

the Water System Extension.

- (c) The validity of the legal instruments by which the Developer acquires any such easements and by which Developer assigns such easements to AWSSC must be approved by AWSSC's attorney.

3. **Construction of the Water System Extension**

- (a) Developer shall advertise for bids for the construction of the Water System Extension in accordance with generally accepted bidding practices and shall award the contract for the construction of the Water System Extension subject to the approval of the AWSSC. AWSSC may reject any bid.
- (b) The Water System Extension shall be constructed in accordance with the approved plans and specifications. AWSSC shall have the right to inspect all phases of the construction of the Water System Extension. Developer must give written notice to AWSSC of the date on which construction is scheduled to begin so that AWSSC may assign an inspector. AWSSC may charge reasonable inspection fees based on the actual costs of labor, travel and incidental expenses of the inspectors, plus 10% overhead.

4. **Dedication of Water System Extension to AWSSC.**

- (a) Upon proper completion of construction of the Water System Extension and final inspection thereof by AWSSC, the Water System Extension shall be dedicated to the AWSSC by an appropriate legal instrument approved by AWSSC's Attorney. The Water System Extension shall thereafter be owned and maintained by AWSSC subject to the warranties required of Applicant under Subsection (b). Any connection of individual customers to the Water System Extension shall be made by the AWSSC.
- (b) Upon dedication of the Water System Extension, Applicant shall warrant materials and performance of the Water System Extension constructed by Applicant for 12 months following the date of dedication.

5. **Cost of the Water System Extension.**

- (a) Developer shall pay all costs associated with the Water System Extension as a contribution in aid of construction, including, without limitation, the cost of the following:
- (1) engineering and design;
  - (2) easement or right -of-way acquisition;
  - (3) construction;
  - (4) inspection;
  - (5) attorneys' fees; and
  - (6) governmental or regulatory approvals required to lawfully provide service.
  - (7) Developer shall indemnify AWSSC and hold AWSSC harmless from all of the foregoing costs.
- (a) Provided, however, nothing herein shall be construed as obligating the Developer to maintain the Water System Extension subsequent to its dedication and acceptance for maintenance by AWSSC.
- (b) If AWSSC has required the Water System Extension to be oversized in anticipation of the needs of the other customers of AWSSC, AWSSC shall reimburse Developer for the additional costs of construction attributable to the oversizing, as determined by the

AWSSC's consulting engineer, in three annual installments without interest beginning one year after dedication of the Water System Extension to AWSSC.

6. **Service From the Water System Extension.**

- (a) After proper completion and dedication of the Water System Extension to AWSSC, AWSSC shall provide continuous and adequate water service to the Property, subject to all duly adopted rules and regulations of AWSSC and the payment of the following:
  - (1) All standard rates, fees and charges as reflected in AWSSC's approved tariff;
  - (2) Any applicable impact fee adopted by AWSSC;
  - (3) Any applicable reserved service charge adopted by AWSSC.
- (b) It is understood and agreed by the parties that the obligation of AWSSC to provide water service in the manner contemplated by this Contract is subject to the issuance by the Texas Commission on Environmental Quality and all other governmental agencies having jurisdiction of all permits, certificates or approvals required to lawfully provide such service.
- (c) Unless the prior approval of AWSSC is obtained, the Developer shall not:
  - (1) construct or install additional water lines or facilities to service areas outside the Property;
  - (2) add any additional lands to the Property for which water service is to be provided pursuant to this Agreement; or
  - (3) connect or serve any person or entity who, in turn, sells water service directly or indirectly to another person or entity.

7. **Effect of Force Majeure.**

In the event either party is rendered unable by force majeure to carry out any of its obligations under this Contract, in whole or in part, then the obligations of that party, to the extent affected by the force majeure shall be suspended during the continuance of the inability, provided however, that due diligence is exercised to resume performance at the earliest practical time. As soon as reasonably possible after the occurrence of the force majeure relied upon to suspend performance, the party whose contractual obligations are affected thereby shall give notice and full particulars of the force majeure to the other party.

The cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure" includes acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and civil disturbances, explosions, breakage, or accidents to equipment, pipelines, or canals, partial or complete failure of water supply, and any other inability's of either party, whether similar to those enumerated or otherwise, that are not within the control of the party claiming the inability and that could not have been 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 requirement that any force majeure be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party if the settlement is unfavorable to it in the judgment of the party

having the difficulty.

