



Control Number: 43523



Item Number: 1

Addendum StartPage: 0

**CITY OF ELGIN**

43523

**APPLICATION TO AMEND CITY OF ELGIN  
WATER CCN #10311**



**City of Elgin, Texas  
Bastrop County**

**Prepared for:**

**City of Elgin**

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**505 EAST HUNTLAND DRIVE, SUITE 250  
AUSTIN, TEXAS 78752  
(512) 454-8716  
TBPE FIRM # F-8632**

**September, 2014**



# APPLICATION TO OBTAIN OR AMEND A WATER/SEWER CERTIFICATE OF CONVENIENCE AND NECESSITY (CCN)

\*CN# 600336549

\*RN# 101390193

\*If known (See Instructions)

## PURPOSE OF THIS APPLICATION

☐ OBTAIN ☐ New Water CCN ☐ New Sewer CCN

☒ AMEND ☒ Water CCN# (s) 10311 - City of Elgin; 10294 - Aqua WSC

☐ AMEND ☐ Sewer CCN#(s)

## 1. APPLICANT INFORMATION

Utility Name City of Elgin

Utility Address (City/ST/ZIP/Code) 310 N. Main St. Elgin, Tx 78621

Utility Phone Number and Fax P: (512) 281-5724 F: (512) 285-5962

Contact Person: Please provide information about the person to be contacted regarding this application. Indicate if this person is the owner, operator, engineer, attorney, accountant manager, or other title related to the applicant.

Name Doug Prinz

Title Utilities Director

Street Address (City/ST/ZIP/Code) 310 N. Main St. Elgin, Tx 78621

Telephone and Fax P: (512) 281-0119 F: (512) 285-4267

E-Mail Address dprinz@ci.elgin.tx.us

County (ies) in which service is proposed: Please list below:

Bastrop and Travis County

A. Check the appropriate box and provide information regarding the legal status of the applicant:

- ☐ Investor owned utility    ☐ Individual    ☐ Partnership
- ☐ Home or Property Owners Association    ☐ For-profit corporation
- ☐ Non-profit, member-owned, member-controlled cooperative corporation  
(Water Code Chapter 67, Water Supply or Sewer Service Corporation)
- ☒ Municipality    ☐ District    ☐ Other Please Explain:

City of Elgin

B. If the applicant is a For-Profit business or corporation, please include the following information:

*Not Applicable.  
Applicant is a  
municipality.*

- i. Provide a copy of the corporation's "Certification of Account Status" from the Texas State Comptroller of Public Accounts.
- ii. Provide the corporation's charter number as recorded with the Office of the Texas Secretary Of State \_\_\_\_\_
- iii. Provide a listing of all stockholders and their respective percentages of ownership.
- iv. Provide a copy of the company's organizational chart, if available.
- v. Provide a list of all directors and disclose the title of each individual.
- vi. Provide a list of all affiliated organizations (if any) and explain the relationship with the applicant.

C. If the applicant is a Water Code Chapter 67 water supply or sewer service corporation:

*Not Applicable.  
Applicant is a  
municipality.*

- i. Provide a copy of the Articles of Incorporation and By-Laws.
- ii. Provide the corporation's charter number as recorded with the Office of the Texas Secretary of State.
- iii. Identify all board members including name, address, title, and telephone number.
- iv. Provide a copy of the corporation's Certificate of Account Status from the Texas Comptroller of Public Accounts.

## 2. LOCATION INFORMATION

- A. Are there people already living in the proposed area? ☒ Yes ☐ No

If YES, are any currently receiving utility service?

☒ Yes ☐ No If YES, from Whom? The City of Elgin

Demonstrate the Need for Service by providing the following:

- B. Have you received any requests for service in the requested service area?

☐ Yes ☒ No If YES, provide the following:

- i. Describe the service area and circumstances driving the need for service in the requested area. Indicate the name(s) and address(es) of landowner(s), prospective landowner(s), tenant(s), or resident(s) that have requested service; and/or
- ii. Describe the economic need(s) for service in the requested area (i.e. plat approvals, recent annexation(s) or annexation request(s), building permits, septic tank permits, hospitals, etc.); and/or
- iii. Discuss in detail the environmental need(s) for service in the requested area (i.e. failing septic tanks in the requested area, fueling wells, etc.); and/or
- iv. Provide copies of any written applications or requests for service in the requested area; and/or
- v. Provide copies of any reports and/or market studies demonstrating existing or anticipated growth in the requested area. If no, please justify the need for service in the proposed area.
- vi. If none of these items exist or are available, please justify the need for service in the proposed area in writing.

**See Attachment 1 - Need for Service**

**Note:** Failure to demonstrate a need for additional service in the proposed service area may result in the delay and /or possible denial of the application.

- C. Is any portion of the proposed service area inside an incorporated city or district? ☒ Yes ☐ No

If YES, within the corporate limits of: The City of Elgin

Provide a copy of any franchise, permit, or consent granted by the city or district. If not available please explain:

Not Applicable. The applicant is the City of Elgin.

- D. Is any portion of the proposed service area inside another utility's CCN area?

☒ Yes ☐ No

If YES, has the current CCN holder agreed to decertify the proposed area?

☒ Yes ☐ No

If **NO**, are you seeking dual or single certification of the area? Explain why decertification of the area is in the public interest.

Not Applicable

### 3. MAP REQUIREMENTS:

**Attach the following hard copy maps with each copy of the application:**

- A. A general location map delineating the proposed service area with enough detail to accurately locate the proposed area within the county.  
*See Attachment 2 - General Location Map*
- B. A map showing only the proposed area by:
  - i. metes and bounds survey certified by a licensed state or register professional land surveyor; or
  - ii. projectable digital data with metadata (proposed areas should be in a single record and clearly labeled). Also, a data disk labeled with the applicant's name must be provided; or
  - iii. following verifiable natural and man-made landmarks; or
  - iv. a copy of recorded plat map with metes and bounds.  
*See Attachment 3 - Projectable Digital Data*
- C. A written description of the proposed service area.  
*See Attachment 4 - Service Area Written Description*
- D. Provide separate and additional maps of the proposed area(s) to show the following:
  - i. all facilities, illustrating separately facilities for production, transmission, and distribution of the applicant's service(s); and
  - ii. any facilities, customers or area currently being served outside the applicant's certificated area(s).  
*See Attachment 5 - Existing Facilities Map*

**Note:** Failure to provide adequate mapping information may result in the delay or possible denial of your application. Digital data submitted in a format other than ESRI ArcGIS may result in the delay or inability to review applicant's mapping information.

### 4. NEW SYSTEM INFORMATION OR UTILITIES REQUESTING A CCN FOR THE FIRST TIME

- A. Please provide the following information:
  - i. a list of public drinking water supply system(s) or sewer system(s) within a 2 mile radius of the proposed system;

- ii. copies of written requests seeking to obtain service from each of the public drinking water systems or sewer systems listed in #4.A.i above or documentation that it is not economically feasible to obtain service from each entity;
  - iii. copies of written responses from each system or evidence that they did not reply; and
  - iv. for sewer utilities, documentation showing that you have obtained or applied for a wastewater discharge permit.
- B. Were your requests for service denied?
- i. If yes, please provide documentation of the denial of service and go to 4.C.
  - ii. If no, please provide a detailed analysis which justifies your reasons for not accepting service. A separate analysis must be prepared and submitted for each utility that granted your request for service.
- C. Please summarize how the proposed utility system will be constructed and describe each projected construction phase, if any:

Not Applicable.

- D. Date of plat approval, if required: \_\_\_\_\_  
 Approved by: \_\_\_\_\_
- E. Date Plans & Specifications submitted for approval: \_\_\_\_\_  
 Log # \_\_\_\_\_ Attach copy of approval letter if available.
- F. Date construction is scheduled to commence: \_\_\_\_\_
- G. Date service is scheduled to commence: \_\_\_\_\_

## 5. EXISTING SYSTEM INFORMATION

A. Please provide the following information for **each** water and/or sewer system, attach additional sheets if necessary.

i. Water system's TCEQ Public Water System identification number(s):

0	1	1	0	0	0	2														
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ii. Sewer system's TCEQ Discharge Permit number(s)

W	Q						-					W	Q						-				
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W	Q						-					W	Q						-				
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W	Q						-					W	Q						-				
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iii Date of last inspection: 10/16/2013

iv Attach a copy of the most recent inspection report letter.

v For each system deficiency listed in the inspection report letter; attach a brief explanation listing the actions taken or being taken by the utility to correct the listed deficiencies, including the proposed completion dates.

**See Attachment 6 - TCEQ Inspection Letter**

B. Provide the following information about the utility's certified operators

Name	Classes	License Number
Douglas L. Prinz	C	WG0002520
Donnie Grames	B	WG0010033
Jorge Villarreal	C	WG0011199
Antonio Ledesma Jr.	C	WG0009082
Vernon Johnson	C	WG0004232
Ronald Nickel	A	WG00007253
Pedro Navejas	C	WG0010596
Marcus James	C	WG0000373
John Calhoun	C	WG0014245

- Attach additional sheet(s) if necessary -

C. Using the current number of customers, is any facility component in systems named in #5A above operating at 85% or greater of minimum standard capacity?

☐ Yes ☒ No

Attach an explanation listing the actions to be taken to make system improvements including proposed completion dates (See 291.93(3)(A) of TCEQ Rules).



- D. In the table below, the number of existing and/or proposed metered and non-metered connections (by size). The proposed number should reflect the information presented in the business plan or financial documentation and reflect the number of service requests identified in Question 2.b in the application.

Water System			Sewer System		
Connection	Existing	Proposed	Connection	Existing	Proposed
5/8" or 3/4" meter	2995	2995	Residential	2558	2558
1" meter or larger	108	108	Commercial	560	560
Non-Metered	0	0	Industrial	0	0
Other:	0	0	Other:	7	7
Total Water	3103	3103	Total Sewer	3125	3125

- E. If this application is for a water CCN only, please explain how sewer service is or will be provided:

Sewer Service to customers within the City of Elgin's sewer CCN is provided by the City of Elgin.

- F. If this application is for a sewer CCN only, please explain how water service is or will be provided:

Not Applicable

- G. Effect of Granting a Certificate Amendment.  
Explain in detail the effect of granting of a certificate or an amendment, including, but not limited to regionalization, compliance and economic effects on the following:
- i the applicant,
  - ii any retail public utility of the same kind already serving the proximate area; and
  - iii any landowner(s) in the requested area.

**See Attachment 7 - Effect of Granting a Certificate Amendment**

H. Do you currently purchase or plan to purchase water or sewer treatment capacity from another source?

i ☒ No, (skip the rest of this question and go to #6)

ii ☐ Yes, Water

Purchased on a ☐ Regular ☐ Seasonal ☐ Emergency basis?

Source	% of Total Treatment

iii Sewer treatment capacity,

iv ☐ Yes

Purchased on a ☐ Regular ☐ Seasonal ☐ Emergency basis?

Source	% of Total Treatment

vi Provide a signed and dated copy of the most current water or sewer treatment capacity purchase agreement or contract.

I. Ability to Provide Adequate Service.

Describe the ability of the applicant to provide adequate service, including meeting the standards of the commission, taking both of the following items into consideration:

- i. the current and projected density, and
- ii. the land use of the requested area.

J. Effect on the Land.

Explain the effect on the land to be included in the certificated area.

