UTILITY FUNCTIONS AND
SERVICES ALLOCATION AGREEMENT

92-1142

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

THIS AGREEMENT, made and entered into as of the date herein last specified, by and between the CITY OF HOUSTON, TEXAS (the "City"), a municipal corporation and home-rule city which is principally situated and has its City Hall in Harris County, Texas, and Jim Sowell Construction Company, Inc. (hereinafter referred to as "Sowell") on behalf of proposed HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 359, to be created as a body politic and corporate and a governmental agency of the State of Texas organized under the provisions of Article XVI, Section 59 of the Texas Constitution and Chapter 54, Texas Water Code, as amended (the "District") (hereinafter the term "District" shall be construed to include both Sowell and the District, as it is the intention of the parties to this Agreement that all rights, benefits and obligations pursuant to this Agreement shall ultimately be assigned to said District upon its creation. Thus, the representations herein by said Harris County Municipal Utility District No. 359 at this time represent Sowell's commitment to cause or direct the same to occur);

W I T N E S S E T H:

WHEREAS, pursuant to Resolution No. 84-103 of the City of Houston, Texas, establishing the policy of the City regarding the creation of conservation and reclamation districts within the corporate limits of the City (the "Policy Statement"), the District is proposed to be created within the City, for the purposes of, among other things, (i) providing water distribution, wastewater collection and drainage facilities and services (as more fully defined below, the "Facilities"), to serve development occurring within and near that portion of the City situated within the boundaries of the District, by financing and purchasing the Facilities, and (ii) promoting the policies of the City and the Texas Water Commission for regionalization of wastewater treatment facilities, by participating in the Upper Brays Bayou regional wastewater treatment plant; and

WHEREAS, under the authority of Vernon's Texas Codes Annotated, Local Government Code Section 402.014, as amended, the City and the District may enter into an agreement under the terms of which (i) the District will acquire for the benefit of, and for ultimate conveyance to, the City, the Facilities needed to serve lands being developed within and near the boundaries of the District and, (ii) in order to enhance the economic feasibility of the District and more equitably distribute among the taxpayers of the City and the District the burden of ad valorem taxes to be levied from time to time by the City and the District, the City will make annual tax and monthly water and sewer revenue rebate

payments to the District in consideration of the District's financing, acquisition and construction of the Facilities; and

WHEREAS, the City and Sowell have determined that they are authorized by the Constitution and laws of the State of Texas to enter into this Agreement and have further determined that the terms, provisions and conditions hereof are mutually fair and advantageous to each; NOW, THEREFORE;

AGREEMENT

For and in consideration of these premises and of the mutual promises, obligations, covenants and benefits herein contained, Sowell and the City contract and agree as follows:

ARTICLE I

DEFINITIONS

The capitalized terms and phrases used in this Agreement shall have the meanings as follows:

"Annual Payments" shall mean the annual payments to be made by the City to the District, as provided in Section 5.01 hereof.

"Approving Bodies" shall mean the City, Harris County, Texas, the Texas Department of Health, the Texas Water Commission, the Attorney General of Texas, the Comptroller of Public Accounts of Texas, the United States Department of Justice and all other federal, state and local governmental authorities having regulatory jurisdiction and authority over the financing, construction or operation of the Facilities or the subject matter of this Agreement.

"Bonds" shall mean the District's bonds, notes or other evidences of indebtedness issued from time to time for the purpose

of financing the costs of acquiring, constructing, purchasing, operating, repairing, improving or extending the Facilities, whether payable from ad valorem taxes, the proceeds of one or more future bond issues or otherwise, and including any bonds, notes or similar obligations issued to refund such bonds.

"Director" shall mean the Director of the Department of Public Utilities, his successors and assigns.

"District" shall mean Harris County Municipal Utility District No. 359, a body politic and corporate and a governmental agency of the State of Texas organized under the provisions of Article XVI, Section 59 of the Texas Constitution and Chapter 54 Texas Water Code, as amended, and which includes within its boundaries 292.4785 acres of land situated wholly within the corporate limits of the City, such 292.4785 acres more particularly described on Exhibit "A", attached hereto and incorporated herein by reference for all purposes.

"District Assets" shall mean (i) all rights, title and interests of the District in and to the Facilities, (ii) any Bonds of the District which are authorized but have not been issued by the District, (iii) all rights and powers of the District under any agreements or commitments with any persons or entities pertaining to the financing, construction or operation of all or any portion of the Facilities and/or the operations of the District, and (iv) all books, records, files, documents, permits, funds and other materials or property of the District.

"District's Obligations" shall mean (i) all outstanding Bonds of the District, (ii) all other debts, liabilities and

obligations of the District to or for the benefit of any persons or entities relating to the financing, construction or operation of all or any portion of the Facilities or the operations of the District, and (iii) all functions performed and services rendered by the District, for and to the owners of property within the District and the customers of the Facilities.

"Engineers" shall mean Benchmark Engineering Corporation, consulting engineers, or its replacement, successor or assignee.

"Engineering Reports" shall mean and refer to that certain Preliminary Engineering Report prepared by the Engineers relating to the creation of the District and describing the initial scope and extent of the Facilities and any additional engineering reports prepared by the Engineers from time to time relating to the issuance of Bonds by the District, copies of which shall be on file in the offices of the District.

"Facilities" shall mean and include the water distribution, sanitary sewer collection, transportation and treatment, and stormwater collection, control and drainage systems constructed or acquired or to be constructed or acquired by the District to serve lands within and adjacent to its boundaries, and all improvements, appurtenances, additions, extensions, enlargements or betterments thereto, together with all contract rights, permits, licenses, properties, rights-of-way, easements, sites and other interests related thereto, all as more fully described in the Engineering Reports.

"Monthly Revenue Payments" shall mean the monthly payments to be made by the City to the District, as provided in Section 5.04 hereof.

ARTICLE II

DISTRICT AS ALTER EGO OF THE CITY

Under the terms of this Agreement, the City hereby recognizes that the District may be designated to act as the alter ego of the City, as it is defined in the rules of the Texas Water Commission, for the purposes of financing, constructing, acquiring and operating the Facilities during the term of this Agreement, and hereby agrees that, if the District is so designated by the Texas Water Commission, that the authority, rights, duties and obligations of the District to finance, construct, acquire and operate the Facilities shall be, for the term of this Agreement, the acts of the City for such purposes. The District hereby agrees to be and act as the alter ego of the City for such purposes and to perform the duties and functions necessary to provide the services of the Facilities to the landowners and customers of the District.

ARTICLE III

DESCRIPTION, DESIGN, FINANCING
AND CONSTRUCTION OF THE FACILITIES

3.01. Facilities. The Facilities, as described in the Engineering Reports, including the Wastewater Meter, shall be designed and constructed in compliance with all applicable requirements and criteria of the applicable Approving Bodies and subject to the applicable provisions of the City's ordinance granting a petition for inclusion of certain territory in the

District (the "Consent Ordinance"). The District shall not be required to design and construct the Facilities to requirements more stringent than the City's requirements and criteria applicable to all design and construction within the City's jurisdiction. The District shall design, construct or extend the Facilities in such phases or stages as the District, in its sole discretion, from time to time may determine to be economically feasible.

3.02. Water Distribution and Supply Facilities. The City shall provide the District with its ultimate requirements for water supply and water distribution capacities, if the City has same available, and same shall be provided to the District's boundaries. The District, or third parties on behalf of the District, shall pay water impact fees of the City. Any water supply and water distribution capacities so purchased by the District shall be reserved and allocated exclusively to serve the property within the District and shall not be utilized to serve any other property.

There shall be as many points of connection between the City's and the District's water supply systems as shall be mutually agreed upon by the District and the Director. All water supplied by the City to customers within the District shall be metered.

3.03. Wastewater Treatment Plant Facilities. The City and the District acknowledge that Sowell has been issued City of Houston Wastewater Capacity Name Transfer Receipt No. 010702002 for 1,494,931 gallons per day of wastewater capacity. The

District shall have the right, at its option, to purchase wastewater treatment plant capacities from Sowell; or pay impact charges of the City for wastewater treatment plant and collection line capacities (if the City has same available). The City hereby authorizes and approves the purchase of wastewater treatment plant capacities by the District, at a rate not to exceed the wastewater impact fee rates of the City existing at the time of such purchase, and the transfer of such capacities to the District. Any wastewater treatment plant and collection line capacities so purchased by the District shall be reserved and allocated exclusively to serve the property within the District and shall not be utilized to serve any other property. The City and the District hereby agree that the property located within the District is hereby designated as part of the service area of the Upper Brays Bayou Plant. The District shall limit the quantity of wastewater delivered from property within its boundaries to the Wastewater Point of Discharge such that it does not exceed the amount of wastewater treatment plant capacity it has purchased. The District shall be required to construct only one point of connection between the District's sanitary sewer collection system and the City's wastewater collection system (which system is connected to the Upper Brays Bayou Plant), the location of which shall be mutually agreed upon by the District and the Director (the "Wastewater Point of Discharge"). At the Wastewater Point of Discharge, there shall be installed by the District a meter, manhole and related appurtenances compatible with the City's flowmeter system (the "Wastewater Meter"). All

wastewater collected from customers within the District shall be delivered through the Wastewater Point of Discharge and shall be metered.

In connection with the purchase of such wastewater treatment plant capacity, for equivalent single family connections, the standard City criteria published by the Technical Services Branch of the Utility Operations Division of the City shall be used in determining sewage treatment capacity required. No industrial waste discharges as defined in the City's Code of Ordinances shall be permitted within the District.

3.04. Letter of Assurance and Issuance of Assignments of Capacity by the District. The City agrees that, at such time as the District has acquired wastewater treatment plant and/or collection lines capacities as provided in Section 3.03 hereof, the City shall, upon reasonable request, issue a letter of assurance that the District is entitled to the use and benefit of capacity in the Upper Brays Bayou Plant. The letter of assurance shall provide for the use and benefit of quantities of services up to, but not in excess of, the capacity purchased by the District in the Upper Brays Bayou Plant.

The District shall have the right to assign all or part of its capacity on assignment forms approved by the City for reservation of capacity in the Upper Brays Bayou Plant with landowner(s) and developer(s) within its boundaries. At such time as a landowner or developer located within the boundaries of the District requests a building permit from the City, the City shall honor such assignments of capacity or agreements; provided,

however, that the City shall have no duty to honor any assignment of capacity that was not validly issued or which will result in capacity which exceeds the uncommitted capacity reserved by the District in the Upper Brays Bayou Plant.

The City shall limit the number and type of connections to the District's sanitary sewer collection system so that the number of active connections does not exceed the District's capacity in the Upper Brays Bayou Plant. In connection with such limitation, the City shall use the standard City criteria published by the Wasteload Control Branch of the Utility Operations Division of the City. The District shall have the right and shall be solely responsible for allocating its capacity in the Upper Brays Bayou Plant among the customers of its sanitary sewer system. Notwithstanding the foregoing, the City shall not allow to be made any connection to the District's sanitary sewer system until, with respect to such connection:

(1) the District has issued an assignment of capacity specifying the number of gallons per day allocated for such connection, and has provided a copy thereof to the Director of the Department of Public Utilities of the City;

(2) the City has inspected the connection and premises and has issued a building permit for that connection; and

(3) all buildings or structures served by connections shall be located entirely within the boundaries of a lot or parcel shown in a plan, plat or replat filed with and finally approved by the City Planning and Zoning

Commission of the City of Houston and duly recorded in the official records of the county where the property is located (provided this limitation shall not apply if no plan, plat or replat is required by applicable State statutes, City ordinances or City Planning and Zoning Commission regulations).

The City shall have the right to refuse the issuance of a building permit for any connection if: (i) with respect to the District, the addition of such connection will result in a number of active connections to the District's sanitary sewer collection system which exceeds the District's capacity in the Upper Brays Bayou Plant; (ii) the number of gallons per day stated in the assignment of capacity for the connection is less than the actual number of gallons per day for the connection, computed in accordance with the standard City criteria published by the Technical Services Branch of the Utility Operations Division of the City; or (iii) the connection or premises served do not comply with the City's building code.

A connection shall no longer be considered an active connection when the Director shall have determined that: (1) the premises formerly served by the connection have been destroyed or abandoned; (2) the connection has been physically sealed; and (3) sewer services are not likely to be resumed to the premises in the reasonably foreseeable future.

3.05. Wastewater Collection Facilities. Unless reduced design criteria is otherwise agreed to by the City and the District, sanitary sewer collection lines to be constructed by

the District to serve the property within its boundaries shall be designed using the City's standard criteria of 6,000 gallons per day per acre (peak flow) for single family areas and 20,000 gallons per day per acre (peak flow) for multi-family/commercial areas. The current land plan presented to the District by its developer provides for 161 net acres of single family development and 110 acres of multi-family/commercial development, as shown on Exhibit "B", attached hereto and incorporated herein for all purposes. Areas used for computing peak flows shall include any future road rights-of-way, but exclude easements or fee tracts dedicated to the Harris County Flood Control District.

3.06. Authority of District to Issue Bonds. The District shall have authority to issue, sell and deliver Bonds from time to time, as deemed necessary and appropriate by the Board of Directors of the District, for the purposes, in such forms and manner and as permitted or provided as federal law, the general laws of the State of Texas and the City's Consent Ordinance. The District shall not be authorized to sell Bonds until it has provided the City with a certified copy of the Texas Water Commission order approving each bond issue in which the Texas Water Commission concludes that a District debt service tax rate of $0.65 per $100 of assessed valuation, or less, is feasible in accordance with its then existing rules. The foregoing shall not be construed as a limitation on the District's authority to levy an unlimited tax rate, it being understood and acknowledged that the District's bonds shall be payable from and secured by a pledge of the proceeds of an ad valorem tax, without legal

limitation as to rate or amount. The District shall provide the City with copies of the Official Statement and the Bond Order for each issue prior to the issuance of the respective Bonds.

3.07. Distribution of Bond Proceeds. The proceeds of Bonds issued by the District shall be deposited, upon receipt, into the District's funds, as appropriate, and shall be used and may be invested or reinvested, from time to time, as provided in the order or orders of the District authorizing the issuance, sale and delivery of such Bonds and in the manner provided by law and the applicable rules, regulations and guidelines of the applicable Approving Bodies. Pursuant to the requirements of the applicable Approving Bodies and as permitted by federal law and the laws of the State of Texas, surplus funds on hand and available from the proceeds of the Bonds may be applied by the District to the further extension or improvement of the Facilities or to pay any related costs and expenses thereof.

3.08. Bonds as Obligation of District. Unless and until the City shall dissolve the District and assume the properties, assets, obligations and liabilities of the District, the Bonds of the District, as to both principal and interest, shall be and remain obligations solely of the District and shall never be deemed or construed to be obligations or indebtedness of the City; provided, however, that nothing herein shall limit or restrict the District's ability to pledge to or assign all or any portion of the Annual Payments or Monthly Revenue Payments, to be made by the City to the District as provided herein, to the payment of the principal of, or redemption premium, if any, or

interest on the Bonds or other contractual obligations of the District relating to the financing, acquisition or use of the Facilities.

3.09. Construction by Third Parties. From time to time, the District may enter into one or more agreements, a copy of the standard form of which is attached hereto as Exhibit "C", (hereinafter, "Utility Development Agreement") with landowners or developers of property located within or in the vicinity of the District whereby such landowners or developers will undertake, on behalf of the District, to pre-finance and pre-construct, in one or more phases, all or any portion of the Facilities. Under the terms of each Utility Development Agreement, the landowners or developers will be obligated to finance and construct the Facilities in the manner which would be required by law if such work were being performed by the District. Each Utility Development Agreement will provide for the purchase of the Facilities from the landowners or developers using the proceeds of one or more issues of Bonds, as otherwise permitted by law and the applicable rules, regulations and guidelines of the applicable Approving Bodies or as provided in Section 6.01 below. Any and all Utility Development Agreements to be executed with landowners or developers of property located outside the boundaries of the District shall be approved by the City prior to Board approval and execution.

ARTICLE IV

OWNERSHIP, OPERATION AND MAINTENANCE OF FACILITIES

4.01. Ownership by City. As the Facilities are acquired and constructed, the District shall convey the same to the City, including all warranties relating to the Facilities, reserving, however, a security interest therein for the purpose of securing the performance of the City under this Agreement; provided, however, that the District shall not convey, and the City shall not accept, stormwater detention systems. Stormwater detention systems shall be conveyed by the District, or by third parties on behalf of the District, to the Harris County Flood Control District. At such time as the District's Bonds issued to acquire and construct the Facilities have been discharged, the District shall execute a release of such security interest and the City shall own the Facilities free and clear of such security interest.

4.02. Operation by the City. As acquisition and/or construction of each phase of the Facilities is completed, representatives of the City shall inspect the same and, if the City finds that the same has been completed in accordance with the final plans and specifications, the City will accept the same, whereupon such portion of the Facilities shall be operated and maintained by the City at its sole expense as provided herein; provided, however, that the City shall not accept, or operate and maintain, stormwater detention systems. In the event that the Facilities have not been completed in accordance with the final plans and specifications, the City will immediately

advise the District in what manner said Facilities do not comply, and the District shall immediately correct the same; whereupon the City shall again inspect the Facilities and accept the same if the defects have been corrected. During the term of this Agreement, the City will operate the Facilities and provide service to all users within the District without discrimination. The City shall at all times maintain the Facilities, or cause the same to be maintained, in good condition and working order and will operate the same, or cause the same to be operated, in an efficient and economical manner at a reasonable cost and in accordance with sound business principles in operating and maintaining the Facilities, and the City will comply with all contractual provisions and agreements entered into by it and with all valid rules, regulations, directions or orders by any governmental, administrative or judicial body promulgating the same.

