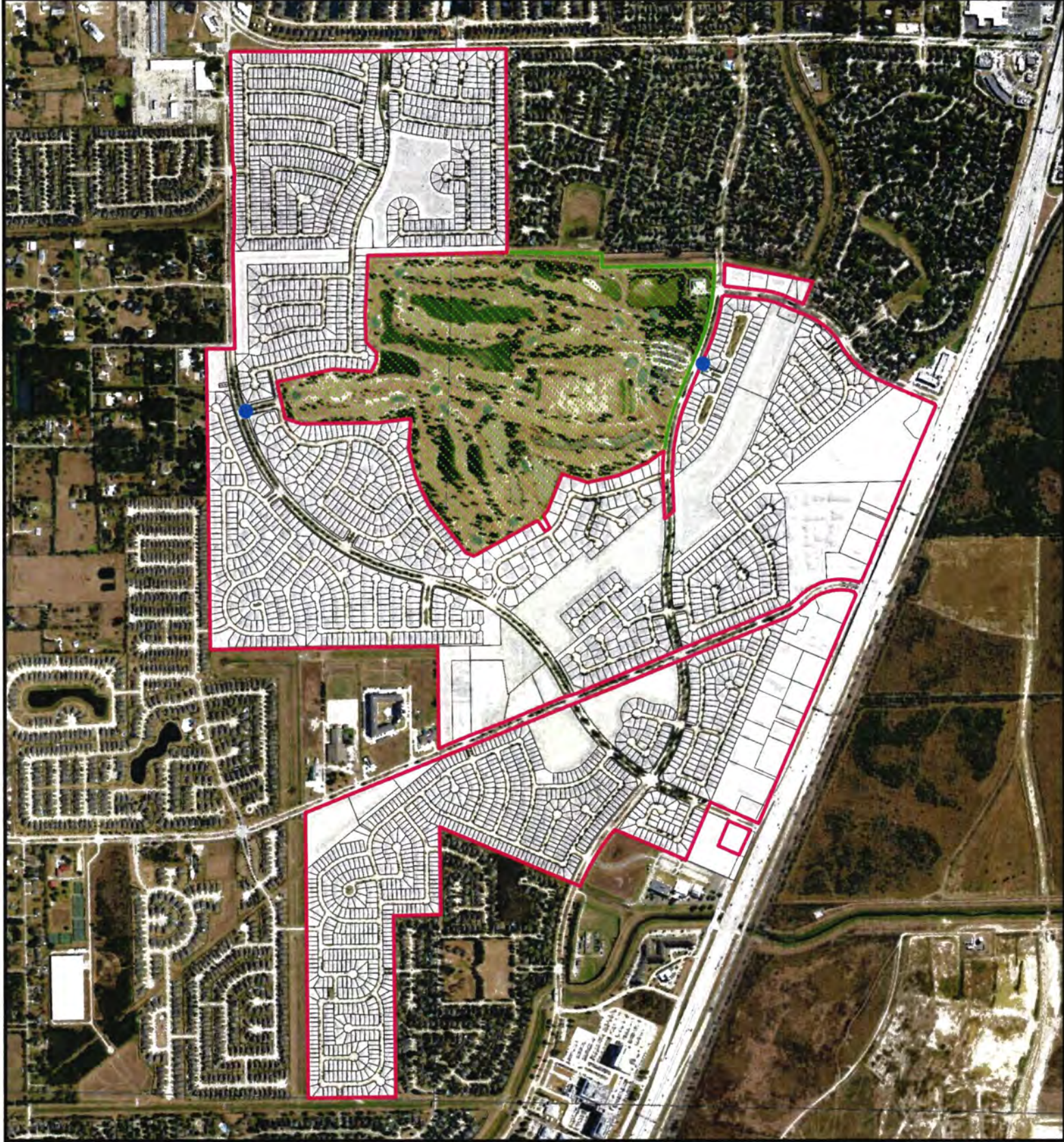
**Exhibit D**  
Harris County, Texas

1:16,000  
Date: 6/2/2023

0 400 800 1,600 Feet







Vicinity Map  
1:800,000

**Legend**

- HCMUD 391 Boundary
- HCMUD 592 Service Area
- WP Connection Points

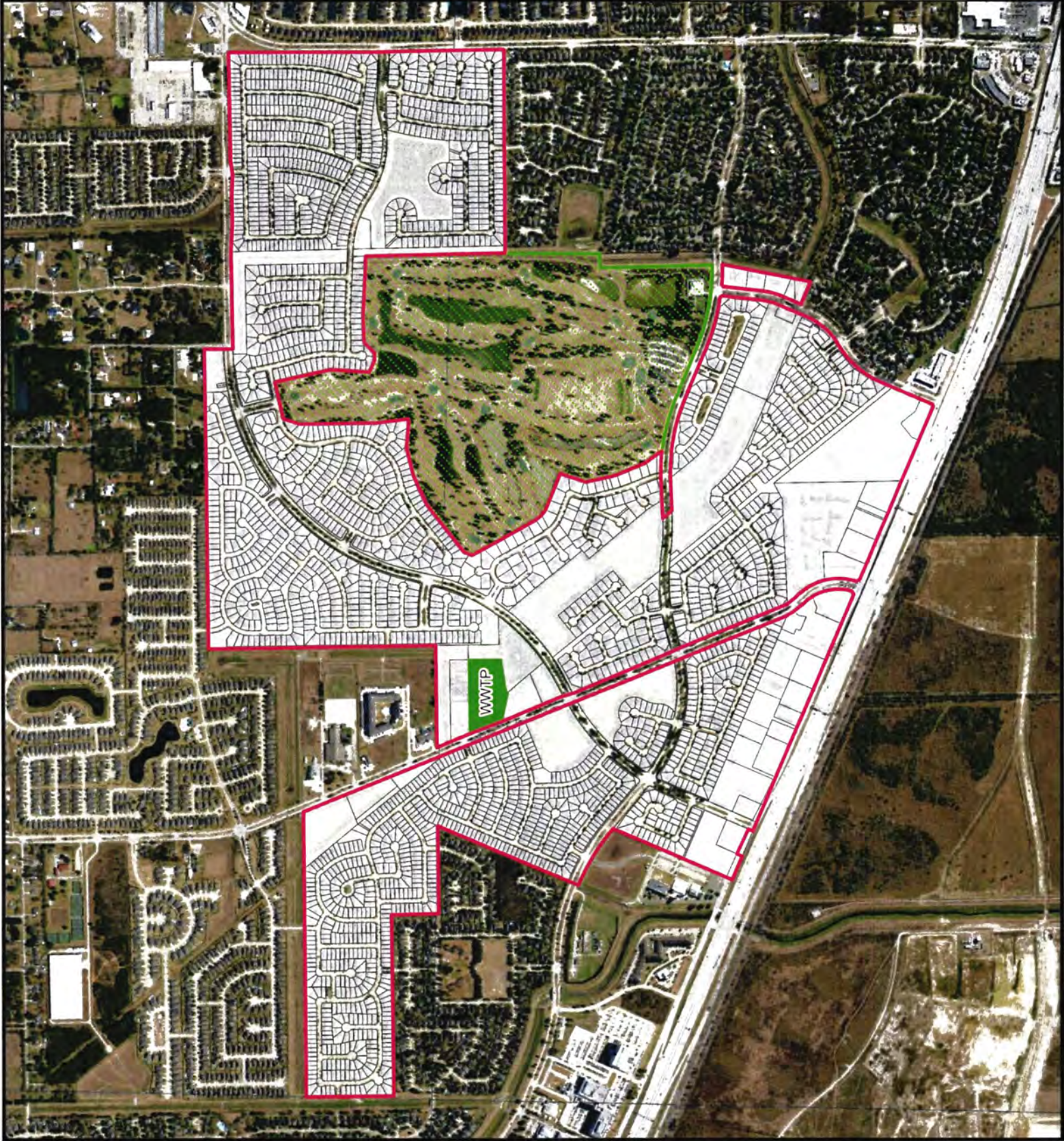
Diagram of Water Connection