Not Applicable

## 6. FINANCIAL INFORMATION

- A. For new systems and for applicants with existing CCNs who are constructing a new stand alone system:
- i. the applicant must provide an analysis of all necessary costs for constructing, operating, and maintaining the system, and the source of that capital (such as a financial statement for the developing entity) for which the CCN is requested for at least the first five years. In addition, if service has been offered by an existing water service provider as stated in #4.A., but the applicant has determined that the cost of service as finally offered renders the project not economically feasible, the applicant must provide a comparison analysis of all necessary costs for acquiring and continuing to receive service from the existing system for the same period.
  - ii. Attach projected profit and loss statements, cash flow worksheets, and balance sheets (projected five year financial plan worksheet is attached) for each of the first five years of operation. Income from rates should correlate to the projected growth in connections, shown on the projected profit and loss statement.
  - iii. Attach a proposed rate schedule or tariff. Describe the procedure for determining the rates and fees and indicate the date of last change, if applicable. Attach copies of any cost of service studies or rate analysis worksheets.
- B. For existing systems:
- i. Attach a profit and loss statement and current balance sheet for existing businesses (end of last fiscal year is acceptable). Describe sources and terms for borrowed capital such as loans, bonds, or notes (profit and loss and balance sheet worksheets are attached, if needed).
  - ii. Attach a proposed rate schedule or tariff.

*Not Applicable.  
Applicant has an  
existing CCN.*

★**NOTE:** An existing system may be required to provide the information in 6.A.i. above during the technical review phase if necessary for staff to completely evaluate the application.

- C. Identify any funds you are required to accumulate and restrict by lenders or capital providers.
- D. In lieu of the information in #6.A. thru #6.C., you may provide information concerning loan approvals within the last three (3) years from lending institutions or agencies including the most recent financial audit of the applicant.

**Note:** Failure to provide adequate financial information may result in the delay or possible denial of your application.

*See Attachment 8 - 2013 Annual Financial Report*

## 7. NOTICE REQUIREMENTS

- A. All proposed notice forms must be completed and submitted with the application. However, do not mail or publish them until you receive written approval from the Commission to do so.
- B. The Commission cannot grant a CCN until proper notice of the application has been given. **Commission rules do not allow a waiver of these notice requirements for CCN applicants.**

- C. **It is the applicant's responsibility to ensure that proper notice is given to all entities that are required to receive notice.**
- D. Recommended notice forms for publication, neighboring cities and systems, landowners with 25 acres or more, and customers are included with this application to use in preparing your proposed notices. (These notice forms are also available in Spanish upon request.)
- E. After reviewing and, if necessary, modifying the proposed notice, the Commission will send the notice to the applicant after the application is accepted for filing along with instructions for publication and/or mailing. Please review the notice carefully and note any additional neighboring utilities which may be included in the acceptance letter.
- F. Notice For Publication:  
The applicant shall publish the notice in a newspaper having general circulation in the county or counties where a CCN is being requested, once each week for two consecutive weeks beginning with the week after the notice is received from the Commission. Proof of publication in the form of a publisher's affidavit shall be submitted to the Commission within 30 days of the last publication date. The affidavit shall state with specificity each county in which the newspaper is of general circulation. ***See Attachment 9 - Notice for Publication***
- G. Notice To Neighboring Utilities:
  - i. List all neighboring retail public utilities and cities providing the same utility service within the following vicinities of the applicant's proposed certificate area.
  - ii. For applications for the issuance of a **NEW** CCN, the applicant must mail the notice with a copy of the proposed CCN map to all cities and neighboring retail public utilities providing the same utility service within **five (5) miles** of the requested service area.
  - iii. For applications for the **AMENDMENT** of a CCN, the applicant must mail the notice with a copy of the proposed CCN map to all cities and neighboring retail public utilities providing the same utility service within **two (2) miles** of the requested service area.
- H. Notice to Customers  
Investor Owned Utilities (IOUs) that are currently providing service without a CCN must provide individual mailed notice to all current customers. The notice must contain the current rates, the date those rates were instituted and any other information required in the application. The notice must also list all zip codes affected by the application.
- I. The Commission may require the applicant to deliver notice to other affected persons or agencies.

***See Attachment 10 -  
Notice for Neighboring  
Systems, Landowners,  
and Cities***

**Do not publish or send copies of the proposed notices to anyone at the time you submit the application to the Commission. Wait until you receive written authorization to do so. This will occur after the Commission has reviewed the notices for completeness, and your application has been accepted for filing. Once the application is accepted for filing, you will receive written authorization to provide notice. Please check the notices for accuracy before providing them to the public. It is the applicant's burden to ensure that correct and accurate notice is provided.**

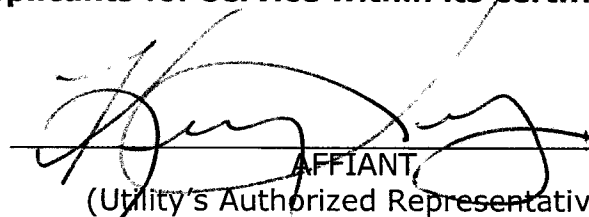
# OATH

STATE OF Texas  
COUNTY OF Bastrop

I, Kerry Lacy, being duly sworn,  
file this application as City Manager (indicate relationship to Applicant,  
that is, owner, member of partnership, title as officer of corporation, or other authorized  
representative of Applicant); that, in such capacity, I am qualified and authorized to file  
and verify such application, am personally familiar with the maps and financial information  
filed with this application, and have complied with all the requirements contained in this  
application; and, that all such statements made and matters set forth therein are true and  
correct. I further state that the application is made in good faith and that this application  
does not duplicate any filing presently before the Texas Commission on Environmental  
Quality.

I further represent that the application form has not been changed, altered or amended  
from its original form available only from the Commission.

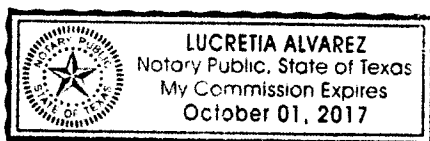
**I further represent that the Applicant will provide continuous and adequate  
service to all customers and qualified applicants for service within its certificated  
service area.**


  
AFFIANT  
(Utility's Authorized Representative)

If the Affiant to this form is any person other than the sole owner, partner, officer of the  
Applicant, or its attorney, a properly verified Power of Attorney must be enclosed.

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public in and for the State of Texas,  
This day 24th of September 20 14

SEAL



  
NOTARY PUBLIC IN AND FOR THE  
STATE OF TEXAS

Lucretia Alvarez  
PRINT OR TYPE NAME OF NOTARY

MY COMMISSION EXPIRES October 1, 2014

## **List of Attachments**

Attachment 1 – Need for Service

Attachment 2 – General Location Map

Attachment 3 – Digital Data Map

Attachment 4 – Service Area Written Description

Attachment 5 – Existing Facilities Map

Attachment 6 – TCEQ Inspection Report

Attachment 7 – Effect of Granting a Certificate Amendment

Attachment 8 – 2013 Annual Financial Report

Attachment 9 – Notice for Publication

Attachment 10 – Notice to Neighboring Systems, Landowners, and Cities

# Attachment 1

## Need for Service

(ref. pg. 10 of 31, item 2.B)

# Need for Service

This application is intended to formally modify both the City of Elgin's (City) and Aqua Water Supply Corporation's (Aqua) water CCN boundaries to coincide with the areas previously agreed to be transferred by the City and Aqua. Included with this attachment is a resolution from Aqua's Board of Directors approving the boundary modification. The areas shown to be transferred, both to the City from Aqua and to Aqua from the City, are already being served by either the City or Aqua.



**RESOLUTION #14.05.01**

**A RESOLUTION OF THE BOARD OF DIRECTORS  
OF AQUA WATER SUPPLY CORPORATION AUTHORIZING AN AMENDMENT TO  
THE 2012 SETTLEMENT AGREEMENT BETWEEN AQUA AND THE CITY OF  
ELGIN TO ADDRESS RETAIL WATER SERVICE AREA ISSUES**

WHEREAS, Aqua Water Supply Corporation ("Aqua") is a nonprofit water supply corporation, operating under the authority of Chapter 67 of the Texas Water Code and the holder of retail water Certificate of Convenience Necessity No. 10294 ("CCN") issued by the Texas Commission on Environmental Quality ("TCEQ"); and,

WHEREAS, the City of Elgin ("Elgin") is a home rule municipal corporation organized and existing under the laws of the State of Texas, and Elgin possesses retail water CCN No. 10311; and,

WHEREAS, Aqua and Elgin entered into the Settlement Agreement Designating Retail Water Service Area Boundaries and Settling Disputes Between City of Elgin, Texas and Aqua Water Supply Corporation ("Settlement Agreement") (Exhibit A) with an effective date of April 25, 2012 ("Effective Date"); and,

WHEREAS, an Addendum to the Settlement Agreement was executed by Elgin and Aqua on August 15, 2012 and August 16, 2012, respectively, clarifying the parties' intent with regard to the boundaries of their CCNs as a result of the Settlement Agreement; and,

WHEREAS, since the Effective Date of the Settlement Agreement, the staff members of both Aqua and Elgin have identified service areas within each party's designated service area boundaries as shown on the attached map (Exhibit B) that would be better served by the other party based on technical reasons and the proximity to infrastructure; and,

WHEREAS, Section 3.08 of the Settlement Agreement enables Aqua and Elgin to modify and amend the Agreement if the amendment is in writing and signed by both Aqua and Elgin; and,

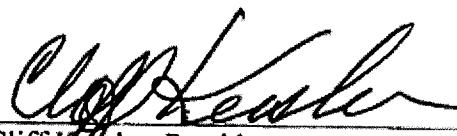
WHEREAS, an amendment to the Settlement Agreement will need to be approved by USDA-RD, CoBank, Texas Water Development Board (TWDB) and the TCEQ, if required, before the amendment can become effective.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF  
AQUA WATER SUPPLY CORPORATION THAT:


1. The above recitals are true and correct.
2. The Board of Directors of Aqua hereby authorizes its President, the Aqua staff, and legal counsel for Aqua to take all necessary steps to amend the Settlement Agreement to enable Aqua and Elgin to transfer service areas as shown on the attached map (Exhibit B).
3. The Board of Directors of Aqua also hereby authorizes its President, the Aqua staff, and legal counsel for Aqua to take all necessary steps to obtain the necessary approvals of the amendment to the Settlement Agreement and the necessary revisions to the boundaries of their respective CCNs from USDA-RD, CoBank, TWDB and TCEQ, if required.

PASSED AND APPROVED this the 5<sup>th</sup> day of May, 2014.

AQUA WATER SUPPLY CORPORATION

  
Cliff Kessler, President

ATTEST:

  
William F. Tomsu, Secretary/Treasurer

attachments

**SETTLEMENT AGREEMENT  
DESIGNATING RETAIL WATER SERVICE AREA BOUNDARIES  
AND SETTLING DISPUTES BETWEEN  
CITY OF ELGIN, TEXAS  
AND AQUA WATER SUPPLY CORPORATION**

The parties to this Settlement Agreement (collectively, the "Parties") are Aqua Water Supply Corporation ("Aqua") and the City of Elgin, Texas ("Elgin").

