

**FLOOD CONTROL DEVELOPMENT AGREEMENT
(STORMWATER QUALITY
FOR LITTLE CYPRESS CREEK WATERSHED)**

**THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §**

This Agreement is made, entered into, and executed pursuant to Texas Local Government Code Annotated, Chapter 395, by and between the **Harris County Flood Control District**, a body corporate and politic under the laws of the State of Texas, hereinafter referred to as "HCFCF," or the "District," and **Harris County Municipal Utility District No. 565**, a conservation and reclamation district created and operating under the provisions of Article XVI, Section 59, of the Constitution of Texas, and Chapters 49 and 54 of the Texas Water Code, hereinafter referred to as the "Applicant."

RECITALS:

WITNESSETH, that

WHEREAS, the upper portion of Cypress Creek watershed, referred to as "Little Cypress Creek Watershed," shown in Exhibit A, is in need of certain improvements not defined by previous drainage reports for Cypress Creek; and

WHEREAS, the District completed a study entitled "Little Cypress Creek Sub-Regional Frontier Program," outlining the responsibilities of HCFCF in developing a drainage solution for the watershed, such improvements being defined as the "Regional Drainage Solution"; and

WHEREAS, the Applicant volunteers to join the Voluntary HCFCF Little Cypress Creek Stormwater Quality Program for Permit Coverage under the Regional LCC Permit.

WHEREAS, the Applicant is willing to pay calculated Permit Coverage Cost to that certain tract or parcel of land shown herein in Exhibit B and described herein as the Applicant's Property, for stormwater quality management purposes, due prior to receipt of development permits within the Applicant's Property, with such calculation of Permit Coverage Cost being defined herein; and

WHEREAS, the Applicant understands that the Contributing Watershed Area for Permit Coverage Cost calculations will be equal to the Applicant's Property 137.44 acres.

WHEREAS, the Applicant is willing to construct certain drainage and detention improvements consistent with the Regional Drainage Solution; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants, agreements, and benefits to the parties, the parties hereby contract, covenant, and agree as follows:

Terms:

I. Definitions

The terms and expressions used in this Agreement (unless the context shows clearly otherwise) shall have the following meanings:

"Applicant" is a developer who applies to join the Voluntary HCFCD Little Cypress Creek Stormwater Quality Program.

"Credit" is the Permit Coverage Cost Credit due to the Applicant as calculated in the Calculated Credit toward Permit Coverage Cost Exhibit D.

"Guidelines" shall mean the "Interim Guidelines for New Development in the Little Cypress Creek Service Area" formally adopted by Commissioners Court on February 11, 2014.

"Interim Detention" shall mean the interim improvements to the Regional Drainage Solution.

"In-Kind Improvements" shall mean the interim improvements to the Regional Drainage Solution constructed or to be constructed by the Applicant in accordance with this Agreement. Such improvements can be recognized if the improvements are necessary according to the District and qualify as part of the Regional Drainage Solution.

"Little Cypress Creek Service Area" shall mean the portion of Little Cypress Creek watershed as identified in Exhibit A.

"Permit Coverage" shall mean coverage under the Regional LCC Permit, as authorized by Harris County.

"Permit Coverage Cost" shall mean the fee for joining the voluntary HCFCD Little Cypress Creek Stormwater Quality Program, as calculated in Exhibit C, Line 4.

"Property" is defined as various tracts, totaling approximately 137.45 acres, said tracts being more fully illustrated in Exhibit B.

"Regional LCC Permit" shall mean the HCFCD Regional Little Cypress Creek Stormwater Quality Management Permit, as authorized by Harris County.

"Regional Drainage Solution" shall mean the Little Cypress Creek plan, a drainage system master plan for flood management within a watershed of Harris County that identifies the right-of-way (ROW) needed and channel and detention basin improvements necessary to convey or provide storage for the 100% developed conditions within the watershed as defined in the Guidelines, including all revisions.

