



Control Number: 45231



Item Number: 7

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RATEPAYERS' APPEAL OF THE  
DECISION BY TROPHY CLUB  
MUNICIPAL UTILITY DISTRICT  
NO. 1 TO CHANGE RATES

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§  
§

PUBLIC UTILITY COMMISSION  
PUBLIC UTILITY COMMISSION  
FILING CLERK  
OF TEXAS

**TROPHY CLUB MUNICIPAL UTILITY DISTRICT NO. 1'S  
MOTION TO SEVER PID PETITION**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

Trophy Club Municipal Utility District No. 1 files this Motion to Sever Wholesale Petition and would respectfully show the following:

**I.  
BACKGROUND**

On October 8, 2015, retail customers of Trophy Club Municipal Utility District No. 1 (the "District") filed a petition pursuant to Section 13.043(b) of the Texas Water Code entitled "MUD Petition to Appeal Rates Established by the Board of Directors" (the "Retail Petition"). On October 14, 2015, the Administrative Law Judge ("ALJ") for the Public Utility Commission of Texas ("Commission") issued Order No. 1 requesting comments on processing the Retail Petition and a proposed procedural schedule no later than November 9, 2015. The Commission Staff and the District timely filed comments and the District timely filed a proposed procedural schedule. On November 10, 2015, and after the comments and proposed procedural schedule were filed, a "PID Petition to Appeal Rates Established by the Board of Directors" was filed in this Docket ("PID Petition"). It is unclear to the District who was actually responsible for filing the PID Petition in Docket 45231.

**II.  
THE PID PETITION**

The PID Petition is an appeal by individuals who are residents of the Trophy Club Public Improvement District ("PID"), which was created in 2007 by the Town of Trophy Club ("Town"). The boundaries of the PID do not overlap the boundaries of the District, as shown on the map attached as Exhibit "A". The District does not provide retail water or wastewater

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service to the residents of the PID. The District provides wholesale water service to the Town for the area of the PID under an "Amended and Restated Contract for Wholesale Water Supply and Wastewater Treatment Services and Water and Wastewater Operational Services" dated April 15, 2014 ("Wholesale Contract"), which replaced previous agreements between the District and the Town related to wholesale water supply and wastewater treatment and water and wastewater system operations.<sup>1</sup> A copy of the Wholesale Contract is attached as **Exhibit "B"**. The Town provides retail water and wastewater service to the PID residents. Under the Wholesale Contract, the Town adopts its own rate order to establish the water and wastewater charges to the Town's customers, and the District then bills the Town's customers for those services.<sup>2</sup>

The District does not establish retail water or wastewater rates for the residents of the PID. The residents of the PID are ratepayers of the Town, not the District. Consequently, the residents of the PID do not have standing to appeal the District's retail rates under Section 13.043(b) of the Texas Water Code. As such, it is not appropriate to include the PID Petition in Docket No. 45231, and the PID Petition should be severed from this action on the Retail Petition.

### III. PRAYER

The District respectfully requests that the PID Petition be severed and removed from the filings in Docket No. 45231 and be processed by the Commission as a separate matter, although the District is unaware of any statutory authority for the ratepayers of one retail utility to appeal the wholesale rates of another retail utility, which is what the PID Petition attempts to do.

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<sup>1</sup> District and the Town previously entered into the following contracts providing for the provision of wholesale water and wastewater services, and contract operation services, by District to Town: (i) "Contract for Water Supply and Wastewater Treatment" dated November 20, 2007, as amended by that certain "First Modification of Contract for Water Supply and Wastewater Treatment" dated July 7, 2008; and (ii) "Contract for Water and Wastewater Operational Services" dated November 12, 2007 as subsequently amended on July 7, 2008 and November 19, 2013.

<sup>2</sup> See Wholesale Contract, Article 7.1.

Respectfully submitted,


By:   
John J. Carlton

John J. Carlton  
The Carlton Law Firm P.L.L.C.  
2705 Bee Cave Road, Suite 200  
Austin, Texas 78746  
(512) 614-0901  
Fax (512) 900-2855  
State Bar No. 03817600

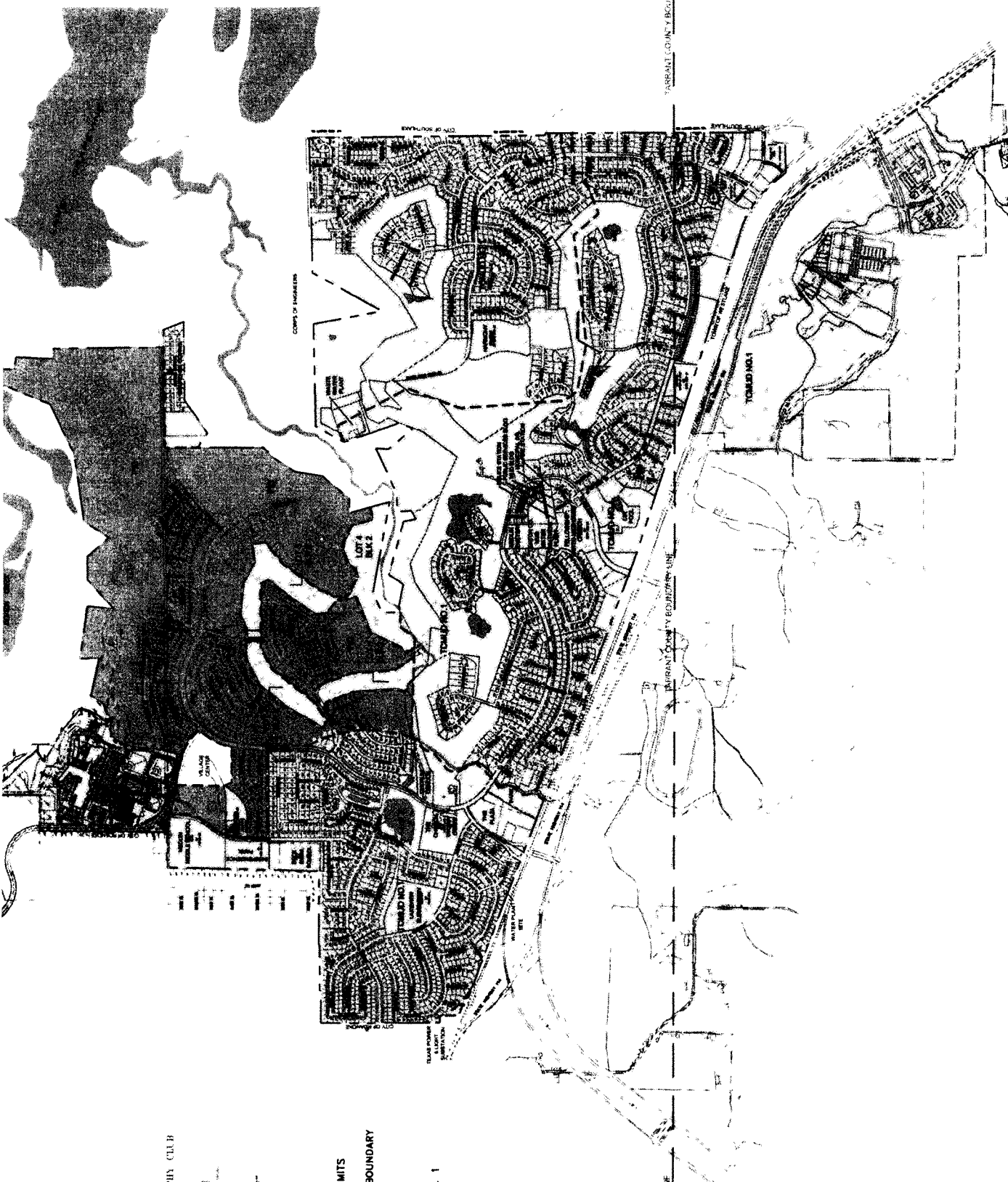
ATTORNEYS FOR TROPHY CLUB  
MUNICIPAL UTILITY DISTRICT NO. 1

**CERTIFICATE OF SERVICE**

I hereby certify that I have served or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail and/or Certified Mail Return Receipt Requested to all parties on this the 16th day of November, 2015.

  
John Carlton





MAP OF THE TOWN OF TROPHY CLUB  
ENTITIES

TROPHY CLUB



--- TOWN LIMITS  
--- TCMUD BOUNDARY

TCMUD NO. 1  
PID

**AMENDED AND RESTATED CONTRACT FOR WHOLESALE WATER  
SUPPLY AND WASTEWATER TREATMENT SERVICES AND WATER AND  
WASTEWATER OPERATIONAL SERVICES**

This Amended and Restated Contract for Wholesale Water Supply and Wastewater Treatment Services and Water and Wastewater Operations Services ("Contract") is entered into as of APRIL 15, 2014 (the "Effective Date") between THE TOWN OF TROPHY CLUB, TEXAS, a home rule municipality located in Denton and Tarrant Counties (hereinafter "Town") and TROPHY CLUB MUNICIPAL UTILITY DISTRICT NO. 1, a conservation and reclamation District of the State of Texas in Denton and Tarrant Counties created and operating pursuant to Chapters 49 and 54 of the Texas Water Code (hereinafter "MUD").