8. **Notices.**

Any notice to be given hereunder by either party to the other party shall be in writing and may be effected by personal delivery or by sending said notices by registered or certified mail, return receipt requested, to the address set forth below. Notice shall be deemed given when deposited with the United States Postal Service with sufficient postage affixed. Any notice mailed to the AWSSC shall be addressed:

Avalon Water and Sewer Service Corporation  
P. O. Box 246  
Itasca, TX 76055

Any notice mailed to Applicant shall be addressed:

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Either party may change the address for notice to it by giving written notice of such change in accordance with the provisions of this paragraph

9. **Breach of Contract and Remedies.**

- (a) If either party breaches any term or condition of this Contract, the non-breaching party may, at its sole option, provide the breaching party with a notice of the breach within sixty (60) days of discovery of the breach by the non-breaching party. Upon notice of breach, the breaching party shall have sixty (60) days to cure the breach. If the breaching party does not cure the breach within the sixty (60) days, the non-breaching party, below, shall have all rights at law and in equity including the right to enforce specific performance of this Contract by the breaching party, the right to perform the obligation in question and to seek restitution for all damages incurred in connection therewith.
- (b) In the event of termination of this Contract by a non-breaching party, such action shall not affect any previous conveyance.
- (c) The rights and remedies of the parties provided in this Contract shall not be exclusive and are in addition to any other rights and remedies provided by law and under this Contract.

10. **Third Parties.**

It is the express intention of the parties that the terms and conditions of this Contract may be enforced by either party but not by any third party or alleged third-party beneficiary.

11. **Captions.**

Captions are included solely for convenience of reference and if there is any conflict between captions and the text of the Contract, the text shall control.

12. **Context.**

Whenever the context requires, the gender of all words herein shall include the masculine, feminine, and neuter, and the number of all words shall include the singular and the plural.

13. **Mediation. [Optional]**

Prior to the institution of legal action by either party related to any dispute arising under this Contract, said dispute shall be referred to mediation by an independent mediator mutually agreed upon by both parties. The cost of the mediator shall be shared equally by both parties.

14. **Litigation Expenses.**

Either party to this Contract who is the prevailing party in any legal proceeding against the other party, brought in relation to this Contract, shall be entitled to recover court costs and reasonable attorneys' fees from the non-prevailing party.

15. **Intent.**

The parties hereto covenant and agree that they shall execute and deliver such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the intent of this Contract.

16. **Multiple Originals.**

This Contract may be executed in multiple originals, any copy of which shall be considered to be an original.

17. **Authority.**

The signatories hereto represent and affirm that they are authorized to execute this Contract on behalf of the respective parties hereto.

18. **Severability.**

The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstances shall not be affected thereby and this Agreement shall be construed as if such invalid or unconstitutional portion had never been contained therein.

19. **Entire Agreement.**

This Agreement, including any exhibits attached hereto and made a part hereof, constitutes the entire agreement between the parties relative to the subject matter of this Agreement. All prior agreements, covenants, representations, or warranties, whether oral or in writing, between the parties are merged herein.

20.

**Amendment.**

No amendment of this Agreement shall be effective unless and until it is duly approved by each party and reduced to a writing signed by the authorized representatives of the AWSSC and the Developer, respectively, which amendment shall incorporate this Agreement in every particular not otherwise changed by the amendment.

21. **Governing Law.**

This Agreement shall be construed under and in accordance with the laws of the State of Texas and all obligations of the parties are expressly deemed performable in Ellis County, Texas.

22. **Venue.**

Any action at law or in equity brought to enforce or interpret any provision of this Contract shall be brought in a state court of competent jurisdiction with venue in Ellis County, Texas.

23. **Successors and Assigns.**

This Agreement shall be binding on and shall inure to the benefit of the heirs, successors and assigns of the parties.

24. **Assignability.**

The rights and obligations of the Developer hereunder may not be assigned without the prior written consent of the AWSSC.

25. **Effective Date.**

This Agreement shall be effective from and after the date of due execution by all parties.

IN WITNESS WHEREOF each of the parties has caused this Agreement to be executed by its duly authorized representative in multiple copies, each of equal dignity, on the date or dates indicated below.

Avalon Water and Sewer Service Corporation

DEVELOPER

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT I**

BY-LAWS  
AVALON WATER SUPPLY AND SEWER SERVICE CORPORATION

Bylaws of Avalon Water Supply and Sewer Service Corporation, having been presented to the Board of Directors of said Corporation and duly adopted as follows:

ARTICLE I

The President shall preside at all Members' and Directors' meetings. The President may, and upon demand of one-third (1/3) of the Members, shall call a special meeting of the Members or Directors. Such special meetings shall be held upon giving the notice required in Article XII of the By-Laws. The President shall perform all other duties that usually pertain to the office or are delegated to him by the Board of Directors.