The City, at its sole cost and expense, shall cause the Wastewater Meter to be tested and calibrated to one hundred per cent accuracy every six months. In addition, the District shall have the right to request the City to test, and calibrate if necessary, the Meter at any time. If so requested, the City shall have the Meter tested, and calibrated if necessary, within sixty days of the date of each request. If the Meter is determined to be functioning within ten per cent of accuracy, the cost of such requested test shall be borne by the District. If the Meter is determined to be functioning inaccurately by ten per

cent or more, the cost of such requested test shall be borne by the City.

4.03. Rates. The City shall bill and collect from customers of the Facilities and shall from time to time fix such rates and charges for such customers of the Facilities as the City, in its sole discretion, determines are necessary; provided that the rates and charges for services afforded by the Facilities will be equal and uniform to those charged other similar classifications of users in non municipal utility district areas of the City. Except as provided in Section 5.04, all revenues from the Facilities shall belong exclusively to the City.

4.04. Connection Charges. Notwithstanding any City ordinance to the contrary, the City may impose a charge for connection to the Facilities at a rate to be determined from time to time by the City, provided the charge is equal to the sums charged other City users for comparable connections; and provided further, that in the event the District does purchase wastewater treatment plant capacities from Sowell, the City shall not impose any impact recovery fee or charge of any kind with regard to wastewater treatment plant capacity. Except as provided in Section 5.04, the connection charge shall belong exclusively to the City.

ARTICLE V

ANNUAL PAYMENTS, DISTRICT TAXES AND MONTHLY REVENUE PAYMENTS

5.01. Calculation of Annual Payments. In consideration of the acquisition and construction of the Facilities by the

District and in order to enhance the economic feasibility of the District and more equitably distribute among the taxpayers of the City and the District the burden of ad valorem taxes to be levied from time to time by the City and the District, the City shall make a payment to the District ("Annual Payment"). That portion of the City property tax which shall be returned to an in-city water district, including the District, in order to eliminate double payment by taxpayers in the water district shall be calculated as follows:

.20	X	City property tax rate for debt service on property tax-supported bonds	X	assessed valuation of in-city district / 100	=	dollar value offset in in-city district

The parties shall utilize the City's most recent Notice of Effective Tax Rate Calculation and the District's most recent certified tax roll from the Harris County Appraisal District (which the District will annually provide to the City).

5.02. Payment of Annual Payment. The Annual Payment shall begin on April 1 in the calendar year following the calendar year in which the District completes its initial bond sale and shall be payable each April 1 thereafter (the "Payment Date"), with each such Annual Payment being applicable to the calendar year preceding the calendar year of each such April 1. Each Annual Payment that is not paid on or before the Payment Date shall be delinquent and shall incur interest at the rate of one percent (1%) of the amount of the Annual Payment per month, for each month or portion thereof during which the Annual Payment remains unpaid.

5.03. Supplemental Tax Rolls; Correction Tax Rolls; Adjustment to Annual Payment. The parties recognize and acknowledge that, from time to time, the Harris County Appraisal District may submit to the District one or more Supplemental Tax Rolls and/or Correction Tax Rolls and that each such Supplemental Tax Roll and/or Correction Tax Roll may affect the total value of taxable properties within the District for a particular year and therefore the Annual Payment due and payable by the City for such year. The District agrees that promptly upon receiving a Supplemental Tax Roll and/or Correction Tax Roll, the District shall deliver such Supplemental Tax Roll and/or Correction Tax Roll to the City. Promptly upon receiving a Supplemental Tax Roll and/or Collection Tax Roll from the District, the City shall recalculate the amount of the Annual Payment pertaining thereto and shall notify the District of the amount of such recalculated Annual Payment. Within forty-five (45) days from the date on which the District receives notice of a recalculated Annual Payment, the City shall pay to the District the amount, if any, by which the recalculated Annual Payment exceeds the amount of the Annual Payment previously paid by the City to the District for the year in question, or the District shall pay to the City the amount, if any, by which the recalculated Annual Payment is less than the amount of the Annual Payment previously paid; provided, however, that if such amount in either instance is less than $1,000.00, rather than payment within such 45 days, the next Annual Payment shall be adjusted accordingly. The obligation of the City to make Annual Payments to the District shall terminate

on (i) the date when all of the District's obligations, including all Bonds of the District, have been fully paid and discharged as to principal, redemption premium, if any, and interest or (ii) the termination of this Agreement in accordance with Section 8.13 hereof, whichever occurs first. Nothing herein shall be deemed or construed to require that the City shall be or become liable for any debt or other obligations of the District including, without limitation, the payment of principal, redemption premium, if any, or interest on any Bonds until such time as the City dissolves the District and acquires the District's Assets and assumes the District's Obligations as provided by law and Article VI, below.

5.04. Payment of Monthly Revenue Payments. In addition to the Annual Payment, the City shall make a payment to the District ("Monthly Revenue Payment"), as follows:

(a) Such payment shall have two components and shall be calculated as follows:

(i) The City shall pay to the District each month the amount equal to the difference between the amount collected by the City from individual customers within the District for actual water usage billed at retail "Additional Amounts" rates, and a Contract Treated Water Rate in accordance with Chapter 47-61(f)(3)(b), City Code of Ordinances ("Contract Treated Water Rate"), calculated as follows: the total of (A) the amount the District would pay to the City as a customer (i.e., as are customers utilizing one meter), based upon the total amount of water metered to customers within

the District each month, at the then current rate charged by the City to contract customers for Contract Treated Water Rate (the current Contract Treated Water Rate structure is attached hereto as Exhibit "D" and incorporated herein for all purposes), and (B) $0.19 per 1,000 gallons of metered water to customers within the District (which represents a supply system line maintenance charge). Each such monthly payment shall also include a written accounting from the City detailing the calculation of each such payment. Such Contract Treated Water Rate may be changed from time to time by the City, however the rate applied to the District shall be the same rate applied by the City to all other Contract Treated Water Rate customers. The District and the City acknowledge that such Contract Treated Water Rate as applied to customers by the City includes a base and peaking unit charge per thousand gallons for water metered. The City and the District agree that the District's initial flow level can not be determined at this time and that the District shall advise the City in writing at least sixty (60) days prior to requesting water service from the City of the initial flow levels to be utilized by the District. The City and the District agree that a semiannual recalculation of the actual flow per month shall be conducted and the rate charged the District for the next succeeding semiannual period shall be adjusted accordingly. The supply system line maintenance charge rate may be changed from time to time by the City; provided, however, that the rate charged

(whether increased or decreased) shall be the direct maintenance and operation component of the cost of service to all customers using the City's system, which component shall not include the City's renovation and replacement charge, as established in the City's annual budget as approved by City Council and as applied to all customers of the City. Any increase in the supply system line maintenance charge may be made only if it is supported in such budget. Any change in rates by the City to the District shall be prospective only and the City may not apply any adjustment or change retroactively.

(ii) The District has purchased, or will purchase, capacity in the Upper Brays Bayou Regional Treatment Plant from Sowell or the City, which plant is operated and maintained by the City. The City shall pay to the District each month the amount equal to the difference between the amount collected by the City from individual customers within the District utilizing wastewater service, and the total of (A) the amount the District would pay to the City as a customer at the then current wholesale treatment rate charged by the City to conservation and reclamation districts (the current wholesale sewer service rate structure is attached hereto on Exhibit "E", and is incorporated herein for all purposes), based upon the metered wastewater through the Wastewater Point of Discharge, (B) $0.30 per 1,000 gallons of metered wastewater through the Wastewater Point of Discharge (which represents

a collection system line maintenance charge), and (C) $0.24 per 1,000 gallons of metered wastewater through the Wastewater Point of Discharge (which represents the District's share of City annexed districts' debt) (provided, however, that the amount of wastewater so calculated each month shall not exceed the total amount of water metered to customers within the District). The wholesale treatment rate may be changed from time to time by the City, however the rate applied to the District (a) shall be the same rate applied by the City to all other conservation and reclamation districts and (b) any increase shall be contemporaneous with an increase in rates by the City for single family residential property and the percentage of any such increase in the wholesale treatment rate shall not exceed the percentage increase established by the City for usage exceeding the minimum established for single family residential property. The collection system line maintenance charge may be changed from time to time by the City; provided, however, that the rate charged (whether increased or decreased) shall be the direct maintenance and operation component of the cost of service to all customers using the City's system, which component shall not include the City's renovation and replacement charge, as established in the City's annual budget as approved by City Council and as applied to all customers of the City. Any increase in the collection system line maintenance charge may be made only if it is supported in such budget. Any change in rates

by the City to the District shall be prospective only and the City may not apply any adjustment or change retroactively.

See Exhibit "F", attached hereto and incorporated herein by reference for all purposes, which illustrates the Monthly Revenue Payment calculations utilizing the City's rates in effect as of the date of this Agreement.

The total of the amounts calculated pursuant to paragraphs (i) and (ii) above shall be paid by the City to the District by the last day of the second month following the month for which the Monthly Revenue Payment is being calculated (the "Due Date"). Each Monthly Revenue Payment that is not paid on or before the Due Date shall be delinquent. If the City fails or refuses to pay a delinquent Monthly Revenue Payment for a period in excess of sixty (60) days from the receipt of written notice from the District regarding same, then each Monthly Revenue Payment included in such notice shall incur interest at the rate of one per cent (1%) of the amount of the Monthly Revenue Payment per month, for each month or portion thereof during which a Monthly Revenue Payment remains unpaid upon expiration of such sixty (60) day period. The obligation of the City to make Monthly Revenue Payments shall terminate on (A) the date when all of the Bonds of the District have been fully paid and discharged as to principal, redemption premium, if any, and interest or (B) the termination of this Agreement in accordance with Section 8.13 hereof, whichever occurs first.

(b) The total amount of the Monthly Revenue Payments made by the City in each calendar year shall not exceed the District's debt service requirements for such calendar year. The District shall provide the City with its annual debt service requirements in connection with each issuance of Bonds by the District.

The City and the District acknowledge and agree that the District is dependent upon the Monthly Revenue Payments in order that development within the District may be competitive with development in surrounding areas. The City and the District agree, therefore, that if the amount of Monthly Revenue Payments should be substantially changed because of the changes in the City's rate structure, they shall revise the revenue procedure such that the District receives revenue Monthly Revenue Payments in amounts commensurate with the amounts of Monthly Revenue Payments the District would have received prior to the City's adjustment of its rate structure.

5.05. Access to Records for Verifying Calculation of Annual and Revenue Payments. The City shall maintain proper books, records and accounts of all ad valorem taxes levied by the City from time to time in the City's Department of Finance and Administration, shall provide the District an accounting together with each Annual and/or Monthly Revenue Payment, and shall afford the District or its designated representatives reasonable access thereto for purposes of verifying the amounts of each Annual Payment and/or Monthly Revenue Payment or recalculated Annual Payment and/or Monthly Revenue Payment which is or becomes due and payable by the City hereunder. The District shall maintain

proper books, records and accounts of all Bonds issued by the District and its debt service requirements and shall afford the City or its designated representatives reasonable access thereto for purpose of verifying the amounts of Monthly Revenue Payments relative to the District's debt service requirements.

5.06. District Taxes. The District is authorized to assess, levy and collect ad valorem taxes upon all taxable properties within the District to provide for (i) the payment in full of the District's Obligations, including principal, redemption premium, if any, or interest on the Bonds and to establish and maintain any interest and sinking fund, debt service fund or reserve fund and (ii) for maintenance purposes, all in accordance with applicable law. The parties agree that nothing herein shall be deemed or construed to prohibit, limit, restrict or otherwise inhibit the District's authority to levy ad valorem taxes as the Board of Directors of the District from time to time may determine to be necessary. The City and the District recognize and agree that all ad valorem tax receipts and revenues collected by the District, together with all Annual Payments and Monthly Revenue Rebate Payments shall become the property of the District and may be applied by the District to the payment of all proper debts, obligations, costs and expenses of the District and may be pledged or assigned to the payment of all or any designated portion of the principal or redemption premium, if any, or interest on the Bonds or otherwise in accordance with applicable law. Each party to this Agreement agrees to notify the other party as soon as is reasonably

possible in the event it is ever made a party to or initiates a lawsuit for unpaid taxes.

5.07. Sale or Encumbrance of Facilities. It is acknowledged that the District may not dispose of or discontinue any portion of the Facilities, but may pledge the revenue to be paid by the City pursuant to Article V hereof in connection with the issuance of its Bonds.

ARTICLE VI

DISSOLUTION OF THE DISTRICT

6.01. Dissolution of District Prior to Retirement of Bonded Indebtedness. The City and the District recognize that, as provided in the laws of the State of Texas and the Consent Ordinance, the City has the right to abolish and dissolve the District and to acquire the District's Assets and assume the District's Obligations. Upon dissolution of the District, the City shall acquire the District's Assets and shall assume the District' Obligations. If requested by the District, the City shall afford the District the opportunity to discharge any District's Obligations pursuant to any existing Utility Development Agreements of the District, by either (i) authorizing the District to sell its Bonds before or during a transition period prior to the effective date of dissolution, as established by the City, (ii) pursuant to Vernon's Texas Codes Annotated, Local Government Code Section 43.080, as amended, issuing and selling bonds of the City in at least the amount necessary to discharge the District's Obligations, including those under any

Utility Development Agreements, or (iii) providing written notice to the District that the City has sufficient funds available from other sources to discharge the District's Obligations, including those under any existing Utility Development Agreements of the District.

6.02. Transition upon Dissolution. In the event all required findings and procedures for the dissolution of the District have been duly, properly and finally made and satisfied by the City, and unless otherwise mutually agreed by the City and the District pursuant to then existing law, the District agrees that its officers, agents and representatives shall be directed to cooperate with the City in any and all respects reasonably necessary to facilitate the dissolution of the District and the transfer of the District's Assets to, and the assumption of the District's Obligations by, the City.

ARTICLE VII

REMEDIES IN EVENT OF DEFAULT

The parties hereto expressly recognize and acknowledge that a breach of this Agreement by either party may cause damage to the nonbreaching party for which there will not be an adequate remedy at law. Accordingly, in addition to all the rights and remedies provided by the laws of the State of Texas, in the event of a breach hereof by either party, the other party shall be entitled to the equitable remedy of specific performance.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

8.01. Permits, Fees, Inspections. The District understands and agrees that all City ordinances and codes, including applicable permits, fees and inspections, shall be of full force and effect within its boundaries the same as to other areas within the City's corporate limits.

8.02. Force Majeure. In the event either party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, then the obligations of such party, 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 party whose contractual obligations are affected thereby shall give notice and the full particulars of such force majeure to the other party. 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, and inability to provide water necessary for operation of the water and sewer systems hereunder, or of the City to receive Waste, and any other inabilities of either party, whether similar to those enumerated or otherwise, which are not within the control of the party claiming such inability, which such party could not have avoided by the exercise of due diligence and care. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable to it in the judgment of the party having the difficulty.

8.03. Approvals and Consents. Approvals or consents required or permitted to be given under this Agreement shall be evidenced by an ordinance, resolution or order adopted by the governing body of the appropriate party or by a certificate executed by a person, firm or entity previously authorized to give such approval or consent on behalf of the party. Approvals and consents shall be effective without regard to whether given before or after the time required for giving such approvals or consents.

8.04. Address and Notice. Unless otherwise provided in this Agreement, any notice to be given under this Agreement shall

be given in writing and may be given either by depositing the notice in the United States mail postpaid, registered or certified mail, with return receipt requested; delivering the notice to an officer of such party; or sending the notice by prepaid telegram, when appropriate. Notice deposited by mail in the foregoing manner shall be effective the day after the day on which it is deposited. Notice given in any other manner shall be effective only when received by the party to be notified. For the purposes of notice, the addresses of the parties shall be as follows:

If to the City, to:

Director, Department of Public Utilities
City of Houston
City Hall Annex
P.O. Box 1562
Houston, Texas 77251

With copies to:

Director of Planning and Development
City of Houston
City Hall Annex
P. O. Box 1562
Houston, Texas 77251

If to Sowell, to:

Jim Sowell
Jim Sowell Construction Co., Inc.
4809 Cole Avenue, Suite 250
Dallas, Texas 75205-3525

With copies to:

Fred Farner
TFC Management, Inc.
3318 Mercer Road
Houston, Texas 77027

If to the District, to:

Harris County Municipal Utility District No. 359

c/o Schwartz, Page & Harding, L.L.P.
1300 Post Oak Boulevard
Suite 1400
Houston, Texas 77056

The parties shall have the right from time to time to change their respective addresses by giving at least fifteen (15) days' written notice of such change to the other party.

8.05. Assignability. This Agreement may be assigned by either party upon notice in writing to the other party; provided, however, that no assignment shall be effective until the assignee shall have executed and delivered written acceptance of the terms and conditions of this Agreement to the nonassigning party. Sowell shall assign this Agreement to the District within ninety (90) days after the results of the election to confirm the creation of the District are declared.

8.06. No Additional Waiver Implied. The failure of either party to insist upon performance of any provision of this Agreement shall not be construed as a waiver of the future performance of such provision by the other party.