II. Property

The Applicant hereby agrees to excavate on District owned ROW to be considered as a part of the Interim Detention in Little Cypress Creek.

The Applicant understands that Applicant's Property as shown in Exhibit B and listed on Exhibit C line 1 will have a maximum developed impervious cover of 41.00% for the Property. The Applicant agrees that any increase in maximum impervious cover will require a separate stormwater quality management permit as authorized by Harris County.

HCFCD hereby grants to the Applicant and its contractors the temporary right to enter the HCFCD ROW for construction of the Applicant's permitted improvements and for temporary maintenance activities as described below.

Applicant further agrees that this executed Agreement shall be filed with the deeds, dedication instruments and plats in the Real Property Records of Harris County, Texas.

III. Compensation

Compensation to the Applicant by the District for excavation will be in the form of Permit Coverage Cost Credit for Permit Coverage Costs due for the Property in accordance with the current voluntary HCFCD Stormwater Quality Program and Permit Coverage Cost, calculated and shown in Exhibit C. Upon recordation of this Agreement as herein above described, the District shall issue to the Applicant a written receipt for the amount of the Permit Coverage Cost as compensation for the excavation and the Property will be listed as a part of the HCFCD Regional LCC Permit.

If the value of Credits granted by the District exceeds the Permit Coverage Cost, the Permit Coverage Cost is zero.

IV. Plans

After the approval of this Agreement by the Commissioners Court of Harris County, the Applicant will furnish to the District, more specifically the District Watershed Coordination Department, for the District's written approval, detailed construction plans and specifications conforming to the District's Policy, Criteria and Procedures Manual (PCPM) (hereinafter the "Plans and Specifications") for the Excavation of Interim Detention features. All proposed detention basin related appurtenances must be shown on the plans submitted for review and approval. After the approval of the Plans and Specifications the District will notify the Applicant that the District poses no objection to the Applicant's use of the District owned ROW, situated in Harris County, Texas, for the purpose of constructing improvements for the Regional Drainage Solution.

V. Construction

At the sole expense of the Applicant and in accordance with the Plans and Specifications, the Applicant shall commence to construct Interim Detention features, and shall proceed diligently until completed but in no event longer than two (2) years from the commencement of construction, unless the Executive Director or his designee(s) determines in his or their sole discretion that good cause exists to extend the time in which the Interim Detention features are to be completed.

The District will make available an inspector to represent the District and ensure the construction of Interim Detention features adhere to the approved Plans and Specifications.

If any portion of the District owned ROW is covered by an agreement between the District and the United States Army Corps of Engineers (USACE), Harris County, or any other party, then those agreements take priority over this Agreement, and the Applicant must obtain the consent and approvals from said third parties, in addition to the District approval, prior to undertaking the construction or maintenance of the Interim Detention features.

VI. Excavation Activities

All excavation activities within the District owned ROW will be in accordance with the requirements contained in the Guidelines. As part of the implementation of the Regional Drainage Solution, the District will review and approve the excavation activities of all Applicants that are participating in the development of the Regional Drainage Solution. To the extent practicable, the District will administer a program that allows an Applicant to excavate material in a manner that is cost effective for the Applicant's use and the District needs. At the same time, the District reserves the right to designate excavation patterns within the District owned ROW with the intent of being as equitable as practical for both excavation and disposal of material while achieving the ultimate goal of the Regional Drainage Solution. The Applicant agrees to excavate 16,425.47 cubic yards of material from District owned ROW.

VII. Maintenance and Repair

Upon completion of the Interim Detention features, the Applicant will enter into a one year warranty period, for maintenance of the Interim Detention features, for the purposes of maintaining the completed work to the HCFCD PCPM standard. The District will require repair of deficiencies prior to the District's acceptance of the improvements. The District's approval and final acceptance of the Interim Drainage features for maintenance shall be determined at the sole discretion of the District. Upon completion of the one year warranty period and final acceptance by the District, it will be the sole responsibility for the District to maintain the Interim Drainage features and any Regional Drainage Solutions on District ROW thereafter.