**Exhibit E**  
Harris County, Texas

U  
1:16,000  
Date: 6/2/2023

0 400 800 1600  
Feet





Vicinity Map  
1:800,000

- Legend**
- HC/MUD 391 WWTP Service Area
  - HC/MUD 592 Service Area
  - WWTP

Wastewater Treatment Plant  
Service Area

**Exhibit F**  
Harris County, Texas

1:16,000  
Date: 6/2/2023

0 400 800 1,600 Feet

**r.g. miller** **escm**  
16340 Park Ten Place • Suite 350 • Houston • Texas 77064  
Office: 713.461.9609 • Info: info@rgmiller.com  
Texas Registered Engineering Firm F-487





Vicinity Map  
1:800,000

**Legend**

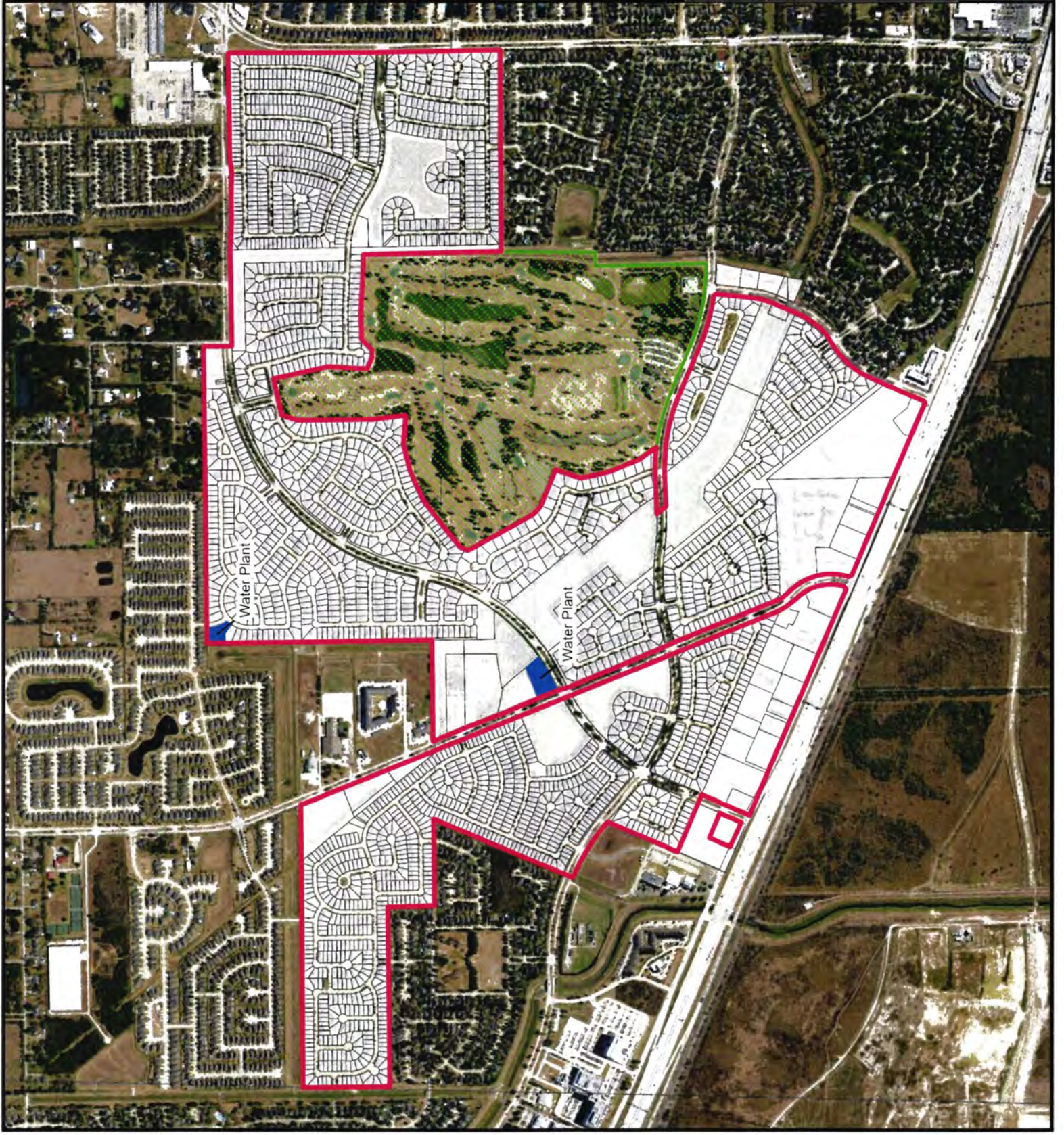
- HCMD 391 WP Service Area
- HCMD 592 Service Area
- Water Plant