**Recitals**

**WHEREAS**, MUD currently supplies retail water and wastewater services to those customers located within the corporate boundaries of MUD; and

**WHEREAS**, Town currently provides water and wastewater services to a certain portion of property located within the territorial boundaries of Town which property is not located within the boundaries of MUD nor is provided retail water or wastewater services therefrom, hereinafter referred to as the "Property" and more fully described in Exhibit "A"; and

**WHEREAS**, Town and MUD previously entered into the following contracts providing for the provision of wholesale water and wastewater services, and contract operation services, by MUD to Town: (i) "Contract for Water Supply and Wastewater Treatment" dated November 20, 2007, as amended by that certain "First Modification of Contract for Water Supply and Wastewater Treatment" dated July 7, 2008 (hereafter, the "2007 Wholesale Contract"); and (ii) "Contract for Water and Wastewater Operational Services" dated November 12, 2007 as subsequently amended on July 7, 2008 and November 19, 2013 (hereafter, the "2007 Operations Contract");

**WHEREAS**, Town and MUD desire to amend and restate the 2007 Wholesale Contract and to terminate the 2007 Operations Contract;

**WHEREAS**, the Interlocal Cooperation Act, Texas Government Code, Chapter 791, et seq., as amended (the "Act") provides authority for governmental entities of the State of Texas to enter into interlocal contracts with each other regarding governmental functions and services as set forth in the Act; and

**WHEREAS**, the provision of wholesale water and wastewater services by MUD to Town, and the provision of operational services by MUD to Town, are

valid governmental functions necessary for the public health, safety and welfare for which an interlocal contract is allowed pursuant to the Act; and

**WHEREAS**, each Party hereto paying for the performance of governmental functions or services shall make such payments from current revenues legally available to the paying Party and each Party hereby finds and agrees that it is fairly compensated for the services or functions performed under the terms of this Contract.

**NOW, THEREFORE**, Town and MUD, for and in consideration of the recitals set forth above and terms and conditions below, agree as follows:

**ARTICLE I.  
INCORPORATION / DEFINITIONS / EXHIBITS**

**1.1 Incorporation of Recitals.** The foregoing recitals are agreed upon and incorporated herein as a part of this Contract.

**1.2 Definitions.** Unless the content indicates others, the following words used in this Contract shall have the following meanings:

*2007 Operations Contract* means that certain "Contract for Water and Wastewater Operational Services" dated November 12, 2007 entered into by MUD and Town, as subsequently amended on July 7, 2008 and November 19, 2013.

*2007 Wholesale Contract* means that certain "Contract for Water Supply and Wastewater Treatment" dated November 20, 2007", as amended by that certain "First Modification of Contract for Water Supply and Wastewater Treatment" dated July 7, 2008 entered into by Town and MUD, as amended.

*Annual Capital Improvements and Maintenance Charge* has the meaning set out in Section 7.2.

*Annual Debt Service Requirement* has the meaning set out in Section 7.2.

*Certified Assessed Valuation* means the most current certified assessed valuation from the County Tax-Assessor collector as of August 1 of a calendar year.

*Commission or TCEQ* means the Texas Commission on Environmental Quality and any successor or successors exercising any of its duties and functions.

*Emergency* means a sudden unexpected happening; an unforeseen occurrence or condition; exigency; pressing necessity; or a relatively permanent



condition or insufficiency of service or of facilities resulting from causes outside of the reasonable control of MUD. The term includes Force Majeure and acts of third parties that cause the MUD Water System or MUD Wastewater System to be unable to provide the Wholesale Water Services or Wholesale Wastewater services agreed to be provided herein.

*EPA* means the Environmental Protection Agency and any successor or successors exercising any of its duties and functions.

*Fort Worth Impact Fee* means the charge imposed by Fort Worth pursuant to Chapter 395 of the Local Government Code under the Fort Worth Water Contract.

*Fort Worth Water Contract* means the Contract for Water Service Between the City of Fort Worth, Texas, and Trophy Club Municipal Utility MUD No. 1, dated November 16, 2010, as amended.

*Infiltration and Inflow* means water that enters a wastewater collection system through physical defects in the system or from other point sources.

*MUD* means Trophy Club Municipal Utility District No. 1.

*MUD Wastewater System* means the wastewater collection lines, lift stations, pipes, valves, meters, pumps, motors, treatment plant, effluent discharge lines, and other facilities, equipment and appurtenances thereto owned or controlled by the MUD, and any expansions, improvements, enlargements, additions and replacements thereto.

*MUD Water System* means the water supply, treatment, storage, transmission, pumping and distribution system of the MUD and appurtenances thereto, and any expansions, improvements, enlargements, additions and replacements thereto.

*Operations Services* has the meaning set out in Section 5.2.

*Parties or Party* shall mean either one or more of MUD or Town or both, as the context provides.

*Permit* means Permit No. WQ0011593-001 held by MUD authorizing the treatment and disposal of treated wastewater effluent.

*Person(s)* means an individual, corporation, partnership, association, joint venture or any other third party legal entity.

*Points of Connection of Wastewater* means that point or points where Town Wastewater Collection System connects to MUD's Wastewater System.

*Points of Connection of Water* means that point or points where Town Water System connects to MUD's Water System.

*Property* means the approximately 609-acre tract of land located within the corporate boundaries of Town shown in the attached **Exhibit "A"**.

*Retail Customer Charge* has the meaning set forth in Section 7.1.

*Town* means the Town of Trophy Club, Texas, a home-rule municipality located in Denton and Tarrant Counties, Texas, and all land included within the territorial limits and extraterritorial jurisdiction of Town, at Town's creation and thereafter annexed from time to time.

*Town Customers* means any Person(s) residing within the Property and who have the right to receive, who contract to receive or otherwise are receiving Water and/or Wastewater Services from Town Water Distribution System and/or Town Wastewater Collection System.

*Town Rate Order* means an order adopted by Town setting out the rates and fees for retail water and wastewater services for Town Customers, including without limitation administrative fees, customer deposits, usage rates, late charges, returned check fees, disconnect fees, meter re-read fees, and after-hours service fees, and any Town Surcharge.

*Town Surcharge* has the meaning set forth in Section 7.1(d).

*Town Wastewater Collection System* means the Wastewater system constructed and owned by Town for the collection of Wastewater received from Town Customers, ending at the Points of Connection of Wastewater.

*Town Water Distribution System* means the water distribution system constructed and owned by Town for the distribution of potable water received from MUD to Town Customers, beginning at the Points of Connection of Water, including any elevated storage tanks and pumping facilities. The Town Water Distribution System shall not include any Wells.

*Utility Fee* has the meaning set out in Section 7.4.

*Utility Fee Remainder* has the meaning set out in Section 7.4.

*Wastewater* means the water-carried wastes, exclusive of ground, surface, and storm waters, normally discharged from the sanitary conveniences of dwellings, including apartment houses, hotels, offices buildings and institutions, of a domestic, not industrial, nature, and that meets the requirements of this Contract.

*Water or Water Supply* means potable water that meets federal and state standards for consumption by humans.

*Wells* means any and all potable water wells that may be constructed within the Property or for the benefit of the Property by Town or its designee.

*Wholesale Wastewater Services* means the wholesale wastewater treatment and disposal services provided by MUD in accordance with the terms and conditions of this Contract in receiving, treating, testing, and disposing of Wastewater from Town Wastewater Collection System in accordance with this Contract.

*Wholesale Water Services* means the wholesale services provided by MUD in furnishing a wholesale supply of Water to Town at the Points of Connection of Water.

**1.3 Exhibits.** The following Exhibits attached to this Contract are hereby made a part of the Contract as though fully incorporated herein:

**Exhibit "A"**

**Exhibit "B"**

- The Property
- Points of Connection of Water and Wastewater

## **ARTICLE II. EFFECT ON PRIOR CONTRACTS**

**2.1 2007 Operations Contract.** As of the Effective Date, the 2007 Operations Contract shall terminate for all purposes; provided, however, the terms and conditions set forth therein relating to payment by Town to MUD for services shall remain in effect until such time as MUD commences collection of the Retail Customer Charge under this Contract.

**2.2 2007 Wholesale Contract.** As of the Effective Date, the 2007 Wholesale Contract shall be amended and restated by this Contract.

