

When recorded, please return to:

City Clerk
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

LIFT STATION CONSTRUCTION AND REIMBURSEMENT AGREEMENT

This LIFT STATION CONSTRUCTION AND REIMBURSEMENT AGREEMENT (this “**Agreement**”) by and between BYPG HOLDINGS, LLC, an Arizona limited liability company (“**BYPG**”), and the CITY OF GLENDALE, an Arizona municipal corporation (the “**City**”) is executed as of this ____ day of _____, 2023 (the “**Effective Date**”).

RECITALS

A. The City has determined that an extension of its sanitary sewer system requires an additional infrastructure improvement, a lift station, to efficiently serve certain parcels of real estate (individually, a “**Benefitted Parcel**,” and collectively, the “**Benefitted Parcels**”) adjacent to North Ball Park Boulevard, generally west of 99th Avenue. The properties to be served are designated in the aggregate on the site map (the “**Site Map**”) set forth on Exhibit A attached hereto.

B. A lift station is essential for the movement of wastewater and sewage from the Benefitted Parcels, will protect human health and the environment and will facilitate the development of the Benefitted Parcels. The Lift Station will be constructed and sized to have sufficient capacity to serve the Benefitted Parcels and will require site grading and preparation, construction of a building to house equipment, pumps, sewer lines and connections, and paving and landscaping. These tasks and equipment will hereinafter be referred to collectively as “the **Lift Station**.”

C. On January 15, 2021, the City and BYPG entered into a Real Property Transfer Agreement P21-002 (“**Prior Agreement**”), that required BYPG to pay for construction of the Lift Station on a parcel designated on the Prior Agreement’s Site Map (the “**Lift Station Parcel**”). BYPG has already deeded that parcel to the City. The City holds, and will continue to hold, fee title to all of the Lift Station Parcel.

D. Subject to the terms and conditions of the Prior Agreement and this Agreement, BYPG will pay all the costs associated with constructing the Lift Station and the City will cooperate in good faith with BYPG to assist it in obtaining reimbursement from the owners and/or developers of Benefitted Parcels not owned by BYPG or any entity that controls, is controlled by, or is under common control with BYPG.

E. BYPG will fund the entire costs for the design, engineering and construction of the Lift Station, and seek reimbursement from each Developing Owner (as such term is defined in Section 3 hereof) as provided in this Agreement.

F. The City is entering into this Agreement pursuant to Section 9-500.05(g) of the Arizona Revised Statutes, as its conditions, terms, restrictions and requirements provide for the financing of public infrastructure and reimbursement for costs incurred related to this project.

AGREEMENT

NOW, THEREFORE, for and in consideration of the premises and mutual covenants and agreement contained herein, the payment to the City of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, BYPG and the City hereby covenant and agree as follows:

1. Incorporation of Recitals. The Recitals set forth above are hereby incorporated into this Agreement and are hereby made a part hereof, as if fully set forth herein.

2. Design, Engineering, Construction, Acceptance and Maintenance of Lift Station.

(a) Design and Engineering of Lift Station. The City has retained Primatech in accordance with Title 34 of the Arizona Revised Statutes to design and engineer the Lift Station. Primatech has undertaken the design of the Lift Station (based on specifications for the Lift Station provided by the City, which were acceptable to BYPG), and has completed certain plans and drawings, dated January 6, 2023 (“**Current Plans**”) for the construction of the Lift Station. If and to the extent necessary, Primatech will revise the Current Plans in order that they will constitute final construction plans and drawings as may be necessary to fully and completely construct the Lift Station. Such design and construction plans, either the Current Plans, or the Current Plans as revised in accordance with the foregoing (collectively, the “**Lift Station Plans**”), shall be subject to the approval of the City, the City Engineer and any other appropriate City official in accordance with the City’s applicable ordinances, codes, rules and regulations. Within 15 business days of the City’s approval of the Lift Station Plans, the City will deliver the same to BYPG. The City will also deliver a final invoice to BYPG for all fees, costs and expenses incurred by the City for the preparation and review of Primatech’s Lift Station Plans (the “**Lift Station Design Costs**”). BYPG will reimburse the City for all such costs City within 30 days after the delivery of such invoice and any supporting documentation.