**Water Plant Service Area**

**Exhibit G**  
Harris County, Texas

1:16,000  
Date: 6/2/2023

0 400 800 1,600 Feet





**EXHIBIT "H"**  
**CALCULATION OF WATER PLANT CAPACITY PAYMENT**

**WATER PLANT**

Item	Funded	Plans	District Share	Engineering	UL			School %	Pro-Rata Share	Completion	Funding Date	Bond Interest Rate
					District Plant Capacity (ESFC)	School Share	School %					
Water Plant No. 1 Phase 1 (RGMJob#2725)	Bond 1	X	\$1,415,415	\$186,341	4,532	755	16.7%	\$266,841.52	September 10, 2003	June 29, 2004		5.28%
Water Plant No. 1 Phase 2 (RGMJob#2642.70)	Bond 7.12	X	\$68,380	\$23,632	4,532	755	16.7%	\$15,328.54	April 24, 2007	August 25, 2014		4.23%
Water Plant No. 3 Phase 3 (RGMJob#2642.71)	Bond 7.10.12	X	\$550,091	\$119,974	4,532	755	16.7%	\$103,631.79	March 17, 2009	August 25, 2014		3.97%
Water Plant No. 1 500 kW Generator (RGMJob#2642.73)	N/A	X	\$281,469	\$38,405	4,532	755	16.7%	\$53,288.81	January 11, 2011	N/A		0.00%
Water Plant No. 2 Phase 1 (RGMJob#2642.72)	Bond 13, SF16.15	X	\$2,375,964	\$328,132	4,532	755	16.7%	\$450,483.71	March 11, 2014	December 1, 2017		3.48%
Water Plant No. 2 Phase 2 (RGMJob#2642.705)	Bond 15	X	\$596,175	\$103,370	4,532	755	16.7%	\$116,539.46	September 25, 2018	September 25, 2018		2.06%
<b>Total</b>			<b>\$5,287,494</b>	<b>\$751,854</b>				<b>\$1,006,113.83</b>	<b>Subtotal</b>			<b>Total</b>
												<b>\$93,661.31</b>

**LAND ACQUISITION**

Item	Funded	Plans	District Share	Service Area/Cap acity	School Share	School %	Pro-Rata Share
Water Plant No. 1 Site	Surplus 2008	X	\$12,932	4,532	755	16.7%	\$2,154.38
Water Plant No. 2 Site	Bond 16	X	\$16,940	4,532	755	16.7%	\$2,822.02
			<i>Total</i>				<i>Subtotal</i>
							\$4,976.40
			<i>Total Capital Costs</i>				
			<i>+16% Soft Costs</i>				
			<i>Total</i>				
			<i>Total Capital Costs w/ Soft Costs</i>				
			<i>Total Interests Costs</i>				
</							