8.07. Reservation of Rights. All rights, powers, privileges and authority of the parties hereto not restricted or affected by the express terms and provisions hereof are reserved by the parties and, from time to time, may be exercised and enforced by the parties.

8.08. Parties in Interest. This Agreement shall be for the sole and exclusive benefit of the parties hereto and shall not be construed to confer any rights upon any third parties.

8.09. Merger. This Agreement embodies the entire understanding between the parties and there are no

representations, warranties or agreements between the parties covering the subject matter of this Agreement other than the Consent Ordinance between the City and the District. If any provisions of the Consent Ordinance appear to be inconsistent or in conflict with the provisions of this Agreement, then the provisions contained in this Agreement shall be interpreted in a way which is consistent with the Consent Ordinance.

8.10. Captions. The captions of each section of this Agreement are inserted solely for convenience and shall never be given effect in construing the duties, obligations or liabilities of the parties hereto or any provisions hereof, or in ascertaining the intent of either party, with respect to the provisions hereof.

8.11. Interpretations. This Agreement and the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of this Agreement.

8.12. Severability. If any provision of this Agreement or the application thereof to any person or circumstances is ever judicially declared invalid, such provision shall be deemed severed from this Agreement and the remaining portions of this Agreement shall remain in effect.

8.13. Term and Effect. This Agreement shall remain in effect until the earlier to occur of (i) the dissolution of the District by the City or (ii) the expiration of forty (40) years from the date hereof. Further, this Agreement shall automatically terminate in the event that the Texas Water

Commission does not adopt an order consenting to the creation of the District on or before December 31, 1993.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of equal dignity, on this the 21 day of Sept 1992.

THE CITY OF COLLEGE STATION, TEXAS

Mayor Jayne Longley

ATTEST/SEAL:

City Secretary

COUNTERSIGNED:

City Controller

DATE COUNTERSIGNED:

9/24 1992

APPROVED AS TO FORM:

Assistant City Attorney

APPROVED:

Director of Public Utilities

ATTEST

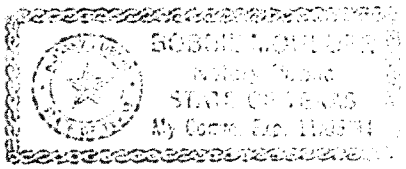
By:_____
Name:_____
Title:_____

JIM SOWELL CONSTRUCTION COMPANY, INC.

By:_____
James E. Sowell
President

THE STATE OF TEXAS §
§
COUNTY OF DALLAS §

This instrument was acknowledged before me on this the 10TH day of AUGUST, 1992, by James E. Sowell, President of Jim Sowell Construction Company, Inc.



Bobbie Moulder
Notary Public in and for
the State of Texas

Printed Name of Notary and
Commission Expiration Date:

_____

359/Agmt/01.doc

LIST OF EXHIBITS

Exhibit "A"	Description of 292.4785 Acres
Exhibit "B"	Land Plan
Exhibit "C"	Form of Utility Development Agreement
Exhibit "D"	Constricted Flow Service Rate Structure
Exhibit "E"	Wholesale Sewer Service Rate Structure
Exhibit "F"	Monthly Revenue Payment Calculations utilizing the City's rates in effect as of the date of the Agreement

EXHIBIT "A"
METES AND BOUNDS DESCRIPTION
292.4785 ACRES

A DESCRIPTION OF 292.4785 ACRES (12,740,363 SQUARE FEET OF LAND) IN THE WILLIAM HARDIN SURVEY, ABSTRACT NO.24, H.K. LEWIS SURVEY, ABSTRACT NO.42, EUGENE PILLOT SURVEY, ABSTRACT NO.631, HENRY WOODRUFF SURVEY, ABSTRACT NO.844, AND THE REYNOLDS SURVEY, ABSTRACT NO.662, HARRIS COUNTY, TEXAS, SAID 292.4785 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 5/8 inch iron rod found for the northwest corner of the herein described tract located on the south right-of-way line of Westheimer Road (120 feet wide);

THENCE, N 87 ° 26'16" E, 1979.14 feet along said south right-of-way line to a 5/8 inch iron rod found at the northwest corner of Westminster Plaza Subdivision (Volume 307, Page 147, Harris County Map Records) from which a 5/8 inch iron rod found in concrete bears S 18 ° 50'00" E, 15.5 feet and from which an aluminum cap found in concrete bears S 27 ° 20'00" E, 11.2 feet;

THENCE, S 02 ° 24'50" E, at 2229.67 feet passing the north Right-of-Way of Richmond Road, for a total of 3626.12 feet along the west line of said Westminster Plaza to a 5/8 inch iron rod found set at the southwest corner of said Westminster Plaza Subdivision;

THENCE, N 87 ° 50'06" E, 1291.64 feet along the south line of said Westminster Plaza Subdivision to a 5/8 inch iron rod found in concrete for corner and being the southeast corner of said subdivision and located in the west right-of-way line of Old Westheimer Road (80 feet wide);

THENCE, S 02 ° 34'35" E, 1385.82 feet along said west right-of-way line of said Old Westheimer Road to a 3/4 inch iron rod found for corner, located on the south right-of-way line of a 200 foot wide Harris County Flood Control Drainage Easement as recorded in Volume 6394, Page 53 and H.C.C.F. No.C-320488, and being the northeast corner of a 25.0000 acre tract of land recorded in Clerk's File No.K-382906 of the Harris County Deed Records;

THENCE, S 87 ° 24'00" W, 810.70 feet along the south right-of-way line of said Harris County Flood Control Drainage Easement to a 5/8 inch iron rod set at the northwest corner of a 23.0000 acre tract of land recorded in Clerk's File No.K-897147 of the Harris County Deed Records;

THENCE, continuing along said Braes Bayou the following:

THENCE, S 87 ° 24'00" W, 435.92 feet;

THENCE, along a curve to the left having a radius of 1045.92 feet, a central angle of 30 ° 00'00", an arc length of 547.64 feet and a chord bearing S 72 ° 24'00" W, for 541.41 feet to a 5/8 inch iron rod found;

THENCE, S 57 ° 24'00" W, 123.38 feet;

THENCE, along a curve to the right having a radius of 1245.92 feet, a central angle of 30 ° 00'00", an arc length of 652.36 feet and a chord bearing S 72 ° 24'00" W for 644.94 feet to a 5/8 inch iron rod found;

THENCE, S 87 ° 24'00" W, 1199.48 feet to a 5/8 inch iron rod set for corner;

THENCE, S 02 ° 52'01" E, departing said Braes Bayou, a distance of 1360.85 feet to a 5/8 inch iron rod set on the north line of a 1.0000 acre tract; hereinafter refered to as the "Save and Except" tract, and further described at the conclusion of this herein described tract;

THENCE, N 87 ° 07'59" E, along said north line, a distance of 45.95 feet to a 5/8 inch iron rod found at the northeast corner of said 1.0000 acre save and except tract;

THENCE, S 02 ° 52'01" E, along the east line of said 1.0000 acre save and except tract, a distance of 192.78 feet to a 5/8 inch iron rod found at the southeast corner of said 1.0000 acre tract;

THENCE, S 87 ° 07'59" W, along the south line of said 1.0000 acre save and except tract, a distance of 45.95 feet to a 5/8 inch iron rod set for corner;

THENCE, S 02 ° 52'01" E, a distance of 902.85 feet to a 5/8 inch iron rod set in the north line of said railroad right-of-way;

THENCE, S 83 ° 00'55" W, along said railroad right-of-way, a distance of 163.11 feet to a 5/8 inch iron rod found at the intersection of a 100' wide S.A. & A.P. Railroad Right-of-Way (R.O.W.) and the east R.O.W. of Dairy Ashford Road (width varies), said 5/8 inch iron rod also lies approximately 100 feet north of the north R.O.W. of Alief Clodine Road;

THENCE, along the east line of Dairy Ashford Road;

N 02 ° 28'44" W, 244.62 feet;
S 87 ° 31'16" W, 20.00 feet;
N 02 ° 28'44" W, 152.60 feet;
N 02 ° 52'01" W, 517.22 feet to a 5/8 inch iron rod found at the southwest corner of said 1.0000 acre save and except tract;

THENCE, N 02 ° 52'01" W, continuing along said Dairy Ashford Road, a distance of 192.78 feet to a 5/8 inch iron rod found at the northwest corner of said 1.0000 acre save and except tract;

THENCE, continuing along said Dairy Ashford Road;

N 02 ° 52'01" W, 1195.94 feet to a 5/8 inch iron rod found;
N 87 ° 07'59" E, 20.00 feet to a 5/8 inch iron rod found;
N 02 ° 52'01" W, 174.66 feet;
S 87 ° 24'41' W, 20.00 feet to a 5/8 inch iron rod found for corner;
N 02 ° 52'01' W, 100.00 feet to a point for corner and being in the centerline of the said Braes Bayou;

THENCE, N 87 ° 24'00" E, 346.66 feet along said centerline of said Braes Bayou to a point for corner;

THENCE, N 58 ° 33'50" E, 298.80 feet leaving said centerline to a 5/8 inch iron rod found;

THENCE, N 02 ° 31'18" W, 2504.94 feet to a 3/4 inch iron pipe found for an angle point;

THENCE, N 02 ° 24'08" W, at 324.17 feet passing a 5/8 inch iron rod found on the south Right-of-Way line of Richmond Road (100' wide), in all a total of 2642.74 feet returning to THE POINT OF BEGINNING containing 293.4785 acres or 12,783,923 square feet save and except the said 1.0000 acre tract of land and further described hereunder;

"DESCRIPTION OF A 1.0000 ACRE TRACT OF LAND OUT OF THE EUGENE PILLOT SURVEY, A-631, HARRIS COUNTY, TEXAS, SAID 1.0000 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a 5/8 inch iron rod found at the intersection of a 100' wide S.A. & A.P. Railroad Right-of-Way (R.O.W.) and the east R.O.W. of Dairy Ashford Road (width varies), said 1" iron pipe also lies approximately 100 feet north of the north R.O.W. of Alief Clodine Road;

THENCE, along the east line of Dairy Ashford;

N 02°28'44"W, 244.62 feet;
S 87°31'16"W, 20.00 feet;
N 02°28'44"W, 152.60 feet;
N 02°52'01"W, 517.22 feet to a 5/8 inch iron rod set at the POINT OF BEGINNING of the herein described 1.0000 acre tract.

THENCE, N 02°52'01"W continuing along said Dairy Ashford Road, a distance of 192.78 feet to a 5/8 inch iron rod set;

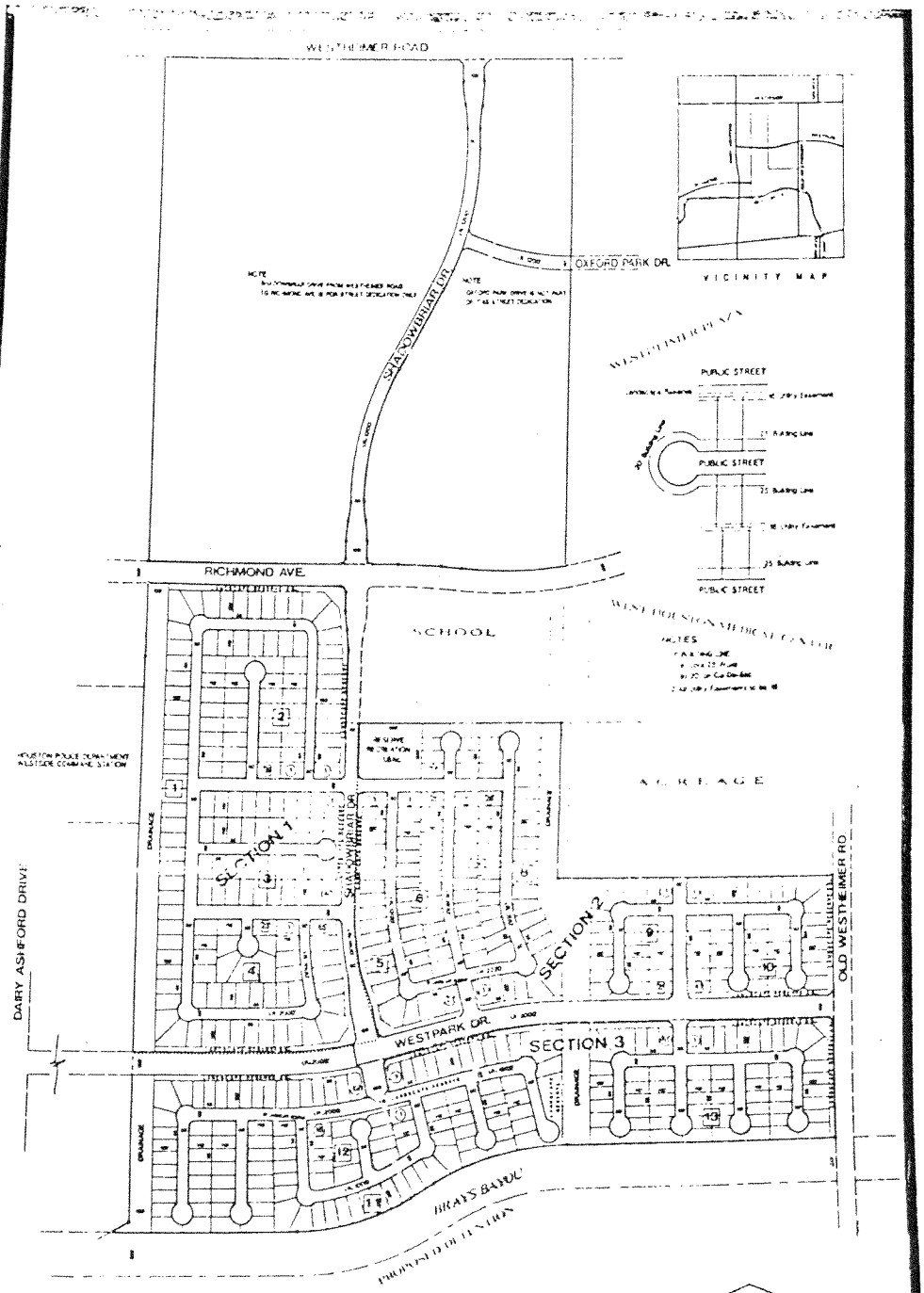
THENCE, N 87°07'59"E, a distance of 225.95 feet to a 5/8 inch iron rod set;

THENCE, S 02°52"01"E, a distance of 192.78 feet to a 5/8 inch iron rod set;

THENCE, S 87°07'59"W, a distance of 225.95 feet returning to the POINT OF BEGINNING and containing 1.0000 acre or 43,560 square feet of land".

The net area described above constituting the boundaries of Harris County Municipal Utility District Number 359 is 292.4785 acres of land or (12,740,363 square feet).

EXHIBIT "B"



PROPOSED LAND USE PLAN

A REVISED GENERAL STREET PLAN PRELIMINARY OF SECTIONS 1, 2, & 3 AND A STREET DEDICATION

PROPOSED HARRIS COUNTY M.U.D. 359

A SUBDIVISION OF 292.48 ACRES OF LAND OUT OF THE W. HARDIN SURVEY, A-24, H.K. LEWIS SURVEY, A-42, H. WOODRUFF SURVEY, A-644, & R. REYNOLDS SURVEY, A-662 AND THE E. PILLOT SURVEY, A-631, HOUSTON, HARRIS COUNTY, TEXAS.

220 LOTS IN 10 BLOCKS WITH 1 RESERVE

DEVELOPER : JAMES E. BOWELL CONSTRUCTION CO.
ENGINEER : BENCHMARK ENGINEERING, CORP.

SECTION 1
167 LOTS IN 47.0 AC.
TYPICAL LOT SIZE 65 x 110

SECTION 2
[illegible] LOTS IN 44.5 AC.
TYPICAL LOT SIZE 65 x 110

SECTION 3
108 LOTS IN 50.2 AC.
TYPICAL LOT SIZE 50 x 100

DATE : APRIL 24, 1998

EXHIBIT "C"

UTILITY DEVELOPMENT AGREEMENT

BY AND BETWEEN

HARRIS COUNTY MUNICIPAL UTILITY
DISTRICT NO. 359

AND

_____

THE STATE OF TEXAS)(
)(
COUNTY OF HARRIS)(

THIS UTILITY DEVELOPMENT AGREEMENT (the "Agreement"), entered into as of _____, 19___, by and between HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 359 of Harris County, Texas, a body politic and corporate and a governmental agency of the State of Texas, operating under and governed by the provisions of Chapter 54, Texas Water Code, as amended, and Section 59 of Article XVI of the Texas Constitution (the "District"), and _____ _____, and _____, (hereinafter called the "Developer").

The Developer is the owner of and/or intends to develop the _____ acre tract of land, hereinafter defined as the Service Area, said land being the tract described in Annex "I", attached hereto. The Developer will require water, sewer and drainage services for the development of the Service Area. The District was created, organized and exists for the purpose of furnishing water, sewer and drainage services to the area within its boundaries, and the District is desirous of providing such services to the Service Area. The Developer will construct certain utilities necessary to provide water, sewer and drainage service to the Service Area, and the District desires to acquire such utilities from the Developer.

The District desires that such utilities be provided prior to the sale of its bonds to pay therefor, because the interim growth of taxable values in the District should make such bonds saleable upon better terms and will permit the District to meet more easily debt service requirements on such bonds, and because it is anticipated that timely construction of such utilities will prevent escalation of construction costs.