**2.3 Prior Revenues.** MUD shall be entitled to collect and retain all revenues for any and all water and wastewater services rendered to Town Customers prior to the Effective Date pursuant to the 2007 Operations Contract and 2007 Wholesale Contract, including any such revenues received after the Effective Date. The Parties agree that it is their mutual intent that the MUD shall continue to receive all payments under the 2007 Operations Contract and 2007 Wholesale Contract until such time as any payments under this Contract can be collected in lieu thereof.

**ARTICLE III.  
WHOLESALE WATER SERVICES**

**3.1 Points of Connection of Water.** MUD shall deliver a wholesale supply of Water to Town Water Distribution System at the existing Points of Connection of Water. Any additional Points of Connection of Water must be at locations mutually agreed upon in writing by the Parties.

**3.2 Quantity of Wholesale Water Services.** Subject to the terms of this Contract, MUD agrees to purchase and transport to Town a supply of Water: (i) in a quantity that meets all regulatory requirements for public water systems applicable to the provision of retail water service by Town to Town Customers located within the Property; and (ii) to be made available according to the same terms, conditions and limitations that MUD furnishes a supply of Water to its retail customers. MUD agrees that, for purposes of compliance with 30 Texas Administrative Code Sec. 290.45(f), the maximum authorized daily purchase rate shall be not less than 0.6 gallons per minute, and the maximum hourly purchase rate plus actual service pump capacity shall be at least 2.0 gpm per connection or provide at least 1,000 gpm and be able to meet peak hourly demands, whichever is less.

**3.3 Resale Prohibited.** Town shall not provide or sell Water received under this Contract to any person entity, private or public, other than Town's retail customers located within the Property, without MUD's prior written consent. The Parties agree that as of the Effective Date, MUD has not provided any such consent and Town does not provide retail water or wastewater service to any customers located outside the Property.

**3.4 Sole Provider.** MUD will be the sole source of Wholesale Water Services to Town for the Property unless MUD consents in writing to Town's conversion to another wholesale provider. Under the terms and conditions set forth herein, MUD shall be entitled to provide Wholesale Water Services to Town for the Property from any source available to MUD.

**3.5 Title to Water.** Title to the water purchased by MUD and transported to Town under this Contract shall remain with MUD at all times until it reaches the Points of Connection of Water. At the Points of Connection of Water, title to the Water shall pass to the Town.

**3.6 Conservation and Drought Planning.** Town will adopt a water conservation plan and a drought contingency plan in compliance with TCEQ rules, 30 Texas Administrative Code, Chapter 288, with provisions at least as stringent as the provisions of the existing MUD Water Conservation and Drought Contingency Plan. MUD shall provide Town with any amended or revised MUD Water Conservation and Drought Contingency Plan upon adoption, and Town will adopt a water conservation plan and a drought contingency plan in compliance with TCEQ rules, 30 Texas Administrative Code, Chapter 288, with provisions at

least as stringent as the provisions of the amended or revised MUD Water Conservation and Drought Contingency Plan within sixty (60) days of Town's receipt of the amended or revised MUD Water Conservation and Drought Contingency Plan. Town specifically agrees that upon institution of any mandatory water conservation or drought contingency restrictions by MUD upon its customers, MUD shall impose identical restrictions upon Town Customers as part of the Operational Services until and unless Town has adopted more stringent restrictions, in which event MUD shall enforce Town's more stringent restrictions upon Town Customers.

**3.7 Plumbing Regulations.** MUD and Town both covenant and agree to adopt and enforce adequate plumbing regulations with provisions for the proper enforcement thereof, to ensure that neither cross-connection nor other undesirable plumbing practices are permitted. Plumbing regulations adopted by Town shall be not less stringent than those adopted by MUD.

**3.8 Curtailment of Service.** If water service is curtailed by MUD to other customers of the MUD Water System, MUD may impose a like curtailment on Wholesale Water Services delivered to Town under this Contract. MUD will impose such curtailments in a nondiscriminatory fashion. The Parties agree that they will not construe this Contract to prohibit MUD from curtailing service completely in the event of a maintenance, operation or Emergency for a reasonable period necessary to complete such maintenance operations or repairs or respond to an Emergency circumstance. Town acknowledges and agrees that the MUD's provision of Wholesale Water Services under this Contract is subject to applicable provisions of the MUD Water Conservation and Drought Contingency Plan.

**3.9 Water Service Rules, Regulations and Policies.** Within sixty (60) days of the Effective Date, Town agrees to adopt retail water service rules, regulations and policies with provisions at least as stringent as, and not inconsistent with, the provisions of the existing MUD water service rules, regulations and policies (the "MUD Service Rules and Policies"). MUD shall provide Town with any amended or revised water service rules, regulations and policies upon adoption, and Town will adopt provisions at least as stringent as the provisions of the amended or revised MUD service rules, regulations or policies within sixty (60) days of Town's receipt of the amended or revised MUD service rules, regulations and policies.

**3.10 Consumer Confidence Report.** Town shall timely adopt a consumer confidence report in accordance with all regulatory requirements, and to conduct any public hearing relating thereto. MUD agrees to furnish all required data and information required for Town to prepare the report and a draft of the report to Town for Town's approval, and further agrees to distribute the approved report to all Town customers upon receipt from Town as part of the Operations Services to be provided hereunder.

**ARTICLE IV.  
WHOLESALE WASTEWATER SERVICES**

**4.1 Points of Connection of Wastewater.** MUD shall receive Wastewater from Town Wastewater Collection System at the existing Points of Connection of Wastewater. Any additional Points of Connection of Wastewater must be at locations mutually agreed upon in writing by the Parties.

**4.2 Wholesale Wastewater Service.**

(a) Subject to the terms and conditions of this Contract and the requirements of applicable law, MUD agrees to provide Wholesale Wastewater Services to Town: (i) in a quantity that meets all regulatory requirements applicable to the provision of retail wastewater service by Town to Town Customers located within the Property; and (ii) according to the same terms, conditions and limitations that MUD furnishes wastewater service to its retail customers.

(b) Town agrees that it shall adopt and enforce: (1) wastewater service rules and policies at least as stringent as, and not inconsistent with, the MUD Service Rules and Policies; and (ii) any pretreatment requirements for its retail customers as may be necessary to cause the quality of Wastewater Town delivers to the MUD Wastewater System pursuant to this Contract to meet the requirements of this Contract and the MUD Service Rules and Policies. MUD shall be responsible for the quality of any Wastewater collected from MUD customers and passed through the Town Wastewater Collection System to the MUD Wastewater System.

(c) MUD shall be entitled to collect samples of Wastewater at or near the Point(s) of Connection into the MUD Wastewater System or from any point within the Town Wastewater Collection System and cause the same to be analyzed in accordance with accepted methods in the industry to determine if such Wastewater complies with the MUD Service Rules and Policies and any pretreatment requirements. If analysis discloses that the Wastewater does not comply with the MUD Service Rules and Policies and any pretreatment requirements, Town shall be obligated to require the offending originator to immediately cease discharging such Wastewater into the Town Wastewater Collection System or to pretreat such Wastewater such that the discharge of prohibited Wastewater ceases immediately.

**4.3 Sole Provider.** MUD will be the sole source of Wholesale Wastewater Service to Town for the Property unless MUD consents in writing to Town's conversion to another wholesale provider. Under the terms and conditions set forth herein, MUD shall be entitled to provide Wholesale Wastewater Service to Town for the Property from any source of treatment capacity available to MUD.

**4.4 Wholesale Service Commitment Not Transferable.** MUD's commitment to provide Wholesale Wastewater Service is solely to Town and solely for the Property. Town may not assign or transfer in whole or in part its right to receive Wholesale Wastewater Service without MUD's prior written consent.

**4.5 Curtailment of Service.** The Parties agree that, if Wastewater service is curtailed by MUD to other customers of the MUD Wastewater System, MUD may impose a like curtailment on Wholesale Wastewater Service delivered to Town under this Contract. The MUD will impose such curtailments in a nondiscriminatory fashion. The Parties agree that they will not construe this Contract to prohibit MUD from curtailing service completely in the event of a maintenance operation or Emergency for a reasonable period necessary to complete such maintenance operations or repairs or respond to an Emergency circumstance.

**4.6 Town Prevention of Infiltration and Inflow.** Town will adopt and enforce such ordinances as are reasonably necessary or prudent to minimize Infiltration and Inflow to the Town Wastewater Collection System, and such ordinances shall be at least as stringent as, and not inconsistent with, the MUD's Service Rules and Policies. Town will prohibit the discharge of drainage water and stormwater run-off into the Town Wastewater Collection System.