VIII. Not a Joint Venture

This Agreement is not intended to and shall not create any formal working relationship between the District and Applicant, other than the role of the District as manager of flood control facilities and the Applicant as a developer of land. This Agreement is not intended to and shall not create a joint enterprise between the Applicant and the District. The parties are undertaking governmental functions or services under the Guidelines and the purpose of the District is solely to further the public good, rather than any pecuniary or proprietary purpose.

IX. District Funding

The District is not and shall not be obligated to appropriate or expend funds pursuant to this Agreement. The District may, but shall not be obligated to, from time to time budget, appropriate, and expend funds to fulfill any obligation under this Agreement or the Guidelines.

X. Notices

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, or delivered to the District at the following address

Harris County Flood Control District
9900 Northwest Freeway
Houston, Texas 77092

ATTN: Executive Director

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, or delivered to the Applicant or Applicant's Representative at the following address:

Harris County Municipal Utility District No. 565
c/o Coates Rose, P.C.
9 Greenway Plaza, Suite 1000
Houston, TX 77046

ATTN: Michael W. Johnson

XI. Assignment

The rights and obligations created in this Agreement shall run with the land known as the Property in perpetuity and shall be binding upon and enure to the benefit of all future owners of the Property. Accordingly, the Permit Coverage Cost due for the Property, as provided herein, touch and concern said land and are not separately assignable.

XII. Entire Agreement

This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any modifications concerning this instrument shall be of no force or effect, excepting a subsequent modification in writing signed by all parties hereto.

EXECUTED on _____.

APPROVED AS TO FORM:

CHRISTIAN D. MENELEE
Harris County Attorney

HARRIS COUNTY FLOOD CONTROL
DISTRICT

DocuSigned by:
Mitzi Turner
27D876F21B1047A...
By: _____
MITZI TURNER
Assistant County Attorney

By: _____
LINA HIDALGO
County Judge

ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on _____, 2021, by Lina Hidalgo, County Judge of Harris County, Texas, on behalf of the Harris County Flood Control District.

Notary Public in and for the
State of Texas

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 565

By: Taylor L. Gaver
Name Taylor L. Gaver
Title President

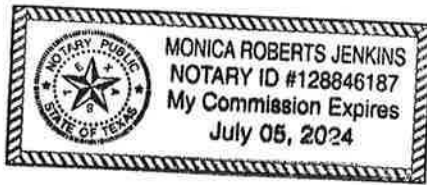
ACKNOWLEDGMENT

THE STATE OF TEXAS

COUNTY OF HARRIS

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This instrument was acknowledged before me on this the 24th day of September, 2021, by Taylor Gaver, President of and on behalf Harris County Municipal Utility District No. 565.



Monica Jenkins
Notary Public in and for the State of Texas

Exhibit "A"