**SECTION 1**

**RECITALS**

1.01 Aqua is a nonprofit rural water supply corporation organized under Texas Water Code, Chapter 67, for the purposes stated in Water Code § 67.002. Aqua possesses Certificate of Convenience and Necessity ("CCN") No. 10294 ("Aqua Certificate") issued by the Texas Commission on Environmental Quality ("TCEQ"). The Aqua Certificate authorizes Aqua to furnish retail water utility service to the public and grants to Aqua the exclusive right to furnish retail water service to a defined geographical area in Bastrop, Travis, Lee, and Caldwell Counties ("Aqua Certificated Service Area"). Aqua owns and operates a public water system in the Aqua Certificated Service Area.

1.02 Elgin is a home rule municipal corporation organized and existing under the laws of the State of Texas and located wholly within Bastrop County, Texas. Elgin owns and operates a municipal water supply system and a municipal sanitary sewer system and provides water and sewer utility services to persons located within Elgin's corporate limits and extra-territorial jurisdiction. Elgin possesses water CCN No. 10311 ("Elgin Certificate") issued by the TCEQ, authorizing Elgin to provide such services within the geographical area contained within the CCN ("Elgin Certificated Service Area"). The Parties acknowledge that the current Elgin Certificated Service Area is as shown on Exhibit A hereto, which is the official CCN map as maintained by the TCEQ.

1.03 On September 1, 2011, Austin Community College District Public Facility Corporation ("ACC") filed a petition with the TCEQ for the expedited release of approximately ninety-eight (98) acres owned by ACC (the "ACC Property") from the Aqua Certificated Service Area, under the provisions of Texas Water Code § 13.254(a-5) ("ACC Petition"). On October 26, 2011, the TCEQ entered an order approving the ACC Petition ("Order of Decertification").

1.04 On November 23, 2011, Aqua filed at the TCEQ a Motion to Overturn the Order of Decertification. Also on November 23, 2011, Aqua filed an Original Petition with the Travis County District Court, entitled *Aqua Water Supply Corporation v. Texas Commission on Environmental Quality, Bryan W. Shaw, Buddy Garcia and Carlos Rubinstein, in their official capacity as Commissioners of the Texas Commission on Environmental Quality, an Agency of the State of Texas, Zak Covar, in his official capacity as Deputy Executive Director of the Texas Commission on Environmental Quality, an Agency of the State of Texas, and Austin Community*

*College District Public Facility Corporation, a Texas Public Facility Corporation*, Case No. D-1-GN-11-003617 ("State Lawsuit"). The State Lawsuit is currently pending.

1.05 Aqua and Elgin are parties in Civil Action No. 11-CV-855-LY, styled *Aqua Water Supply Corporation vs. City of Elgin, a Texas Municipality, Austin Community College District Public Facility Corporation, a Texas Public Facility Corporation; Bryan W. Shaw, Buddy Garcia, and Carlos Rubinstein, in their official capacity as Commissioners of the Texas Commission on Environmental Quality, an Agency of the State of Texas; Zac Covar, in his official Capacity as Deputy Executive Director of the Texas Commission on Environmental Quality, an agency of the State of Texas*, pending in the United States District Court for the Western District of Texas, Austin Division ("Federal Lawsuit"). The following are hereafter referred to collectively as "State Defendants": Bryan W. Shaw, Buddy Garcia, and Carlos Rubinstein, in their official capacity as Commissioners of the Texas Commission on Environmental Quality, an Agency of the State of Texas; Zac Covar, in his official Capacity as Deputy Executive Director of the Texas Commission on Environmental Quality, an agency of the State of Texas; and the Texas Commission on Environmental Quality, an agency of the State of Texas.

1.06 Aqua and Elgin are also parties in a related proceeding pending before the TCEQ, Application No. 37151-D, styled *Petition of Aqua Water Supply Corporation Requesting a Cease and Desist Order Against the City of Elgin*, ("Administrative Proceeding").

1.07 Aqua and Elgin acknowledge that the above-referenced Administrative Proceeding, State Lawsuit, and Federal Lawsuit (collectively, the "Litigation") reflect bona fide disputes and controversies between them concerning the provision of retail water utility service in the Aqua Certificated Service Area.

1.08 It is the intent of the Parties that this Settlement Agreement provide for the full and final settlement of all claims asserted or that could have been asserted by and between Aqua and Elgin in the Litigation by designating either Aqua or Elgin as the exclusive retail water service provider to certain geographical areas.

1.09 The Parties desire to avoid the further annoyance, cost, delay, and uncertainty associated with the Litigation and to evidence that settlement by executing this formal Settlement Agreement. It is the intent of the Parties that this Settlement Agreement resolves all disputed issues between Elgin and Aqua with regard to the subject matter of the Litigation. To the extent that Aqua has claims against ACC and the State Defendants, such claims are not intended to be resolved by this Settlement Agreement, but rather shall be resolved separately by agreement or by other means, as between Aqua, ACC, and the State Defendants. As used in this Settlement Agreement, the word "shall" means mandatory and not permissive.

1.10 Therefore, in order to fully and finally compromise and settle all claims that have been asserted or that could have been asserted in the Litigation by and between the Parties hereto with regard to the provision of retail water utility service to Aqua Certificated Service Area, as

well as all other matters in controversy between Aqua and Elgin, the Parties hereby enter into this Settlement Agreement.

## SECTION 2

### TERMS OF AGREEMENT

In full consideration of the mutual promises and agreements contained in this Settlement Agreement, including the Recitals set forth in Section 1 above and for the transfer of service area as described in Section 2.02 below, the Parties agree as follows:

2.01 **Intent of Parties to Settle All Litigation.** It is the intent of the Parties that this Settlement Agreement provide for full and final settlement of all claims asserted or that could have been asserted by and between Aqua or Elgin in the Federal Lawsuit, and also provide for full and final settlement of all administrative claims and proceedings pending in the Administrative Proceeding or that could have been asserted by Aqua or Elgin in the Administrative Proceeding. Although Elgin is not a party in the State Lawsuit, Aqua hereby releases and disclaims any causes of action or claims against Elgin that Aqua asserted or could have asserted against Elgin in the State Lawsuit.

#### 2.02 **Transfer of CCN Area.**

(a) As provided herein, Aqua shall seek approval of this Settlement Agreement by USDA-RD and CoBank and Elgin shall fully cooperate in assisting Aqua to obtain USDA-RD and CoBank approval of service area transfers from Aqua to Elgin as described herein. Upon receipt of such approvals, the Parties shall file the appropriate documents with the TCEQ and the Parties shall jointly request approval of same by the TCEQ in order to revise the Parties' CCN areas as provided in this Settlement Agreement. USDA-RD and CoBank approvals of this Settlement Agreement are conditions precedent to the existence, validity and enforceability of the Settlement Agreement. TCEQ approvals of the area and line transfers described herein are also conditions precedent to the existence, validity and enforceability of the Settlement Agreement. If any condition precedent described in this Settlement Agreement is not fully satisfied, then in that event, this Settlement Agreement, and any transfers described in this Settlement Agreement, shall be invalid and void *ab initio*.

(b) As depicted on the attached Water CCN Transfer Map attached as **Exhibit B**, the Transfer Area consists of the areas shown on **Exhibit B** and no other lands.

(c) In accordance with the procedures set forth herein, Aqua agrees to transfer the Transfer Area from the Aqua Certificated Service Area, to Elgin's CCN, upon receipt of all the required approvals, judgments entered, dismissals entered, and satisfaction of conditions precedent, all as set forth herein. Aqua shall fully cooperate in assisting Elgin to obtain approval of the service area transfers from Aqua to Elgin. This Agreement may be considered and approved pursuant to Texas Water Code § 13.248.

2.03 **Consideration.** No monetary consideration is being paid by either of the Parties to the other. Aqua and Elgin stipulate and agree that the mutual promises contained herein, transfer of territory, transfer of physical assets (*i.e.*, water service infrastructure), exchange of releases referenced herein, and dismissals to be filed in the Federal Lawsuit, State Lawsuit, and Administrative Proceeding constitute sufficient and satisfactory consideration for this Settlement Agreement.

2.04 **30-Year Moratorium.**

(a) For a period of thirty (30) years beginning on and from the Effective Date of this Settlement Agreement, Elgin shall not provide water utility service outside the retail water service boundaries of Elgin depicted in **Exhibit C** regardless of any future decertifications of any part of the Aqua Certificated Service Area, regardless of the Order of Decertification (whether it is vacated/reversed/nullified or not), and regardless of whether Aqua remains indebted to the USDA-RD during said thirty (30) year period.

(b) For a period of thirty (30) years beginning on and from the Effective Date of this Settlement Agreement, Aqua shall not provide water utility service inside the retail water service boundaries of Elgin depicted in **Exhibit C** regardless of any future decertification of any part of the area inside the retail water service boundaries of Elgin depicted in **Exhibit C**.

(c) For purposes of this Settlement Agreement, Aqua and Elgin agree and stipulate that the ACC Property is deemed to be outside of and beyond the retail water service boundaries of Elgin depicted in **Exhibit C**.

(d) Elgin agrees to a thirty (30) year moratorium, beginning on and from the Effective Date of this Settlement Agreement, against Elgin taking any action, directly or indirectly, to amend its CCN, amend Aqua's CCN, or to provide retail water service to any person or property in any area outside the retail water service boundaries of Elgin depicted in **Exhibit C**, including areas outside the retail water service boundaries of Elgin depicted in **Exhibit C** currently certificated to Aqua or that may hereafter be removed from the Aqua CCN by action of the TCEQ, by petition of any property owner or others, or other action by any public entity or private entity/person. The prohibition against amending the Elgin Certificate includes any form of application requesting the TCEQ to decertify or dually certify the Aqua Certificated Service Area (situated outside the retail water service boundaries of Elgin depicted in **Exhibit C**), in whole or in part, whether filed by Elgin, or on Elgin's behalf.

(e) Aqua agrees to a thirty (30) year moratorium, beginning on and from the Effective Date of this Settlement Agreement, against Aqua taking any action, directly or indirectly, to amend Elgin's CCN, amend Aqua's CCN relative to any land situated inside the retail water service boundaries of Elgin depicted in **Exhibit C**, or to provide retail water service to any person or property in any area inside the retail water service boundaries of Elgin depicted in **Exhibit C**, including areas that may hereafter be removed from the Elgin CCN by action of the TCEQ, by petition of any property owner or others, or other action by any public entity or private entity/person. The prohibition against amending the Aqua Certificate relative to land

situated inside of the retail water service boundaries of Elgin depicted in **Exhibit C** includes any form of application requesting the TCEQ to decertify or dually certify any land situated inside the retail water service boundaries of Elgin depicted in **Exhibit C**, in whole or in part, whether filed by Aqua, or on Aqua's behalf.

(f) The prohibition against Elgin's provision of retail water service outside of and beyond the retail water service boundaries of Elgin depicted in **Exhibit C** also precludes Elgin from:

- (1) accepting the dedication of water system infrastructure situated outside of and beyond the retail water service boundaries of Elgin as depicted in **Exhibit C** from any third-party unless the point of use of water produced or conveyed by such infrastructure is within the water service boundaries of Elgin, as depicted on **Exhibit C**; and
- (2) constructing any retail water service infrastructure situated outside of and beyond the retail water service boundaries of Elgin depicted in **Exhibit C** unless the point of use of water produced or conveyed by such infrastructure is within the water service boundaries of Elgin, as depicted in **Exhibit C**; and
- (3) selling retail water that may be consumed or used within any part of any land situated outside of and beyond the retail water service boundaries of Elgin depicted in **Exhibit C**.