**4.7 Liability of Town.** As between the Parties, liability for damages to third persons arising from the reception, transportation, delivery, treatment and disposal of all Wastewater will remain with Town to each Point of Connection of Wastewater; provided, however, that if any such liability to third parties arises directly out of an act or omission of MUD in the provision of Operations Services, then the MUD will pay all costs and expenses arising out of such liability as part of the Operations Services provided hereunder. Town agrees that any sewer backups caused by force majeure, intrusion of roots into the Town Wastewater Collection System, defects in construction of the Town Wastewater Collection System or other circumstances that are not under the direct control of MUD do not arise out of the act or omission of MUD, and MUD shall have no liability in connection therewith. As between the Parties, liability for damages to third persons will pass to MUD at the Points of Connection of Wastewater to the MUD Wastewater System.

**4.8 Liability of MUD.** Subject to the foregoing, MUD will bear the responsibility as between the Parties for the proper reception, transportation, treatment, and disposal of such Wastewater received by it at each Point of Connection of Wastewater in accordance with the Contract. However, the Parties agree that they will not construe this Contract to cause MUD to have liability for damages to the MUD Wastewater System or to third persons arising from the delivery by Town of any Wastewater that is prohibited under this Agreement. Similarly, this Contract shall not be construed as a waiver of any governmental immunity that MUD or Town may enjoy with respect to any claims brought by third party persons or entities.

**4.9 MUD Treatment and Use of Wastewater.** MUD may treat the Wastewater delivered by the Town pursuant to this Contract and dispose of the effluent generated thereby in such manner as may be provided in the Permit or other TCEQ authorization in its sole discretion; provided, however, that if MUD has effluent available, as determined in MUD's discretion, then MUD will make available all or part of such effluent to Town at Town's request in accordance with all terms and conditions of the MUD Service Rules and Policies relating to the use of wastewater effluent for irrigation customers, as modified from time to time. To the extent allowed by law, MUD will make effluent available to Town at no charge. Town shall be responsible for the acquisition or construction of all facilities and improvements required to transport effluent from the MUD Wastewater System to the place of use, and any modifications to the MUD's Wastewater System, at Town's sole expense. The design of all such improvements and modifications shall be subject to MUD's prior approval. Town shall also be responsible for securing at its sole cost and expense all regulatory approvals required for the delivery and use of effluent. Notwithstanding any provision herein to the contrary, the Town acknowledges and agrees as follows: (i) that Trophy Club Country Club shall have an opportunity to purchase any excess Wastewater effluent prior to such effluent being made available to Town and (ii) Town may not furnish or resell to third parties any Wastewater effluent.

**4.10 Wastewater Service Rules, Regulations and Policies.** Within sixty (60) days of the Effective Date, Town agrees to adopt wastewater service rules, regulations and policies with provisions at least as stringent as, and not inconsistent with, the provisions of the existing MUD wastewater service rules, regulations and policies ("MUD Service Rules and Policies"). MUD shall provide Town with any amended or revised wastewater service rules, regulations and policies upon adoption, and Town will adopt provisions at least as stringent as the provisions of the amended or revised MUD service rules, regulations or policies within sixty (60) days of Town's receipt of the amended or revised MUD service rules, regulations and policies.

**ARTICLE V.  
OPERATIONS SERVICES RELATED TO TOWN WATER DISTRIBUTION  
SYSTEM, TOWN WASTEWATER COLLECTION SYSTEM,  
AND TOWN WELLS**

**5.1 Town's Obligation to Construct Town Water Distribution System and Town Wastewater Collection System.** Town shall continue to design and construct, at its sole cost and expense, the Town Water Distribution System and a Town Wastewater Collection System to provide retail water and wastewater service to Town Customers. The Town Water Distribution System shall include all facilities necessary to store Water and to convey Water from the Points of Connection of Water to Town Customers. The Town Wastewater Collection System shall include all facilities necessary to transport Wastewater from Town Customers to the Points of Connection of Wastewater. The Parties specifically agree that the MUD shall have no obligation whatsoever to construct new



improvements within, or as part of, the Town Water Distribution System or the Town Wastewater Collection System to serve new development or new land uses within the Property.

## **5.2 Provision of MUD Operations Services.**

(a) MUD agrees to provide the following contract operation, maintenance, meter reading, billing and reporting functions (collectively, the "Operations Services") to Town in connection with the Town Water Distribution System and Town Wastewater Collection System:

- 1) Operating and maintaining the Town Water Distribution System and Town Wastewater Collection System in the same manner as the MUD operates and maintains the MUD Water System and the MUD Wastewater System;
- 2) Repairing and replacing the Town Water Distribution System and Town Wastewater Collection System (but excluding any expansions) in the same manner as the MUD repairs and replaces the MUD Water System and the MUD Wastewater System as necessary to provide continuous and adequate service in accordance with all regulatory requirements;
- 3) Reading individual meters of Town retail customers on behalf of Town;
- 4) Billing, collecting from, and responding to service calls from Town Customers;
- 5) Dead-end water flushes;
- 6) Prepare and filing certain operational and compliance reports required by law, including those required by the Commission or EPA relating to operation of the Town Wastewater Collection System or Town Water Distribution System, as more particularly described in Section 5.2(e) below;
- 7) Preparing and furnishing to Town a monthly operational report including the same detail and information prepared by the MUD for its own system;
- 8) Providing a representative, upon prior request of Town, to present reports at regular Town Council meetings regarding service matters; and
- 9) Cooperating with respect to any inspection of the Town Wastewater Collection System or Town Water Distribution System by TCEQ, EPA or any other regulatory entity.

(b) MUD will provide Operations Services to Town under this Contract in compliance with all applicable, federal, state, and local laws, rules and regulations, and in the same manner that it provides those services to retail water and wastewater customers within the MUD. If MUD's failure to comply with all applicable, federal, state, and local laws, rules and regulations for which it is responsible under this Contract results in fines or penalties against Town of any kind or any requirement that Town take corrective action by any governmental agency having jurisdiction, then MUD shall pay such fines and penalties, and shall undertake such correction, as part of the Operations Services provided hereunder; provided, however, that notwithstanding any provision in this Contract to the contrary, MUD shall have absolutely no responsibility to pay any costs, fines or penalties that arise out of any of the following: (i) the design or construction of the Town Wastewater Collection System or Town Water Distribution System; (ii) the introduction of prohibited Wastewater by any customer of the Town into the Town Wastewater Collection System for which the Town has not taken immediate enforcement action; (iii) any action, decision, inaction or delay of the Town that contributes to the circumstance or condition that results in the violation, fine or penalty; (iv) matters which are outside the scope of Operations Services to be provided by MUD; and (v) matters that are outside the reasonable control of the MUD, including acts of force majeure and acts of third parties.

(c) As an independent contractor, MUD shall work independently and exercise its own judgment in providing the Operations Services. Town shall have no control over the means or methods of the MUD's work, except that MUD shall provide Operations Services in a professional and workmanlike manner consistent with the standards by which it furnishes services to its own retail water and wastewater customers, and shall comply with all applicable local, state and federal laws, rules and regulations.

(d) Town acknowledges that the Operations Services do not include any services or obligations not specifically set forth in this Contract. By way of example and without limitation, the Operations Services do not include design or construction of extensions to the Town Wastewater Collection System or Town Distribution System; plumbing inspections; construction inspections; records retention; filing of plans for new infrastructure improvements with regulatory authorities; legislative functions such as adoption of policies, rates and service rules; or enforcement of Town ordinances, rules, regulations or policies.

(e) As part of the Operations Services, MUD shall prepare, execute and file on behalf of Town those operations and sampling reports and filings that may legally be executed by an operator of a public water or wastewater system on behalf of the owner. With respect to those reports, plans and filings that must be executed or filed directly by the owner of the public water or wastewater system, MUD shall prepare a draft report, plan and/or filing for Town, but Town shall be solely responsible for final approval, execution and filing thereof. The

Parties agree that the data to be furnished by MUD for purposes of preparing reports, filings and plans on behalf of Town shall be operational and sampling data obtained by MUD in connection with providing the Operations Services, and Town shall be responsible for gathering and furnishing other data not generated as a result of operating the Town Water Distribution System and Town Wastewater Collection System, such as Town population data.

**5.3 Wells.** Town has sole discretion regarding the specifications for, number and location of Wells that may be constructed by Town. Any and all Wells constructed by or at the direction of Town or dedicated to Town shall be owned and operated by Town, and are outside the scope of Operations Services to be furnished by MUD. No Wells shall be connected to the Town Water Distribution System without the prior consent and approval of the MUD. MUD has sole discretion regarding the specifications for, number and location of Wells that may be constructed by MUD.