(b) Construction of Lift Station. As promptly as practicable (using reasonable diligence) after the City’s delivery of the Lift Station Plans to BYPG under Section 2(a) hereof, BYPG will select and enter into a construction contract in accordance with Title 34 of the Arizona Revised Statutes (the “**Construction Contract**”) with a general contractor (the “**Contractor**”) registered with the Arizona Registrar of Contractors, for the construction of the Lift Station. BYPG, at its sole cost and expense (but subject to reimbursement as provided in this Agreement), will use commercially reasonable efforts to cause the Lift Station to be constructed and completed in substantial accordance with the Lift Station Plans (including, without limitation, in the location set forth therein). The costs and expenses that BYPG incurs in order to achieve such construction and completion of the Lift Station, including, without limitation, all costs and expenses that BYPG incurs under the Construction Contract, are herein collectively called the “**Lift Station Construction Costs.**”

(c) Acceptance and Maintenance of Lift Station. Upon commissioning and final acceptance of the Lift Station and BYPG’s delivery to the City of a two-year contractor warranty and such mechanics’ claim and lien releases and waivers with respect thereto that the City may reasonably require, the City will accept ownership of the Lift Station and will at all times thereafter, operate, maintain, repair and replace the Lift Station at the City’s sole cost and expense. Further, the City will maintain ownership of the Lift Station Parcel, together with the Lift Station and all other improvements constructed thereon from time to time, except for such remnant portion of the Lift Station Parcel that may be deeded back to BYPG as provided in the Prior Agreement.

3. Reimbursement of Lift Station Construction Costs.

(a) Subject to this Section 3, as a condition precedent to the issuance of the earliest of: (i) a grading or excavation permit, (ii) a demolition permit, or (iii) a building permit for the development, construction or installation of any improvements on all or any portion of any Benefitted Parcel (the “**First Permit**”), the City will attempt to collect from the owner (individually, a “**Developing Owner,**” and collectively, the “**Developing Owners**”) of all or the applicable portion of any Benefitted Parcel, the Pro Rata Share (as such term is defined below).

(b) The “**Pro Rata Share**” is defined as the proportionate share of both the Lift Station Design Costs and the Lift Station Construction Costs, plus interest at a fixed rate of 5.0% compounded annually from the date the Lift Station was substantially completed until the required reimbursement payment allocated to each Benefitted Parcel

has been made in full (collectively, the “Lift Station Costs”). The Pro Rata Share is calculated by dividing the actual gross square footage of the Benefitted Parcel (without reduction for any rights-of-way, easements, wetlands areas, or other areas that may not be usable for development or construction) by 12,317,849, the actual gross square feet of all of the Benefitted Parcels together, as determined by BYPG and the City, for all purposes of this Agreement.

(c) To the extent allowed under any applicable law or regulation, the City will not grant the First Permit and will prohibit any connection to the City’s Sanitary Sewer System, including the Lift Station, unless and until a Developing Owner’s Pro Rata Share is paid in full.

(d) Notwithstanding any provision in this Agreement to the contrary, the City will attempt to collect the entire Pro Rata Share allocated to a Benefitted Parcel from the first Developing Owner thereof when the First Permit is issued, regardless of the type or extent of the interest such first Developing Owner has in such Benefitted Parcel. Further, once the entire Pro Rata Share attributable to a Benefitted Parcel has been paid in full, no subsequent Developing Owners of all or any portion thereof are obligated to make any further payments to the City or BYPG under this Agreement.

(e) Within 30 calendar days following receipt by the City of all or any portion a Developing Owner’s Pro Rata Share, the City will transmit such amount to BYPG. The City will keep reasonably detailed records of each Developing Owner (and each Benefitted Parcel) that is issued an excavation, demolition or building permit or that connects to or is served by the Lift Station, and will make such records available to BYPG from time to time upon request.