(g) The prohibition against Aqua's provision of retail water service inside of the retail water service boundaries of Elgin depicted in **Exhibit C** also precludes Aqua from accepting the dedication of water system infrastructure situated inside the retail water service boundaries of Elgin as depicted in **Exhibit C** from any third-party and further precludes Aqua from constructing any retail water service infrastructure inside of the retail water service boundaries of Elgin depicted in **Exhibit C** or selling retail water that may be consumed or used within any part of any land situated inside of the retail water service boundaries of Elgin depicted in **Exhibit C**.

## **2.05 Transfer of Customers and Facilities and Special Conditions.**

(a) Aqua and Elgin have agreed upon certain special conditions applicable to the property commonly referred to as the Highway 290 LLC property that are reflected below. Elgin and Aqua have investigated and determined that certain customers or facilities will be transferred between them as reflected below.

(b) As a condition precedent to the transfer of the CCN Transfer Area as set forth in Section 2.02, Elgin shall transfer to Aqua a twelve (12) inch water line located on the south side of U.S. Highway 290, as more fully described herein. Immediately after the Effective Date hereof, Elgin shall commence the process to accomplish a complete defeasance of all outstanding bonds related to the twelve (12) inch water line. Elgin agrees to use its best efforts to obtain such defeasance without undue delay. All indebtedness held by Elgin associated with the twelve (12) inch line shall be defeased by Elgin prior to the transfer to Aqua. Aqua and Elgin shall

cooperatively submit paperwork with the TCEQ for the transfer of the twelve (12) inch water line within thirty (30) days after the Effective Date. Service on the line will remain with Elgin until TCEQ approves the transfer. Upon approval by TCEQ of the transfer of the twelve (12) inch water line (and transfer of any associated customers contemplated to be transferred as provided for herein), and approval by USDA-RD and CoBank of this Settlement Agreement, Aqua shall ensure connection of its system to the twelve (12) inch water line within sixty (60) days after the last of such approvals have been obtained. If the TCEQ fails to approve the transfer, or the USDA-RD or CoBank fails to approve this Settlement Agreement, this Settlement Agreement and the transfer of any part of the Aqua Certificated Service Area between the Parties is invalid and void *ab initio*.

(c) The extent of the line to be transferred runs from County Line Road east to a point of intersection with the existing U.S. Highway 290 crossing east of the western property pin of a property commonly known as Highway 290 LLC. A map showing the location of the transferred twelve (12) inch water line is as shown on **Exhibit D**, attached hereto.

(d) Current Elgin customers connected to this line shall be transferred to Aqua, including Prosperity Bank ("Elgin Transferred Customers") when Aqua connects the twelve (12) inch line to its water system. Elgin Transferred Customers shall not incur any additional costs, deposits, membership fee, charges, or other fees for the transfer to Aqua. Prior to the date of transfer, additional customers located within the Aqua Certificated Service Area may be connected to this line only under the following conditions:

- (1) If Elgin receives a request from any person located within the Aqua Certificated Service Area to receive retail water utility service from the twelve (12) inch line, Elgin shall inform the requesting person that the line will be transferred to Aqua and direct the person to contact Aqua.
- (2) Upon receipt by Aqua of written information from the prospective water customer regarding the prospective water customer's needs, and upon receipt by Aqua of its tariffed connection fees and charges, Aqua shall make arrangements with Elgin whereby Elgin will establish a water service account in Aqua's name. Aqua shall purchase water from Elgin at a connection point on the twelve (12) inch line as specified by Aqua, for sale by Aqua to the prospective water customer.
- (3) If Aqua receives a request for service from any person located within the Aqua Certificated Service Area to receive retail water utility service from the twelve (12) inch line, Aqua shall make arrangements with Elgin as set forth in subsection (2) above.
- (4) Upon the transfer of the twelve (12) inch line to Aqua, any accounts set up by Elgin in Aqua's name under the provisions of this section will be closed.



(e) All contracts, option rights, permits, certificates, licenses, reimbursement rights, service agreements, deposits, warranties, records, regulatory correspondence, and other intangible assets of Elgin that are related to the ongoing operation and ownership of the twelve (12) inch water line transferred to Aqua hereunder ("Elgin Intangible Assets") shall also be transferred to Aqua in accordance with the provisions of this Settlement Agreement. All land and interests therein, including without limitation easements, licenses and rights-of-way owned or held by Elgin for the installation, use and maintenance of, or otherwise associated with the transferred water line, together with all and singular the rights, privileges, and appurtenances pertaining to said land and interests therein, including any right, title, and interest of Elgin in and to adjacent streets, alleys, or rights-of-way, together with any improvements, fixtures, and personal property of Elgin situated on and attached to said land and interests therein associated with the transferred water line (Elgin Transferred Property"), shall also be transferred to Aqua.

(f) Upon the transfer of twelve (12) inch water line, Elgin Intangible Assets, and Elgin Transferred Property from Elgin to Aqua, Elgin shall deliver to Aqua each of the following items:

- (i) A Bill of Sale and Assignment ("Bill of Sale") duly executed by Elgin, transferring and assigning to Aqua all of Elgin's rights, title, and interest in the transferred water line, warranting that all bonds associated with said water line have been completely defeased.
- (ii) An instrument duly executed by Elgin, in the form as reflected in **Exhibit G**, assigning to Aqua all of Elgin's interests in any easements, licenses, or rights-of-way included in the transferred twelve (12) inch water line, to the extent they are assignable.
- (iii) A signature on a letter to be jointly drafted by Aqua and Elgin to be sent to the Elgin Transferred Customers informing them of the change in ownership of the Elgin Transferred Facilities, change in water rates, if applicable, and any other information Aqua and Elgin determine is necessary or useful to the Elgin Transferred Customers.
- (iv) Closing instructions to enable a title company to deliver the documents provided in this section to Aqua on the Transfer Date.
- (v) Any other additional documents and instruments as in the mutual opinion of Aqua's counsel and Elgin's counsel are reasonably necessary to the proper consummation of this transaction.

(g) Relative to retail water service to be provided by Aqua to the Highway 290 LLC property (as that property currently exists as of the date of this Settlement Agreement), Aqua will cap its capacity reservation fee at \$600 per living unit equivalent ("LUE") and its system development fee at \$3,900 per LUE, both caps to be in effect for a period of ten (10) years from the Effective Date of this Settlement Agreement. All retail water customers at such property will be responsible for paying Aqua's tariffed water rates then in effect, plus a meter set fee, a membership fee in the amount of one hundred dollars (\$100), and a deposit in the amount of one thousand dollars (\$1,000) for legal review of the capacity reservation agreement.

(h) Except for the Elgin Transferred Customers described in Section 2.05(d) above, all water customers which Elgin currently serves within Aqua's Certificated Service Area shown on **Exhibit C** and which are situated outside of and beyond the boundaries of **Exhibit C**, shall continue to receive service from Elgin until such time as Aqua serves on Elgin its notice that Aqua intends to transfer service for said customers to Aqua. A list of the addresses at which these connections are located is attached hereto as **Exhibit E**. Aqua, at its sole discretion, may transfer such customers served by Elgin one at a time or in groups of customers from time to time, as Aqua determines and specifies. All customers transferred to Aqua pursuant to this section shall not incur any additional costs, deposits, membership fee, charges, or other fees for the transfer to Aqua. Any conflict between the **Exhibit C** map and the **Exhibit E** address list shall be resolved in favor of the **Exhibit C** map.

(i) To the extent Aqua is serving any water customers situated in the Transfer Area, such customers shall continue to receive service from Aqua until such time as Elgin serves on Aqua its notice that Elgin intends to transfer service for said customers to Elgin. A list of the addresses at which these connections are located is attached hereto as **Exhibit F**. Elgin, at its sole discretion, may transfer such customers served by Aqua one at a time or in groups of customers from time to time, as Elgin determines and specifies. All customers transferred to Elgin pursuant to this section shall not incur any additional costs, deposits, membership fee, charges, or other fees for the transfer to Elgin. Any conflict between the **Exhibit C** map and the **Exhibit F** address list shall be resolved in favor of the **Exhibit C** map.

**2.06 Abatement of Administrative Proceeding Pending Approval of Settlement.** Immediately after the Effective Date of this Settlement Agreement, Aqua will file a request with the TCEQ that the Administrative Proceeding be abated pending receipt by the Parties of the approvals required herein. If the Administrative Proceeding has been forwarded by the TCEQ to the State Office of Administrative Hearings ("SOAH") prior to the Effective Date, or prior to the TCEQ's receipt of Aqua's request for abatement, then both parties will file an agreed motion with the SOAH Administrative Law Judge to abate the proceeding pending receipt by the Parties of the approvals required herein.

**2.07 Abatement of Federal Lawsuit Pending Approval of Settlement.** Immediately after the Effective Date of this Settlement Agreement, Aqua and Elgin will file an agreed motion with the Court to abate the Federal Lawsuit relative to the claims pending between them, pending receipt of the USDA-RD, CoBank, and TCEQ approvals of the Settlement Agreement and of the service area transfer. While the claims by and between Aqua and Elgin in the Federal Lawsuit are abated and the Parties are working to obtain the approvals of the TCEQ, USDA-RD, and CoBank of this Settlement Agreement, each Party may continue furnishing water utility service to existing customers located in Transfer Area and any existing customers located within the land described in **Exhibit C**.

**2.08 Requesting USDA-RD Approval.** This Settlement Agreement and the release or transfer of any part of the Aqua Certificated Service Area between the Parties is invalid and void *ab initio* unless approved in advance by the USDA-RD in accordance with the Consolidated Farm and Rural Development Act of 1961. Aqua will submit this Settlement Agreement and the

service area transfer to the USDA-RD together with a request for approval. Aqua agrees to use its best efforts to obtain USDA-RD approval of this Settlement Agreement without undue delay. Aqua agrees to send copies of the approval request and USDA-RD response to Elgin.

2.09 **Requesting CoBank Approval.** This Settlement Agreement and the release or transfer of any part of the Aqua Certificated Service Area between the Parties is invalid and void *ab initio* unless approved in advance by CoBank in accordance with the terms of the loan agreement between Aqua and CoBank. Aqua will submit this Settlement Agreement and the service area transfer to CoBank together with a request for approval. Aqua agrees to use its best efforts to obtain CoBank approval of this Settlement Agreement without undue delay. Aqua agrees to send copies of the approval request and CoBank response to Elgin.

2.10 **State Lawsuit.** Aqua has sought to reverse/vacate/nullify the TCEQ Order of Decertification, all as more particularly described in the State Lawsuit. Elgin agrees that it will not take any action directly or indirectly to oppose or object to Aqua's efforts in the State Lawsuit or in any other proceeding (TCEQ, etc.) initiated by Aqua to vacate, reverse or nullify by other means, the Order of Decertification referenced in the State Lawsuit or otherwise cause the ACC Property to be a part of Aqua's CCN if Aqua deems such action necessary. For purposes of this Settlement Agreement, Aqua and Elgin agree and stipulate that the ACC Property is deemed to be outside of and beyond the retail water service boundaries of Elgin depicted in Exhibit C, regardless of the final resolution of the State Lawsuit or any other proceeding Aqua may initiate relative to the ACC Property, and regardless of whether the Order of Decertification is vacated/reversed/nullified, or not.