The District and the Developer each represent to the other that it may enter into this Agreement by the Constitution and laws of the State of Texas, particularly Section 54.218, Texas Water Code.

AGREEMENT

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

ARTICLE I

Definitions

Allowable Costs. "Allowable Costs" shall mean those costs hereunder, including Construction Costs, Interest Costs and any Site Costs, which the Commission allows to be reimbursed by the District.

Bonds. "Bonds" shall mean the bonds of the District to be sold to pay the Purchase Price.

Commission. "Commission" shall mean the Texas Water Commission or its successors.

Construction Costs. "Construction Costs" shall mean all costs directly related to the development and construction of the Facilities by the Developer, including but not limited to:

(a) construction contract amounts, including approved change orders;
(b) advertisement costs;
(c) resident construction inspection service as approved by the District;
(d) engineering fees for consultation, surveying and preparation of plans and specifications of the Facilities and construction supervision and other necessary services, such fees not to exceed those fees charged by the District Engineer in accordance with the District Engineer's contract with the District;
(e) market study, if one is required to support the District's Bond application to the Commission; and
(f) legal fees incurred by the Developer related directly to the letting and preparation of construction contracts and the obtaining of approval from the appropriate governmental agencies for such construction;

but excluding any sales or use tax paid by the Developer or any contractor or subcontractor with respect to materials incorporated into the Facilities from which the District is exempt.

Developer's Engineer. "Developer's Engineer" shall mean _____, _____, Texas, or its successor duly appointed by the Developer.

District's Engineer. "District's Engineer" shall mean _____ _____, _____, Texas, or its successor duly appointed by the District.

Facilities. "Facilities" shall mean following improvements: _____ necessary to serve the Service Area.

Interest Costs. "Interest Costs" shall mean the interest on moneys paid by the Developer for Construction Costs, calculated at a rate equal to the lesser of (a) the net effective interest rate of the District's bonds issued to pay the Purchase Price or to finance the Facilities or (b) the Developer's actual interest rate on loans (including general corporate borrowings) obtained for the purpose of making payment of Construction Costs, in either event calculated for a period of up to two (2) years after the final payment by the Developer on approved Construction Costs in accordance with 31 T.A.C. Section 293.50 to the time of the closing described in Section 5 of Article III of this Agreement. If the Developer uses its own funds to pay Construction Costs and consequently does not obtain loans for such purpose, Interest Costs shall be calculated on the basis of (a) above.

Purchase Price. "Purchase Price" shall mean an amount not less than the sum of (1) the Construction Costs for the Facilities, including increased or diminished amounts due to change orders, which have been expended by the Developer for work performed at the time of the closing described in Section 5 of Article III of this Agreement, (2) Interest Costs and (3) any Site Costs, but all such costs only to the extent that such are determined by the Commission to be Allowable Costs.

Rules. "Rules" shall mean the rules and regulations of the Commission.

Service Area. "Service Area" shall mean all of the land described in Annex "I" attached hereto.

Sites. "Sites" shall mean all necessary easements, rights-of-way and sites required for the Facilities.

Site Costs. "Site Costs" shall mean the cost of all necessary easements, rights-of-way and sites required for the Facilities.

ARTICLE II

Developer's Responsibilities

Section 1: General. At such time as the Developer commences with development of the Service Area, the Developer will comply with all applicable subdivision ordinances of the City of Houston and all applicable terms of the City's consent to the creation of

the District. The Developer shall proceed with the design and construction of the Facilities with due diligence.

Section 2: Risk of Loss. As between the Developer and the District, and except as provided in the Lease Agreement attached hereto as Annex "II", the Developer shall bear all risk of loss of or damage to the Facilities occurring prior to the time of closing specified in Article III - "Purchase of Facilities" herein. Provided, however, such assumption of risk shall not bar any action by the Developer and/or the District for recovery against parties who may be responsible for such loss.

Section 3: Plans and Specifications. The Developer will design the Facilities in accordance with sound engineering principles, the District's and the Commission's standards and specifications, the regulations of the Texas Department of Health and the City of Houston and any other agency having or hereafter acquiring jurisdiction. The plans and specifications for the Facilities shall be prepared by the District's Engineer and submitted to and approved by the District prior to the beginning of construction thereof.

No change in the final plans and specifications shall be effected or permitted except pursuant to written change order approved by the District. Such change orders shall clearly state changes to be made and the increase or decrease in Construction Costs effected thereby. No substantial change shall be made without the prior consent of the Commission, if required by the then applicable Rules of the Commission.

Section 4: Contract Documents and Bonds; Sales Tax Exemption. Along with the plans and specifications, the Developer shall submit to the District for approval the form of contract proposed to be used for all construction and engineering services. Further, the bid documents and construction contract documents shall be in a form such that they constitute a "separated contract" pursuant to the laws of the State of Texas and the rules of the Comptroller of Public Accounts of the State of Texas in order that all tangible personal property required to be purchased and incorporated into the Facilities will be exempt from state sales and use tax. In that regard, the Developer shall obtain a resale certificate and shall require all contractors and subcontractors to obtain a Texas Limited Sales, Excise and Use Tax Permit prior to execution of a construction contract for the Facilities. The District will issue an exemption certificate or other appropriate document when and as necessary to assure exemption from such sales and use tax. The Developer shall further require all contractors to provide performance and payment bonds comporting with the requirements of Section 53.201, et seq., Texas Property Code, naming the Developer as the secured party in order to assure completion and payment. The Developer shall file all construction plans and specifications, contract documents and supporting engineering data with respect to the Facilities with

the Commission as and if required by the Rules of the Commission and shall provide evidence of such filing to the District.

The Developer shall require all contractors to have insurance coverage and furnish certificates of insurance, in duplicate form, with the project name, the District, the City of Houston, and the contractor's names stated thereon, which certificates shall be submitted prior to the beginning of each phase of the Facilities. The District and the City of Houston shall be named as additional insureds on all such policies except Worker's Compensation. The coverage and amounts designated herein shall be minimum requirements and do not establish limits of the contractor's liability. Additional coverage may be provided at the contractor's option and expense.

(a) comprehensive general liability insurance including contractual liability:

(1) If purchased separately

bodily injury:	$500,000.00 per occurrence $500,000.00 aggregate
property damage:	$100,000.00 per occurrence

(2) If purchased in combined form:

$600,000.00 aggregate

(b) comprehensive auto liability insurance:

(1) If purchased separately

bodily injury:	$500,000.00 per occurrence $500,000.00 aggregate
property damage	$100,000.00 per occurrence

(2) If purchased in combined form:

$600,000.00 aggregate

(c) workers compensation with employers liability including broad form all states endorsement: statutory.

The contractors shall be responsible for insurance to cover equipment, tools, materials, supplies, etc., used in the performance of the work, owned or rented, the capital value of which is not included in the cost of each construction contract.

Insurance policies shall be written by companies authorized to do business under the laws of the State of Texas and on forms approved by the Insurance Commission of the State of Texas. The contractors shall be required to provide the Developer a copy of all insurance policies upon request.

All of the insurance required to be carried by the contractors shall be by policies which shall require on their face, or by endorsement, thirty (30) days' written notice to the District and the City of Houston before they may be cancelled or materially changed, and within which thirty-day period the contractors shall covenant that they will provide other suitable policies in lieu of those about to be cancelled or required under the provisions hereof.

The Developer shall further require each contractor, on behalf of itself, its officers, assigns, agents, and employees to agree and warrant that it will protect, defend, indemnify and hold harmless the District and the City of Houston, their agents, assigns, legal representatives, employees, and officers from any and all fines, demands, or claims arising by reason of or in connection with the actual or alleged errors, omissions, or negligent acts of contractor relating to each contract or any services or performances undertaken to create or fulfill each contract or any acts or omissions of the District or City of Houston, their officers, agents, or employees, including the District's or the City of Houston's concurrent or sole negligence, in any way relating to the District's or the City of Houston's oversight of the contract, including without limitation, the supervision or control of contractor's work, approval or certification of the contractor's methods, means of construction, or selection of subcontractors, or other acts relating to each contract. It is understood and agreed however, that the contractor or contractors shall not be liable for the sole negligent acts of the District or the City of Houston in relation to the Facilities when such acts commence after the Facilities are accepted by the City of Houston under the terms and conditions set forth in the Utility Functions and Services Allocation Agreement between the City of Houston and Jim Sowell Construction Company, Inc. on behalf of the District.

Section 5: Advertisement for Bids. The Developer shall advertise for bids and let construction contracts in accordance with Section 50.061 of Chapter 50, and Sections 54.222 through 54.228 of Chapter 54, Texas Water Code, as amended, and the Rules of the Commission. In the event that the Developer does not comply with such provisions, the District may refuse to approve such construction contracts. Upon receipt of bids, the Developer shall submit same to the District and the District's Engineer together with a tabulation of the bids for review and approval.

Section 6: Construction. All construction shall be performed in a good and workmanlike manner and in accordance with the Rules of the Commission. All Facilities shall be constructed in dedicated public rights-of-way or utility easements or in easements or lands specifically reserved by the Developer or by third parties participating in construction of the Facilities. The Developer shall provide such inspection of the Facilities during construction as is deemed reasonable and necessary by the

District's Engineer. Notwithstanding the foregoing, the District's representatives including the District's Engineer shall have full access at all times to the construction by the Developer to make such inspections thereof as the District deems necessary. Any change order to the contract shall be subject to approval by the District (which approval shall not be unreasonably withheld) and shall be filed with, and approved by, the Commission as and if required by the Rules of the Commission. Upon completion of the construction of the Facilities and in the event that the Developer has not assigned the construction contracts for the Facilities to the District prior to said completion, the Developer shall provide the District with "as-built" drawings of the Facilities. The District's Engineer shall provide a certificate of completion to the effect that the construction has been completed in accordance with the plans and specifications as approved by the District and has been approved by all required regulatory agencies having jurisdiction, which certificate shall be addressed to both the Developer and the District.

Section 7: Water and Sewer Connections to Facilities Constructed by the Developer. Prior to the lease of the Facilities by the District, as described in Article IV herein, the Developer shall use its best efforts to prohibit any person, other than the properly authorized agents of the District, from making taps or connections to the Facilities constructed by the Developer. In addition, subsequent to the lease of the Facilities by the District, the Developer and the District will require every person desiring the installation of a water meter to sign and execute an application for installation of a meter before the District installs said meter. Every person desiring to connect to the Facilities constructed by the Developer shall comply with any applicable rules and regulations which have been adopted by the District.

Section 8: Street and Road Construction Contracts. In accordance with 31 T.A.C. Section 293.48(2), or any successor provision, the Developer shall include in any Service Area street and road construction contract a provision that places the responsibility on the contractor for repair and clean-up of broken manholes, buried valve boxes, broken sewer pipe, and all other damage to District facilities caused by construction of streets and roads.

Section 9: Records. The Developer shall keep accurate records itemizing and separating all costs relative to the portions of the Facilities eligible for purchase by the District as set forth herein, such costs being allocated and determined in accordance with the Rules of the Commission. The Developer shall have the burden of establishing such allocation to the reasonable satisfaction of the District and the Commission, if necessary. The District shall have the right to examine such records at reasonable times and intervals.

ARTICLE III

Purchase of the Facilities

Section 1: Purchase Price. Subject to the conditions and limitations hereafter defined, and the construction of the Facilities as heretofore provided, the Developer shall be obligated to sell and the District shall be obligated to purchase the Facilities and the Sites for the Purchase Price. The Developer and the District understand and agree that the total Purchase Price paid to the Developer shall be subject to the Rules of the Commission (including particularly the Rule of the Commission requiring contribution by the Developer of thirty percent (30%) of certain costs) and further subject to any orders of the Commission relating to whether any component cost of the Purchase Price is an Allowable Cost; provided, however, that the parties hereto specifically agree that the amount of the Purchase Price shall not be diminished by any action or a failure to act by the District which attempts to restrict or limit payment of the Purchase Price, or any component cost therein, more than is required by such Rules or orders of the Commission. The Developer and the District understand and agree that such total Purchase Price will be paid only to the extent that such amounts are legally available for such purpose, and the District agrees to pay the Purchase Price to the Developer based upon invoices provided to the District, which must be satisfactory to the District and indicate the amount paid by the Developer.

Section 2: Rights-of-Way. The Developer shall provide all the necessary easements and rights-of-way for the Facilities, the Site Costs of which shall be included in the Purchase Price to the extent that such are Allowable Costs. The Developer shall have the right to use all easements, presently held by the District for the benefit of the Service Area, including those easements and rights-of-way for drainage, subject to the reasonable use thereof.

Section 3: Conditions. The District shall be under no obligation to purchase the Facilities unless:

(a) the Facilities have been constructed in accordance with the plans and specifications approved by the District and in a good and workmanlike manner; provided, however, it is understood and agreed that the District reserves the right to assume any construction contract for the Facilities or any portion of the Facilities prior to completion thereof;

(b) the Commission has approved the terms and conditions of the purchase;

(c) the conditions set forth in Section 1 of this Article have been satisfied;

(d) the District and the Developer and its lenders have entered into an agreement whereby the Developer permanently waives the right to claim agricultural, open space, timberland, or inventory valuations for any land,

homes or buildings owned by the Developer within the District, in accordance with the provisions of 31 T.A.C. Section 293.59 (k)(8); and

(e) all obligations and requirements of Developer as set forth in the Rules, specifically including, but not limited to, those requirements set forth in 31 T.A.C. Section 293.59, shall have been fully performed and satisfied.

Section 4: Sale of Bonds. The District will be under no obligation to purchase the Facilities until the District has consummated the sale of the Bonds in an amount sufficient to pay the Purchase Price, or a mutually agreed upon portion thereof. The District covenants that it will, subject to the provisions of Sections 1 and 3 of this Article, exercise its best efforts to sell same immediately upon occurrence of the conditions set forth in Section 3 of this Article; provided, however, it is understood and agreed that the District may delay the sale of the Bonds in the event its financial advisor determines that the Bonds would be unmarketable or that the District would be required to pay a substantially higher interest rate than that used in the District's application to the Commission for approval of the Bonds.

Section 5: Time of Closing. Subject to the conditions in Section 3, of this Article, the purchase of the Facilities shall be consummated within thirty (30) days after receipt by the District of the funds from the sale of the Bonds; provided, however, the District may, at its option, purchase the Facilities at an earlier time.

Section 6: Conveyance by the Developer. Except as provided hereinbelow, the Developer shall convey the Facilities to the District by general warranty deed or other appropriate instrument with full warranties, free and clear of all liens, claims, encumbrances, options, charges, assessments, easements, restrictions, limitations and reservations, (except for such restrictions, limitations and reservations which restrict the Sites or Facilities for utility purposes) including liens for ad valorem taxes for the current year and payments due to construction contractors, laborers and materialmen; provided, however, the District may consent to any conveyance with such restrictions, limitations, and reservations which would not unreasonably interfere with the use of the Facilities or the Sites. The Developer shall provide such proof of title and proof that no such liens, claims, and encumbrances exists as may be reasonably required by the District. The Developer shall be required to represent and warrant in the conveyance or conveyances that (a) it has the full legal right and authority to make the conveyance, (b) it has good and marketable title to the Facilities, (c) it is not subject to any bylaw, agreement, mortgage, lien, lease, instrument, order, judgement, decree or other restriction of any kind or character which would prevent the

execution of the conveyance or conveyances, (d) it is not engaged in or threatened with any legal action or proceeding, nor is it under any investigation, which would prevent the execution of the conveyance or conveyances, and (e) the person executing the conveyance or conveyances on behalf of the Developer has full authority to do so without further action of the Developer.

The conveyance or conveyances shall include all easements where the collection, distribution and drainage systems are located (where such easements have not been dedicated to the public) and which are necessary to own, operate and maintain the Facilities, together with the necessary rights-of-way thereto, where such easements are not directly accessible to a dedicated public street, and all licenses, franchises and permits required for the operation of the Facilities. The Developer shall also assign in writing all of its contractors' and materialmen's warranties and guarantees relating to the Facilities.

Section 7: Representations by Developer. The Developer represents and covenants that:

(a) This Agreement, the transactions contemplated herein, and the execution and delivery of this Agreement has been duly authorized by the Developer;

(b) This Agreement, and the representations and covenants contained herein, and the consummation of the transaction contemplated herein, will not violate or constitute a breach of any contract or other agreement to which the Developer is a party; and

(c) The Developer has made sufficient financial arrangements to assure its ability to provide funds to pay all costs associated with the acquisition and construction of the Facilities.

Section 8: Representations by the District. The District represents and covenants that it will use its best efforts to:

(a) Obtain the approval of the Commission of the completed Facilities;

(b) Obtain the approval of the Commission for the issuance and sale of the bonds;

(c) Market the bonds, subject to the terms and conditions set forth herein, in the manner contemplated hereby; and

(d) Obtain the approval of the Attorney General of the State of Texas of the bonds.

Section 9: Survival of Representations. All representations, warranties and agreements of the District and the Developer shall survive the conveyance of the Facilities.

Section 10: Service to Service Area. When the District accepts conveyance of the Facilities, the District shall have and enjoy complete ownership of the Facilities and the Developer shall have no further rights to the Facilities. The District shall provide water, sewer, and drainage service to the Service Area on the same terms and conditions as it provides services to all of the land within the District. Subject to the provisions of Section 11 in this Article, the District shall maintain the Facilities after purchase. The Developer hereby agrees and represents that it will not enter into any contract or agreement which would limit the right of the District to establish the rates for water and sewer service or to establish reasonable classifications of customers without the written consent of the District.