**5.4 Cooperation.**

(a) Town agrees to fully cooperate with MUD in connection with the provision of Operations Services by MUD. By way of example and without limitation, Town shall not prevent, hinder or impair MUD's access to the Town Wastewater Collection System or Town Water Distribution System. Similarly, in the event Town receives any notices, correspondence, notices of enforcement action, inspection reports, customer correspondence or other information relating to water or wastewater services, operations or water or wastewater facilities, it shall provide a copy thereof to MUD as soon as reasonably practical. Town shall also timely execute any operations reports or filings that must be executed by an authorized representative of Town, and shall fully cooperate as necessary to allow MUD to file any regulatory reports or filings that MUD files on behalf of Town as part of the Operations Services.

(b) The Parties agree to fully cooperate and provide notice to each other as soon as practicable regarding emergencies and events that materially impact water and wastewater service.

(c) The Parties will fully cooperate to respond to alleged violations or enforcement action pertaining to water and wastewater services.

**5.5 Approvals for MUD Bonds Relating to Town Infrastructure.** The Parties acknowledge and agree that the Operations Services to be provided by MUD include necessary repairs or replacement of the Town Wastewater Collection System or the Town Water Distribution System. In the event that MUD seeks to issue bonds for funding any such repairs or replacements and TCEQ withholds approval for the issuance of such bonds, or the Attorney General of the State of Texas refuses to render an opinion approving the validity of bonds issued by MUD for such purposes, then the Parties agree to fully cooperate as necessary to cause such repair or replacement to proceed without delay at no

additional cost to Town. MUD shall have no obligation to undertake any such repair or replacement until an alternative funding source is identified and agreed upon by the Parties.

**5.6 Elevated Storage Tank.** The Parties acknowledge that the Town Water Distribution System includes an elevated storage tank to which both Parties contributed funding. As part of the Operations Services, MUD shall operate the elevated storage tank to provide and maintain pressure to customers of both the Town Water Distribution System and the MUD Water System in accordance with all applicable regulatory requirements applicable to both systems.

**5.7 Insurance.** MUD agrees to secure and maintain insurance for the Town Water Distribution System and Town Wastewater Collection System at MUD's sole cost and expense. The Parties mutually agree that any payments of insurance under any such policies should go to MUD for purposes of repair or replacement of Town infrastructure. In the event that the insurance company tenders payment of the insurance proceeds to Town for any reason, Town agrees to immediately remit all such insurance proceeds to MUD, which shall utilize the proceeds for repair or replacement of Town infrastructure, or if the amount of the proceeds exceeds the cost of the repair or replacement, MUD shall credit such excess proceeds to the Annual Capital Improvements and Maintenance Charge due from Town.

#### **ARTICLE VI. CHARGES TO TOWN**

**6.1 Charges to Town for Wholesale Water Service, Wholesale Wastewater Services and Operational Services.** The MUD charges to Town for Wholesale Water Services, Wholesale Wastewater Services, and Operational Services shall consist of the following:

- (a) The Retail Customer Charge;
- (b) The Annual Capital Improvements and Maintenance Charge;
- (c) Fort Worth Impact Fees; and
- (d) Utility Fees.

#### **ARTICLE VII. BILLING AND PAYMENT**

**7.1 Retail Customer Charge.**

(a) Within thirty (30) days of the Effective Date, Town shall adopt the Town Rate Order. Except as provided in Section 7.1(d) below, the Town Rate Order shall be identical to the existing MUD Rate Order. MUD shall provide to

Town any amended or revised MUD Rate Order adopted by MUD not later than sixty (60) days before the effective date of any new rates and charges, and Town shall adopt a Town Rate Order identical to the amended or revised MUD Rate Order within sixty (60) days of Town's receipt of the amended or revised MUD Rate Order, such that the effective date of any changes to the Town Rate Order and MUD Rate Order shall be identical. In the event that in connection with any rate proceeding TCEQ (or the Public Utility Commission of Texas) changes any MUD rates, fees or charges, MUD shall provide immediate notice thereof to Town and Town shall use its best efforts to change the Town Rate Order immediately, including by calling a special meeting if necessary.

(b) As part of the Operations Services provided to Town, MUD shall bill and collect amounts due from Town Customers under the Town Rate Order for the provision of retail water and wastewater services. Such billing and collection shall be conducted by MUD in the same manner of billing and collections performed by MUD for retail water and wastewater service furnished by MUD to its retail customers in the MUD boundaries.

(c) Town hereby authorizes MUD to collect all monthly payments from Town Customers under the Town Rate Order and to directly deposit such payments into the MUD bank accounts. MUD shall keep one hundred percent (100%) of all collections from Town Customers, except as provided in Section 7.1(d) below. All such payments collected by MUD from Town Customers under the Town Rate Order identical to the rates, fees and charges of MUD are collectively referred to herein as the "Retail Customer Charge."

(d) Town shall have the right at any time to modify its rate order to include separate fees and charges in addition to those billed and charged by MUD. Any such additional Town fees or charges (a "Town Surcharge") shall be separately identified on the MUD's bill to Town Customers. Town shall give MUD not less than 60 days prior written notice of any such additional Town charge. Except as provided in Section 7.2(d) below with respect to the levy and collection of a Town Surcharge for payment of the Annual Capital Improvements and Maintenance Charge, MUD shall remit payment of any such additional Town fees and charges that it collects to Town within fifteen (15) days after receipt of a written invoice for payment from Town. Notwithstanding any provision herein to the contrary, Town agrees that the volumetric rates for water and wastewater service to Town Customers under the Town Rate Order must be identical to the MUD volumetric rates for water and wastewater services under the MUD Rate Order, and the Town Surcharge shall not be a gallonage charge (and instead shall be a fixed sum).

## **7.2 Annual Capital Improvements and Maintenance Charge.**

(a) The Annual Capital Improvements and Maintenance Charge shall be calculated in accordance with the following methodology:

- 1) Town shall furnish its most current certified assessed valuation from the County Tax-Assessor (the "Certified Assessed Valuation") for the Property to the MUD on or before August 1 of each year that this Contract remains in effect.
  - 2) No later than September 1 of the same year, MUD will furnish Town with an annual debt service, maintenance and operations budget that contains the following items:
    - a. The total debt service requirements for new money ad valorem tax bonds issued by MUD after the Effective Date in the next calendar year ("Annual Debt Service Requirement");
    - b. The total expenses to be funded with maintenance taxes in the next fiscal year ("Annual Maintenance and Repair Requirement"), save and except budgeted costs of MUD director fees and director elections, the costs of which MUD agrees shall not be funded by the Annual Capital Improvements and Maintenance Charge;
    - c. The cumulative total of the Certified Assessed Valuation for the MUD and the Property;
    - d. Town's percentage share of the Annual Debt Service Requirement and Annual Maintenance and Repair Requirement calculated by dividing the Certified Assessed Valuation for the Property by the cumulative total of the Certified Assessed Valuation for the MUD and the Property; and
    - e. The amount of the next year's Annual Debt Service Requirement and Annual Maintenance and Repair Requirement for which the Town is responsible for payment during the subsequent calendar year (the "Annual Capital Improvements and Maintenance Charge") shall be equal to the product of the Town's percentage share of the Annual Debt Service Requirement and Annual Maintenance and Repair Requirement multiplied by the Annual Debt Service Requirement and Annual Maintenance and Repair Requirement.
- (b) If for any reason the timing of issuance of ad valorem tax debt by MUD does not allow the Annual Capital Improvements and Maintenance Charge to be calculated in accordance with the foregoing schedule, then Town's share of any such ad valorem debt service payments shall be added to the next subsequent calendar year Annual Debt Service Requirement.

(c) Town shall determine, in its sole discretion, the source of funding for payment of the Annual Capital Improvements and Maintenance Charge; provided, however, that (i) the Town shall not levy and collect an ad valorem tax for payment of the Annual Capital Improvements and Maintenance Charge; and (ii) the source of funding shall be collected only from Town Customers within the Property. Without limitation, Town may levy a Town Surcharge (as defined in Section 7.1(d) above) in the Town Rate Order for purposes of generating revenues for payment of the Annual Capital Improvements and Maintenance Charge.

(d) If Town levies a Town Surcharge for payment of the Annual Capital Improvements and Maintenance Charge, then MUD shall retain the Town Surcharge for payment of the Annual Capital Improvements and Maintenance Charge. If Town uses another source of funding to pay the Annual Capital Improvements and Maintenance Charge, then Town shall pay such funds to MUD within thirty (30) days of receipt, but in no event later than the end of the calendar year. Within thirty (30) days of the end of each calendar year, MUD shall prepare and furnish to Town a reconciliation that identifies the cumulative sum collected by MUD from the Town Surcharge or paid by Town from other funding sources. In the event that the cumulative sum collected exceeds the Annual Capital Improvements and Maintenance Charge, the MUD shall remit such excess monies to Town within thirty (30) days after the reconciliation report is furnished to Town. If the cumulative sum collected is less than the Annual Capital Improvements and Maintenance Charge, then Town shall pay the full amount of the deficit within thirty (30) days of receipt of the MUD reconciliation report.