2.11 **Requesting TCEQ Approval.** The Parties acknowledge that this Settlement Agreement designates areas to be served and customers to be served by Aqua and Elgin, and therefore must be approved by the TCEQ. At the earliest opportunity following approval of the terms of this Settlement Agreement by USDA-RD and CoBank, the Parties will submit this Settlement Agreement to the TCEQ and request approval of same, and revisions to their respective CCN boundaries. The Parties shall use their best efforts to obtain TCEQ approval of this Settlement Agreement and/or CCN boundary revisions without undue delay.

2.12 **Agreed Judgment in Federal Lawsuit.** Within ten (10) days of the last to occur of: (i) the TCEQ issuing a final order approving this Settlement Agreement and issuing new and amended water CCNs to Elgin and Aqua respectively consistent with its terms; and (ii) the USDA-RD and CoBank giving notice of their approval of this Settlement Agreement and the transfer under Section 2.02; and (iii) satisfaction of all other conditions (which include certain conditions precedent) all as described in this Settlement Agreement, Aqua and Elgin will file a joint request for the Court to enter an Agreed Judgment in the Federal Lawsuit relative to the claims by and between Aqua and Elgin adopting the terms and conditions of this Settlement Agreement as the Court's own, dismissing all claims by and among Aqua and Elgin with prejudice, and ordering taxable court costs to be paid by the party incurring same. The Parties will also request the Court to retain jurisdiction relative to this Settlement Agreement and retain the power to resolve any dispute that may arise from or under this Settlement Agreement. It is expressly understood that Aqua's claims associated with all other defendants in the Federal

Lawsuit shall remain as Aqua elects. Aqua reserves the right under this Settlement Agreement to continue to pursue any claims or issues it may have relative to all remaining defendants (other than Elgin) in the Federal Lawsuit, including but not limited to litigating and obtaining judgment on issues associated with whether certain sections of the Texas Water Code are preempted by federal law.

2.13 **Mutual Release of Liability.** The Parties hereby forever release, acquit, and discharge each other and their respective officers, agents, attorneys, employees, successors, assigns, and representatives from any and all claims, demands, charges, costs of court, attorney's fees, causes of action, liability, or damages of whatever nature, on any legal theory, known or unknown, past, present, or future, that have been or could have been asserted in the Federal Lawsuit, other than claims related to the breach of any provisions of this Settlement Agreement or to enforce the terms of this Settlement Agreement.

2.14 **Effective Date.** This Settlement Agreement shall be effective on the date that this Settlement Agreement is executed by authorized representatives of both Parties.

### SECTION 3

#### **ADDITIONAL TERMS OF AGREEMENT**

3.01 This Settlement Agreement is solely for the benefit of the Parties hereto. There are no third party beneficiaries of this agreement.

3.02 This agreement may be recorded in the official or land records of Bastrop and Travis Counties, Texas.

3.03 Any reference to a state or federal administrative agency in this Settlement Agreement, such as the TCEQ or USDA-RD, includes the named agency's predecessor and successor agencies, if any.

3.04 In executing this Settlement Agreement, the Parties acknowledge that they are not relying on any statement or representation of any other Party regarding the matters in dispute. Each of the Parties is relying on their own judgment and each is represented by attorneys in this matter.

3.05 This Settlement Agreement is a compromise of doubtful and disputed claims. Nothing in this Settlement Agreement is an admission of liability by any of the Parties hereto, and nothing in this Settlement Agreement may be interpreted as an admission of liability. Each of the Parties to this Settlement Agreement expressly denies liability to the other Parties to this Settlement Agreement.

3.06 This Settlement Agreement is to comply with the laws of the State of Texas and the laws of the United States. The Parties agree that this Settlement Agreement is governed by, and will be construed and enforced in accordance with Texas law and United States law where

applicable. Exclusive venue for any lawsuit related to this Settlement Agreement shall be in Bastrop County, Texas, except that:

(a) to the extent required or permitted by law, venue is in Travis County, Texas, for any lawsuit related to TCEQ enforcement of CCN holder obligations required by the water CCNs issued to Aqua or Elgin to effect the terms of this Settlement Agreement;

(b) to the extent required or permitted by law, venue shall be in the federal court for any lawsuit related to the adjudication of any claims under 7 U.S.C. §1926(b) or 42 U.S.C. § 1983; and

(c) any motions or actions filed in the Federal Lawsuit related to enforcement of the Agreed Judgment to be entered pursuant to Section 2.12 above.

3.07 This Settlement Agreement is binding on and inures to the benefit of the Parties and their respective administrators, legal representatives, officers, agents, employees, successors and assigns.

3.08 This Settlement Agreement contains the entire agreement between the Parties and it supersedes any and all prior agreements, arrangements or understandings between the Parties on all subjects in any way related to the transactions or occurrences described in the Federal Lawsuit, the Administrative Proceeding or in this Settlement Agreement. No oral understandings, statements, promises or inducements contrary to or inconsistent with the terms of this Settlement Agreement exist. This Settlement Agreement is not subject to any oral modification, waiver, addition or deletion, and any modification, waiver, addition or deletion of any provision in this Settlement Agreement must be made in writing and signed by the Parties affected by the modification, waiver, addition or deletion.

3.09 For purposes of notice, the addresses, telephone numbers and fax numbers of the Parties are as follows:

**Aqua Water Supply Corporation**

Aqua WSC  
Attn: General Manager  
415 Old Bastrop Highway  
Drawer P  
Bastrop, Texas 78602  
Telephone: (512) 303-3943  
Fax: (512) 303-4881

**City of Elgin**

City of Elgin  
Attn: City Manager  
310 N. Main  
Elgin, Texas 78621-2623  
Telephone: (512) 285-6721  
Fax: (512) 285-5962

With copy to:

Robert H. Lloyd  
Lloyd Gosselink Rochelle &  
Townsend, P.C.  
816 Congress Avenue, Suite 1900  
Austin, Texas 78701  
Telephone: (512) 322-5800  
Fax: (512) 472-0532

With copy to:

Charles Crossfield  
Crossfield & Sheets, PC  
309 E. Main St.  
Round Rock, Texas 78664  
Telephone: (512) 255-8877

For purposes of notice under this Settlement Agreement, any Party that changes its address, email address or fax number must give the other Party at least seven (7) days' notice of the change.

3.10 This Settlement Agreement may be executed in multiple counterparts, each of which shall be deemed an original for all purposes.

3.11 This Settlement Agreement has been prepared and drafted by the joint efforts of the respective attorneys for each of the Parties and thus shall be construed equally against both Parties.

3.12 If any provision of this Settlement Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Settlement Agreement, such provision(s) shall be fully severable.

3.13 The Parties agree to cooperate fully and to execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Settlement Agreement.

3.14 This Settlement Agreement contains the entire agreement by and between the Parties with respect to the Litigation and any disputes between the Parties related to the subject matter of the Litigation.

3.15 Each of the Parties shall be responsible for paying its own legal costs and expenses including, without limitation, attorney's fees, expert witness fees, professional services fees, engineering costs, court costs and related expenses incurred in connection with the Litigation, with this Settlement Agreement, and with the transfer of the Transfer Area and of the twelve (12) inch water line, as described herein.

3.16 This Settlement Agreement must be approved by the Elgin City Council and by the Board of Directors of Aqua to become effective.

3.17 The attached Exhibits A through G are incorporated herein by reference for all purposes as if set forth verbatim.

**3.18 Default:** In the event that either party shall fail to comply with any of its obligations under this agreement, and shall fail to remedy its default/failure to comply within thirty (30) calendar days following a written notice of default served by the non-defaulting party upon the defaulting party that specifies with particularity what the default/failure to comply comprises, then in that event, the non-defaulting party shall be entitled to the following remedies which shall be *cumulative* and non-exclusive:

1. In the event the non-defaulting party engages legal counsel to enforce the provisions of this Settlement Agreement, the non-prevailing party in such enforcement action/proceeding shall pay all of the prevailing party's reasonable legal expense plus all reasonable litigation expense (including expert witness fees, costs, and the like).

3. At their sole and exclusive option the non-defaulting party shall be entitled to declare this Settlement Agreement terminated. Should termination be a chosen remedy, the non-defaulting party shall be entitled to:

(a) retain all physical assets received from the defaulting party prior to the default; *and*

(b) have any territory transferred by the non-defaulting party to the defaulting party under the terms of this Settlement Agreement returned to the non-defaulting party; *and*

(c) the non-defaulting party shall be entitled to be the sole and exclusive retail water service provider within the area returned as specified in (b) immediately above under applicable law; *and*

(d) fully pursue and enforce all state and federal law claims and remedies to which the non-defaulting party is entitled.

[Remainder of page purposefully left blank.]

Executed in multiple copies, each of which shall constitute an original, on the dates set forth below:

DATE: 4-25-2012

CITY OF ELGIN, TEXAS

By: Mar Holm  
Mayor

ATTEST:

Shirley David  
City Secretary

[Seal]

DATE: 4-09-12

AQUA WATER SUPPLY CORPORATION

By: [Signature]  
President, Board of Directors

ATTEST:

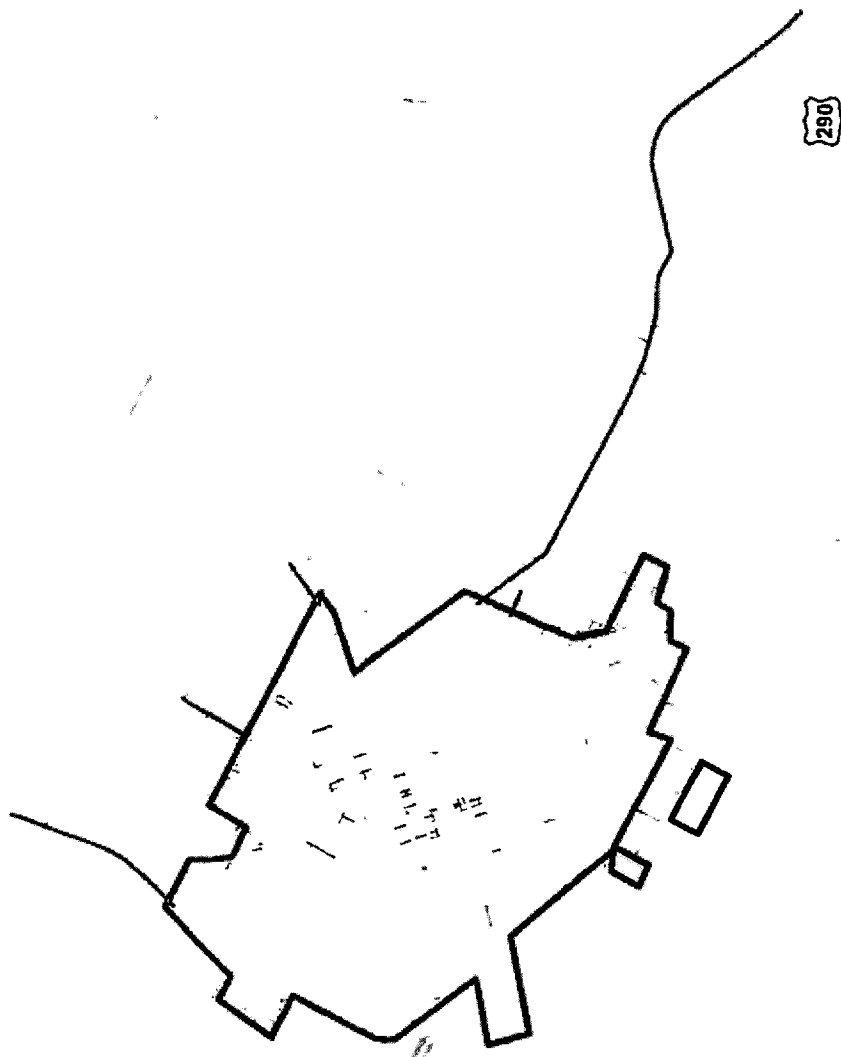
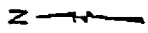
William F. [Signature]  
Secretary



## EXHIBITS

- Exhibit A Map of Elgin Water CCN 10311.
- Exhibit B Water CCN Transfer Map.
- Exhibit C Aqua and Elgin CCN Areas as Modified by Settlement Agreement
- Exhibit D Map showing extent of transferred twelve (12) inch line.
- Exhibit E A list of the addresses of existing Elgin customers within Aqua CCN, to be transferred to Aqua at a later date.
- Exhibit F A list of the addresses of existing Aqua customers within the Transfer Area, to be transferred to Elgin at a later date.
- Exhibit G Form for document to transfer Elgin's interests in easements, licenses, or rights-of-way in twelve (12) inch water line.