ARTICLE II

The Vice-President shall, in case of the absence or disability of the President, perform the duties of the President.

ARTICLE III

The Secretary-Treasurer shall have the custody of all the monies and securities of the Corporation. The Secretary-Treasurer shall keep regular books and shall keep minutes of all meetings of Members and Directors. All monies of the Corporation shall be deposited by the Secretary-Treasurer in such depository as shall be selected by the Directors. Checks must be signed by the Secretary-Treasurer and the President or Vice-President, in

the absence of the President. The Secretary-Treasurer shall have custody of the seal of the Corporation and affix it as directed hereby or by resolution passed by the Board of Directors or Members. The Board of Directors may appoint an employee as assistant or deputy secretary to assist the Secretary-Treasurer in all official duties pertaining to the office of Secretary.

The position of the Secretary-Treasurer and other positions entrusted with receipt and disbursement of funds shall be placed under a fidelity bond in an amount which shall be set from time to time, but not less than once each year, by the Board of Directors. The fidelity bond coverage amount shall approximate the total annual debt service requirements for all FmHA loans and be evidenced by a position fidelity schedule bond as acceptable to the Farmers Home Administration.

#### ARTICLE IV

Section 1. The Board of Directors shall consist of seven (7) Directors, a majority of whom shall constitute a quorum. Upon issuance of the Charter and annually thereafter on fourth Thursday of March, the Board of Directors shall elect a President, a Vice-President and a Secretary-Treasurer. The Directors shall be elected by the Members at the Members' regular meeting provided for in Article XI of the By-Laws. The Directors shall be divided into three (3) classes, each class to be as near as equal in number as possible. The terms of the Directors of the first class shall expire at the first annual meeting of the shareholders after their election, the terms of the Directors of



the second class shall expire at the second annual meeting after their election and terms of the Directors of the third class shall expire at the third annual meeting after their election. At each annual meeting after such classification, the number of Directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the third succeeding annual meeting. The Directors shall serve without pay, but may be compensated for actual expenses by a majority vote of Directors.

Upon the death or resignation of a Director, a successor shall be elected by a majority of the existing Directors to serve until the next regular or special Membership meeting at which time the general Membership shall elect a successor for the remaining balance of the previously vacated term.

Section 2. Officers and Directors may be removed from office in the following manner except as otherwise provided in Article V: Any Member, Officer, or Director may present charges against a Director or Officer by filing such charges in writing with the Secretary-Treasurer of the Corporation. If presented by a Member, the charges must be accompanied by a petition signed by at least ten (10) percent of the Members of the Corporation. Such removal shall be voted on at the next regular or special meeting of the Membership and shall be effective if approved by a vote of 2/3 majority of those voting if a quorum is present. The Director(s) or Officer(s) against whom such charges have been presented shall be informed in writing, of such charges at least

twenty days prior to the meeting, and shall have the opportunity at such meeting to be heard in person or by counsel and to present witnesses; and the person or persons presenting such charges shall have the same opportunity. If the removal of a Director(s) is approved, such action shall also vacate any other office(s) held by the removed Director(s) in the Corporation. A vacancy in the Board thus created shall immediately be filled by a qualified person other than the removed Director upon a vote of a majority of the Members present and voting at such meeting. A vacancy in any office thus created shall be filled by the Board of Directors from among their number so constituted after the vacancy in the Board has been filled.

Section 3. The President of the Board or his designee shall preside at any meeting of the Members convened to consider removal of an Officer or Director as provided under Section 2, unless the President is the subject of charges, in which event the Vice-President shall preside. In the event both the President and the Vice-President are the subject of charges, those Directors who are not the subject of any charges shall appoint one of their number to preside over the meeting. Any meeting convened to consider the removal of an Officer or Director shall be conducted in accord with the procedures prescribed by the Credentials Committee established under the provisions of Article XI. The fact that President, Vice-President, or any other Officer or Director has been made the subject of charges does not otherwise prevent such Officer from

Continuing to act in this capacity as an officer or Director of the Corporation. Any Director that has been removed under the provisions of this Article shall not be precluded from subsequent election to a position on the Board of Directors.

Section 4. The Board of Directors shall adopt and maintain a conflict of interest policy designed to promote the business of the Corporation and serve the interests of the Membership.

#### ARTICLE V

Section 1. Regular meetings of the Board of Directors shall be held at such time and place as the Board may determine at the next previous regular meeting and shall include posting of the meeting as required by the Texas Open Meetings Act, Chapter 551 Texas Government Code including any amendment thereto. Such notice shall specify the date, hour, place and subject of each meeting held by the Board of Directors.

