

Control Number: 44024



Item Number: 1

Addendum StartPage: 0

444029

# THE TERRILL FIRM

A PROFESSIONAL CORPORATION

810 West 10<sup>th</sup> Street  
Austin, Texas 78701  
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December 22, 2014

RECEIVED  
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PUBLIC UTILITY COMMISSION  
FILING CLERK

Tammy Benter  
Team Leader  
Public Utility Commission of Texas  
1701 N Congress PO Box 13326  
Austin, Texas 78711-3326

*Re:* Application by Aqua Texas, Inc., Certificate of Convenience and Necessity ("CCN") No. 13201, for Approval of a Sale, Transfer, or Merger ("STM") of CCN No. 11439, Union Hill Water Supply Corporation Service Area and Assets.

Dear Tammy:

Aqua Texas, Inc. d/b/a Aqua Texas ("Aqua Texas") presents the attached STM application seeking approval to acquire the CCN and water system assets of Union Hill Water Supply Corporation ("Union Hill"). A unique aspect of this STM application is that Union Hill is a non-profit water supply corporation formed and operated according to Texas Water Code, Chapter 67, while Aqua Texas is a private, investor-owned utility.

On June 24, 2010, Aqua Utilities, Inc. d/b/a Aqua Texas entered into an agreement with Union Hill (collectively, the "Applicants") that, in pertinent part, would result in a pay-off of Union Hill's remaining federal debt and Aqua Texas acquiring Union Hill water system assets if certain conditions were fulfilled. The agreement also provided terms for construction of an interconnect between the Union Hill water system and Aqua Texas' Phoenix Water Works water system (PWS No. 1070211), which was completed in late 2010. Prior to the interconnect, Union Hill's existing water well was failing and a new sustainable water supply was needed. The parties expected meeting the conditions to take several years, and it has. In the interim, Aqua Texas has acted as a contract operator for Union Hill, but is not the certificated retail public water utility for CCN No. 11439. During its time as a contract operator, Aqua Texas has ensured that Union Hill water system operations remained compliant with TCEQ and PUC requirements.

Now, over four years later, there are changed circumstances: (1) the agreement was assigned to Aqua Texas, Inc. d/b/a Aqua Texas (CCN No. 13201), which is a different Aqua America, Inc. subsidiary that also conducts business as Aqua Texas; (2) the regulatory authority for CCNs is now the Public Utility Commission of Texas ("PUC"); and (3) most of the conditions required for Aqua Texas to acquire the Union Hill assets are now fulfilled. A key condition that is not fulfilled is approval for the transaction by the regulatory authority under Texas Water Code, Chapter 13, which the PUC is now charged with administering. Consequently, Aqua Texas and Union Hill hereby present a Sale, Transfer or Merger application that seeks approval for the proposed transaction. This

will allow Aqua Texas and Union Hill to complete the conditional deal as contemplated in 2010 so that Aqua Texas may obtain Union Hill's CCN and close on the Union Hill water system assets. This will make Aqua Texas the retail public utility responsible for continuous and adequate service to Union Hill customers in place of Union Hill.

Please find enclosed the following:

1. Seven copies, including the original, of the completed STM application form, attachments, maps, and exhibits.
2. Seven copies of the documents supporting the proposed transactions.
3. Seven copies of the water tariff currently used by Union Hill and the tariff Aqua Texas proposes to result from the STM. The application seeks a minor tariff change to incorporate Aqua Texas' "Water Utility Tariff for North Region" service policies and Union Hill rates into a "Water Utility Tariff for North Region - Union Hill" tariff, but the application does not seek to change the rates currently billed to Union Hill customers.
4. Seven copies of the "Certificate of Account Status" for Aqua Texas, Inc.
5. Seven copies, including the original, of each of the sworn affidavits of the transferor and transferee utilities' representatives.

The Applicants understand that there is no current PUC filing fee requirement for STM applications. If this is not the case, please let me know and payment will be forwarded accordingly.