Little Cypress Creek Service Area

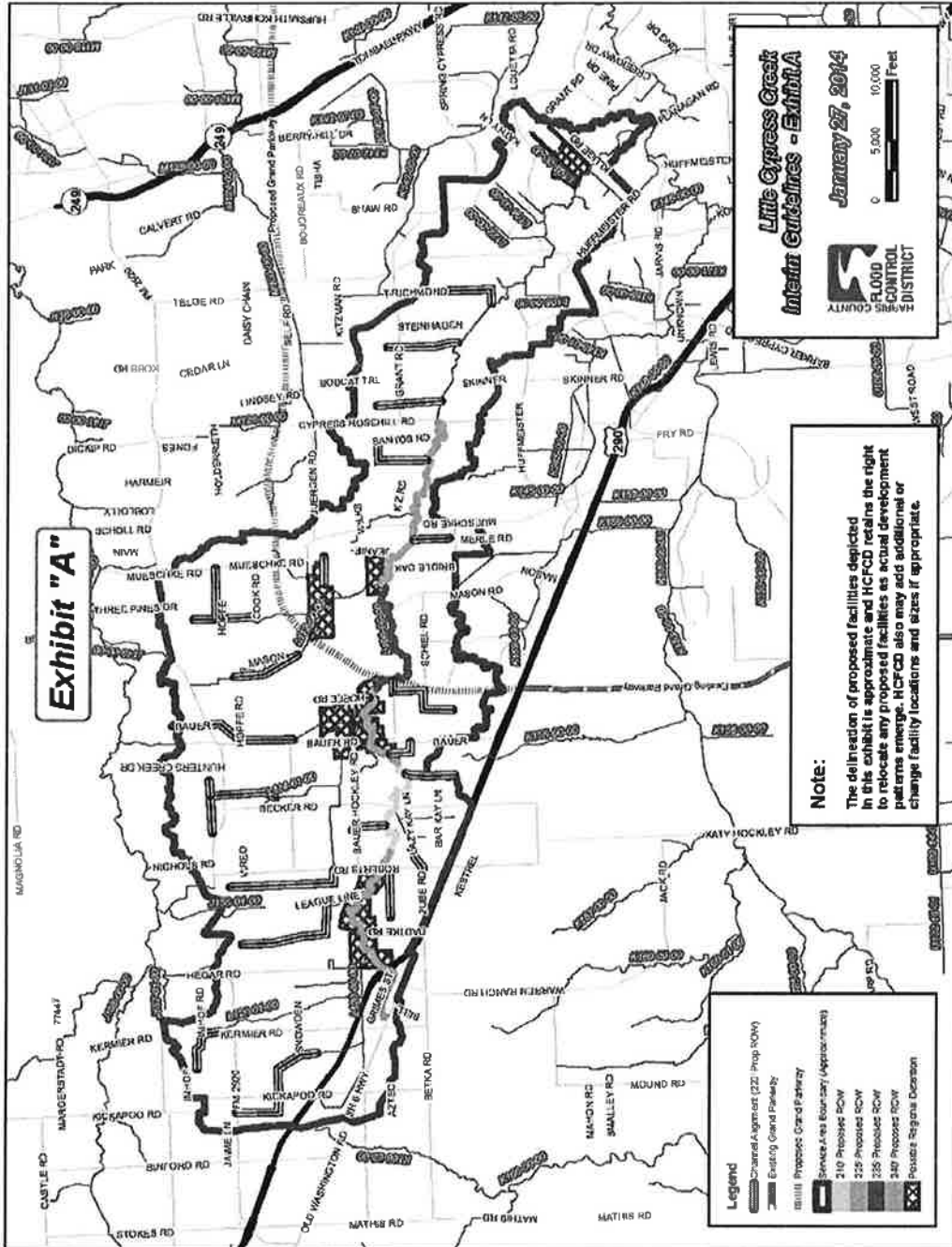


Exhibit "B"