(f) The City hereby assigns to BYPG pursuant to A.R.S. §33-982 or any other applicable statutory provision any rights it may have to collect the Pro Rata Share for improvements that have been made on the City-owned Lift Station Parcel directly from each Developing Owner that fails or refuses to make payment of its Pro Rata Share to the City as requested under subsection (d) above. In furtherance of its rights under this Agreement, BYPG may seek to perfect a lien in accordance with A.R.S. §§33-983 and 33-993 or any other applicable statutory provision, together with any and all other remedies available under any applicable Arizona law against each applicable Benefitted Parcel or Developing Owner, including, without limitation, the remedies of specific performance or monetary damages.

(g) Anything in this Agreement to the contrary notwithstanding, the condition precedent and the Pro Rata Share reimbursement obligation contained in this Section shall not apply to BYPG or any entity that controls, is controlled by, or is under common control with BYPG.

4. Completion of Work; Accounting. BYPG and the City anticipate that construction of the Lift Station will be, and BYPG will use commercially reasonable efforts to cause construction of the Lift Station to be, substantially completed by December 31, 2024; provided, however, that BYPG will not be in default or violation of any of its obligations under this Agreement if such estimated substantial completion date is not achieved. After the construction of the Lift Station is completed, tested, and approved by the City in accordance with any applicable City code provisions, BYPG will provide a final accounting of the Lift Station Construction Costs to the City.

5. Cooperation for Shared Access. The Lift Station Plans contemplate that access between the Lift Station Parcel and the planned curb cut on North Ball Park Boulevard will be provided via an easement across certain real property (currently owned by a third party) located north of the Lift Station Parcel. BYPG’s intended development of the property, which it currently owns and is located immediately to the east of the Lift Station Parcel (the “**Easterly Parcel**”), contemplates BYPG and the City sharing the contemplated curb cut and portions of the access drive to the Lift Station Parcel. The City will cooperate with BYPG in order to arrange for such easement and shared access. To the extent that BYPG’s shared use of the curb cut and access drive increases the cost thereof above the cost that would be incurred in the absence of such sharing, such increased costs will be borne by BYPG.

6. Term. The term of this Agreement, with respect to the City’s obligations hereunder, will commence on the Effective Date and will continue until the earlier of: (a) the date on which all Lift Station Costs have been collected by the City and transmitted to BYPG in accordance with this Agreement; or (b) the 15th anniversary of the Effective Date. However, the expiration of this Agreement under the immediately preceding sentence does not waive

or otherwise affect BYPG's rights thereafter to seek reimbursement from any Developing Owner, and/or file a lien hereunder against a Benefitted Parcel to the extent permitted under applicable law.

7. Binding Effect. The provisions of this Agreement are binding upon, and shall inure to the benefit of, the parties and their respective successors and assigns.

8. Discretionary Authority. Except as expressly set forth herein, nothing in this Agreement will be interpreted or implied to require, restrict or limit, in any manner whatsoever, any legislative, discretionary or other approvals by the City related to development of any Benefitted Parcel, nor will this Agreement impinge in any way upon the City in carrying out or exercising any of its governmental duties, rights, powers or privileges.

9. Indemnification.

(a) BYPG agrees to indemnify, defend and hold harmless, on a current basis, the City, and its officials, including, without limitation, elected officials, officers, managers, members, agents and employees, from and against all direct (but not indirect, consequential, special or punitive) loss, damage, claims, suits, proceedings, cost and expense, including, without limitation, reasonable attorneys' fees, costs and experts' fees, arising or resulting from, caused or occasioned by, or related to BYPG's obligations, performance and actions taken or not taken under this Agreement.

(b) The City agrees to indemnify, defend and hold harmless, on a current basis, BYPG, and its officers, managers, members, agents and employees, from and against all direct (but not indirect, consequential, special or punitive) loss, damage, claims, suits, proceedings, cost and expense, including, without limitation, reasonable attorneys' fees, costs and experts' fees, arising or resulting from, caused or occasioned by, or related to the City's gross negligence, willful or intentional conduct. Nothing in this Agreement, however, subjects the City to any liability or indemnification for any failure to collect or obtain recovery of a Pro Rata Share from a Benefitted Parcel on BYPG's behalf.