# EXHIBIT A - ELGIN EXISTING CCN PER TCEQ



290

## Legend

Elgin CCN

Elgin Facilities Plus 200 Feet (F200) CCN

STEEGERS & BIZZELL  
LAND SURVEYORS & ENGINEERS  
AUGUST 2005

# EXHIBIT B - WATER CCN TRANSFER MAP

N

0 2,000 4,000 Feet

## Legend



Transfer Area

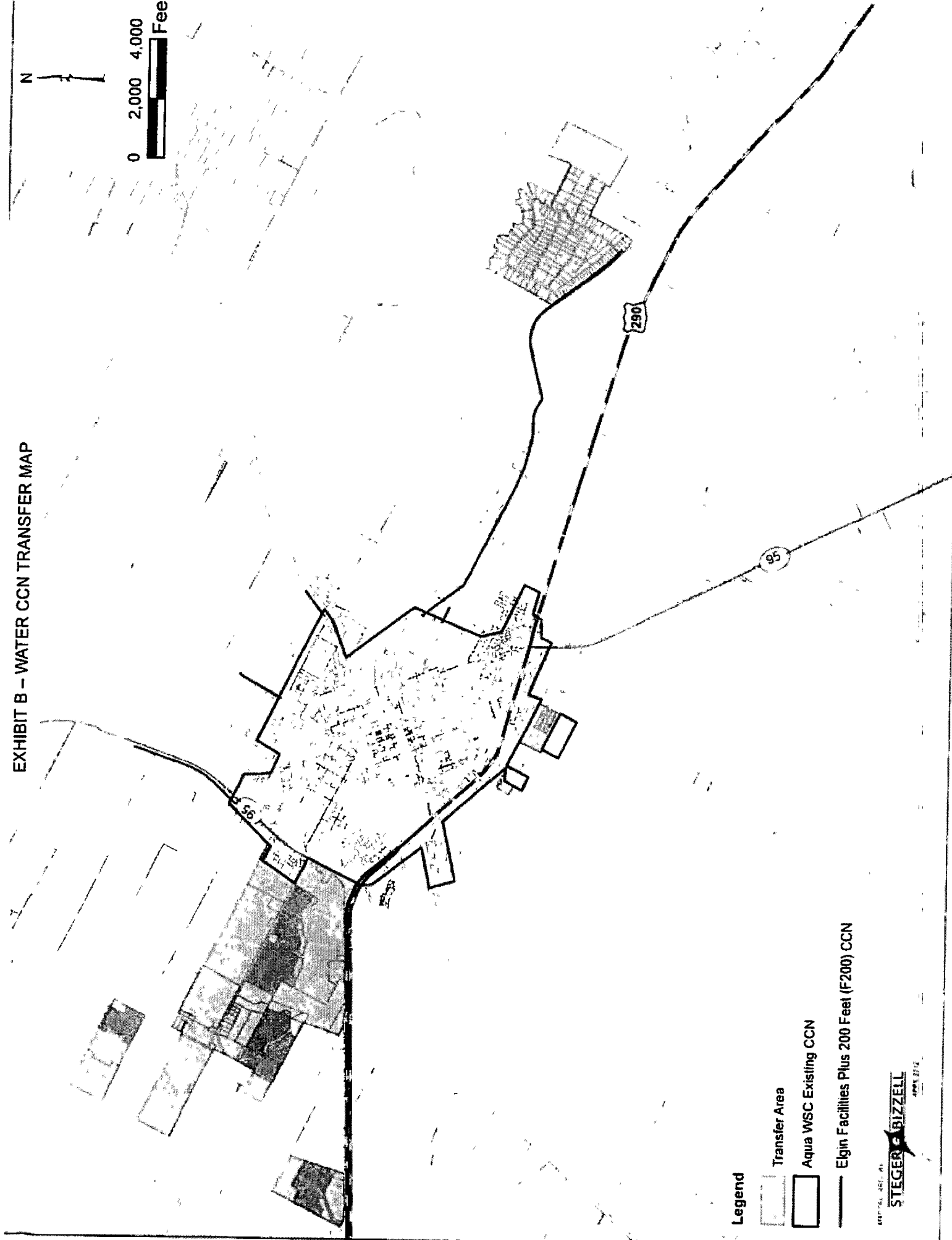


Aqua WSC Existing CCN

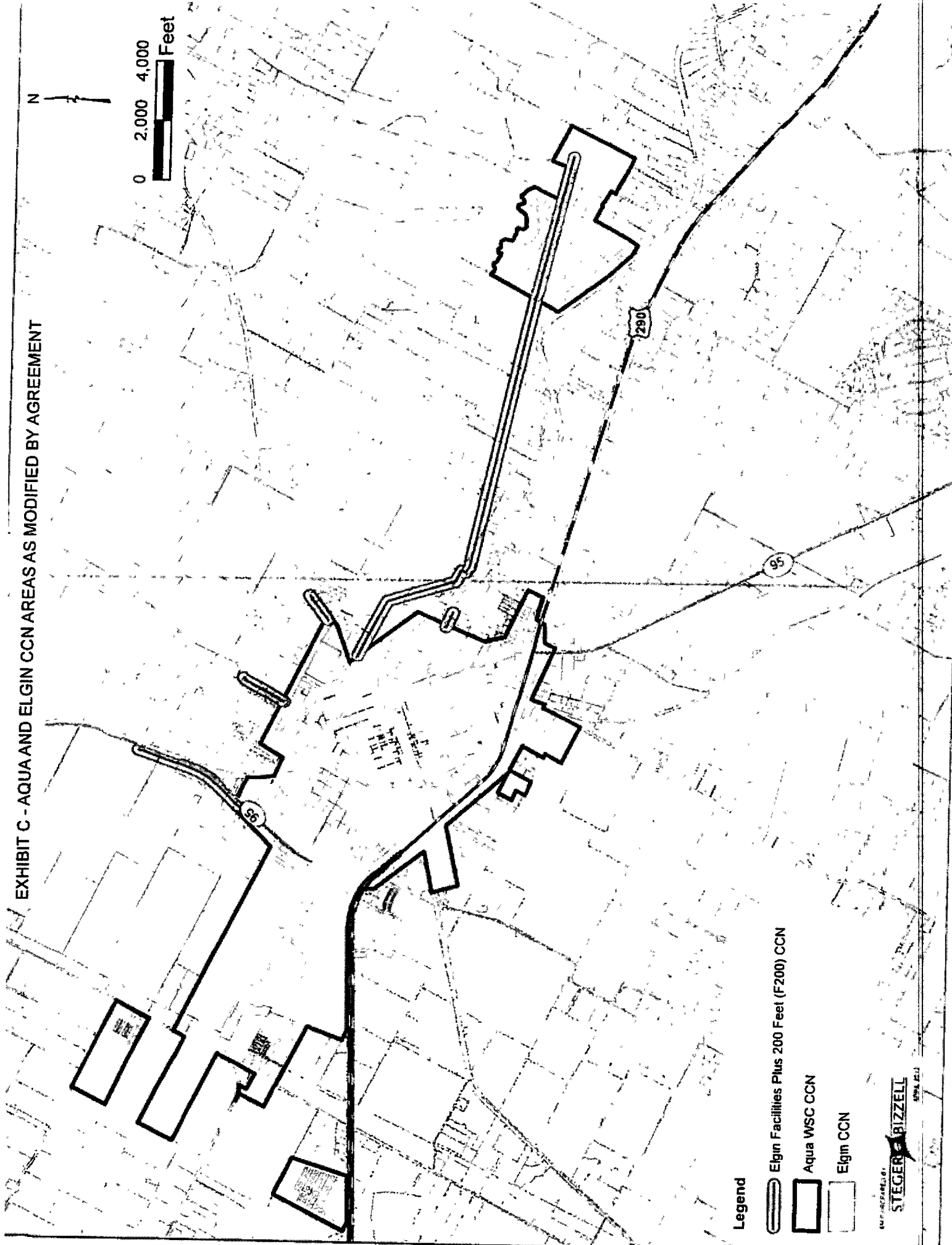
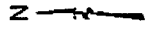
Elgin Facilities Plus 200 Feet (F200) CCN

STEEGERS & BIZZELL

April 2014



# EXHIBIT C - AQUA AND ELGIN CCN AREAS AS MODIFIED BY AGREEMENT



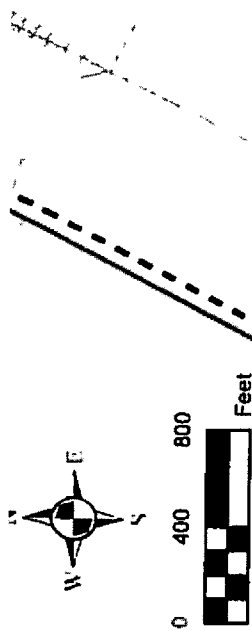
## Legend

 Elgin Facilities Plus 200 Feet (F200) CCN

 Aqua WSC CCN

 Elgin CCN

# EXHIBIT D



ACC  
ELGIN CAMPUS

WILDERNESS TRL  
SHENANDOAH TRL  
GETTYSBERG LP  
ANTIETAMD R  
NAPC 2"  
VICKSBURG LP

12"

12"

12"

ELGIN HWY. 290 SUBD.  
(WALMART SITE)

PROSPERITY  
BANK

JIM DANDY D

COUNTY LINE RD 12"

TRAVIS  
BASTROP

## Legend

- Exist. Aqua WSC Water Line
- 12" Water Line Transferred from Elgin to Aqua WSC
- - - Exist. City of Elgin Water Line

**AQUA**  
WATER SUPPLY  
CORPORATION

**STEGER BIZZELL**  
ENGINEERS

LITIG RD 10" 2"