Applicant's Property

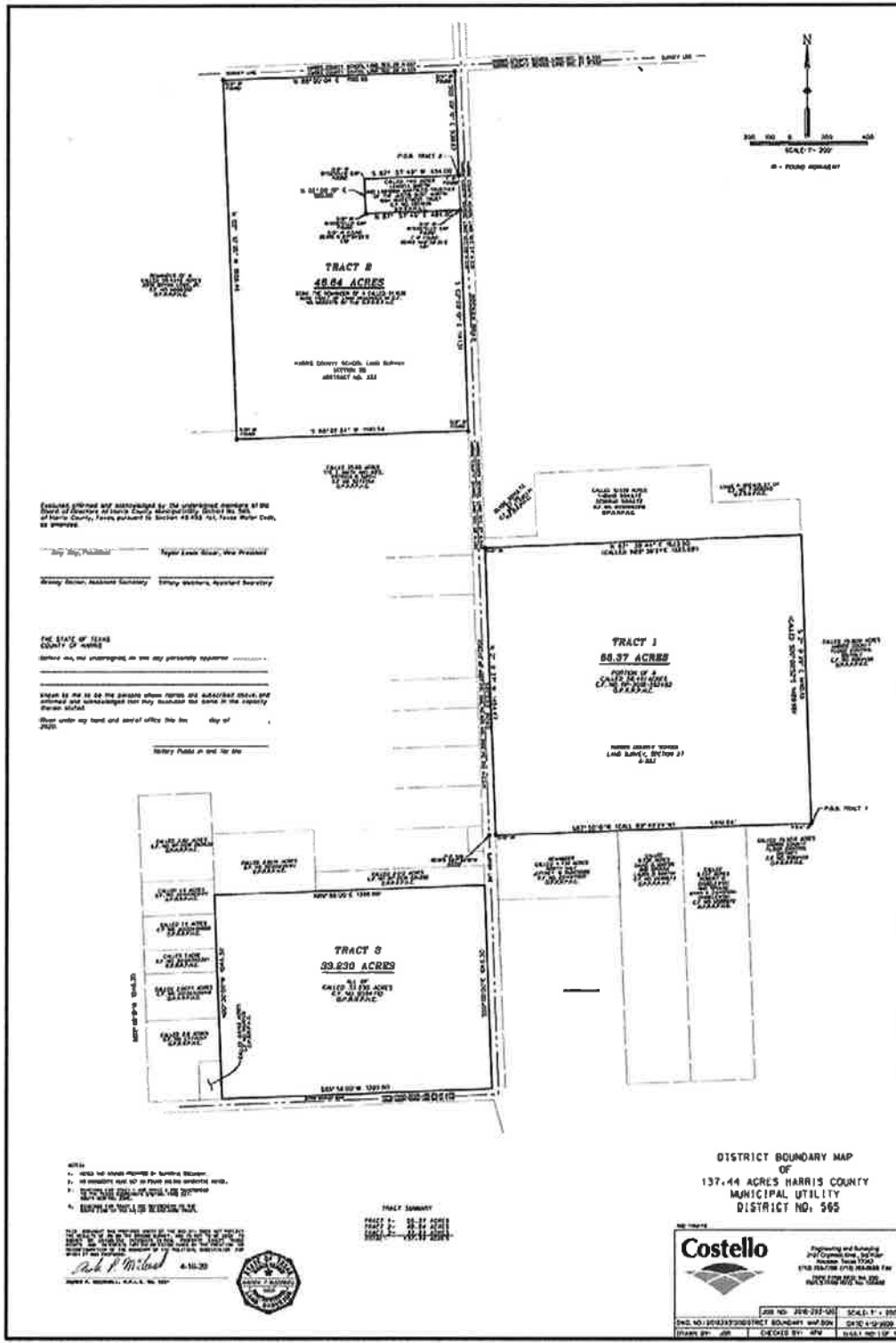


EXHIBIT C**Permit Coverage Cost Table****HARRIS COUNTY MUNICIPAL UTILITY DISTRICT 565**

1	Total acreage of the "Property" owned by Applicant as shown in Exhibit B	137.4400	acres
2	Total proposed developable acreage owned by the Applicant within the Little Cypress Creek Service Area (Exhibit B)	137.4400	acres
3	Remaining undeveloped acreage owned by Applicant within the Little Cypress Creek Watershed after execution of this Agreement (Line 1 - Line 2)	0.000	acres
*4	HCFCFCD water quality Permit Coverage Cost	\$0.00	
5	Acreage developed in a previous phase under the Little Cypress Creek Stormwater Quality Program	0.00	acres
6	Remaining developable property	0.000	acres
7	Contributing Watershed Area going to treatment facility	137.440	acres
8	Property maximum impervious cover	41.000	%
9	Required water quality volume for Property	8.398	ac-ft
10	Required stormwater treatment wetland acreage (0.181 ac/ac-ft)	1.520	acres
11	Acreage developed today	0.000	acres
12	Total acreage that water quality volume is not provided for	0.000	acres
13	RSQV to be Purchased	\$0.00	

Revised 2/26/2018

NOTE:

- * THIS CALCULATION APPLIES TO THE PERMIT COVERAGE COST FOR APPLICANT'S PROPERTY (LINE 4)

EXHIBIT D
Calculation of Credit Towards Permit Coverage Cost

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT 565

<u>PURCHASE REQUIRED STORMWATER QUALITY VOLUME (RSQV)</u>			
Excavation will be within basin L514-01-00			
<u>Improvements from Exhibit</u>	<u>RSQV in Cubic Yards</u>	<u>Value per Cubic Yar</u>	<u>Total Cost</u>
RSQV for Development	13,548.75		
* RSQV Provided	16,425.47		
** RSQV to be purchased	-2876.72	\$8.35	-\$24,020.6

- * THIS IS EXCAVATION TO BE CONDUCTED BY THE APPLICANT IN HCFCD ROW
- ** IF NEGATIVE THIS WILL ACCOUNT AS CREDIT TOWARD THE GRANTORS PERMIT COVERAGE COSTS ON EXHIBIT C LINE 4.

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

The Commissioners Court of Harris County, Texas, convened at a meeting of said Court at the Harris County Administration Building in the City of Houston, Texas, on _____, with the following members present, to-wit:

Lina Hidalgo	County Judge
Rodney Ellis	Commissioner, Precinct No. 1
Adrian Garcia	Commissioner, Precinct No. 2
Tom S. Ramsey, P.E.	Commissioner, Precinct No. 3
R. Jack Cagle	Commissioner, Precinct No. 4

and the following members absent, to-wit: _____, constituting a quorum, when among other business, the following was transacted:

ORDER AUTHORIZING EXECUTION OF FLOOD CONTROL DEVELOPMENT AGREEMENT (STORMWATER QUALITY FOR LITTLE CYPRESS CREEK WATERSHED) BETWEEN THE HARRIS COUNTY FLOOD CONTROL DISTRICT AND HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 565

Commissioner _____ introduced an order and made a motion that the same be adopted. Commissioner _____ seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order, prevailed by the following vote:

		Yes	No	Abstain
AYES:	Judge Lina Hidalgo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NAYS:	Comm. Rodney Ellis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ABSTENTIONS:	Comm. Adrian Garcia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Comm. Tom S. Ramsey, P.E.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Comm. R. Jack Cagle	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The County Judge thereupon announced that the motion had duly and lawfully carried and that the order had been duly and lawfully adopted. The order thus adopted follows:

WHEREAS, the upper portion of Cypress Creek watershed, referred to as "Little Cypress Creek Watershed," shown in Exhibit A, is in need of certain improvements not defined by previous drainage reports for Cypress Creek; and

WHEREAS, the District completed a study entitled "Little Cypress Creek Sub-Regional Frontier Program," outlining the responsibilities of HCFCD in developing a drainage solution for the watershed, such improvements being defined as the "Regional Drainage Solution"; and

WHEREAS, the Applicant volunteers to join the Voluntary HCFCD Little Cypress Creek Stormwater Quality Program for Permit Coverage under the Regional LCC Permit.

WHEREAS, the Applicant is willing to pay calculated Permit Coverage Cost to that certain tract or parcel of land shown herein in Exhibit B and described herein as the Applicant's Property, for