Section 11: Duty to Cure. The Developer shall assign to the District all its rights under the performance and payment bonds required to be obtained by the contractors and, as provided in Section 6 of this Article, all contractors' and materialmen's warranties and guarantees running to it with respect to the construction of the Facilities. The Developer agrees, upon the District's request, to act on behalf of the District in any action taken by the District for correction of any construction or engineering defects in the Facilities or satisfying any claim for labor and materials. The Developer hereby agrees that any such action requested by the District shall be performed diligently and expeditiously.

Section 12: Remedies. In the event of default by the Developer in any of its obligations hereunder (and which default continues for thirty (30) days after receipt of written notice by the Developer), the District shall have the option to

(a) terminate this agreement without liability to the Developer; and/or
(b) assume the outstanding construction contracts, and complete the construction of the Facilities; and/or
(c) pursue all other remedies provided by law.

If the District elects to assume the outstanding construction contracts, the District will, at the time of such assumption (subject to funds being legally available for such purpose), pay to the Developer, ninety percent (90%) of all Construction Costs which (a) have actually been incurred by the Developer until such time, (b) have been certified by the District's Engineer to have been appropriately paid under such contracts, less all out-of-pocket expenses incurred by the District in assuming such contracts, and (c) have been determined to be Allowable Costs. The remaining ten percent (10%) of such Construction Costs, subject to the exceptions hereinabove stated, shall be paid upon completion of such contracts, as certified by the District's Engineer. If no funds are then legally available for such purpose, such payment will be made at the time the District determines that such funds are legally available.

ARTICLE IV

Lease of Facilities

Section 1: Lease Agreement. The Developer agrees to lease to the District the Facilities (or any completed portion thereof) during the period or periods of time between the completion of the Facilities (or any portion thereof) and the purchase by the District of the Facilities, in accordance with the Lease Agreement attached hereto as Annex "II."

ARTICLE V

Miscellaneous

Section 1: Liability of District. The District shall not be liable to any contractor, engineer, attorney or materialmen employed or contracted with by the Developer, unless the District assumes the construction contract(s) as provided in Section 12(b) of Article III. The District shall have no liability to Developer, except in accordance with the terms hereof.

Section 2: Force Majeure. If either party hereto is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, except the obligation of the Developer to pay all Construction Costs, then the obligations of such party, 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. 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, (i) 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 of the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, and (ii) breakage or accidents to machinery, pipelines or canals, partial or entire failure of water supply or inability to provide water necessary for operation of the sewer system hereunder, or of the District to receive waste, and (iii) any other inabilities of either party, whether similar to those enumerated or otherwise, which are not within the control of the party claiming such inability and which such party could not have avoided by the exercise of due diligence and care. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demand of the opposing party or parties when such settlement is

unfavorable to it in the judgment of the party having the difficulty.

Section 3: Modification. This Agreement shall be subject to change or modification only with the mutual written consent of the Developer and the District.

Section 4: Term. Except as otherwise provided herein, this Agreement shall be in force and effect from the date of execution hereof for a term of five (5) years or until the Developer has conveyed the Facilities to the District and the District has purchased the Facilities, whichever last occurs, unless earlier terminated pursuant to the provisions of Article III, Section 12.

Section 5: Assignability. This Agreement shall bind and benefit District and its legal successors and Developer and its legal successors, but shall not otherwise be assignable, in whole or in part, by either party except by supplementary written agreements between the parties. If a city or cities annex District in its entirety and such an annexing city assumes the obligations of the District, this Agreement shall remain in full force and effect and such annexing city shall be entitled to the benefits and required to assume the obligations hereof.

Section 6: Assignment of District Proceeds. It is expressly agreed and understood that to aid and assist Developer in the financing of its development and the improvements to be constructed hereunder, Developer shall have the right, power and authority to negotiate, assign, pledge or hypothecate any sums or portions thereof due it or to become due it from the District or the Developer's contract right to any such sums arising out of and by virtue of this Agreement.

Section 7: Approval by the Parties. Whenever this Agreement requires or permits approval or consent to be hereafter given by either of the parties, the parties agree that such approval or consent shall not be unreasonably withheld or delayed. In the absence of notice to the contrary, approval by the President of the Board of Directors of the District or an appropriate certificate executed by a person, firm or entity authorized to determine and give approval or consent will evidence approval or consent on behalf of the respective parties. Such approval or consent shall be effective without regard to whether given before or after the time required herein.

Section 8: Construction and Interpretation. This Agreement shall be construed in accordance with and governed by the laws of the State of Texas. The titles assigned to the various Sections and Articles of this Agreement are for convenience of reference only and shall not be restrictive of the subject matter of any such Section or Article or otherwise affect the meaning, construction, or effect of any part hereof.

Section 9: Severability. If any provision or application of this Agreement shall be held illegal, invalid, or unenforceable by any court, the invalidity of such provision or application shall not affect or impair any of the remaining provisions and applications hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in several counterparts, each of which shall be deemed to be an original and all of which shall constitute the original, as of the date and year first written herein.

HARRIS COUNTY MUNICIPAL
UTILITY DISTRICT NO. 359

ATTEST:

_____ By:_____
Secretary President

(SEAL)

[DEVELOPER]

ATTEST:

By:_____
_____ Printed Name:_____
Secretary
Title:_____

[SEAL]

THE STATE OF TEXAS)(
)(
COUNTY OF HARRIS)(

This instrument was acknowledged before me on this _____ day of _____, 19_____, by _____, _____ Board of Directors of Harris County Municipal Utility District No. 359.

_____
Notary Public in and for the
State of T E X A S

(SEAL)

Printed Name:_____
Commission Expires:_____

THE STATE OF _____)(
)(
COUNTY OF _____)(

This instrument was acknowledged before me on this _____ day of _____, 19____, by _____, _____.

_____
Notary Public in and for the
State of T E X A S

(SEAL)

Printed Name:_____
Commission Expires:_____

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ANNEX II

LEASE AGREEMENT

THE STATE OF TEXAS)(
)(
COUNTY OF HARRIS)(

THIS LEASE AGREEMENT (the "Lease") made and entered into this ____ day of _____, 19____, by and between _____ _____, a _____, (the "Developer"), and HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 359, a conservation and reclamation district, a body politic and corporate, and a governmental agency of the State of Texas ("the District").

W I T N E S S E T H:

WHEREAS, the Developer, with the consent and authorization of the District, provided in that certain Utility Development Agreement dated _____, 19___ (the "Agreement"), has solicited and received bids, awarded contracts, and caused to be constructed certain facilities, as defined in the Agreement (the "Facilities"), to serve lands within the boundaries of the District; and

WHEREAS, it is anticipated by the parties that the District will purchase from the Developer the Facilities at such time as the District has funds available from the future sale of its bonds; and

WHEREAS, in order to permit the District to commence service to customers within its boundaries, the District and the Developer desire to enter into this Lease to provide for the temporary use by the District of the Facilities, pending the final purchase thereof by the District;

NOW, THEREFORE, for and in consideration of One and No/100 ($1.00) Dollar paid to the Developer by the District, and the further and additional consideration of the covenants and agreements herein contained and the mutual benefits to be derived herefrom, the Developer and the District hereby agree as follows:

I.

DESCRIPTION

The Developer hereby leases to the District all or a portion of the Facilities as more particularly described in the construction contracts previously executed by the Developer and listed on Exhibit "A", attached hereto and made a part hereof for all purposes (the "Property").

II.

REPRESENTATION

Developer represents to the District that the Property herein leased to the District, to the best of its knowledge and belief, has been constructed in accordance with the requirements of the District and all applicable regulatory authorities and is in good working order as of the date hereof.

III.

TERM

This Lease shall become effective commencing with the delivery of the Property to the District, which will be on or about _____, 19___, and shall continue until the purchase of the Property by the District has been consummated pursuant to the Agreement, provided that the District continues to use its best faith efforts in order to purchase the Property in accordance with the Agreement.

Upon the termination hereof, except upon the purchase of the Property by the District, the District shall redeliver the Property to the Developer in good order, condition and repair, normal use, wear and tear excepted.

IV.

USE AND OWNERSHIP

The Property shall be used by the District only at the locations where it is presently situated and shall not be removed therefrom or disposed of, nor shall this Lease be assigned without the previous written consent of the Developer.

This is an agreement of lease only, and the District acquires no right, title or interest in or to the Property other than the right to the possession and use of the same in accordance with the terms of this Lease.

V.

OPERATION AND MAINTENANCE

The District shall take, hold and operate the Property during the term hereof, and the District shall exercise due and proper care in the use and maintenance of the Property and keep the same in a good state of repair, provided, however, that the District shall not be responsible for damages to the Property except as caused by the District or its agents.

The Developer shall have the right of access to the Property at all reasonable times for the purpose of the inspection of the Property, and shall minimize interference with the District's operation. If such inspection reveals that the Property is being improperly used, repaired or maintained, the Developer may, after written notification to the District, service or repair same as needed and such expense shall be paid by the District. Any work performed by the Developer in the service or maintenance of the Property as a result of the District's failure or neglect shall not deprive the Developer of any of its rights, remedies or actions against the District for damages resulting from such failure or neglect.

VI.

PURCHASE OF SYSTEMS

Developer agrees to sell, transfer, assign and convey the Property to the District, and the District agrees to purchase the Property from the Developer out of proceeds received from its next issue or installment of bonds, all as approved by the Texas Water Commission and as more fully described in the Agreement. This Lease shall terminate upon consummation of such sale and purchase.

VII.

INSURANCE

If the District shall have money available for such purpose, and if such insurance is customarily maintained on facilities of comparable character by public entities such as the District, the District shall maintain fire and extended coverage insurance covering the Property. In the event that the District has not obtained such insurance, the Developer may provide sufficient funds for the purchase of such insurance to the District and be entitled to reimbursement for such funds by the District at such time as the District shall have money available from any legal source. Notwithstanding any provision of this Lease, however, the failure of the District to maintain such insurance shall not relieve the Developer of its obligations hereunder.

VIII.

GENERAL PROVISIONS

Texas Law to Apply. This Lease shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in the county in which the District is located.

Legal Construction. In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity,

illegality or unenforceability shall not affect any other provision hereof, and this Lease shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Assignment. This Lease shall not be assigned, by operation of law or otherwise, by either party without the written consent of the other.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

[Name of Developer]

ATTEST:

By:_____
Name:_____
Title:_____

_____
Secretary

[(SEAL)]

ATTEST:

HARRIS COUNTY MUNICIPAL
UTILITY DISTRICT NO. 355

_____
Secretary

By:_____
President

(SEAL)

359\AGMT/02.DOC

City of Houston Ordinance No. 92-113

AN ORDINANCE RELATING TO CHARGES AND TERMS OF SERVICE FOR WATER AND WASTEWATER SERVICE; AMENDING CHAPTER 47 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS; CONTAINING FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; PROVIDING A REPEALING CLAUSE; AND DECLARING AN EMERGENCY.

* * * * * *

WHEREAS, certain costs of operating and maintaining the City of Houston combined Water and Sewer System (the "System") have increased since the year 1990 and are projected to increase further in the future; and

WHEREAS, such increases in cost necessitate increases in water and sewer rates and charges to protect the financial integrity of the System; and

WHEREAS, land subsidence in the Houston metropolitan area constitutes a grave public emergency which must be met by the distribution of surface water; and

WHEREAS, rehabilitation, expansion and construction of sewer facilities are necessary to comply with the Texas Water Commission Order dated March 3, 1987; and

WHEREAS, the continued ability of the City of Houston to distribute surface water requires that the financial integrity of the System be protected; and

WHEREAS, the continued development of the System is essential to the health, safety and welfare of the people; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON:

Section 8. That Subsection 47-61(d) of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"(d) Charges for additional quantities. The charge **for the additional quantity for certain customers in any given month shall be as follows:**

(1) Residential Classifications:

a. For each single-family residential customer with a gross quantity of twelve thousand (12,000) gallons or less in a given month, the charge for any additional quantity shall be Two Dollars and Thirty-One Cents ($2.31) per one thousand (1,000) gallons.

b. For each single-family residential customer with a gross quantity in excess of twelve thousand (12,000) gallons in a given month, the charge for any additional quantity shall be as follows:

1. For the first increment (twelve thousand (12,000) gallons less the minimum quantity for that customer): Two Dollars and Thirty-One Cents ($2.31) per one thousand (1,000) gallons.

2. For that part of the gross quantity in excess of twelve thousand (12,000) gallons: Four Dollars and Nineteen Cents ($4.19) per one thousand (1,000) gallons.

c. For each multi-family residential customer with a per-unit gross quantity of ten thousand (10,000) gallons or less in a given month, the charge for any additional quantity shall be One Dollar and Eighty-One Cents ($1.81) per one thousand (1,000) gallons.

d. For each multi-family residential customer with a per-unit gross quantity in excess of ten thousand (10,000)

gallons in a given month, the charge for any additional quantity shall be as follows:

1. For the first increment (ten thousand (10,000) gallons per unit multiplied by the number of units less the minimum quantity for that customer): One Dollar and Eighty-One Cents ($1.81) per one thousand (1,000) gallons.
2. For that part of the gross quantity in excess of ten thousand (10,000) gallons per unit: Four Dollars and Four Cents ($4.04) per one thousand (1,000) gallons.

(2) Resale Classification. For each resale customer, the charge for any additional quantity shall be Two Dollars and Fifty-One Cents ($2.51) per one thousand (1,000) gallons.

(3) Outdoor Classification. For each outdoor customer, the charge for any additional quantity shall be Four Dollars and Nineteen Cents ($4.19) per one thousand (1,000) gallons.

(4) Commercial Classification. For each commercial customer, the charge for any additional quantity shall be Two Dollars and Sixteen Cents ($2.16) per one thousand (1,000) gallons.

(5) **Emergency Backup Service. For each EBS customer, the charge for any additional quantity (which for EBS customers equals the**

gross quantity) shall be Two Dollars and Fifty-One Cents ($2.51) per one thousand (1,000) gallons.

(6) Contract Treated Water Service. See subsection (f), below.

(7) Transient Meter Classification. For each transient meter customer, the charge for any additional quantity (which for transient meter customers equals the gross quantity) shall be Two Dollars and Sixteen Cents ($2.16) per one thousand (1,000) gallons."

Section 2. That Paragraph 47-61(f)(3) of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"(3) Rates and charges

a. For contract treated water customers receiving treated surface water only, the monthly charge shall equal:

$$P \times \$1.05$$

plus

$$(P-M) \times [((P/M)-1) \times \$.33]$$

Where: P is the total water delivery to such customer during the month expressed in units of one thousand gallons, except if the minimum monthly amount of water specified in the customer's contract is greater than P, P shall equal M; and

M is the minimum monthly amount of water specified in the customer's contract expressed in units of one thousand gallons.

b. For contract treated water customers that do not receive only surface water from the city, the monthly charge shall equal:

P x $1.17

plus

(P-M) x [((P/M)-1) x $.32]

Where: P is the total water delivery to such customer during the month expressed in units of one thousand gallons, except if the minimum monthly amount of water specified in the customer's contract is greater than P, P shall equal M; and

M is the minimum monthly amount of water specified in the customer's contract expressed in units of one thousand gallons.

(In the event a billing period is longer or shorter than thirty (30) days, a daily charge shall be determined using the formulas specified above, but "P" defined as to average daily amount of water delivered during the billing period and "M" defined as the monthly minimum divided by thirty. Such daily charge shall then be multiplied by the number of days in the billing period.)"

Section 3. That Section 47-64 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"Sec. 47-64. Minimum charges for unmetered connection for fire sprinkling systems.

(a) Each person with an unmetered connection serving an automatic sprinkling system under the provisions of section 47-4 shall pay the following monthly service charge for the corresponding size of the diameter of the service line connected to the city's water main:

Service Line Diameter (inches)	Monthly Service Charge
5/8", 3/4"	$ .44
1"	1.10
1-1/2"	2.20
2"	3.52

3"	7.70
4"	13.20
6"	27.50
8"	39.60
10"	63.80
12"	94.60

(b) Billing for charges made under this section shall be made on a monthly basis. Payment shall be due and made in accordance with the provisions of this Code, and payment of such charges shall be enforced by any and all means available to the city under other provisions of this Code, including termination of service."

Section 4. That Subsection 47-84(c) of the Code of Ordinances, Houston, Texas is hereby amended to read as follows:

"(c) It is the city's policy that no guarantees or warranties of any sort shall be made with respect to continued service, water quality, prices, quantity, pressure or any other matter relating to the furnishing of water, except to the extent referred to in section 47-24, which applies to untreated water and this division. When no contract is in effect, there are no warranties or guarantees of any sort, nor shall there be any minimum monthly quantity, and any water taken by any customer in the absence of a water supply contract shall be paid for at the following rates per month:

(1) First ten million (10,000,000) gallons, $0.89912 per one thousand (1,000) gallons.

(2) Next ten million (10,000,000) gallons, $0.80777 per one thousand (1,000) gallons.

(3) Next thirty million (30,000,000) gallons, $0.76203 per one thousand (1,000) gallons.

(4) Next one hundred million (100,000,000) gallons, $0.71633 per one thousand (1,000) gallons.