(e) Each Annual Capital Improvements and Maintenance Charge shall remain in effect from January through December of each year that this Contract remains in effect. The Parties acknowledge that the payment procedures may cause the MUD to be responsible for principal or interest on bonds during the calendar year before Town has fully contributed its pro rata share of such payments to MUD; provided, however, the reconciliation and payment obligations of the Parties shall ensure that Town pays, and the MUD receives, the Annual Capital Improvements and Maintenance Charge for each calendar year (and not more or less).

(f) A new Annual Capital Improvements and Maintenance Charge shall be calculated for each calendar year in accordance with the same methodology set forth in Section 7.2(a) for so long as this Contract remains in effect.

(g) If all of the Property is annexed into the corporate boundaries of the MUD, then Town's obligation to pay the Annual Capital Improvement and Maintenance Charge will terminate on the January 1 following the effective date of the annexation.

**7.3 Fort Worth Impact Fees.** Town understands that MUD has a separate agreement for water services with the City of Fort Worth (hereinafter "Fort Worth Water Contract" as defined above) and that pursuant to that Fort Worth Water Contract, MUD is responsible for collection of Fort Worth's impact fees from new customers that are paid to Fort Worth. Town understands and agrees that as a wholesale water supply customer of MUD, Town will be required to collect and pay all impact fees due under the Fort Worth Water Contract for each new Town Customer. The Parties further agree that Town's permitting department collects the Fort Worth Impact Fee from each new Town Customer and each new retail customer of MUD within the boundaries of Town, and provides a daily collection report to MUD identifying all new customers. Town remits the cumulative Fort Worth Impact Fees collected from all such customers to MUD each month upon receipt of a written invoice for payment from MUD, and MUD in turn provides payment to the City of Fort Worth. Town agrees to continue to take such actions as may be necessary to collect or to allow for the collection from all new retail connections of Town and MUD within the boundaries of Town an amount equal to the impact fee assessed by the City of Fort Worth pursuant to the Fort Worth Water Contract and to remit such sum to MUD in the amount and in accordance with the terms set forth in the Fort Worth Water Contract. Upon receipt of such funds from Town, MUD shall immediately remit that amount to the City of Fort Worth. Town agrees that no new Town Customer shall be entitled to receive water or wastewater service for which the Fort Worth Impact Fee is not collected and paid to MUD. In the event that payment of the Fort Worth Impact Fee is not collected from any new Town Customer, MUD may immediately disconnect service until payment is received.

**7.4 Utility Fees.** The Parties acknowledge that the 2007 Wholesale Contract provided for the Town to pay MUD a lump sum amount of \$540,000 and a Utility Fee of \$2,300 for each new service connection to the Town Water Distribution System and Town Wastewater Collection System until the total amount of Utility Fees paid to MUD equaled \$3,260,000, in consideration of the MUD's payment of the debt service on bonds issued to finance the construction and installation of the existing MUD Water System and MUD Wastewater System. For purposes of this contract, and in consideration of the receipt of Utility Fees, MUD agrees that Town shall not be responsible for payment of debt service on ad valorem tax bonds issued by MUD prior to the Effective Date, or any refunding thereof. The 2007 Wholesale Contract further provided that to the extent the Town paid less than this sum to the District as of May 7, 2013, then the Town would be required to pay ten percent (10%) interest each year on the difference between the amount of such fees paid to the District and \$3,260,000 in accordance with a formula set forth in the 2007 Wholesale Contract. The Parties now acknowledge that there will not be a sufficient number of new service connections within the Property in order for Town to collect and remit to MUD the full amount that was required to be paid under the 2007 Wholesale Contract. As a result, from and after the Effective Date, the Parties agree that Town's payment obligation of Utility Fees and interest shall be as follows:



(a) Town shall collect a fee \$2,300 (the "Utility Fee") for each new standard service connection within the Property to the Town Water Distribution System or Town Wastewater Collection System within the Property and tender such fee to MUD until such time as MUD has received Utility Fees from 1,407 standard service connections within the Property (including those received under the 2007 Wholesale Contract);

(b) From and after the Effective Date, Town shall pay to MUD the Utility Fees collected by Town for all new service connections within the Property during the preceding calendar month on or before the end of a calendar month.

(c) Until such time as MUD has received Utility Fees from 1,407 new service connections within the Property (including those received under the 2007 Wholesale Contract), Town shall, pursuant to its contract with 831 Trophy LP ("Developer"), entitled "The Highlands at Trophy Club Development and Public Improvement District Agreement" and all prior modifications thereof, notify the Developer of its requirement to directly pay to MUD or to provide a letter of credit for the benefit of MUD to pay interest in accordance with the following methodology:

- 1) The difference between the total amount of Utility Fees received by MUD as of a specified date and \$3,260,000 represents the "Utility Fee Remainder" as of said date;
- 2) Interest at ten percent (10%) per annum shall be payable to MUD each year based on the Utility Fee Remainder until such time as the MUD has received Utility Fees from 1,407 new service connections within the Property (including those received under the 2007 Wholesale Contract);
- 3) It is hereby agreed that, as of May 7, 2013, the Utility Fee Remainder was \$707,000. Therefore, the initial interest payment, equal to \$70,700 (which represents 10% of the Utility Fee Remainder as of May 7, 2013), shall be paid to MUD on or before May 31, 2014;
- 4) The amount of interest to be paid to MUD thereafter (commencing May 31, 2015) shall be calculated according to the following methodology: where (A) equals the Utility Fee Remainder as of the preceding May 7th (commencing May 7, 2014) and (B) equals the Utility Fee Remainder as of the subsequent May 7<sup>th</sup> (commencing May 7, 2015), then (A) plus (B) divided by two (2) and multiplied by ten percent (10%) will be the amount of interest payable for the preceding year; and
- 5) If the foregoing calculation of interest results in interest greater than the maximum amount allowed by applicable law, then the amount

of interest for that period will be reduced to equal the maximum amount allowed by applicable law.

- 6) Town agrees that no new Town Customer shall be entitled to receive water or wastewater service for which the Utility Fee is not collected and paid to MUD. In the event that payment of the Utility Fee is not collected from any new Town Customer, MUD may immediately disconnect service on behalf of Town until payment is received. In the event interest is not received by MUD by May 31 of each year for so long as such interest is due, no meters shall be set for new service connections within the Property until the interest is paid to the MUD.

**7.5 Customer Deposits.** Town hereby authorizes the MUD to collect, deposit, administer and refund customer deposits from Town Customers in the same manner, in the same amount, and according to the same procedures as applicable to MUD retail customers. Town acknowledges and agrees that interest will not be paid either to Town or to Town Customers on such deposits.

**7.6 Payments by Town Unconditional.** Town recognizes that MUD will issue bonds that will be payable and secured by a pledge of the sums of money to be received by MUD from Town under this Contract. Accordingly, Town's obligation to make the payments required by this Contract is hereby made unconditional. All sums payable hereunder by Town to MUD shall, so long as any part of the MUD bonds are outstanding and unpaid, be paid by Town without set-off, counterclaim, abatement, suspension or diminution except as otherwise expressly provided herein; and so long as any part of MUD bonds are outstanding and unpaid, Town shall not have any right to terminate this Contract nor shall the Town be entitled to the abatement of any payment or any reduction thereof nor shall the obligations of the Town be otherwise affected for any reason, it being the intention of the Parties that so long as any portion of the MUD bonds are outstanding and unpaid, all sums required to be paid by the Town to MUD shall continue to be payable in all events and the obligations of the Town hereunder shall continue unaffected, unless the requirement to pay the same shall be reduced or terminated pursuant to an express provision of the Agreement.

**7.7 Rate Appeals.** If the Town at any time disputes the amount to be paid by it to the MUD, the Town shall nevertheless promptly make the disputed payment or payments, but the Town shall have the right to seek a judicial determination whether the rates charged by the MUD are in accordance with the terms of this Contract.

**7.8 Other Charges.** The Parties mutually acknowledge that each Party currently collects certain charges and fees on behalf of the Party, as follows:

(i) MUD collects Town's solid waste fee and taxes, and drainage fees, on each monthly bill to Town Customers. Payments received from Town Customers are deposited by MUD, and then tendered to Town upon receipt of a monthly invoice for payment.

(ii) The Town permitting department collects the MUD service deposit, meter charge, Utility Fee, Fort Worth Impact Fees, a Fire Line Fee, the Fire Plan Review Fee, and Omnicom Fee from new MUD retail customers. Such payments received from MUD customers are deposited by Town, and then tendered to MUD upon receipt of a monthly invoice for payment.