10. Attorneys' Fees. If any action is brought by a party in respect to its rights under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and court costs as determined by the court.

11. Waivers. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision, whether similar or dissimilar, nor shall any waiver be a continuing waiver. Except as expressly provided in this Agreement, no waiver shall be binding unless executed in writing by the party making the waiver. Either party may waive any provision of this Agreement intended for its benefit; provided, however, that such waiver shall in no way excuse the other party from the performance of any of its other obligations under this Agreement.

12. Governing Law; Severability. This Agreement shall be subject to, and construed according to, the laws of the State of Arizona without the application of any principles of conflicts of law that would require or permit the application of the laws of any other jurisdiction. If any covenant, condition, provision, term or agreement of this Agreement is, to any extent, held invalid or unenforceable, the remaining portion thereof and all other covenants, conditions, provisions, terms and agreements of this Agreement will not be affected by such holding, and will remain valid and in force to the fullest extent permitted by law.

13. Conflict. The parties acknowledge this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the agreement on the City's or BYPG's behalf, respectively, is also an employee, agent or consultant of any other party to this Agreement.

14. Notices. Notices shall be in writing and shall be given by personal delivery, by deposit in the United States mail, certified mail, return receipt requested, postage prepaid, or by express delivery service, freight prepaid, in each case by delivery to each party at the respective addresses set forth below or at such other address as a party may designate in writing. The date notice is given shall be the date on which the notice is delivered, if notice is given by personal delivery or overnight courier, or five calendar days after the date of deposit in the mail, if the notice is sent through the United States mail. Subject to the foregoing, the respective addresses for the parties are as follows:

For BYPG: BYPG Holdings, LLC
c/o VanTrust Real Estate, LLC
Suite 880
2525 East Camelback Road
Phoenix, Arizona 85016
Attention: Keith L. Earnest, Executive Vice President, Phoenix

With a copy to: VanTrust Real Estate, LLC
Suite 880
2525 East Camelback Road
Phoenix, Arizona 85016
Attention: Sandy L. Broadfoot, Executive Vice President, Legal

And with a copy to: O'Rourke, Hogan, Fowler & Dwyer, LLC
Suite 3700
10 South LaSalle Street
Chicago, Illinois 60603
Attention: W. Craig Fowler

For City: City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301
Attention: City Manager

With a copy to: City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301
Attention: City Attorney

15. Documentation. This Agreement, including, without limitation, Exhibit A that is incorporated herein by this reference, constitutes a single agreement pertaining to the subject matter contained herein. Each party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

16. Time Periods. Except as expressly provided in this Agreement, the time for performance of any obligation or taking any action under this Agreement shall be deemed to expire at 5:00 p.m. (Phoenix time) on the date for performance. If the time for the performance of any obligation or taking any action under this Agreement expires on a Saturday, Sunday or legal holiday generally recognized in the State of Arizona, the time for performance or taking such action shall be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday.

17. Entire Agreement; Amendments. This Agreement constitutes the entire agreement of the parties and supersedes any negotiations, discussions, undertakings, correspondence or informal agreements of the parties. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are superseded by and merged in this Agreement. This Agreement, or any provision hereof, or any covenant, condition or restriction contained herein, may be terminated, extended, modified or amended only with the written consent of: (a) the City (and approved by the City Council, if necessary); and (b) BYPG.

18. Interpretation. Both parties have been represented by counsel in negotiating and approving this Agreement. This Agreement shall be interpreted, applied and enforced according to the fair meaning of its terms and shall not be construed in favor of, or against, either party, regardless of which party may have drafted or proposed any of its provisions or terms.

19. Counterparts; Electronic Transmission. This Agreement may be executed in counterparts, each of which, when executed by all of the parties, will be deemed an original, but all of which together, when so executed, will constitute one and the same instrument. To facilitate execution of this Agreement, the parties may execute and deliver counterparts hereof (or counterparts of the signature page or pages hereof) by facsimile or electronic

transmission, and such facsimile or electronically transmitted counterparts will be binding and enforceable to the same extent as originals thereof.