Section 2. Any Director failing to attend two (2) consecutive regular monthly meetings shall be given written notice by the balance of the Board of Directors that failure by said Director to attend a third consecutive monthly meeting, without justifiable cause acceptable to the balance of the Board of Directors, shall give rise to removal of said Director from the Board. A successor shall be elected by a majority vote of the Directors remaining to serve until the next regular or

special Membership meeting, at which time the general Membership shall elect a successor for the balance of the term. If the removal of a Director pursuant to this Section 2 occurs at an annual Membership meeting, then the successor shall be elected by majority vote of the Membership in attendance at the meeting.

Section 3. The Board of Directors shall provide access for the public, new service applicants, or Members to the regular monthly meetings of the Board of Directors by setting aside a time for hearing of suggestions, proposals, or grievances.

The Board of Directors shall establish reasonable rules for access to such meetings.

Section 4. The Board of Directors shall ensure that all meetings comply with the requirements of the Open Meetings Act, Article 6252-17, Tex. Rev. Div. Stat., including any subsequent amendment thereto. In the event of any conflict between the provisions of these Bylaws and the requirements of the Open Meetings Act, the provisions of the Open Meetings Act shall prevail.

Section 5. In conducting their duties as members of the Board, each Director (1) shall be entitled to rely, in good faith and with ordinary care, on information, opinions, reports, or statements, including financial statements and other financial data, concerning the Corporation or the Corporation's affairs, that have been prepared or presented by one or more officers or employees of the Corporation; or by legal counsel, public accountants, or other persons retained by the Corporation for the

development of professional advice and information falling within such person's professional or expert competence; (2) may believe, in good faith and with ordinary care, that the assets of the Corporation are at least that of their book value; and (3) in determining whether the Corporation has made adequate provision for the discharge of its liabilities and obligations; and may rely in good faith and with ordinary care on the financial statements of, or other information concerning, any person or entity obligated to pay, satisfy or discharge some or all of the Corporation's liabilities or obligations; and may rely in good faith on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by one of more Officers or employees of the Corporation; legal counsel, public accountants, or other persons provided the Director reasonably believes such matters to fall within such person's professional or expert competence. Nevertheless, a Director must disclose any knowledge he or she may have concerning a matter in question that makes reliance otherwise provided herein to be unwarranted.

#### ARTICLE VI

The Corporation shall conduct its business on a non-profit basis, and no dividends shall ever be paid upon the Memberships of such Corporation. All profits arising from the operation of such business shall be annually paid out to the persons who have, during the past year, transacted business with the Corporation, in direct proportion to the amount of business transacted,

provided that no such dividends shall ever be paid while any indebtedness of the Corporation remains unpaid.

#### ARTICLE VII

The Directors of the Corporation shall establish and maintain, so long as the Corporation is indebted to the Government, in an institution insured by the State or Federal Government, or invested in readily marketable securities backed by the full faith and credit of the United States of America, a reserve account separate and apart from other fund accounts of the Corporation. There shall be deposited in such fund the sum as required by a total of all loan resolutions executed by the Corporation. Such deposits shall be made monthly and shall continue until the total amount deposited equals the sum as required by the executed loan resolutions provided, however that after any withdrawals, such deposits shall be resumed until the amount accumulated in the fund is restored to the sum as required by the executed loan resolutions.

Withdrawals may be made from this fund only upon prior written approval from Farmers Home Administration. Approval shall be made only for emergency repairs, obsolescence of equipment, improvements to facility, and for making up any deficiencies in revenue for loan payments.

The Directors shall invest all sums in this fund not required to be expended within the year in which the same are deposited in bonds or other evidence of indebtedness of the United States of America, or in readily marketable securities

backed by the full faith and credit of the United States of America. Securities so purchased shall be deemed at all times to be part of the reserve fund account.

#### ARTICLE VIII

Section 1. Every person (which includes any legal entity) owning or having a legal right to the control, possession or occupancy of property served or which may reasonably be served by the Corporation, shall have the right to become a Member of the Corporation upon payment of the Membership fee hereinafter provided and upon compliance with the Corporation's conditions of water and/or sewer service as provided for in its published charges, rates and conditions of service. Membership shall not be denied because of the applicant's race, color, creed, citizenship, or national origin. It is the intent of the Corporation to provide service on a nondiscriminatory basis to all persons desiring service to the extent that the capabilities of the system will reasonably permit.