Each Party agrees to cooperate in good faith with the other Party to continue collection of fees and charges on behalf of the other Party to lower costs to, and minimize burdens upon, their respective customers. Notwithstanding the foregoing, in the event that it is determined that either Party does not have the authority to collect and/or deposit charges on behalf of the other Party, each Party shall be responsible for billing and collection of its own charges, or the Parties shall otherwise cooperate as necessary to ensure that separate payments are made by customers to the appropriate payee.

#### **ARTICLE VIII. TERM**

**8.1 Term.** This Contract shall become effective upon approval by each of the respective governing bodies of Town and MUD and upon execution by their respective authorized representatives, and shall remain in effect for an initial term of 99 years from the Effective Date or until any new bonds issued by the District after the Effective Date (including refunding bonds for such new bonds) are no longer outstanding, whichever is later. Thereafter, this Contract shall renew automatically for additional terms of ten (10) years each unless either Party provides not less than six (6) months prior written notice to the other Party of termination before the expiration of any term.

#### **8.2 Material Breach; Notice and Opportunity to Cure.**

(a) In the event that one Party believes that another Party has materially breached one of the provisions of this Agreement, the non-defaulting Party will make written demand to cure and give the defaulting Party up to 30 days to cure such material breach or, if the curative action cannot reasonably be completed within 30 days, the defaulting Party will commence the curative action within 30 days and thereafter diligently pursue the curative action to completion. This period must pass before the non-defaulting Party may initiate any remedies available to the non-defaulting party due to such breach; provided, however, that neither Party may terminate this Contract as a remedy for default.

(b) Any non-defaulting Party will mitigate direct or consequential damage arising from any breach or default to the extent reasonably possible under the circumstances.

(c) The Parties agree that they will negotiate in good faith to resolve any disputes and may engage in non-binding mediation, arbitration or other alternative dispute resolution methods as recommended by the laws of the State of Texas.

### **8.3 Equitable Relief.**

(a) The Parties acknowledge that MUD is limited in its ability to terminate this Contract in the event of Town's default, whether a monetary default or otherwise, because MUD has outstanding bonds and because Town may have an obligation to provide continuous and adequate water and wastewater services to its retail customers at the time of the default and may lack alternative sources for service. In recognition of this, and that failure in the performance of Town's obligations could not be adequately compensated in money damages alone, Town agrees that in the event of any default on its part that the MUD shall have available to it equitable remedies including, without limitation, the right to obtain a writ of mandamus or specific performance or an injunction against the Town requiring the Town to levy and collect rates and charges sufficient to pay the amounts owed to MUD by Town under this Agreement.

(b) The Parties acknowledge that Town is limited in its ability to terminate this Contract in the event of MUD's default because Town may have an obligation to provide continuous and adequate water and wastewater services to its retail customers at the time of the default and may lack alternative sources for service. In recognition of this, and that failure in the performance of MUD's obligations could not be adequately compensated in money damages alone, MUD agrees that in the event of any default on its part that Town shall have available to it equitable remedies including, without limitation, the right to obtain a writ of mandamus or specific performance or an injunction against MUD requiring it to perform its duties under this Contract.

**8.4 Remedies Not Exclusive.** The provisions of this Agreement providing remedies in the event of a Party's breach of this are not intended to be exclusive remedies. The Parties retain, except to the extent released or waived by the express terms of this Agreement, all rights at law and in equity to enforce the terms of this Agreement in addition to, and cumulative to, remedies provided in this Agreement. The foregoing shall not be construed to authorize termination.

## **ARTICLE IX. MISCELLANEOUS**

**9.1 Joint Meetings.** The Town Council and the MUD Board of Directors agree to hold joint meetings in each quarter of each calendar year or as the parties mutually agree. The purpose of these joint meeting will be to discuss matters of common interest to Town and MUD, including, but not limited to, amendments or revisions to the MUD Conservation and Drought Contingency Plan, amendments or revisions to the MUD Rate Order, the construction of capital improvements to serve the MUD and the Property, the calculation and collection of the Annual Capital Improvements and Maintenance Charge, and the calculation and collection of any other charges due from Town to MUD under this Contract.

**9.2 Immunity.** The fact that Town and MUD accept certain responsibilities relating to the provision of Operations Services under this Contract as part of their responsibility for providing Water and Wastewater Services to their respective residents makes it imperative that the performance of these vital services be recognized as a governmental function and that the doctrine of governmental immunity shall be, and it is hereby, invoked to the extent possible under the law. Neither Town nor MUD waive any immunity or defense against third party claims that would otherwise be available to it against claims arising from the exercise of governmental powers and functions. The Parties hereto agree that each respectively waives its sovereign immunity to suit for the limited purpose of adjudication of a claim for breach of this Contract. Notwithstanding the foregoing Contract, remedies in such action shall be limited to those provided by state law.

**9.3 Force Majeure.** If any Party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Contract, except the obligation to pay amounts owed or required to be paid pursuant to the terms of this Contract, 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 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 other than a Party to this Contract, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or

entire failure of water supply resulting in an inability to provide water necessary for operation of the water and sewer systems hereunder or in an inability of MUD to provide Water or receive Wastewater, and any other inability of any 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 when such settlement is unfavorable to it in the judgment of the Party experiencing such difficulty.

**9.4 Applicable Law.** This Contract shall be governed by the laws of the State of Texas and no lawsuit shall be prosecuted on this Contract except in a court of competent jurisdiction located in Tarrant or Denton County.

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

**9.6 Addresses and Notice.** Unless otherwise provided in this Contract, any notice, communication, request, reply, or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made, or accepted by any Party to the other (except bills), must be in writing and may be given or be serviced by depositing the same in the United States mail postpaid and registered or certified and addressed to the Party to be notified, with return receipt requested, or by delivering the same to such Party, addressed to the Party to be notified. Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated in this Contract, from and after the expiration of three (3) days after it is so deposited. Notice given in any such other manner shall be effective when received by the Party to be notified. For the purpose of notice, addresses of the Parties shall, until changed as hereinafter provided, be as follows:

If to MUD, to:

MUD Manager  
100 Municipal Drive  
Trophy Club, Texas 76262

If to Town, to:

Town Manager,  
100 Municipal Drive  
Trophy Club, Texas 76262

The Parties shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify any other address by at least fifteen (15) days' written notice to the other.

**9.7 Merger and Modification.** This Contract, including the exhibits that are attached hereto and incorporated herein for all purposes, embodies the entire Contract between the Parties relative to the subject matter hereof. This Contract shall be subject to change or modification only with the written mutual consent of all Parties affected by such change or modification.

**9.8 Severability.** The provisions of this Contract are severable, and if any part of this Contract or the application thereof to any person or circumstances shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Contract and the application of part of this Contract to other persons or circumstances shall not be affected thereby.

**9.9 Successors and Assigns.** This Contract shall be binding upon and inure to the benefit of the Parties hereto and their successors. This Contract shall not be assigned without the written consent of the governing bodies of the respective entities.

**9.10 Benefits of Contract.** This Contract is for the benefit of the Parties and their successors and assigns and shall not be construed to confer any benefit on any other person or entity except as expressly provided for herein.

**9.11 Consent and Approvals.** Whenever this Contract provides for the approval or consent of one of the Parties, such consent or approval shall not be unreasonably withheld or delayed.

**9.12 Authority.** This Agreement is made and entered into pursuant to the provisions of the Interlocal Cooperation Act, V.T.C.A. Government Code, Chapter 791; V.T.C.A. Local Government Code, Chapter 552; V.T.C.A. Water Code Chapters 30 and 49, and other applicable law.