(5) Excess of one hundred fifty million (150,000,000) gallons, $0.69351 per one thousand (1,000) gallons."

Section 5. That Subsection 47-85(b) of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"(b) The base rates for water delivered pursuant to contract at delivery points along the main San Jacinto River conveyance systems and the Trinity River conveyance systems owned or to be operated by the city or the Coastal Water Authority are as listed below. (Under all such contracts the buyer agrees to purchase at least ninety (90) percent of all its water requirements from the city or agrees to terms of service, approved by the director, designed to avoid undue variations in rate of flow.):

(1) Schedule A, less than five (5) MGD minimum monthly quantity:

a. First ten million (10,000,000) gallons: $0.44955 per one thousand (1,000) gallons.

b. Next ten million (10,000,000) gallons: $0.40388 per one thousand (1,000) gallons.

c. Next thirty million (30,000,000) gallons: $0.38101 per one thousand (1,000) gallons.

d. Next one hundred million (100,000,000) gallons: $0.35816 per one thousand (1,000) gallons.

e. Excess of one hundred fifty million (150,000,000) gallons: $0.34676 per one thousand (1,000) gallons.

(2) Schedule B, five (5) or more MGD minimum monthly quantity:

a. First one hundred fifty million (150,000,000) gallons: $0.33534 per one thousand (1,000) gallons.

b. Next one hundred fifty million (150,000,000) gallons: $0.32964 per one thousand (1,000) gallons.

c. Excess of three hundred million (300,000,000) gallons: $0.32385 per one thousand (1,000) gallons.

(3) Schedule C, ten (10) or more MGD minimum monthly quantity:

a. First three hundred million (300,000,000) gallons: $0.31820 per one thousand (1,000) gallons.

b. Next three hundred million (300,000,000) gallons: $0.31249 per one thousand (1,000) gallons.

c. Excess of six hundred million (600,000,000) gallons: $0.30676 per one thousand (1,000) gallons.

(4) Schedule D, twenty (20) or more MGD minimum monthly quantity:

a. First six hundred million (600,000,000) gallons: $0.30107 per one thousand (1,000) gallons.

b. Excess of six hundred million (600,000,000) gallons: $0.29535 per one thousand (1,000) gallons.

(5) Schedule E, forty (40) or more MGD minimum monthly quantity:

a. First twelve hundred million (1,200,000,000) gallons: $0.28964 per one thousand (1,000) gallons.

b. Excess of twelve hundred million (1,200,000,000) gallons: $0.27822 per one thousand (1,000) gallons.

(6) Schedule F, sixty (60) or more MGD minimum monthly quantity:

a. First eighteen hundred million (1,800,000,000) gallons: $0.27249 per one thousand (1,000) gallons.

b. Excess of eighteen hundred million (1,800,000,000) gallons: $0.26680 per one thousand (1,000) gallons.

(7) Schedule G, one hundred (100) or more MGD minimum monthly quantity:

a. First three thousand million (3,000,000,000) gallons: $0.25535 per one thousand gallons.

b. Excess of three thousand million (3,000,000,000) gallons: $0.24384 per one thousand (1,000) gallons.

"MGD" is an abbreviation for "million gallons of water per day" and refers to a quantity of water during a calendar month expressed in terms of an average daily quantity.

The unit of measure and sales unit for water shall be one thousand (1,000) gallons, U.S. Standard Liquid Measure."

Section 6. That Subsection 47-89(a) of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"(a) The rates for untreated water sold for irrigation purposes pursuant to written contracts shall be as follows:

(1) If such water is not pumped from the canal or conveyance system: Forty-Five Dollars and Sixty-Seven Cents ($45.67) per acre to be watered initially plus Eight Dollars and Thirty-Three Cents ($8.33) per acre to be watered for each additional watering during the annual term of the contract, or

(2) If such water is pumped from the canal or conveyance system:

a. For the initial watering: The greater of Forty-Five Dollars and Sixty-Seven Cents ($45.67) per acre to be watered or Forty-Five Dollars and Sixty-Seven Cents ($45.67) per million gallons actually used; and

b. For each additional watering during the annual term of the contract: The greater of Eight Dollars and Thirty-Three Cents ($8.33) per acre to be watered or Eight Dollars and Thirty-Three Cents ($8.33) per million gallons actually used."

Section 7. That Section 47-1001 of the Code of Ordinances, **City of Houston, Texas, is hereby amended to read as follows:**

"Sec. 47-1001. Minimum monthly charges for treated water.

The minimum monthly charges referenced in section 47-61, paragraph (c)(1), are set out in the following table. The charge specified for the first designated customer class (residential low-user rate) is the entire amount of the charge for water service to single-family residential customers whose monthly water usage equals three thousand (3,000) gallons or less.

	Meter Size of the Customer (inches)							
	5/8" 3/4"	1"	1 1/2"	2"	3"	4"	6"	8" larger
Single-family residential customer:								
With water usage three thousand (3,000) gallons or less in such month (residential low-user rate)	$2.95	$2.95	$2.95	$2.95	N/A	N/A	N/A	N/A
With water usage in excess of three thousand (3,000) gallons in such month	12.82	12.82	12.82	12.82	$12.82	$32.34	$56.39	$76.74
Multi-family residential customer:								
With a water usage two thousand (2,000) gallons or less in such month	7.57	7.57	7.57	7.57	7.57	29.03	53.08	73.43
Outdoor customer	16.89	16.89	48.81	76.17	162.81	276.81	573.21	824.01
Commercial customer	10.80	10.80	28.51	43.69	91.76	155.01	319.46	458.61
Resale customer	7.53	7.53	25.10	40.16	87.85	150.60	313.75	451.80
Emergency backup service customer	4.37	6.12	9.02	12.51	23.55	38.07	75.84	107.80
Transient meter customer	(See section 47-22 and subsection (d) of section 47-61)"							

Section 8. That Section 47-121 of the Code of Ordinances, Houston, Texas is hereby amended to read as follows:

"Section 47-121. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) City sanitary sewer system. The sanitary sewer and waste disposal system owned, maintained and operated by or on behalf of the city in order to furnish sanitary sewer and waste disposal services, including, but not limited to waste treatment facilities including fertilizer plants, plants, disposal fields, lagoons and areas devoted to sanitary landfills for purposes of treating, neutralizing, stabilizing or disposing of waste, and sewer systems including pipelines, conduits, canals, pumping stations, force mains, and all other constructions, devices and appurtenant appliances used to transport waste, as such system may be now constituted or as it may be hereafter improved, enlarged or extended by construction, reconstruction, acquisition, annexation or otherwise.

(b) Commercial User. Any business or establishment that is identified in the 1987 Edition of the Standard Industrial Classification Manual, but which is not an industrial user.

(c) Duplex residence. A single building equipped for occupancy as a permanent residence by two (2) families.

(d) Industrial User. Any business or establishment that discharges industrial waste as defined in Article V of this Chapter.

(e) Light Commercial User. Any business or establishment that is not a residential, commercial, or industrial user.

(f) Multiple-Dwelling Units. One (1) or more buildings, each equipped for occupancy by three (3) or more families and used as a permanent residence by those families.

(g) Person. Persons, individuals, firms partnerships, companies, corporations and governmental entities, whether one (1) or more or a combination of one (1) or more thereof.

(h) Residential User. A single family residence, or a duplex residence, or a multiple-dwelling residence, or any combination of same.

(i) Single-Family Residence. A residential establishment serving a single family, or household, which may not include separate living quarters. In those instances where there is no meter on the water supply to the principal household, separate living quarters shall be considered as a separate residence and a separate sewer service charge shall be applied.

Section 9. That Section 47-122 of the Code of Ordinances, Houston, Texas is hereby amended to read as follows:

"Sec. 47-122. Rates for users taking city water.

(a) Residential users. The monthly charge for sanitary sewer service for each residential user shall be computed on the basis of the quantity of water furnished to the user's premises as measured by the City water meter or meters serving such premises, as follows:

(1) For each single-family residential (single family low user rate) customer with a gross quantity of three thousand (3,000) gallons or less in a given month, the charge for sewer service will be Five Dollars and Fifty-Five Cents (5.55) (single family low-user rate).

(2) For each single-family residential customer with a gross quantity in excess of three thousand (3,000) gallons in a given month, the charge shall be Two Dollars and Ninety-Five Cents ($2.95) per thousand gallons.

(b) Commercial users. The monthly charge for sanitary sewer service for each commercial user shall be computed on the basis of the quantity of water furnished to the user's premises as measured by the city water meter or meters serving such premises as provided below:

(1) Minimum charge for two thousand (2,000) gallons or less of water usage: Seven Dollars and Ninety-Two Cents ($7.92).

(2) Additional charge for additional water usage in excess of the first two thousand (2,000) gallons: Three Dollars and Ninety-Six Cents ($3.96) per thousand gallons.

(c) Light commercial users. The monthly charge for sanitary sewer service for each light commercial **user shall be computed on the basis of the quantity of water furnished to the user's premises as measured by the city water meter or meters serving such premises as provided below:**

(1) Minimum charge for two thousand (2,000) gallons or less of water usage: Five Dollars and Ninety-Two Cents ($5.92).

(2) Additional charge for additional water usage in excess of the first two thousand (2,000) gallons: Two Dollars and Ninety-Six Cents ($2.96) per thousand gallons.

(d) Industrial users. The monthly charge for sanitary sewer for each industrial user shall be computed on the basis of the quantity of water furnished to the user's premises as measured by the city water meter or meters serving such premises as provided below, plus the industrial waste surcharges required under the provisions of Section 47-202:

(1) Minimum charge for two thousand (2,000) gallons or less of water usage: Seven Dollars and Ninety-Six Cents ($7.96).

(2) Additional charge for additional water usage in excess of the first two thousand (2,000) gallons: Three Dollars and Ninety-Eight Cents ($3.98) per thousand gallons.

Section 10. That Section 47-123 of the Code of Ordinances, Houston, Texas is hereby amended to read as follows:

"Sec. 47-123. Rates for users not receiving water from city.

The monthly sanitary sewer service charge for each user having a private water supply or receiving water **from a source other than the City's water system and whose water supply is not self-metered and billed as provided in Section 47-128 herein, shall be as follows:**

(a) Single family residence: Eleven Dollars and Eighty Cents ($11.80) per month.

(b) Duplex residence: Twenty-Three Dollars and Sixty Cents ($23.60) per month.

(c) Multiple dwelling units, per single family unit: Eleven Dollars and Eighty Cents ($11.80) per month.

(d) Light Commercial user rate, per commercial equivalent: Twenty-Five Dollars and Sixteen Cents ($25.16) per month. Each light commercial user shall pay the cost of a single commercial equivalent unless such light commercial user requires additional commercial equivalents of service as determined by the table provided below.

(e) Commercial user rate, per commercial equivalent: Thirty-Three Dollars and Sixty-Six Cents ($33.66) per month. Each commercial user shall pay the cost of a single commercial equivalent unless such commercial user requires additional commercial equivalents of service as determined by the table provided below.

(f) Industrial user rate, per commercial equivalent: Thirty-Three Dollars and Eighty-Three Cents ($33.83) per month. Each industrial user shall pay the cost of a single commercial equivalent unless such industrial user requires additional commercial equivalents of service as determined by the table provided below.

Type of Commercial Connection	Units to Measure Contribution	Number of Contribution Units to Equal Commercial Equivalent
Offices, warehouses, machine shops, producers of no process waste, without on-premise showers	Total number of on-premises employees working, based on 8-hour shifts	16 Employees
Offices, warehouses, machine ships, producers of no process waste, with on-premise showers	Total number of on-premises employees working, based on 8-hour shifts	8 Employees
Offices, warehouses, machine shops, producers of no process waste without on-premise showers	Total number of off-premises employees working, based on 8-hour shifts	64 Employees
Offices, warehouses, machine ships, producers of no process waste, with on-premise showers	Total number of off-premise employees working, based on 8-hour shifts	32 Employees
Offices, warehouses, machine shops, producers of no process waste	Total number of employees who reside at their place of work	4 Employees
Hospitals with laundry facilities	Number of beds	1.5 beds
Hospitals without laundry facilities	Number of beds	2 beds
Laundries	Pounds of laundry per day	50 pounds
Restaurants	Seating capacity	16 seats
Soda fountain only, without food facilities	Seating capacity	32 seats
Schools, all grades	Number of students average daily attendance	32 students
Churches and Sunday Schools	Seating Capacity	64 seats
Taverns without food facilities	Seating Capacity	32 seats
Skating rinks, theaters bowling alleys, amusement parks, other entertainment facilities*	Average number of patrons daily, based on number of days facility is open	64 patrons
Tourist courts, motels, hotels, other transient lodging facilities*	**Number of rooms**	**2 rooms**

***The number of commercial equivalents for those facilities with restaurants or associated dining facilities to be calculated separately as for "Restaurants" above and added to the number of commercial equivalents calculated for this category."**

Section 11. That Subsection 47-140(a) of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"(a) The wholesale service charge rate for sanitary sewer service for eligible conservation and reclamation districts as defined herein ("districts"), shall be One Dollar and Two Cents ($1.02) per thousand gallons. Said rate shall be used to determine the monthly service charge for a given district by multiplying said service charge rate by a factor equal to .315 x A x B where:

"A" is the number of calendar days in the particular month; and

"B" is the number of residential equivalent units connected to the district's collection system. (Conversion factors for "residential equivalent units" are provided in the wholesale sewer service contracts.)"

Section 12. That Section 47-202 of the Code of Ordinances, Houston, Texas is hereby amended to read as follows:

"(a) The user charges to be determined to each establishment producing industrial waste shall be computed by use of the following formula:

$$UC = Q\left[X + \frac{(BOD-350)\ (8.337)\ Y}{1000} + \frac{(SS-375)\ (8.337)\ Z}{1000}\right]$$

Formula values are:

UC = User charge (in dollars).

Q = Billable quantity of wastewater in thousand gallon units.

X = $ 3.98

Y = $.11101434

Z = $.58330195

BOD = Five day, twenty (20) degree Centigrade **biochemical oxygen demand content of the waste delivered in mg/l, but not less than 350 mg/l**

SS = Suspended solids content of the waste delivered in mg/l, but not less than 375 mg/l.

(b) Those industries defined herein as dry industries, or industries producing wastes containing BOD of less than Three Hundred Fifty (350) milligrams per liter (mg/l) and suspended solids of less than three hundred seventy five (375) milligrams per liter (mg/l) will pay a sewer service charge at the uniform commercial user rate of three dollars and ninety-eight cents ($3.98) per thousand gallons delivered.

(c) When either BOD is equal to or exceeds three hundred fifty (350) milligrams per liter (mg/l) or suspended solids is equal to or exceeds three hundred seventy-five (375) milligrams per liter (mg/l) or both in a delivered waste, the formula provided in subsection (a) shall be used to determine user charges. The amount of the BOD to be used in the formula shall equal the actual amount or three hundred fifty (350) milligrams per liter (mg/l), whichever is greater.

The amount of the suspended solids to be used in the formula shall equal the actual amount or three hundred seventy (375) milligrams per liter (mg/l), whichever is greater.

(d) When an industry produces both domestic and process waste with one connection to the sewer system the waste so delivered shall be considered as industrial waste with uniform rate; or by user charge computations, in compliance with the above, based on the combined volume, BOD and suspended solids content.

(e) A permittee may reduce his user charge rate by greater removals in pretreatment or plant operation procedure, but once the pretreatment or plant procedure **is established to obtain uniform or lower rate, written consent from the director to increase the delivered strength shall be required, and charges for a higher rate based on tests by the city may be made without other notice to the industry.**

(f) Monthly or bimonthly billing for industrial waste disposal shall be accomplished, using the established procedures."

Section 13. The charges and provisions set out in the above Sections One through Twelve of this Ordinance shall apply to each customer beginning with such customer's first billing cycle after the effective date hereof.

Section 14. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict only.

Section 15. The City Council officially finds, determines, recites and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, Article 6252-17, Texas Revised Civil Statutes Annotated; and that this meeting has been open to the public as required by law at all times during which this ordinance and the subject matter thereof has been discussed, considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

Section 16. That the City Council hereby adopts the findings set out in the Preamble hereof.

Section 17. If any provisions, section, subsection, sentence, clause, or phrase of this ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being

the intent of the City Council in adopting this ordinance that no portion hereof or provisions or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this ordinance are declared to be severable for that purpose.

Section 18. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 5th day of February 19 92.

APPROVED this 5th day of February 19 92.

Bob Lanier
Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is _____.