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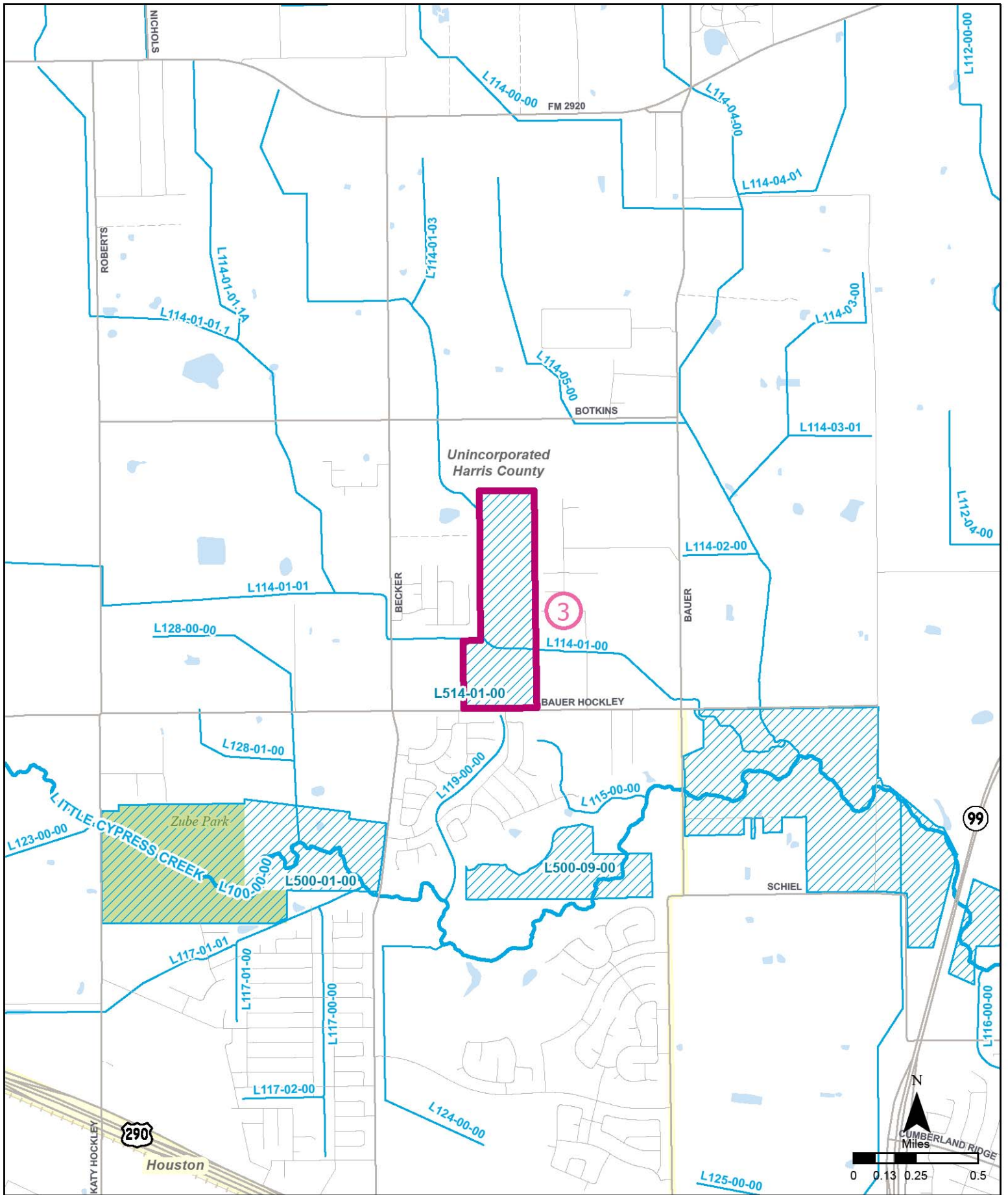
WHEREAS, the Applicant understands that the Contributing Watershed Area for Permit Coverage Cost calculations will be equal to the Applicant's Property 137.44 acres.

WHEREAS, the Applicant is willing to construct certain drainage and detention improvements consistent with the Regional Drainage Solution; and

NOW, THEREFORE, BE IT ORDERED BY THE COMMISSIONERS COURT OF HARRIS COUNTY, TEXAS THAT:

Section 1: The recitals set forth in this order are true and correct.

Section 2: County Lina Hidalgo is hereby authorized to execute for and on behalf of the Harris County Flood Control District, an Agreement by and between the Harris County Flood Control District and Harris County Municipal Utility District No. 565, said Agreement being incorporated herein by reference for all purposes as though fully set forth verbatim herein.



Project ID: L100-00-00-Y007

Watershed: Little Cypress Creek
 Precinct: 3