**Exhibit E**  
**Transfer to Aqua**

	<b>Subdivision</b>	<b>Address Street</b>	<b>Description</b>	
1		111 Butler	Residence	Labarbara Robertson
2		119 (405) Butler	Residence	Sam Butler
3		853 Central Ave	Residence	Rita Sanchez
4		858 Central Ave	Residence	Joe Garland
5		861 Central Ave	Residence	Kristine Elliott
6		1133 Dildy Drive	Commercial	Nalle Landscape
7		1133 Dildy Drive	Commercial	Nalle Landscape Irrigation
8		1155 Dildy Drive	Commercial	Elgin General Store
9		1155 Dildy Drive	Commercial	Elgin General Store Irrigation
10		803 East 2nd St.	Residence	Sydney Villareal
11		805 East 2nd St.	Residence	Angela Villareal
12		815 East 2nd St.	Residence	Mary Villareal
13		821 East 2nd St.	Residence	Berenisse Salazar
14		829 East 2nd St.	Residence	Crystal Hernandez
15		831 East 2nd St.	Residence	Lisa Stelmashenko
16		737 East 2nd St.	Residence	Kathy Block
17		500 East 10th St	Commercial	Elgin Little League 3/4" Meter & 2" Meter
18		700 East 10th St	Church	Primera Iglesia Bautista
19		707 East 10th St	Residence	Adrian Rangel
20		737 FM 3000	Residence	Kathy Block
21		761 FM 3000	Residence	Harvey Westbrook
22		794 FM 3000		
23		813 FM 3000	Residence	
24		850 FM 3000		
25		851 FM 3000	Residence	
26		127 Haisler Lane	Residence	Dawn Schneider
27		147 Haisler Lane	Residence	James Haisler
28		802 Highway 95 North	Residence	Roger Mogonye
29		915A Highway 95 North	Residence	
30		915B Highway 95 North	Residence	
31		916 Highway 95 North	Commercial	Elgin Fertilizer Company
32		132 Highway 95 South	Residence	Emmanuel SDA Church
33		142 Highway 95 South	Residence	Annie Lee Haywood
34		156 Highway 95 South	Residence	Vacant - Johnnie Williams
35		1300 Highway 290 East	Commercial	Chevron Gas Station
36		1312 Highway 290 East	Commercial	First National Bank
37		18712 Highway 290 East	Platted lot	No structure
38		18720 Highway 290 East	Platted lot	No structure
39		18810 Highway 290 East	Commercial	Jeff Hagen, OB/GYN, Ste. 100
40		18818 Highway 290 East	Commercial	Doc's Country Store
41		322 Houston St	Residence	Iganacio Garcia-Mateo
42		410 Houston St	Residence	Lesia Jones
43		500 Houston St	Residence	JD Williams

**Exhibit E**  
**Transfer to Aqua**

	<b>Subdivision</b>	<b>Address Street</b>	<b>Description</b>	
44	Red Town	807 Larson	Residence	John Hibbs
45		100 Live Oak Drive	Commercial	Burning Tree Lodge
46		209 Louise	Residence	James Cordell
47		148 Marek	Residence	Robert Haisler
48		165 Natures Way	Residence	Carole Small
49		174 A Natures Way	Residence	Marilyn Hill
50		172A Norwood Lane	Residence	Etta Easley
51		198 Norwood Lane	Residence	Ken Stone
52		205 Norwood Lane	Residence	Ernest Schneider
53		214 Norwood Lane	Residence	Kim Snyder
54		215 Norwood Lane	Residence	Mike Shafer
55		908 Old McDade Rd	Residence	Keith Kubosh
56		928 Old McDade Rd	Residence	Lupe Mendez
57		929 Old McDade Rd	Residence	Monte Fuller
58		933 Old McDade Rd	Residence	Alicia Newlin
59		941 Old McDade Rd	Residence	Laurie Rogers
60		959 Old McDade Rd	Residence	Damon Doss
61		971 Old McDade Rd	Residence	Laura Sepulveda
62		981 Old McDade Rd	Residence	E.T. Owens
63		985 Old McDade Rd	Residence	Ernest Perkins
64		989 Old McDade Rd	Residence	Tree House Early Learning
65		1007 Old McDade Rd	Residence	Trent Carter
66		1007B Old McDade Rd	Residence	Kelly Smith
67		1110 Old McDade Rd	Residence	LR Brown
68		1017 Old McDade Rd	Residence	Mark Scarborough
69		1019 Old McDade Rd	Residence	Dale Carter Jr.
70		1126 Old McDade Rd	Residence	Dorothy Morgan
71		1049 Old McDade Rd	Commercial	Custom Design
72		1164 Old McDade Rd	Residence	Wayne Marecle
73		1238A Old McDade Rd	Residence	Kenneth Allen
74	Red Town	942 Red Town Road	Residence	Chester Newman
75		802 Savannah Cove	Residence	
76		803 Savannah Cove	Residence	
77		805 Savannah Cove	Residence	
78		113 South Westbrook Lane	Residence	Miguel Nunez
79		114 South Westbrook Lane	Residence	Eliacer Jaimes
80		115 South Westbrook Lane	Residence	Steven Aguilar
81		117 South Westbrook Lane	Residence	Suzanne Hurt
82		118 South Westbrook Lane	Residence	Miguel Nunez
83		136 South Westbrook Lane	Residence	Martin Castillo
84		142 South Westbrook Lane	Residence	Erica Mendoza
85		146 South Westbrook Lane	Residence	Kathleen Havekost
86		176 South Westbrook Lane	Residence	Wendy Smith

**Exhibit E**  
**Transfer to Aqua**

	<b>Subdivision</b>	<b>Address</b>	<b>Street</b>	<b>Description</b>	
87		182	South Westbrook Lane	Residence	Jennifer Boettcher
88		202	South Westbrook Lane	Residence	Formerly Wing Coffman
89		108	Waltons Lane	Residence	
90		128	Waltons Lane	Residence	
91		702	West Cleveland	Residence	Lydia Rocha
92		704B	West Cleveland	Vacant	Irrigation
93		1300	West Hwy 290	Commercial	Don A. Stewart
94		1312	West Hwy 290	Commercial	First National Bank
95	Saratoga Farms		Intersection Jim Dandy & Saratoga	Hydrant Meter	Allen Click



**EXHIBIT F****Future Transfer to Elgin**

	<b>Address</b>	<b>Street</b>	<b>Description</b>	
1	1395	North Ave C	Residence	Present Aqua Member; Paula Clark
2	1406	North Ave C	Residence	Present Aqua Member; Joel Evans
3	1508	North Ave C	Residence	Present Aqua Member; John Boucher
4	1520	North Ave C	Residence	Present Aqua Member; James & Jackie Mabry
5	1545	FM 1100	Residence	Present Aqua Member; Ramiro Garza
6	110	Marek Road	Residence	Present Aqua Member; Brittnee Smith
7	1029	Old McDade Road	Residence	Present Aqua Member; Jerry Crim

## **EXHIBIT G**

### **Bill of Sale**

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

Seller: City of Elgin, Texas

Seller's Mailing Address: 310 N. Main Street, Elgin  
Bastrop County, Texas 78621-2623

Buyer: Aqua Water Supply Corporation

Buyer's Mailing Address: 415 Old Bastrop Highway, Drawer P  
Bastrop, Bastrop County, Texas 78602

Consideration: Ten Dollars (\$10) and other Good and Valuable Consideration

Transferred Properties: Approximately 5,516 feet of 12" C-900 PVC Water Main on the south side of U.S. Hwy 290E, from an existing City 12" Main (at Prosperity Bank) to County Line Road, including 18" boring and casing existing driveways, plus valves and concrete encasement of Elm Creek and fire hydrants at 500' spacing.

Transferred Properties include all rights of access to said Water Main previously granted and conveyed to Seller by adjacent property owners, and all approvals and permissions granted to Seller by Texas Department of Transportation dated March 17, 1999.

Reservations from Transfer: None.

Exceptions to Transfer and Warranty: None.

Seller, for the Consideration set forth herein sells, transfers, and delivers the Transferred Properties to Buyer, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Buyer and Buyer's heirs, successors, and assigns forever. Seller binds Seller and Seller's heirs and successors to warrant and forever defend all and singular the Transferred Properties to Buyer and Buyer's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof when the claim is by, through, or under Seller but not otherwise, except as to the Reservations from Transfer and the Exceptions to Transfer and Warranty.

Seller warrants that the Transferred Properties are free and clear of any and all indebtedness, liens, or any other encumbrance. Seller further warrants that the bonds referenced

in that certain Settlement Agreement with Effective Date of \_\_\_\_\_, 2012, by and between the City of Elgin, Texas, and Aqua Water Supply Corporation, have been fully defeased.

As a material part of the Consideration for this sale, Seller and Buyer agree that Buyer is taking the Transferred Properties "AS IS" and that there are no representations, disclosures, or express or implied warranties except those contained in that certain above-referenced Settlement Agreement and this Bill of Sale. Buyer has not relied on any information other than Buyer's inspection and the representations and warranties expressly contained in the Settlement Agreement described herein and this Bill of Sale.

When the context requires, singular nouns and pronouns include the plural.

City of Elgin, Texas, SELLER

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

ATTEST:

By: \_\_\_\_\_  
City Secretary

Aqua Water Supply Corporation, BUYER

By: \_\_\_\_\_  
President, Board of Directors

ATTEST:

By: \_\_\_\_\_  
Secretary/Treasurer

ADDENDUM TO SETTLEMENT AGREEMENT  
DESIGNATING RETAIL WATER SERVICE AREA BOUNDARIES  
AND SETTLING DISPUTES BETWEEN  
CITY OF ELGIN, TEXAS  
AND AQUA WATER SUPPLY CORPORATION

Aqua Water Supply Corporation ("Aqua") and the City of Elgin, Texas ("Elgin"), being the only Parties to the Settlement Agreement Designating Retail Water Service Area Boundaries and Settling Disputes Between City of Elgin, Texas, and Aqua Water Supply Corporation ("Settlement Agreement"), with an Effective Date of April 25, 2012, do hereby enter into this Addendum to the Settlement Agreement. The Parties agree as follows:

1. Aqua is a nonprofit rural water supply corporation organized under Texas Water Code, Chapter 67, for the purposes stated in Water Code § 67.002. Aqua possesses Certificate of Convenience and Necessity ("CCN") No. 10294 ("Aqua Certificate") issued by the Texas Commission on Environmental Quality ("TCEQ").
2. Elgin is a home rule municipal corporation organized and existing under the laws of the State of Texas and located wholly within Bastrop County, Texas. Elgin possesses water CCN No. 10311 ("Elgin Certificate") issued by the TCEQ, authorizing Elgin to provide such services within the geographical area contained within the CCN ("Elgin Certificated Service Area").
3. On or about April 25, 2012, Aqua and Elgin entered into the Settlement Agreement. The purpose of the Settlement Agreement was to settle litigation related to each Party's respective service territory. As part of that Settlement Agreement, the Parties agreed to transfer respective territories and facilities in full and final settlement of all outstanding claims related to said litigation. The Parties jointly submitted the Settlement Agreement to the TCEQ for approval by the Commission under the provisions of Texas Water Code § 13.248, on June 24, 2012 ("§ 13.248 Submission").
4. Among the areas of dispute intended by the Parties to be resolved by the Settlement Agreement is the portion of Elgin's CCN that is a facilities plus 200' CCN, and which extends from the eastern edge of Elgin's service territory out to the City's water plant. The TCEQ's depiction of Elgin's facilities plus 200' CCN on Elgin's official CCN map (as depicted on Exhibit B to the Settlement Agreement) incorrectly locates the placement of the subject water line. The Parties intended to correct this error as part of their § 13.248 Submission to the TCEQ, as authorized by the Settlement Agreement, by submitting a revised CCN map (specifically Exhibit C to the Settlement Agreement) that correctly depicts the actual location of the line in question, and thus, Elgin's corresponding facilities plus 200' service territory area.
5. This Addendum to the Settlement Agreement memorializes and confirms that it is the Parties' intent that Elgin's revised CCN map, as depicted by Exhibit C to the Settlement Agreement, which depicts the actual location of the line in question, be Elgin's official CCN map on file with the TCEQ.