City Secretary EB

Assistant City Attorney

(Prepared by Legal Dept.
(EWB/lms 07/11/91)
(Requested by Frederick Perrenot, Director, Department of Public Utilities)
(L.D. File No. 80-91270)
EWB2256

CAPTION PUBLISHED IN DAILY COURT

EXHIBIT F

5.04 (A) (I) & 5.04 (A) (II)
EXAMPLE YEAR – 2003

11-Mar-92

ESTIMATED WHOLESALE COST TO DISTRICT (TO BE DEDUCTED FROM TOTAL COLLECTIONS)

WATER PURCHASED FROM CITY:

	ANNUAL CONSUMPTION	AVERAGE MONTHLY CONSUMPTION	WATER COST PER MONTH	WATER LINE MAINT. PER MO.	TOTAL COST PER MONTH	TOTAL COST ANNUALLY
S/F RESIDENTIAL (560 S/F @ 10500 GPM)	70,560,000	5,880,000	$6,879.60	$1,117.20	$7,996.80	$95,961.60
APARTMENTS (2500 UNITS @ 5400 GPM)	162,000,000	13,500,000	15,795.00	2,565.00	18,360.00	220,320.00
OUTSIDE USAGE (2500 APT UNITS @ 600 GPM)	18,000,000	1,500,000	1,755.00	285.00	2,040.00	24,480.00
WATER PURCHASED NOT BILLED (LOSSAGE)	25,056,000	2,088,000	2,442.96	396.72	2,839.68	34,076.16
TOTAL AMOUNT	275,616,000	22,968,000	$26,872.56	$4,363.92	$31,236.48	$374,837.76

SEWER FEES PAID BY DISTRICT TO CITY:

	ANNUAL METERED	AVERAGE MONTHLY FLOW	WASTEWATER COST PER MO.	WASTEWATER LINE MAINT. PER MO.	TOTAL COST PER MONTH	TOTAL COST ANNUALLY
S/F RESIDENTIAL (560 S/F 10500 GPM)	70,560,000	5,880,000	$7,408.80	$1,764.00	$9,172.80	$110,073.60
APARTMENTS (2500 UNITS @ 5400 GPM)	162,000,000	13,500,000	$17,010.00	$4,050.00	21,060.00	252,720.00
	232,560,000	19,380,000	$24,418.80	$5,814.00	$30,232.80	$362,793.60
TOTAL WHOLESALE WATER & SEWER COSTS TO DISTRICT					$61,469.28	$737,631.36

ESTIMATED BILLINGS BY CITY OF HOUSTON TO CUSTOMER WITHIN DISTRICT

	MONTHLY PER CUSTOMER	ANNUALLY PER CUSTOMER	TOTAL SINGLE FAMILY MONTHLY	TOTAL APARTMENTS MONTHLY	TOTAL ANNUAL BILLINGS @ 95% S/F
WATER:					
S/F RESIDENTIAL @ 10500 GPM	$19.01	$228.06	$19.01		121,328
APARTMENTS @ 5400 GPM / APT. UNIT	9.77	117.29		$9.77	293,220
OUTSIDE USAGE @ 600 GPM / APT. UNIT	2.51	30.17		2.51	75,420
SEWER:					
S/F RESIDENTIAL @ 10500 GPM	30.98	371.70	30.98		197,744
APARTMENTS @ 5400 GPM / APT. UNIT	15.93	191.16		15.93	477,900
TOTAL AVERAGE BILLING PER MONTH			$49.98	$28.22	
TOTAL ANNUAL BILLINGS					$1,165,612.32
REVENUE REBATE TO DISTRICT (ESTIMATED BILLINGS LESS ESTIMATED WHOLESALE COST)					$427,980.96

CITY OF HOUSTON 'WHOLESALE' RATE CHARGES :

COST OF WATER (BASE CHARGE)	$1.17	/1000G BASE / UNIT METERED TO DISTRICT (NOT INC. PEAKING RATE)
WATER LINE MAINTENANCE	0.19	/1000G BASE / UNIT METERED TO DISTRICT
TOTAL COST OF WATER FROM CITY OF HOUSTON PER 1000 GALLONS	$1.36	/1000G BASE / UNIT METERED TO DISTRICT
WASTEWATER LINE MAINTENANCE	$0.30	/1000G UNIT METERED TO STP
WASTEWATER TREATMENT (BASE RATE OF $1.02 PLUS $0.24)	1.26	/1000G UNIT METERED TO STP
TOTAL COST OF WASTEWATER EXPENSE BY CITY OF HOUSTON		/1000G UNIT METERED TO STP
TOTAL COST OF WATER, WASTEWATER TREATMT. & LINE MAINTENANCE	$2.92	/1000G

CITY OF HOUSTON RETAIL WATER & SEWER RATE SCHEDULE :

WATER	
SINGLE FAMILY – (5/8 OR 3/4 INCH TAP)	
UP TO 12000 GAL USED EACH 1000	$1.81
OVER 12000 GAL USED EACH 1000	$4.19
MULTI-FAMILY –	
UP TO 10000 GAL USED EACH 1000	$1.81
OUTSIDE USAGE –	
PER 1000 GAL USED	$4.19

SEWER	
RESIDENTIAL UNIT – (SINGLE FAMILY / MULTI FAMILY)	
FLAT RATE RESIDENTIAL UNIT PER /1000G WATER METERED	$2.95

EXHIBIT "F"

ASSIGNMENT OF UTILITY FUNCTIONS AND SERVICES
ALLOCATION AGREEMENT
BY AND BETWEEN
CITY OF HOUSTON, TEXAS AND
JIM SOWELL CONSTRUCTION COMPANY, INC. ON BEHALF
OF HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 359

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF HARRIS §

1. JIM SOWELL CONSTRUCTION COMPANY, INC. (hereinafter called Assignor), hereby assigns unto HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 359, all of its right, title and interest in and to that certain Utility Functions and Services Allocation Agreement dated September 23, 1992.

2. This Assignment is subject to all terms and provisions of the Agreement and is authorized by Section 8.05 of said Agreement.

3. By acknowledging this Assignment Harris County Municipal Utility District No. 359 accepts the terms and conditions of the Agreement and agrees to assume all of Assignor's covenants, duties and obligations under the Agreement, and Assignor is hereby fully released from any and all obligations under the Agreement.

WITNESS THE EXECUTION HEREOF in multiple originals, this the 1st day of March, 1994.

ATTEST:

Lisa A. Cain
Name: LISA A. CAIN
Title: _____

JIM SOWELL CONSTRUCTION
COMPANY, INC.

By: _____
Name: JAMIE CORNELIUS
Title: Vice President

ACKNOWLEDGMENT OF ASSIGNMENT

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 359 acknowledges and consents to the foregoing Assignment of JIM SOWELL CONSTRUCTION COMPANY, INC. ("Assignor"), to HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 359 of all its right, title, and interest in and to that certain Utility Functions and Services Allocation Agreement dated September 23, 1992.

WITNESS THE EXECUTION HEREOF in multiple originals, this the 1st day of March, 1994.

ATTEST:

Secretary
Board of Directors

HARRIS COUNTY MUNICIPAL
UTILITY DISTRICT NO. 359

President
Board of Directors

FORM 132.M
(Approving/Authorizing)

City of Houston Ordinance No. 97-1234

AN ORDINANCE APPROVING AND AUTHORIZING THE FIRST AMENDMENT OF THE UTILITY FUNCTIONS AND SERVICES ALLOCATION AGREEMENT BETWEEN THE CITY OF HOUSTON AND HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 359; MAKING VARIOUS FINDINGS AND PROVISIONS RELATING TO THE SUBJECT; AND DECLARING AN EMERGENCY.

* * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON:

Section 1. The City Council hereby approves and authorizes the contract, agreement or other undertaking described in the title of this Ordinance, in substantially the form as shown in the document which is attached hereto and incorporated herein by this reference. The Mayor is hereby authorized to execute such document and all related documents on behalf of the City of Houston. The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

Section 2. The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such agreement, agreements or other undertaking described in the title of this ordinance, in the event of changed circumstances.

Section 3. The City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under said contract without further authorization from Council.

Section 4. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 15th **day of** October, 1997.

APPROVED this _____ **day of** _____, 19_____.

_____
Mayor of the City of Houston

FORM 132.M
(Approving/Authorizing)

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is OCT 21 1997.

City Secretary

(Prepared by Legal Dept. Assistant City Attorney
(EWB:ajl 10/08/97)
(Requested by Jimmie Schindewolf, Director, Public Works and Engineering Department)
(L.D. File No. 80-97056-01)
u:\WPFiles\Ordinanc\ewb\MUD359

AYE	NO	
✓		MAYOR LANIER
••••	••••	COUNCIL MEMBERS
✓		HUEY
✓		YARBROUGH
✓		WONG
✓		BONEY
✓		TODD
✓		DRISCOLL
✓		KELLEY
✓		FRAGA
✓		CASTILLO
✓		SAENZ
✓		ROACH
✓		SANCHEZ
✓		BELL
✓		ROBINSON
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT REVIEW
DATE: OCT 21 1997

MAY 017 REV. 2/97

FIRST AMENDMENT TO UTILITY FUNCTIONS AND SERVICES ALLOCATION AGREEMENT

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

THIS FIRST AMENDMENT TO UTILITY FUNCTIONS AND SERVICES ALLOCATION AGREEMENT ("First Amendment"), is made and entered into as of the date herein last specified, by and between the CITY OF HOUSTON, TEXAS (the "City"), a municipal corporation and home-rule city which is principally situated and has its City Hall in Harris County, Texas, and HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 359, created as a body politic and corporate and a governmental agency of the State of Texas organized and operating under the provisions of Article XVI, Section 59 of the Texas Constitution and Chapters 49 and 54, Texas Water Code, as amended (the "District");

The City has entered into that certain Utility Functions and Services Allocation Agreement dated September 23, 1992, with Jim Sowell Construction Company, Inc. ("Sowell") (the "Agreement"). Pursuant to Section 8.05 of the Agreement, Sowell assigned its interest in same to the District by an Assignment dated March 1, 1994.

The City and the District have determined that they are authorized by the Constitution and laws of the State of Texas to enter into this First Amendment and have further determined that

the terms, provisions and conditions hereof are mutually fair and advantageous to each.

AGREEMENT

NOW, THEREFORE, for and in consideration of these premises and of the mutual promises, obligations, covenants and benefits herein contained, the District and the City contract and agree as follows:

ARTICLE I

DEFINITIONS

In addition to terms defined elsewhere herein, the capitalized terms and phrases used in this First Amendment shall have the meanings specified in the Agreement, provided, however, that the definition of "Engineers" as set forth in Article I of the Agreement is hereby amended to read as follows:

> "Engineers" shall mean R. G. Miller Engineers, Inc., consulting engineers, or, as appropriate, its predecessor, replacement, successor or assignee.

ARTICLE II

AMENDMENTS

2.01. Amendments to Agreement. (a) Section 3.03 of the Agreement is hereby amended to read as follows:

> 3.03. Wastewater Treatment Plant Facilities. The City and the District acknowledge that Sowell has been issued City of Houston Wastewater Capacity Name

Transfer Receipt No. 010702002 for 1,494,931 gallons per day of wastewater capacity. The District shall have the right, at its option, to purchase wastewater treatment plant capacities from Sowell; or pay impact charges of the City for wastewater treatment plant and collection line capacities (if the City has same available). The City hereby authorizes and approves the purchase of wastewater treatment plant capacities by the District, at a rate not to exceed the wastewater impact fee rates of the City existing at the time of such purchase, and the transfer of such capacities to the District. Any wastewater treatment plant and collection line capacities so purchased by the District shall be reserved and allocated exclusively to serve the property within the District and shall not be utilized to serve any other property. The City and the District hereby agree that the property located within the District is hereby designated as part of the service area of the Upper Brays Bayou Plant. The District shall limit the quantity of wastewater delivered from property within its boundaries to the Wastewater Points of Discharge (hereinafter defined) such that it does not exceed the amount of wastewater treatment plant capacity it has purchased. The

District has constructed or shall construct at least two points of connection between the District's sanitary sewer collection system and the City's wastewater collection system (which system is connected to the Upper Brays Bayou Plant). The initial two locations of said points of connection have been mutually agreed upon by the District and the Director and are reflected on Exhibit A attached to this First Amendment. If necessary to serve the District, additional points of connection may be constructed with the prior written approval of the Director. Said initial two points of connection and any additional points of connection hereafter agreed to in writing by the Director are herein collectively referred to as the "Wastewater Points of Discharge". At the Wastewater Point of Discharge designated as Discharge Point A on the attached Exhibit A, there shall be installed by the District a meter, manhole and related appurtenances compatible with the City's flowmeter system (the "Wastewater Meter"). With respect to the Wastewater Point of Discharge designated as Discharge Point B on the attached Exhibit A, there shall be installed by the District immediately upstream of the connection to the City's Dairy Ashford No. 4 Lift Station ("City Lift

Station"), at a specific location to be mutually agreed upon by the District and the Director, a meter, manhole and related appurtenances compatible with the City's flowmeter system ("Wastewater Meter B"). Wastewater Meter B, and any additional wastewater meters at any additional Points of Discharge as agreed to in writing by the Director, shall be constructed as set forth in Section 3.01 of the Agreement and any references in the Agreement to the Wastewater Meter shall be deemed to include and to apply to Wastewater Meter B and any such additional wastewater meters. All wastewater collected from customers within the District shall be delivered through the Wastewater Points of Discharge and shall be metered with a meter, manhole and related appurtenances compatible with the City's flowmeter system.

In connection with the purchase of such wastewater treatment plant capacity, for equivalent single family connections, the standard City criteria published by the Technical Services Branch of the Utility Operations Division of the City shall be used in determining sewage treatment capacity required. No industrial waste discharges as defined in the City's Code of Ordinances shall be permitted within the District.

(D) Section 3.05 of the Agreement is hereby amended by adding the following language as the first paragraph thereof:

> The District and the City agree that 185,000 gallons per day, average daily flow, of wastewater will flow from the District through the City Lift Station and a City force main which extends from the City Lift Station to the Upper Brays Bayou Plant. Accordingly, the District shall pay to the City $58,982.00, being the District's capital contribution for its pro rata share of the City Lift Station and said force main. In consideration for said payment, the District shall be entitled to, and the City hereby allocates to the District, capacity in the City Lift Station and said force main sufficient for 185,000 gallons per day, average daily flow, of wastewater.

(C) Section 5.04(a)(ii) of the Agreement is hereby amended to read as follows:

> (ii) The District has purchased, or will purchase, capacity in the Upper Brays Bayou Regional Treatment Plant from Sowell or the City, which plant is operated and maintained by the City. The City shall pay to the District each month the amount equal to the difference between the amount collected by the City from individual customers within the District utilizing

wastewater service, and the total of (A) the amount the District would pay to the City as a customer at the then current wholesale treatment rate charged by the City to conservation and reclamation districts (the current wholesale sewer service rate structure is attached to the Agreement as Exhibit E, and is incorporated herein for all purposes), based upon the metered wastewater through the wastewater meters at the Wastewater Points of Discharge, (B) $0.30 per 1,000 gallons of metered wastewater through the wastewater meters at the Wastewater Points of Discharge (which represents a collection system line maintenance charge), and (C) $0.24 per 1,000 gallons of metered wastewater through the wastewater meters at the Wastewater Points of Discharge (which represents the District's share of City annexed districts' debt) (provided, however, that the amount of wastewater so calculated each month shall not exceed the total amount of water metered to customers within the District). The wholesale treatment rate may be changed from time to time by the City, however the rate applied to the District (a) shall be the same rate applied by the City to all other conservation and reclamation districts and (b) any increase shall be contemporaneous with an

increase in rates by the City for single family residential property and the percentage of any such increase in the wholesale treatment rate shall not exceed the percentage increase established by the City for usage exceeding the minimum established for single family residential property. The collection system line maintenance charge may be changed from time to time by the City; provided, however, that the rate charged (whether increased or decreased) shall be the direct maintenance and operation component of the cost of service to all customers using the City's system, which component shall not include the City's renovation and replacement charge, as established in the City's annual budget as approved by City Council and as applied to all customers of the City. Any increase in the collection system line maintenance charge may be made only if it is supported in such budget. Any change in rates by the City to the District shall be prospective only and the City may not apply any adjustment or change retroactively.

The remainder of Section 5.04 shall remain as written in the Agreement.

ARTICLE III

MISCELLANEOUS PROVISIONS

3.01. Force Majeure. In the event either party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this First Amendment, then the obligations of such party, 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 party whose contractual obligations are affected thereby shall give notice and the full particulars of such force majeure to the other party. 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, and inability to provide water necessary for operation of the water and sewer systems hereunder, or of the City to receive Waste, and any other inabilities of either party, whether similar to those enumerated or otherwise, which are not within the control of the party claiming such inability, which such party could not have avoided by the exercise of due diligence and care. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable to it in the judgment of the party having the difficulty.

3.02. Approvals and Consents. Approvals or consents required or permitted to be given under this First Amendment shall be evidenced by an ordinance, resolution or order adopted by the governing body of the appropriate party or by a certificate executed by a person, firm or entity previously authorized to give such approval or consent on behalf of the party. Approvals and consents shall be effective without regard to whether given before or after the time required for giving such approvals or consents.

3.03. Address and Notice. In accordance with Section 8.04 of the Agreement, the addresses for notice of Sowell and the District shall be changed to the following:

If to Sowell, to:

Jim Sowell
Jim Sowell Construction Company, Inc.
3131 McKinney Avenue
Suite 200
Dallas, Texas 75205

If to the District, to:

Harris County Municipal Utility District No. 359
c/o Schwartz, Page & Harding, L.L.P.
1300 Post Oak Boulevard
Suite 1400
Houston, Texas 77056

With copies to Sowell at the address set forth above

3.04. Assignability. This First Amendment may be assigned by either party in the same manner as the Agreement.

3.05. No Additional Waiver Implied. The failure of either party to insist upon performance of any provision of this First Amendment shall not be construed as a waiver of the future performance of such provision by the other party.

3.06. Parties in Interest. This First Amendment shall be for the sole and exclusive benefit of the parties hereto and shall not be construed to confer any rights upon any third parties.