The Applicants request a waiver for the following STM application items:

1. The portion of Item No. 5 which asks for a list of customer deposits and related information (customer deposits will be refunded by Union Hill prior to the closing).
2. Item No. 11.B. to the extent compliance correspondence information beyond that incorporated by reference is requested.
3. Item No. 16 with the exception of the 2013 Annual Financial Report for Aqua America, Inc.
4. All map submission requirements other than providing maps showing approved Union Hill CCN area obtained from the PUC CCN viewer. No CCN service area change is requested with this application other than the transfer of the CCN to Aqua Texas. The Applicant understand that PUC Staff is not requiring additional mapping information in such circumstances. However, if additional mapping information is required, please let me know.

Tammy Benter  
December 22, 2014  
Page 3

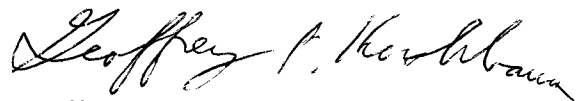
The Item No. 5 waiver is requested because this information is unnecessary. Customer deposits will not transfer to Aqua Texas from Union Hill.

The Item No. 11.B. waiver is requested because the responsive documents are voluminous, already on file with the TCEQ, and are accessible by PUC through the Memorandum of Understanding in place for the two agencies. Obtaining copies of all these documents from and refiling them with the State would be unduly burdensome and was not required by TCEQ for past Aqua Texas STM applications. A brief responsive summary is included in response to Item No. 11.B., but the records are all publicly available and waiver of production is requested.

The Item No. 16 waiver is requested because the financial information provided was deemed sufficient to support financial, managerial, and technical review for multiple STM applications by Aqua Texas, Inc. and other Aqua America, Inc. Texas subsidiaries filed in the past with and approved by TCEQ in lieu of providing financial information in the specific format contemplated by the STM application form (now adopted by PUC). The Applicants expect the information provided is similarly sufficient to support PUC's review of Aqua Texas' financial circumstances in connection with this application. Aqua Texas, Inc. is a wholly-owned subsidiary of Aqua America, Inc. and has typically submitted the Aqua America, Inc. financial information in support of CCN/STM applications since that publicly traded company provides financial support for Aqua Texas as necessary and its annual report includes financial information specific to Aqua Texas.

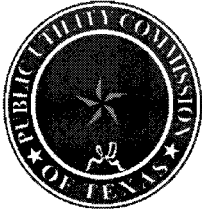
If there is anything else needed to process this STM application, please let me know. Please forward future correspondence regarding this application and requests for additional information to me. I would also like to know when a staff member has been assigned to review this application.

Sincerely,

A handwritten signature in cursive script, reading "Geoffrey P. Kirshbaum".

Geoffrey P. Kirshbaum  
**THE TERRILL FIRM, P.C.**

Enclosures.



## **Application for Sale, Transfer, or Merger of a Retail Public Utility**

Pursuant to Chapter 13.251 of the Texas Water Code

**Docket Number:** \_\_\_\_\_

(this number will be assigned by the Public Utility Commission after your application is filed)

7 copies of the application, including the original, along with one copy of the portable electronic storage medium (such as CD or DVD) containing the GIS data shall be filed with

Public Utility Commission of Texas  
Attention: Filing Clerk  
1701 N. Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326

No later than seven days after filing the application for the boundary change, provide a copy of each paper map and a portable electronic storage medium (such as CD, flash drive or DVD) containing complete and identical data to the portable electronic storage medium submitted above to

Texas Natural Resources Information System  
1700 N. Congress Ave, Room B40  
Austin, Texas 78701

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## Part A – General Information

\*RN# 101266161 \*CN# 600697189 \* (PRIOR TCEQ ID numbers)

1. Proposed action of application (check all the boxes that apply):

☒ Sale of ☒ All ☐ Portion of the ☒ Water system(s) under CCN No.: 11439  
☐ Acquisition ☐ Sewer system(s) under CCN No.:  
☐ Lease/Rental

☒ Transfer of ☒ All ☐ Portion of the ☒ Certificated water service area – CCN No.: 11439  
☐ Certificated sewer service area – CCN No.:

If only a portion of a system or certificated service area is affected by this transaction, please specify the areas or subdivision involved:

and to:

☐ Obtain a CCN for the transferee (purchaser) – indicate if purchaser will take the seller's CCN  
☒ Amend the transferee's CCN No.: 13201  
☐ Merge or consolidate public utilities  
☒ Cancel CCN of the transferor (seller) 11439

2. Proposed effective date of this transaction: 5/1/2015

(Must be at least 120 days after proper notice is provided)

## Part B – Current Service Provider or Seller Information

Questions 3 through 5 apply to the transferor (current service provider or seller)

3. For the current CCN holder or service provider please indicate:

A. Name: Union Hill Water Supply Corporation

(Individual, Corporation or Other Legal Entity)

who is a(n) of: ☐ Individual ☐ Corporation ☒ WSC ☐ HOA or POA ☐ Other

B. Utility Name (if different than above): N/A

Address: 15560 Texas 31, Brownsboro, TX 75756 Telephone: (AC) (903) 852-5248

C. Contact person. Please provide information about the person to be contacted regarding this application. Indicate if this person is the owner, operator, engineer, attorney or accountant.

Name: Kyle Edwards

Title: President

Address: 15560 Texas 31, Brownsboro, TX 75756

Telephone: (AC) (903) 852-5248

Fax: [REDACTED]

Email: [REDACTED]

4. About the last rate increase for the system or facilities being transferred:

A. What was the effective date of the last rate increase?

11/1/2014

B. Was notice of this increase provided to the Public Utility Commission of Texas (commission or PUC) or a predecessor regulatory authority?

☐

No

☒

Yes- Application/Docket Number:

Project No. 48342

Date

Nov. 24, 2014

\* Tariff filed for informational purposes per PUC Subst. R. 24.21(j).

5. Please provide a list of all customers affected by this transaction who have deposits held by the transferor or seller utility, if any, and include the following information (attach additional sheets if necessary):

Name and Address of Utility Customer	Date of Deposit	Amount of Deposit	Amount of Unpaid Interest on Deposit
All deposits will be refunded prior to closing			

### Part C – Purchaser or Transferee Information

☛ Questions 6 through 16 refer to the transferee or purchaser.

6. For the person or entity acquiring the facilities and/or CCN:

Applicant: Aqua Texas, Inc.

(Individual, Corporation, or Other Legal Entity)

Utility Name:

(If different than above)

Utility Address: 1106 Clayton Lane, Suite 400W, Austin, Texas 78723

Fax: (512) 990-4410

Email:

Telephone (AC):

(512) 990-4400

CCN Numbers held prior to the filing of this application:

13201

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

☐

Individual

☐

Home or Property Owners Association

☐

Partnership; attach copy of partnership agreement

☒

Corporation; provide charter number as recorded with the Office of the Secretary of State for

☐

Texas: 32014405503

☐

Non-profit, member owned, member-controlled Cooperative Corporation (Article 1434(a) Water Sewer Service Corporation); provide charter number:

<input type="checkbox"/>	Municipally-owned utility
<input type="checkbox"/>	District (MUD, SUD, WCID, etc.)
<input type="checkbox"/>	County
<input type="checkbox"/>	Other (please explain):

8. If the applicant is an *Individual* or sole proprietorship, provide the following information. If not, skip to the next question.

Name:		Email	
Address			
Telephone (AC):		Fax (AC):	

9. If the applicant is other than an *Individual*, provide the following information regarding the officers or partners of the legal entity applying for the transfer. You must complete either question 8 or question 9, whichever applies to the transferee applicant.

•Name:	SEE ATTACHMENT 1	Telephone (AC):	
Address:			
Position:		Ownership % (if applicable):	0.00%

•Name:		Telephone (AC):	
Address:			
Position:		Ownership % (if applicable):	0.00%

•Name:		Telephone (AC):	
Address:			
Position:		Ownership % (if applicable):	0.00%

•Name:		Telephone (AC):	
Address:			
Position:		Ownership % (if applicable):	0.00%

•Name:		Telephone (AC):	
Address:			
Position:		Ownership % (if applicable):	0.00%

•Name:		Telephone (AC):	
Address:			
Position:		Ownership % (if applicable):	0.00%

- Attach additional sheet(s) if necessary -

- Important:** • If the applicant is a for-profit corporation, please provide a copy of the corporation's "Certification of Account Status" from the State Comptroller Office. This "Certification of Account Status" can be obtained from:



Texas Comptroller of Public Accounts

P. O. Box 13528, Capitol Station

Austin, Texas 78711

1-800-252-5555

- If the applicant is an Article 1434a water supply or sewer service corporation or other non-profit corporation, please provide a copy of the Articles of Incorporation and By-Laws.