**EXHIBIT "I"**  
**CALCULATION OF WASTEWATER TREATMENT PLANT CAPACITY PAYMENT**

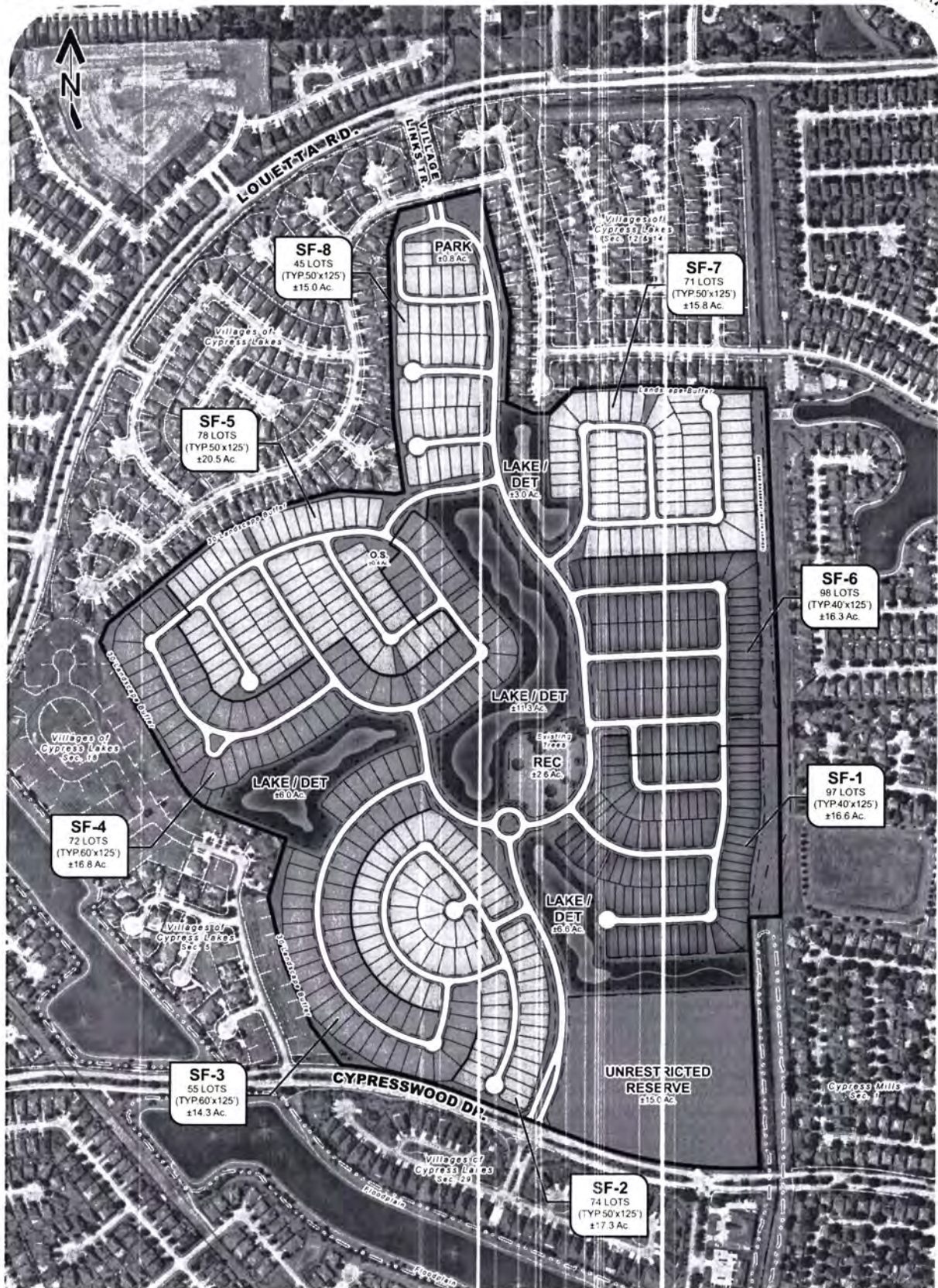
**WASTEWATER TREATMENT PLANT FACILITY**

Item	Funded	Plans	District Share	Engineering	Unit			School %	Pro-Rata Share	Completion	Funding Date	Bond Interest Rate
					District Plant Capacity (ESFC)	School Share	Area/Capacity					
Permanent WWTP Phase 1 (RGMJob#2642.62)	Bond 7, 10, 15	X	\$2,383,505	\$297,735	4,318 (1)	755		17.5%	\$468,813.34	July 1, 2008	December 1, 2017	3.94%
400kW Diesel Generator (RGMJob#2642.64)	N/A	X	\$245,969	\$32,793	4,318 (1)	755		17.5%	\$48,741.36	September 6, 2011	N/A	0.00%
Permanent WWTP Phase 2 (RGMJob#2642.607)	Bond 16	X	\$4,065,972	\$763,529	4,318 (1)	755		17.5%	\$844,435.64	May 12, 2009	July 13, 2020	0.00%
<b>Total</b>			<b>\$6,695,446</b>	<b>\$1,094,057</b>					<b>\$1,361,990.33</b>			
									<b>Subtotal</b>			<b>Total \$92,427.33</b>

**LAND ACQUISITION**

Item	Funded	Plans	District Share	Service Area/Capacity	School %	Pro-Rata Share
WWTP Site	Bond 1	X	\$59,843	4,318 (1)	17.5%	\$10,463.52
<b>Total</b>			<b>\$59,843</b>			<b>\$10,463.52</b>
<b>Total Capital Costs</b>			<b>\$1,372,453.84</b>			
<b>+16% Soft Costs</b>			<b>\$219,592.61</b>			
<b>Total</b>			<b>\$1,592,046.46</b>			
<b>Total Capital Costs w/ Soft Costs</b>			<b>\$1,592,046.46</b>			
<b>Total Interest Costs</b>			<b>\$92,427.33</b>			
<b>GRAND TOTAL HCMUDS92 PRO-RATA COST SHARE</b>			<b>\$1,684,473.79</b>			