3.07. Merger. This First Amendment and the Agreement embody the entire understanding between the parties and there are no representations, warranties or agreements between the parties covering the subject matter of this First Amendment and the Agreement, other than the Consent Ordinance, between the City and the District. If any provisions of the Consent Ordinance appear to be inconsistent or in conflict with the provisions of the Agreement, as amended by this First Amendment, then the provisions contained in the Agreement, as amended by this First Amendment, shall be interpreted in a way which is consistent with the Consent Ordinance.

3.08. Captions. The captions of each section of this First Amendment are inserted solely for convenience and shall never be given effect in construing the duties, obligations or liabilities of the parties hereto or any provisions hereof, or in ascertaining the intent of either party, with respect to the provisions hereof.

3.09. Interpretations. This First Amendment and the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of this First Amendment.

3.10. Severability. If any provision of this First Amendment or the application thereof to any person or circumstances is ever judicially declared invalid, such provision

shall be deemed severed from this First Amendment and the remaining portions of this First Amendment shall remain in effect.

3.11. Term and Effect. This First Amendment shall remain in effect so long as the Agreement is in effect.

3.12. Remedies in Event of Default. The parties hereto expressly recognize and acknowledge that a breach of this First Amendment by either party may cause damage to the nonbreaching party for which there will not be an adequate remedy at law. Accordingly, in addition to all the rights and remedies provided by the laws of the State of Texas, in the event of a breach hereof by either party, the other party shall be entitled to the equitable remedy of specific performance.

3.13. Agreement Remains in Effect. All terms and provisions of the Agreement, except as amended by this First Amendment, shall remain in full force and effect and shall apply hereto.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment in multiple copies, each of equal dignity, on this the _____ day of _____, 199_____.

THE CITY OF HOUSTON, TEXAS

_____
Mayor

ATTEST/SEAL:

_____
City Secretary

COUNTERSIGNED:

_____
City Controller

DATE COUNTERSIGNED:

_____, 19__

APPROVED AS TO FORM:

_____
Assistant City Attorney

APPROVED:

_____
Director of Public Utilities

ATTEST:

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 359

_____
Secretary
Board of Directors

(SEAL)

By: _____
President,
Board of Directors

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on this the _____ day of _____, 199___, by _____, _____ President of Harris County Municipal Utility District No. 359.

_____
Notary Public in and for
the State of Texas

Printed Name of Notary and
Commission Expiration Date:

_____

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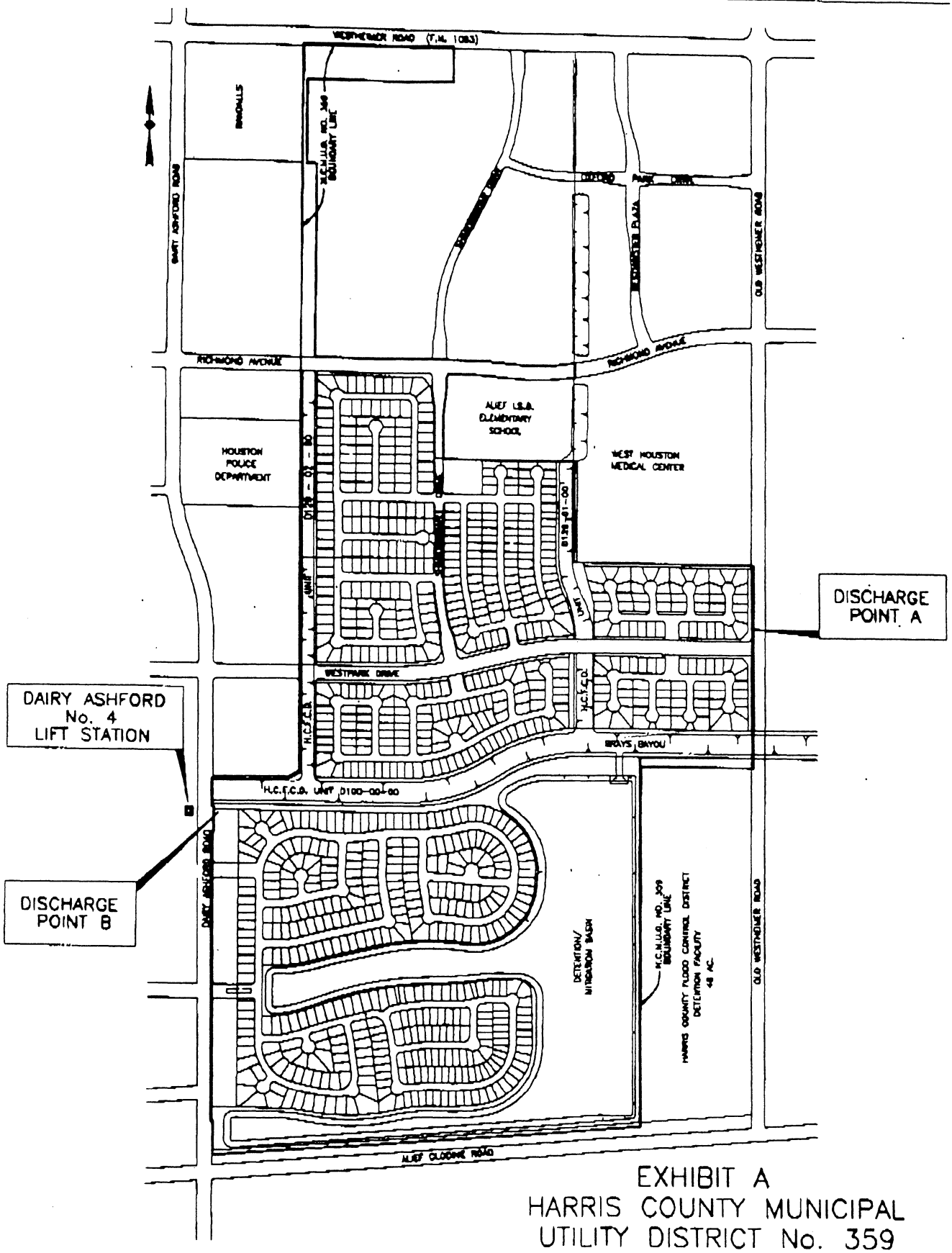

EXHIBIT A
HARRIS COUNTY MUNICIPAL UTILITY DISTRICT No. 359

r.g.miller engineers

TO: Mayor via City Secretary **REQUEST FOR COUNCIL ACTION**

SUBJECT: Ordinance granting the City's consent to the First Amendment of the Utility Functions and Services Allocation Agreement Between the City and HCMUD No. 359.	**Category #**	**Page 1 of ___**	**Agenda Item #** 50

FROM (Department or other point of origin):	**Origination Date**	**Agenda Date**
Department of Public Works and Engineering	10-9-97	OCT 15 1997

DIRECTOR'S SIGNATURE: Jimmie Schindewolf	**Council District affected:** G
For additional information contact: **Phone:** Frederick A. Perrenot 754-0501 Ronald E. Hudson 754-0507	**Date and identification of prior authorizing Council action:** August 26, 1992 Ordinance No. 92-1142

RECOMMENDATION: (Summary)

Approval of an ordinance granting the City's consent to the first amendment of the Utility Functions and Services Allocation Agreement between the City of Houston and Harris County Municipal Utility District No. 359 and acceptance of a capital contribution in the amount of $58,982.00.

Amount and Source of Funding:	**F&A Budget:**
Not Applicable 1234	

SPECIFIC EXPLANATION:

Harris County Municipal Utility District No. 359 ("the District") was created in 1992 as an "in-City" utility district and consists of 353.51 acres bounded by Westheimer, Old Westheimer, Dairy Ashford, and Alief Clodine. Eight (8) sections of Shadowlake Subdivision have been constructed within the District to date, comprised of 325 single family homes. In order to proceed with developing four (4) additional sections of Shadowlake, the District has petitioned the City for an amendment to the Utility Functions and Services Allocation Agreement (the "Agreement) which permits only one (1) point of connection to the City's wastewater collection system.

This amendment will allow the District to construct a second point of connection to the City's wastewater collection system and utilize the City's Dairy Ashford No. 4 Lift Station in conveying its waste to the Upper Braes Regional Wastewater Treatment Plant. In return, the District has agreed to pay a pro rata share of the lift station construction costs. The pro rata share has been determined to be $58,982.00.

Because HCMUD No. 359 is an "in-City" utility district, the District is entitled certain sewer service rebates based on the total amount of flow discharged to the City's wastewater system. This amendment requires that a metering device be installed at the second point of connection. This meter reading, along with the meter reading at the first point of connection, will be totaled and used in calculating the District's rebate.

Approval is recommended.

REH/PRN/SB

cc: Jimmie Schindewolf
John Baldwin
Paul R. Nelson
Gilbert Garcia

MS **REQUIRED AUTHORIZATION** 20REH34F

F&A Director:	**Other Authorization:**	**Other Authorization:**

F&A 011.A REV. 3/94
7530-0100403-00

RH

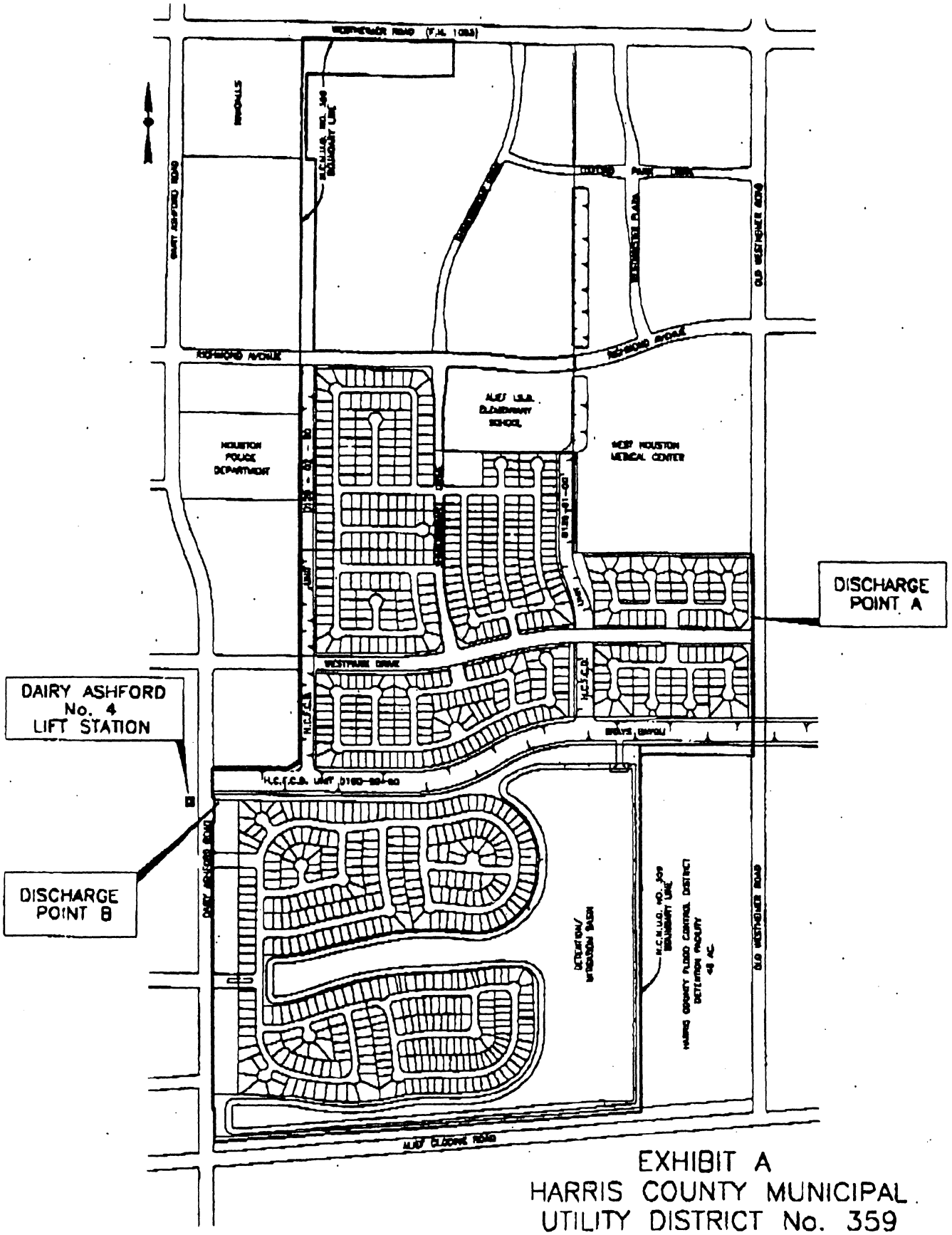

EXHIBIT A
HARRIS COUNTY MUNICIPAL UTILITY DISTRICT No. 359

r.g.miller engineers

C39581
2017-0999

SECOND AMENDMENT TO UTILITY FUNCTIONS AND SERVICES ALLOCATION AGREEMENT

THIS SECOND AMENDMENT TO UTILITY FUNCTIONS AND SERVICES ALLOCATION AGREEMENT (this "Second Amendment") is made by and between the **CITY OF HOUSTON, TEXAS**, a municipal corporation and home-rule city (the "City"), and **HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 359**, a body politic and corporate and governmental agency of the State of Texas organized and operating under the provisions of Article XVI, Section 59 of the Texas Constitution and Chapters 49 and 54 of the Texas Water Code, as amended (the "District") (each a "Party" and together, the "Parties").

RECITALS

WHEREAS, on September 23, 1992, the City and Jim Sowell Construction Company, Inc. ("Sowell") entered into a Utility Functions and Services Allocation Agreement, approved by the Houston City Council by Ordinance No. 92-1142 (the "Agreement"); and

WHEREAS, on March 1, 1994, Sowell assigned its interest in the Agreement to the District; and

WHEREAS, on October 24, 1997, the City and the District entered into a First Amendment to Utility Functions and Services Allocation Agreement, approved by the Houston City Council by Ordinance No. 97-1234; and

WHEREAS, the Agreement requires the use of wastewater meters to calculate payments due from the City to the District for wastewater service; and

WHEREAS, the wastewater meters are no longer functioning and must be replaced; and

WHEREAS, the Parties agree that replacing the wastewater meters is not cost-effective, and that sufficient data exists to estimate the wastewater usage for purposes of calculating payments due from the City to the District for wastewater service; and

WHEREAS, the Parties desire to amend the Agreement to abandon the wastewater meters and provide for calculation of payments due from the City to the District for wastewater service based on the estimated wastewater usage.

NOW, THEREFORE, for and in consideration of the mutual promises and agreements set forth below, the Parties agree as follows:

ARTICLE I
Amendment

1.01 Abandonment and Removal of Wastewater Meters. The Parties hereby abandon the wastewater meters installed for purposes of measuring wastewater service under the

Agreement. The City shall cause the wastewater meters to be removed and shall provide documentation to the District evidencing their removal and the associated costs. The City shall invoice the District for one-half of the removal costs, and the District shall pay the invoice within thirty days of the date of invoice. Alternatively, the City may elect to offset any payments due from the City to the District under Section 2.01 by amounts due from the District to the City under this section.

1.02 Payment Based on Estimated Usage. For wastewater service provided under the Agreement from July 2017 until expiration or termination of the Agreement, the City shall pay the District based on an estimated wastewater usage of 7,467,000 gallons per month (the "Estimated Usage"); provided, however, that if the metered water usage in any month is lower than the Estimated Usage, the City shall pay the District based on the metered water usage during said month. The Parties understand that the Estimated Usage is the average of all usage numbers applied by the City to calculate the payment due from the City to the District for wastewater service over the last five years. The Parties agree that the Estimated Usage is a good faith estimate of actual usage and is a fair and reasonable number to apply going forward because the District is fully developed.

ARTICLE II
Payment for Prior Service; Waiver and Release

2.01 Payment for Prior Service. The District acknowledges that the City has been unable to calculate the payment due to the District for wastewater service after August 2015 because the wastewater meters ceased functioning at or about that time. The District agrees that the City may calculate the payment due for wastewater service from September 2015 through June 2017 based on the lower of the Estimated Usage or metered water usage during each of those months. The Parties agree that, applying this methodology to the data, the payment due for wastewater service from September 2015 through June 2017 is $660,612.25. The City shall pay the District said amount, without interest, within thirty days of the effective date of this Second Amendment.

2.02 Waiver and Release. In exchange for receipt of the City's payment under Section 2.01, the District shall waive and release the City, its elected officials, employees, and agents from any and all claims and causes of action the District may have against them arising out of or in any way related to the wastewater meters, wastewater service, or payments due related thereto, through June 30, 2017.

ARTICLE III
Effect; Effective Date

3.01 Effect. Except as expressly modified by this Second Amendment, all terms and conditions of the Agreement, as previously amended, shall remain in full force and effect.

3.02 Effective Date. This Section Amendment shall be effective on the date countersigned by the Houston City Controller.

IN WITNESS WHEREOF, the Parties have executed this Second Amendment in multiple counterparts, each of which shall be deemed to be an original.

ATTEST:

By:
Name:
Title:

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 359

By:
Name:
Title:

ATTEST/SEAL:

City Secretary

CITY OF HOUSTON, TEXAS
Signed by:

Mayor

APPROVED:

Director, Public Works and Engineering Department

COUNTERSIGNED BY:

City Controller

APPROVED AS TO FORM:

Senior Assistant City Attorney
L.D. File No. 0801600036001

DATE COUNTERSIGNED:

12-28-17