**TOWN OF TROPHY CLUB, TEXAS**

By: Connie White  
Name: Connie White  
Title: Mayor  
Date: APRIL 15, 2014

ATTEST:  
By: Tammy Ard  
Name: Tammy Ard  
Title: Town Secretary

TROPHY CLUB MUNICIPAL UTILITY  
DISTRICT NO. 1

By: *[Signature]*

Name: Jim Moss

Title: President

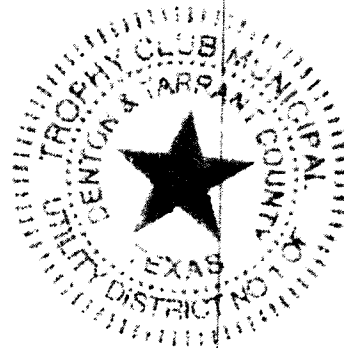
Date: April 15, 2014

ATTEST:

By: *[Signature]*

Name: Kevin R. Carr

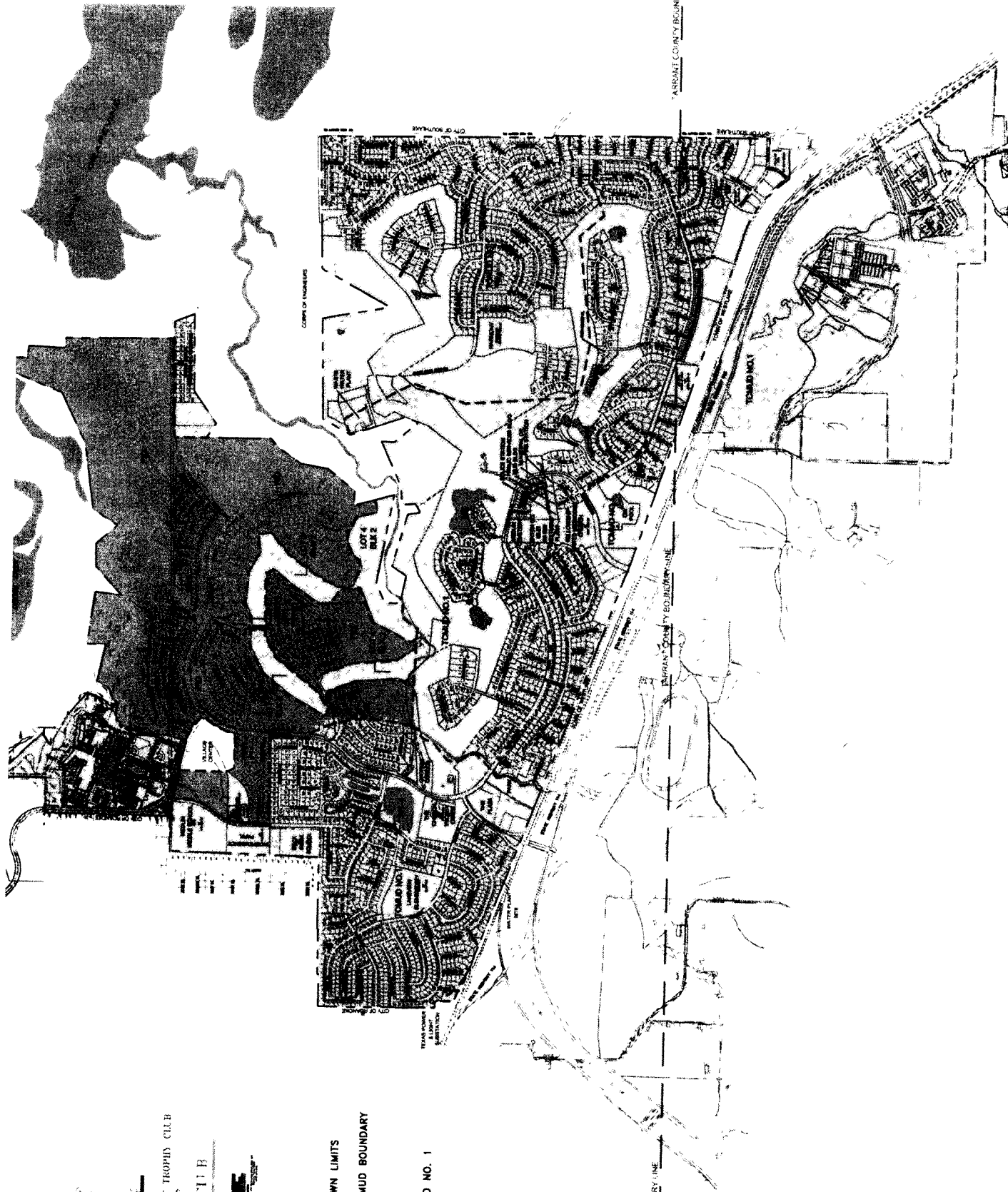
Title: Secretary/Treasurer





**EXHIBIT "A"**

70



MAP OF THE TOWN OF TROPHY CLUB  
TEXAS

TROPHY CLUB



--- TOWN LIMITS  
--- TCMUD BOUNDARY

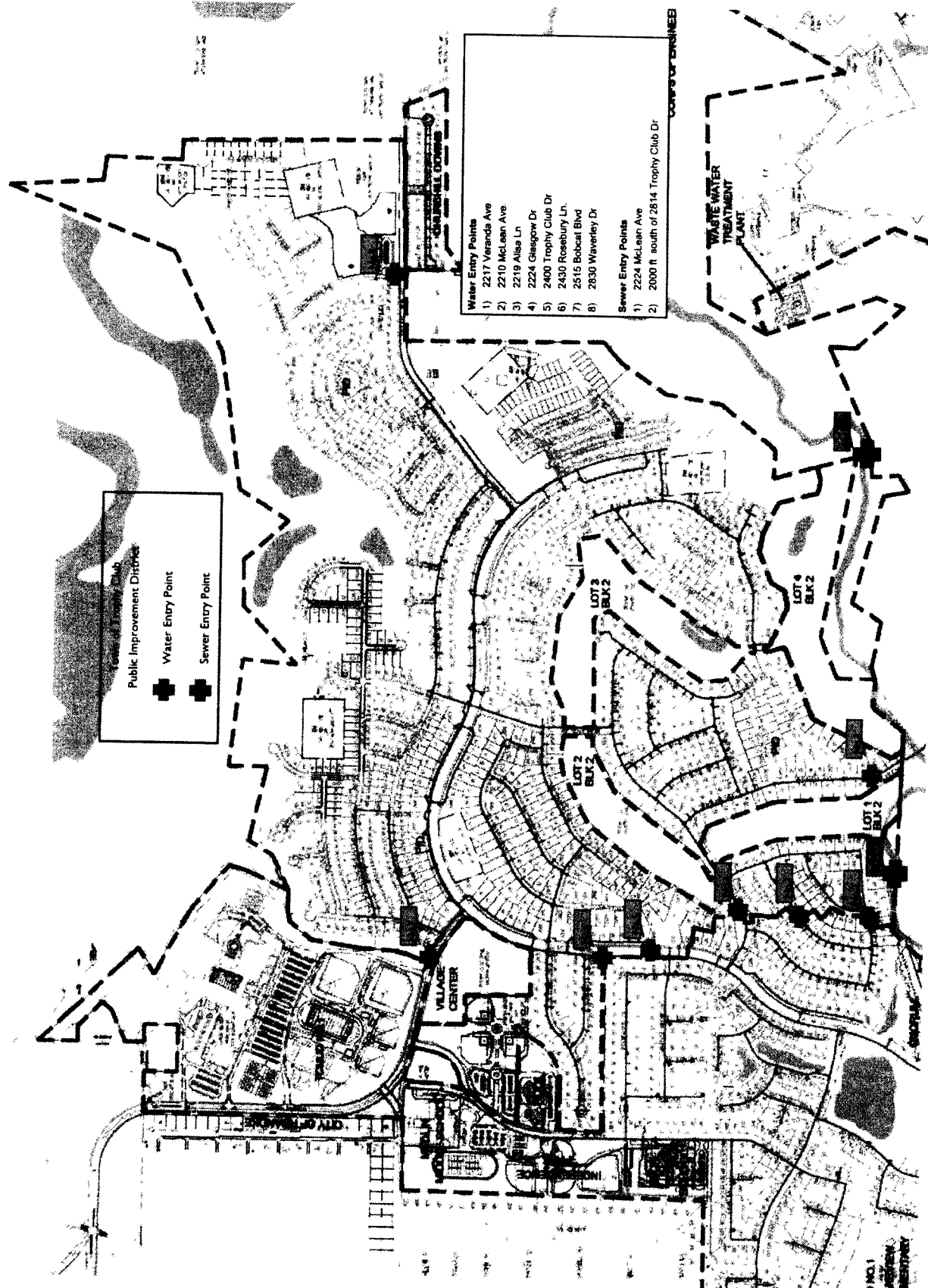
TCMUD NO. 1  
PID

TARRANT COUNTY BOUNDARY LINE

ASSAHT COUNTY BOUNDARY LINE

33

**EXHIBIT "B"**



Public Improvement District

Water Entry Point

Sewer Entry Point

- Water Entry Points
- 1) 2217 Veranda Ave
  - 2) 2210 McLean Ave
  - 3) 2219 Allie Ln
  - 4) 2224 Glasgow Dr
  - 5) 2400 Trophy Club Dr
  - 6) 2430 Rosebury Ln
  - 7) 2515 Bobcat Blvd
  - 8) 2630 Waverley Dr
- Sewer Entry Points
- 1) 2224 McLean Ave
  - 2) 2000 ft south of 2514 Trophy Club Dr

WASTE WATER TREATMENT PLANT

3 INCH  
WASTEWATER  
SEWER