Section 2. The Membership fee shall be \$100.00. Payment of Membership fee or transfer of Membership shall entitle an applicant to further qualify for one (1) connection to the system or shall entitle a transferee of Membership to continue to qualify for service to an existing connection to the system by meeting the conditions for water and/or sewer as provided in the Corporation's published rates, charges, and conditions of service. A person may own more than one Membership but each Member shall be entitled to only one vote regardless of the

number of Memberships owned. Membership certificates shall be in such form as shall be determined by the Board of Directors.

Section 3. The Membership fee may be revised by the Board of Directors as the Board may determine to be appropriate. In determining the amount of the Membership fee, however, the Board shall ensure that the fee is sufficient to establish the potential Member as being legitimately interested in securing water service or sewer service from the Corporation for such potential Members' own needs. Furthermore, the Board shall determine and administer such fee in a manner or in an amount which does not unreasonably deny service to financially deprived potential Members. In no event, however, shall the Membership fee exceed an amount equal to the sum of twelve (12) charges of Corporation's minimum monthly water rate unless previously approved by Farmers Home Administration.

#### ARTICLE IX

Where necessary for determining those Members entitled to notice of, or those Members entitled to vote at any meeting or any adjournment thereof, or where necessary to make a determination of Members for any other proper purpose, ownership of Memberships shall be deemed to be vested in those persons who are the record owners of Memberships as evidenced by the Membership transfer book on the 15th day of the month preceding the month of the date upon which the action requiring such determination is to be taken. Nothing herein shall preclude the holder of a Membership from mortgaging such Membership, or, upon



notification of the Corporation, preclude the holder of such mortgages from exercising legal rights pursuant to such mortgages upon proper notice to the Corporation.

#### ARTICLE X

Section 1. In order to insure that business done by the Corporation shall continue within the capacity of its facilities and to prevent undue financial burden on the Members of the Corporation, Membership in the Corporation shall be transferred in accordance with the following:

(a) Except as herein provided, Membership in the Corporation shall be deemed personal estate and a person or entity that owns any stock of, is a Member of, or has some other right of participation in the Corporation may not sell or transfer that stock, Membership, or other right of participation to another person or entity except: (1) by will to a transferee who is a person related to the testator within the second degree by consanguinity; (2) by transfer without compensation to a transferee who is a person related to the owner of the stock or other interest within the second degree by consanguinity; or (3) by transfer without compensation or by sale to the Corporation.

(b) Subsection (a) of this section does not apply to a person or entity that transfers the Membership or other right of participation to another person or entity as part of the conveyance of real estate from which the Membership or other right of participation arose.

(c) The transfer of stock, a Membership, or another right of

participation under this section does not entitle the transferee to water or sewer service unless each condition for water or sewer service is met as provided in the Corporation's published rates, charges, and conditions of service. Water or sewer service provided by the Corporation as a result of stock, Membership, or other right of participation may be conditioned on ownership of the real estate designated to receive service and from which the Membership or other right of participation arose.

(d) The Corporation may cancel a person's or other entity's stock, Membership, or other right of participation if the person or other entity fails to meet the conditions for water or sewer service prescribed by the Corporation's published rates, charges, and conditions of service, or fails to comply with any other condition placed on the receipt of water or sewer service under the stock, Membership, or other right of participation authorized under Subsection (c) of this section. The Corporation may, consistent with the limitations prescribed by Subsection (a) of this section and as provided in the Corporation's tariff, reassign canceled stock, or a canceled Membership, or other right of participation to any person or entity that has legal title to the real estate from which the canceled Membership or other right of participation arose and for which water or sewer service is requested, subject to compliance with the conditions for water or sewer service prescribed by the Corporation's published rates, charges, and conditions of service.

Section 2. Notwithstanding anything to the contrary

hereinabove provided, the consideration for the transfer of any Membership in the Corporation from the original Members, their transferees, pledges, administrators or executors, or other persons, shall never exceed the amount of the original costs of such Membership. No gain or profit shall ever be realized from the sale or transfer of a Membership.

#### ARTICLE XI

Section 1. There shall be a regular meeting of the Members annually, second Monday of March to transact all business that may be properly brought before it. The Secretary-Treasurer shall give at least fifteen (15) days written notice of such annual meeting to the Membership indicating the time, place and purpose of such meeting, and shall address and mail the notice to each Member at the address last known to the Corporation. Failure to hold or call an annual or special meeting in accordance with these By-Laws shall give each member rights to compel the Board of Directors to properly hold an annual or special meeting of the Membership. Voting by proxy shall be permitted. Members holding ten percent (10%) of the votes entitled to be cast, represented in person or by proxy, shall constitute a quorum for the transaction of business.