6. Further, it is the Parties' intent that the CCN boundaries depicted by **Exhibit C** to the Settlement Agreement, including the facilities plus 200' CCN, and thus, Elgin's corresponding facilities plus 200' service territory area, are intended to be, and are, the correct implementation of the Settlement Agreement, and part of the full and final settlement of all claims related to the outstanding litigation.

7. It is also the Parties' intent that Elgin releases to Aqua the CCN territory encompassed within the location of Elgin's facilities plus 200' CCN as depicted on **Exhibit B** to the Settlement Agreement, and that such released territory is intended to be, and is, transferred from Elgin to Aqua as part of the full and final settlement of all claims related to the outstanding litigation.

8. It is also the Parties' intent that no other service territory was intended to be, or was, transferred as part of the Settlement Agreement, other than as stated herein and as shown on **Exhibit C** to the Settlement Agreement. For purposes of clarity, **Exhibit C** to the Settlement Agreement is also attached to this Addendum.

9. The purpose of this Addendum to the Settlement Agreement is not to alter the terms of the Settlement Agreement in any way, or to transfer any more or any less service territory from Aqua to Elgin beyond what was contemplated by the Parties in the original Settlement Agreement. Rather, the sole purpose of this Addendum to the Settlement Agreement is to clarify the Parties' intent with respect to the area intended to be transferred and the correction of the location of Elgin's facilities plus 200' CCN, as depicted in **Exhibit C** to the Settlement Agreement.

10. Further, the purpose of this Addendum to the Settlement Agreement is to clarify that Aqua has consented to Elgin serving the territory depicted in **Exhibit C**, including the location of the facilities plus 200' CCN, and that it shall not be considered a breach of the Settlement Agreement if Elgin serves retail customers located within its CCN, including the facilities plus 200' portion of the CCN that is depicted in **Exhibit C** to the Settlement Agreement.

11. The Parties shall submit this Addendum to the Settlement Agreement to the TCEQ to address the Notice of Deficiency issued by the TCEQ on July 16, 2012, related to the §13.248 Submission.

12. The Parties have each authorized their respective representatives to execute this Addendum on behalf of the respective Party.

DATE: 15 August 12

CITY OF ELGIN, TEXAS

By: Mayer Marc Helm

ATTEST:

Shirley Garvel  
City Secretary

[SEAL]



DATE: AUGUST 16, 2012

AQUA WATER SUPPLY CORPORATION

By: Earl Steinbach  
Vice-President, Board of Directors

ATTEST:

William F. Jan  
Secretary

EXHIBIT C - AQUA AND ELGIN CCN AREAS AS MODIFIED BY AGREEMENT

N

0 2,000 4,000 Feet

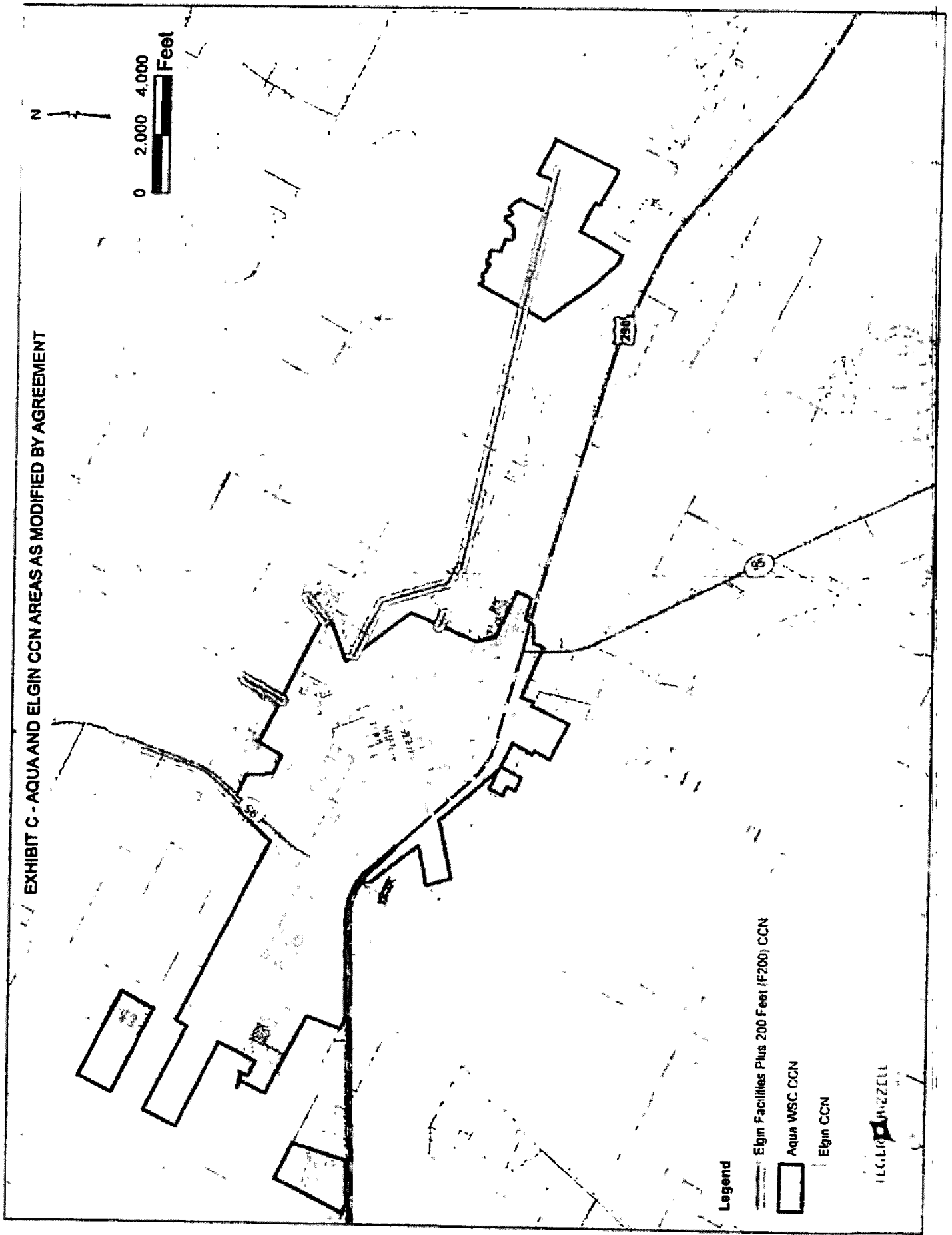
Legend

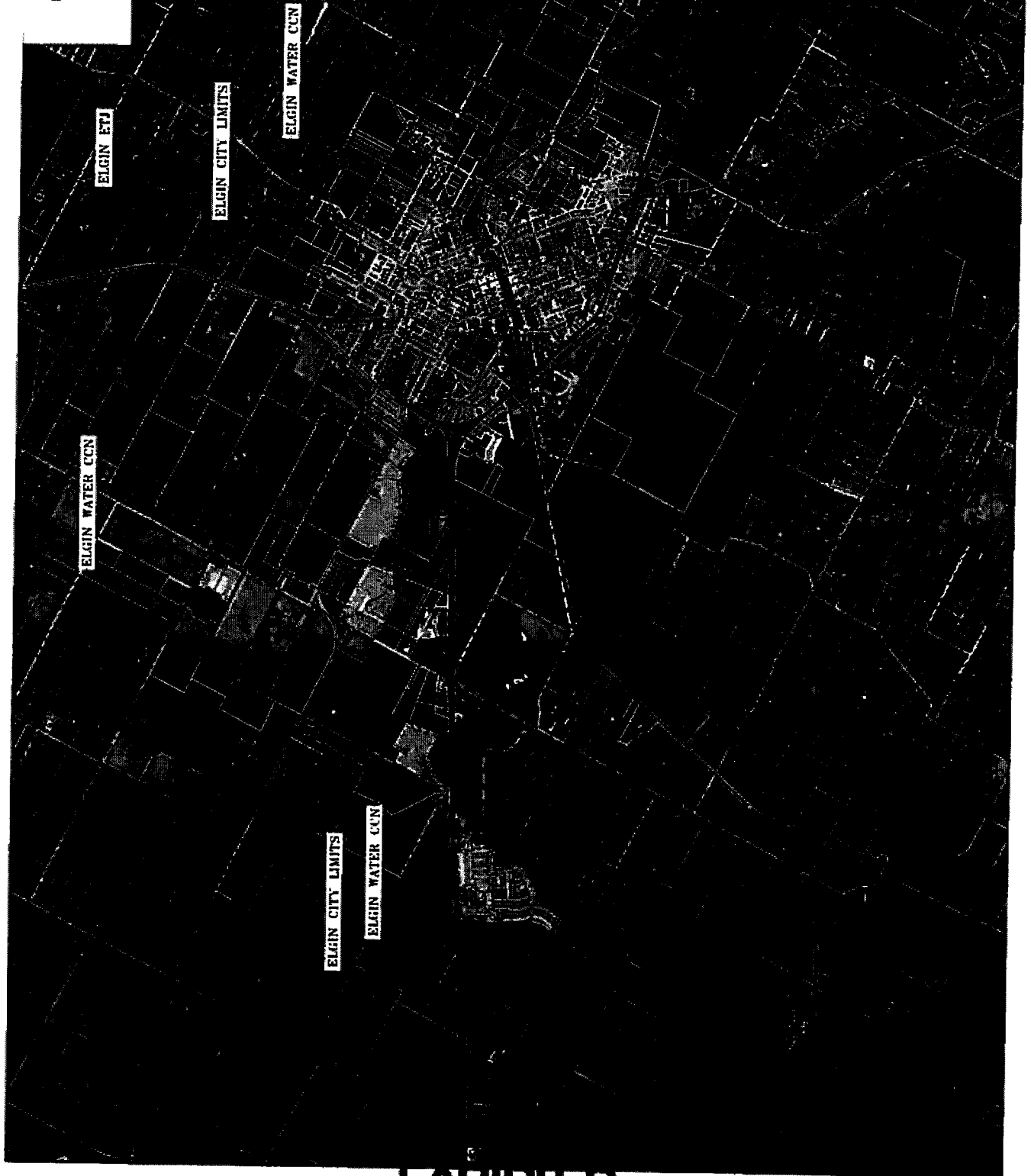
Elgin Facilities Plus 200 Feet (F200) CCN

Aqua WSC CCN

Elgin CCN

ELGIN WATERCELL



CITY OF ELGIN  
WATER CCN



# Attachment 2

## General Location Map

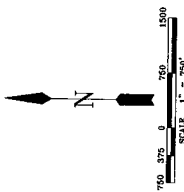
(ref. pg. 11 of 31, item 3.A)

# ATTACHMENT 2

GENERAL LOCATION MAP  
APPLICATION TO AMEND CITY OF  
ELGIN WATER CCN NO 10311



TRC ENGINEERS, INC.  
505 E. HUNTLAND DRIVE, STE. 250 AUSTIN, TX  
78752 TEL: 512-454-8716 FAX: 512-454-8716



## LEGEND



AQUA CCN TO BE TRANSFERRED  
TO ELGIN CCN



ELGIN CCN TO BE TRANSFERRED  
TO AQUA CCN



SERVICE AREA ZONE  
(REF. ATTACHMENT 4-  
WRITTEN DESCRIPTION)

JUNE 2014