<b>COST PER ESFC</b>			<b>\$2,731.09</b>			





a schematic development plan for  
**CROSSING AT CYPRESS LAKES**  
 ±187.5 ACRES OF LAND

prepared for  
**MAK DEVELOPMENT**

**META**

24285 Katy Freeway, Ste. 525  
 Katy, Texas 77494  
 Tel: 281-810-1422

**Exhibit J**

SCALE  
 0 100 200 400

MTA-I-570  
 SEPTEMBER 1, 2023

THIS DRAWING IS A GRAPHIC REPRESENTATION FOR PRESENTATION PURPOSES ONLY AND IS NOT FOR CONSTRUCTION OR CONSTRUCTION PURPOSES. THIS DRAWING IS A SCHEMATIC DEVELOPMENT PLAN AND IS SUBJECT TO CHANGE WITHOUT NOTICE. META MAKES NO WARRANTY, REPRESENTATION OR GUARANTEE, EXPRESS OR IMPLIED, REGARDING THE ACCURACY, COMPLETENESS, OR TIMELINESS OF THE INFORMATION PROVIDED HEREIN. THE INFORMATION PROVIDED HEREIN IS FOR INFORMATIONAL PURPOSES ONLY AND DOES NOT CONSTITUTE AN OFFER OF ANY FINANCIAL PRODUCT OR SERVICE. THE INFORMATION PROVIDED HEREIN IS NOT TO BE USED IN ANY MANNER THAT COULD BE DEEMED A VIOLATION OF ANY APPLICABLE LAW, REGULATION, OR CONTRACT. THE INFORMATION PROVIDED HEREIN IS NOT TO BE USED IN ANY MANNER THAT COULD BE DEEMED A VIOLATION OF ANY APPLICABLE LAW, REGULATION, OR CONTRACT.

© 2023 META MAKING. ALL RIGHTS RESERVED.



LOUETTA RD.

VILLAGE  
LINKS TR.

Villages of  
Cypress Lakes  
Sec. 12 & 14

Villages of  
Cypress Lakes

LEGEND

7' Ht. Brick Thinwall Fence

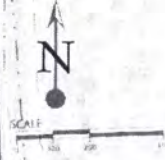
Villages of  
Cypress Lakes  
Sec. 18

Villages of  
Cypress Lakes  
Sec. 5

CYPRESSWOOD DR.

UNRESTRICTED  
RESERVE  
115.0 Ac.