Section 2. After fixing a date for the notice of a meeting, the Board of Directors shall prepare an alphabetical list of the names of all voting members who are entitled to vote as of the record date of the meeting. The list must show the address of each voting member. Not later than two (2) business days after

the date notice is given of the meeting, and continuing through the meeting, the list of voting members must be available for inspection by any member entitled to vote at the meeting for the purpose of communication with other members concerning the meeting at the Corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held. Any voting member, or voting member's agent or attorney, shall be allowed, on written demand, to inspect and, at a reasonable time and at his expense, copy the list. Further, the Board shall make the list of voting members available at the meeting, and shall allow inspection of such list by any voting member or voting member's agent or attorney at any during the meeting, including any adjournments thereof.

Section 3. The Board of Directors shall establish a standing Credentials Committee of three (3) Members, of which the Secretary-Treasurer shall be the chairperson. This committee shall adopt proper procedures for conducting an annual or special Membership meeting; adopt a specific proxy form to be used in conducting an annual or special Membership meeting; adopt procedures for proper notification of the Membership of such meetings and delivery of the Corporation's proxy forms to the Membership; determine, qualify, and register the eligible voters for such meeting; validate proxies, determine presence of quorum for conducting the meeting, design ballots, canvass all votes, and institute proper recording of the results of such elections.

## ARTICLE XII

Special meetings of the Directors may be held upon the posting of notice of such special meeting, in the manner provided under Article V of these Bylaws, at least two hours before the meeting is convened. It shall be the responsibility of the President or his designee to ensure that proper notice is posted. In no event shall any special meeting of the Directors be convened where the business of such meeting could be considered at a regular meeting of the Directors receiving at least seventy-two (72) hours notice as provided under Article V of these Bylaws.

Prior to convening any special meeting of the Members, the President shall request in writing that the Secretary-Treasurer give at least ten (10) days prior notice to the Members, and that such special meeting is otherwise noticed as provided under Article V of these Bylaws. Such notice shall specify the time, place, and purpose of the meeting, and shall be addressed and mailed to each of the Members at their address last known to the Corporation.

## ARTICLE XIII

The business of the Corporation shall be handled under the direction of the Board of Directors by a manager to be elected by majority vote of the Board. The manager shall serve with or without compensation. The manager, with the approval of the Board of Directors, may employ, with or without compensation, such supervisory, clerical or other employees as may be required

to effectively operate the business of the Corporation.

#### ARTICLE XIV

Notwithstanding the ownership of a Membership certificate, all Members shall be billed, disconnected, or reconnected, and otherwise shall receive service in accordance with the written policies of the Corporation, including the tariff of the Corporation. In the event a Member should surrender his Membership certificate properly endorsed to the Secretary-Treasurer of the Corporation, the water service or sewer service shall be discontinued and the obligation to pay for water service or sewer service shall terminate except as for the minimum charge for the current month and the charge for water used or sewer service furnished during the current month, and except as for any prior unpaid amounts due the Corporation. In the event Membership is terminated, cancelled, withdrawn, or surrendered, whether voluntarily or involuntarily, the former Member's rights and interest in the assets of the Corporation will not be forfeited.

#### ARTICLE XV

Upon the discontinuance of the Corporation by dissolution or otherwise, all assets of the Corporation remaining after payment of the indebtedness of the Corporation shall be distributed among the Members and former Members in direct proportion to the amount of their patronage with the Corporation insofar as practicable. Any indebtedness due the Corporation by a Member for water service and sewer service or otherwise shall be deducted from

such Member's share prior to final distribution. By application for the acceptance of Membership in the Corporation, each Member agrees that, upon the discontinuance of the Corporation by dissolution or otherwise, all assets of the Corporation transferred to that Member shall be in turn immediately transferred by the individual Member to an entity that provides a water supply or wastewater service, or both, that is exempt from ad valorem taxation.

#### ARTICLE XVI

The fiscal year of the Corporation shall be January 1st to December 31st.

#### ARTICLE XVII

For so long as the Corporation is indebted for a loan or loans made to it by the United States of America through the Farmers Home Administration, the Corporation shall insure with a reputable insurance company such of its properties and in such amounts as is required by the State Director of the Farmers Home Administration for the State of Texas.

#### ARTICLE XVIII

Section 1. If at the end of the fiscal year, or in the event of emergency repairs, the Board of Directors determines the total amount derived from the collection of water charges to be insufficient for the payment of all costs incident to the operation of the Corporation's system during the year in which such charges are collected, the Board shall make and levy an assessment against each Member of the Corporation as the Board

may determine or as may be required by Farmers Home Administration, so that the sum of such assessments and the amount collected from water and other charges is sufficient to fully pay all costs of operation, maintenance, replacement and repayment on indebtedness for the year's operations, but this provision shall not operate for the benefit of any third party creditor other than Farmers Home Administration without a favorable vote of the majority of the Members. Any assessments levied to make up operational deficits in any year shall be levied against Members in proportion to their patronage with the Corporation.