20. Recordation. As provided in A.R.S. § 9-500.05(D), the City shall record a copy of this Agreement with the Maricopa County Recorder no later than 10 days after it is signed by the City. The recordation constitutes notice of this Agreement to all persons.

21. Effective Date. This Agreement shall become effective 30 days after it is approved by the City Council.

[Signatures on following pages]

The City and BYPG have each caused this Agreement to be executed and delivered by its duly authorized representative to be effective as of the Effective Date.

City:

City of Glendale, an Arizona municipal corporation

By: _____
Kevin R. Phelps, City Manager

Attest:

Julie K. Bower, City Clerk

Approved as to Form:

Michael D. Bailey, City Attorney

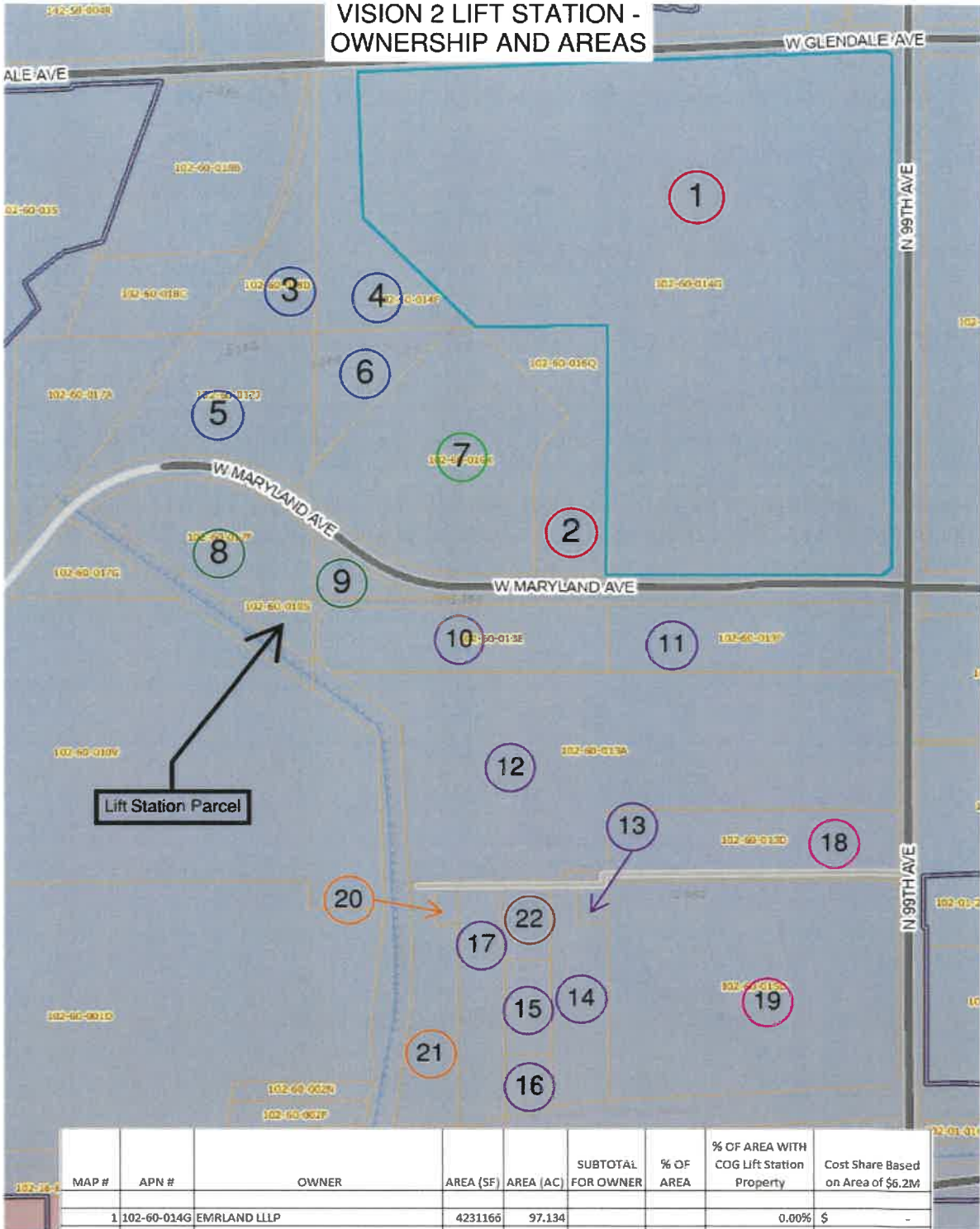
BYPG:

BYPG Holdings, LLC, an Arizona limited liability company

By: 7575 Development, Inc., an Arizona corporation, Manager

By: 
Name: Michael Pacheco
Title: Vice President

VISION 2 LIFT STATION - OWNERSHIP AND AREAS



MAP #	APN #	OWNER	AREA (SF)	AREA (AC)	SUBTOTAL FOR OWNER	% OF AREA	% OF AREA WITH COG Lift Station Property	Cost Share Based on Area of \$5.2M
1	102-60-014G	EMRLAND LLLP	4231166	97.134			0.00%	\$ -
2	102-60-016Q	EMRLAND LLLP	389980	8.953	106.087	37.52%	37.33%	\$ 2,325,982.82
3	102-60-018D	FERRANTINO ENTERPRISES - ARIZONA LLC	304920	7.000			0.00%	\$ -
4	102-60-014F	FERRANTINO ENTERPRISES - ARIZONA LLC	380997	8.746			0.00%	\$ -
5	102-60-017J	FERRANTINO ENTERPRISES - ARIZONA LLC	480380	11.028			0.00%	\$ -
6	102-60-016L	FERRANTINO ENTERPRISES - ARIZONA LLC	187094	4.295	31.070	10.99%		\$ 681,208.56
7	102-60-016K	Z-MODULAR GLENDALE II LLC	862486	19.800	19.800	7.00%	6.97%	\$ 434,119.07
8	102-60-017F	ZEKELMAN PROPERTY GLENDALE LLC	364479	8.367			0.00%	\$ -
9	102-60-016H	ZEKELMAN PROPERTY GLENDALE LLC	70208	1.612	9.979	3.53%	3.51%	\$ 218,793.02
10	102-60-013E	BYPG HOLDINGS LLC	361147	8.291			0.00%	\$ -
11	102-60-013F	BYPG HOLDINGS LLC	393880	9.042			0.00%	\$ -
12	102-60-013A	BYPG HOLDINGS LLC	1607059	36.893			0.00%	\$ -
13	102-60-033	BYPG HOLDINGS LLC	227470	5.222			0.00%	\$ -
14	102-60-028	BYPG HOLDINGS LLC	92434	2.122			0.00%	\$ -
15	102-60-029	BYPG HOLDINGS LLC	54488	1.251			0.00%	\$ -
16	102-60-034	BYPG HOLDINGS LLC	225843	5.1846			0.00%	\$ -
17	102-60-011L	BYPG HOLDINGS LLC	26572	0.610	68.616	24.26%	24.15%	\$ 1,504,413.36
18	102-60-013D	PORTER FIELDS	449104	10.310			0.00%	\$ -
19	102-60-015D	PORTER FIELDS	1296384	29.761	40.071	14.17%	14.10%	\$ 878,564.56
20	102-60-011J	MOTT FAMILY TRUST	16988	0.390			0.00%	\$ -
21	102-60-031	MOTT FAMILY TRUST	219455	5.038	5.428	1.92%	1.91%	\$ 119,009.95
22	102-60-027	BROWN DONALD D/JACQUELINE L	75315	1.729	1.729	0.61%	0.61%	\$ 37,908.65
TOTAL AREA CONTRIBUTING TO LIFT STATION			12317849	282.779	282.779	100%	99.51%	\$ 6,200,000.00