Villages of  
Cypress Lakes

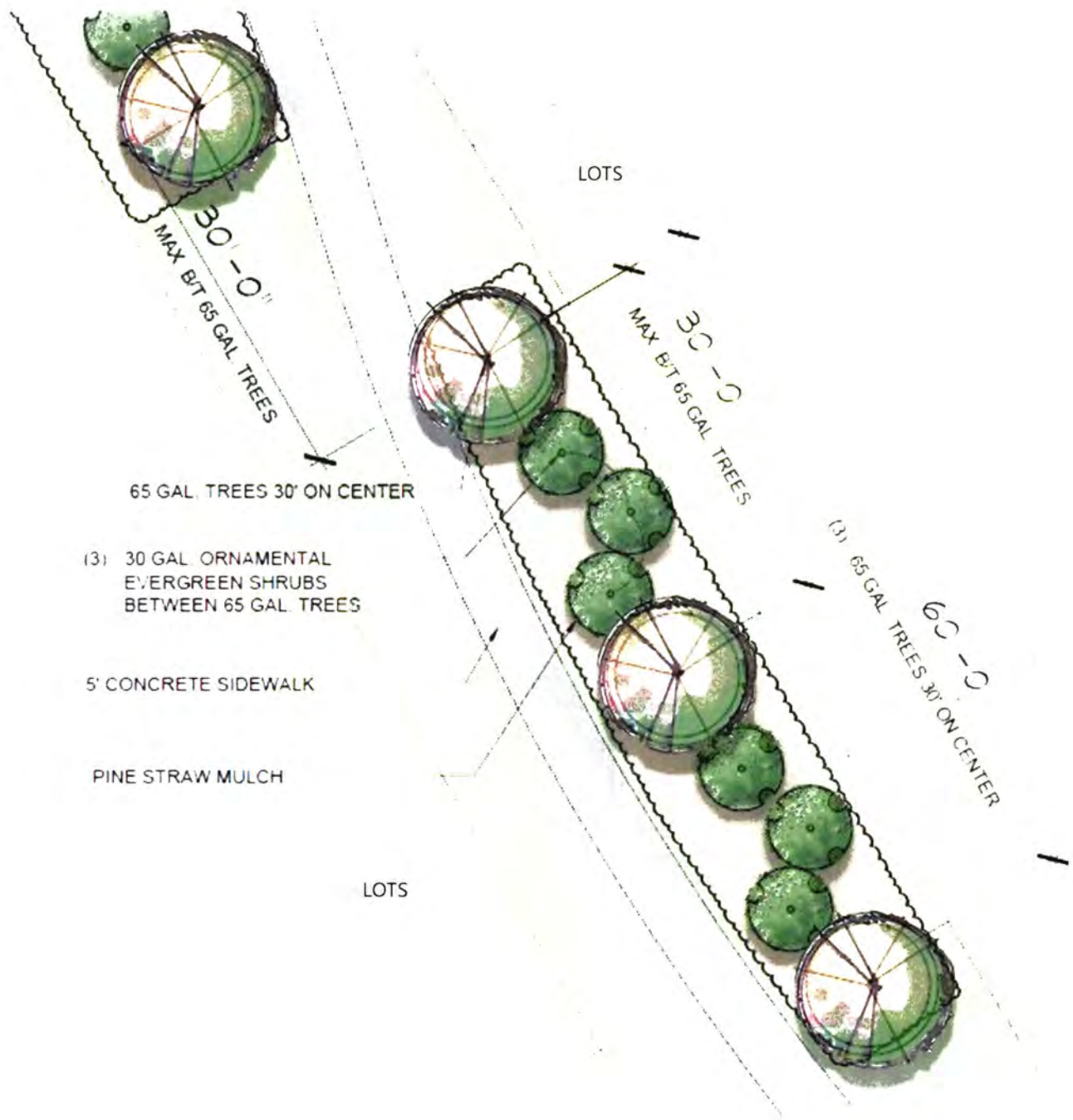


Cypress Mills  
Sec. 1



### Planting Buffer with Sidewalk





Enlargement: Planting Buffer with Sidewalk