Section 2. In the event a Member should surrender his Membership certificate properly endorsed to the Secretary-Treasurer of the Corporation, the obligation to pay such assessments shall be limited to assessments made and levied prior to the date of surrender of the Membership certificate, provided, however, that this paragraph and the second sentence of Article XIV shall not apply to relieve a Member of his obligation under special agreements covering Multiple-Membership certificates held by one Member which may have been required or approved by the Farmers Home Administration.

#### ARTICLE XIX

The Corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its Members, Board of Directors, and committees, and shall keep a record of the name and addresses of its Members entitled to vote



at its registered office or principle office in Texas.

Annually, the Board of Directors shall prepare or cause to be prepared a report of the financial activity of the Corporation for the preceding year including a statement of support, revenue, and expenses and changes in fund balances, a statement of functional expenses, and balance sheets for all funds or such financial reports as required by Farmers Home Administration. Such report shall be approved by the Board of Directors.

With prior written request, corporate records, books, and annual reports, subject to exceptions provided by The Open Records Act, Article 6252-17a, Tex. Rev. Civ. Stat., including any amendments thereof, shall be available for public inspection and copying by the public or their duly authorized representatives during normal business hours subject to a reasonable charge for the preparation of copies.

In the event of any conflict between the provisions of the Open Records Act and the provisions of these Bylaws, the provisions of the Open Records Act shall prevail.

#### ARTICLE XX

These By-Laws may be altered, amended, or repealed by a vote of a majority of the Members present at any regular meeting of the Corporation, or at any special meeting of the Corporation called for that purpose, except that the Members shall not have the power to change the purpose of the Corporation so as to decrease its rights and powers under the laws of the State, or to waive any requirements of bond or other provisions for the safety

and security of the property and funds of the Corporation or its Members, or to deprive any Member of rights and privileges then existing, or so to amend the By-Laws as to effect a fundamental change in the policies of the Corporation. Notice of any amendment to be made at a special meeting of the Members must be given at least ten (10) days before such meeting and must set forth the amendments to be considered. For so long as the Corporation is indebted for a loan or loans made to it by the United States of America through the Farmers Home Administration, these By-Laws shall not be altered, amended, or repealed without the prior written consent of the State Director of the Farmers Home Administration for the State of Texas.

ARTICLE XXI

The seal of the Corporation shall consist of a circle within which shall be inscribed "AVALON WATER SUPPLY AND SEWER SERVICE CORPORATION".

ARTICLE XXII

The Corporation pledges its assets for use in performing the organization's charitable functions.

ARTICLE XXIII

The above By-Laws and regulations were unanimously adopted by the Membership of the AVALON WATER SUPPLY AND SEWER SERVICE CORPORATION, at a meeting in Avalon, Texas on the 10th day of March, A.D. 1997.

*J. Beth Martin*  
Secretary-Treasurer

**EXHIBIT J**

Law Offices of  
**AIMEE HESS**  
A Professional Corporation

6967 S.E. County Road 2385  
Streetman, Texas 75859-7067  
E-mail: [aimeehess@aimeehesspc.com](mailto:aimeehess@aimeehesspc.com)

Telephone: (214) 236-9936  
Toll-Free: 1-888-818-5880  
Toll-Free Fax: 1-888-818-5860

September 12, 2014

**VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED**  
**NO.: 9407 1118 9956 1164 4607 30**

Ms. Carol Gillespie  
3921 Bobbin Ln.  
Addison, TX 75001-3102

Re: August 30, 2014 Public Records Request

Dear Ms. Gillespie:

As you know, this office represents Avalon Water Supply and Sewer Service Corporation ("Avalon"). Please accept this letter as a response both to your Public Records complaint against Avalon, as well as to your letters dated August 14, 2014 and August 30, 2014 to Avalon.

Your letter dated August 14, 2014 does not contain a request for a copy of the minutes of the July 2014 Avalon Directors meeting or for any other documents for that matter. Your August 30, 2014 correspondence does contain a request for a copy of the July 2014 Avalon Directors meeting minutes. While your letter of August 30, 2014 states that you delivered a written request for a copy of these minutes to Avalon at the August 14, 2014 meeting, this is incorrect. Avalon has at no time received such a request from you other than the request in your August 30, 2014 correspondence to Avalon.

The Texas Government Code clearly allows for the minutes of the Avalon Directors meeting to be recorded and digitally archived. We have confirmed the use of this procedure by Avalon personally with the Texas Attorney General's office. The cost of preparing and mailing the CD that contains the minutes of the July 2014 meeting is \$5.00. Please send your payment in this amount, in good funds, to the Avalon business office. Promptly thereafter, and assuming your check (if you pay by check) for payment clears your bank, Avalon will make a copy of the recording of the July 2014 meeting and mail that to you.

My client and I decline at this time to address any of the other allegations/issues in either of your letters because they are either repetitive of previous communications with you or because they are argumentative, frivolous and contentious.

Should you have questions regarding any aspect of this matter, please contact me in writing. Thank you in advance for your courtesy and cooperation.

Very truly yours,

Law Offices of Aimee Hess P.C.

*Aimee Hess*

By: \_\_\_\_\_  
Aimee Hess

**EXHIBIT K**

Law Offices of  
**AIMEE HESS**  
A Professional Corporation

6967 S.E. County Road 2385  
Streetman, Texas 75859-7067  
E-mail: [aimeehess@aimeehesspc.com](mailto:aimeehess@aimeehesspc.com)

Telephone: (214) 236-9936  
Toll-Free: 1-888-818-5880  
Toll-Free Fax: 1-888-818-5860

September 12, 2014

**VIA REGULAR MAIL:**

Ms. Carol Gillespie  
3921 Bobbin Ln.  
Addison, TX 75001-3102

Re: August 30, 2014 Correspondence re: Avalon  
2012 Federal Tax Return

Dear Ms. Gillespie:

As you know, this office represents Avalon Water Supply and Sewer Service Corporation ("Avalon"). Please accept this letter as a response to your letter dated August 14, 2014 regarding the Avalon 2012 federal tax return.

Avalon tax returns are prepared by its accountant. We are assured that the returns comply with all applicable laws and regulations. Some of your questions are general in nature and can be answered by any accountant or with information on the IRS website. If you have specific questions concerning the Avalon tax return that cannot be answered in this way, we will be glad to make an appointment for you with the Avalon accountant. The fees for the accountant's time and also for my time, since I will need to be present, must be paid in good funds prior to the appointment. If you would like to arrange such a meeting, please let me know and I will be glad to coordinate an appointment.

Should you have any further questions regarding any aspect of this matter, please contact me in writing. Thank you in advance for your courtesy and cooperation.

Very truly yours,

Law Offices of Aimee Hess P.C.

*Aimee Hess*

By: \_\_\_\_\_  
Aimee Hess

**EXHIBIT L**



Law Offices of  
**AIMEE HESS**  
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Telephone: (214) 236-9936  
Toll-Free: 1-888-818-5880  
Toll-Free Fax: 1-888-818-5860

September 12, 2014

**VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED**  
**NO.: 9407 1118 9956 1164 4607 30**

Ms. Carol Gillespie  
3921 Bobbin Ln.  
Addison, TX 75001-3102

**VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED**  
**NO.: 9407 1118 9956 1164 4835 62**

Ms. Mary Grace Gillespie Bates  
815 Amherst  
Waxahachie, TX 75165

**VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED**  
**NO.: 9407 1118 9956 1164 4607 30**

Ms. Marcia Gillespie  
3921 Bobbin Ln.  
Addison, TX 75001-3102

Re: Communications with Avalon Water Supply and  
Sewer Service Corporation

Dear Ladies:

This firm represents Avalon Water Supply and Sewer Service Corporation ("Avalon"). Please be advised that from this date forward and until further notice, you and your family are requested to have no further communication at any time and in any form whatsoever, whether verbal, written, digital, telephonic or in any other form, with any officer, director, manager, employee, agent, contractor or representative of Avalon other than in the case of the exceptions described in the third paragraph of this letter.

Should you have any need to communicate with Avalon, please direct your communications to me in writing. Any communication from you or your family to Avalon in violation of this request will be forwarded to me for review and any necessary reply. Any communication that does not comply with this request, including communications delivered during an Avalon directors or members meeting, will not be responded to or acted upon by Avalon.

This request does not apply to payments due to Avalon or emergency requests for service or repair, all of which should be directed to the Avalon office as usual.

Should you have any questions about this request, you're welcome to contact the undersigned in writing. Thank you in advance for your courtesy and cooperation.

Very truly yours,

Law Offices of Aimee Hess P.C.

Aimee Hess

By: \_\_\_\_\_  
Aimee Hess