SEE ATTACHMENT 2

10. Contact person. Please provide information about the person to be contacted regarding this application. Indicate if this person is the owner, operator, engineer, attorney or accountant.

Name:	Geoffrey P. Kirshbaum, The Terrill Firm, PC	Title:	Attorney
Address:	810 West 10th Street	Telephone (AC):	(512) 474-9100
Fax #	(512) 474-9888	Email	gkirshbaum@terril-law.com
Relationship to the applicant:	Attorney		

☛ IF THERE ARE MORE THAN TWO PARTIES INVOLVED IN THIS TRANSACTION, PLEASE ATTACH SHEETS PROVIDING THE INFORMATION REQUIRED IN QUESTION 6 THROUGH QUESTION 10 FOR EACH PARTY

11. Please respond to each of the following questions. Attach additional sheets if necessary.

- A. Describe the experience and qualifications of the applicant to provide adequate utility service to the requested area

Aqua Texas is a subsidiary of Aqua America, Inc., one of the largest publicly traded water utilities in America. Aqua Texas currently operates more than 375 water systems in Texas. The Company has the financial ability to make all necessary repairs and improvements to the systems to keep them in full compliance with all TCEQ and PUC regulations. The Company's experienced operators are thoroughly knowledgeable about water operations, as well as the requirements for continuous and adequate service.

- B. Has the applicant acquiring the CCN or facilities or an affiliated interest of the applicant been under enforcement action by the PUC, TCEQ, Texas Department of Health (TDH), the Office of the Attorney General (OAG) or the Environmental Protection Agency (EPA) in the past for noncompliance with rules, orders or State Statutes? ☒ Yes ☐ No

If yes, please attach copies of any correspondence with these regulatory agencies concerning these enforcement actions and describe any actions and efforts to comply with those requirements. Attach additional sheets if needed.

Aqua Texas, Inc. d/b/a Aqua Texas has received only a few notices of violation from TCEQ which were resolved or are in the process of resolution. Aqua Texas, Inc., Aqua Utilities, Inc., and Aqua Development, Inc. d/b/a Aqua Texas implemented action items required by TCEQ under an extensive Agreed Compliance Order for utility systems under enforcement or compliance orders inherited from AquaSource Utility, Inc. and AquaSource Development Company in 2003. That work is now complete. Aqua Texas systems receive periodic inspections and reports from TCEQ Staff. Records documenting compliance and/or enforcement matters for Aqua Texas, Inc. and its affiliates are voluminous and available from TCEQ files. Waiver of production is requested.

- C. Describe the source and availability of funds required to make the planned or required improvements, if any, to meet minimum requirements of the TCEQ and PUC and ensure continuous and adequate service.

Aqua Texas has the financial ability through customer collections and infusions of capital from lenders, as well as capital contributions from its parent Aqua America, Inc., to make any required improvements necessary to meet TCEQ and PUC minimum requirements for continuous and adequate service.

- D. Describe the anticipated impact of this transaction on the quality of utility service and explain any anticipated changes in the quality of service.

The quality of service will remain at a high level due to the experienced operators employed by Aqua Texas. The quality of service will meet or exceed current levels. Aqua Texas has been the contract operator for Union Hill WSC for over 4 years and has ensured that Union Hill WSC customers receive high quality water service. The Union Hill WSC System currently provides continuous and adequate service to all customers. Aqua Texas will deal promptly with any service issues which may arise.

- E. How will the transaction serve the public interest?

Aqua Texas owns several water utilities in the area of the Union Hill water system (PWS No. 1070032) to be acquired in the proposed transaction. One Aqua Texas water system (Phoenix Water Work, PWS No. 1070211) was interconnected with the Union Hills WSC system in 2010. Prior to the interconnect, Union Hill WSC's water well was failing. Now, the Union Hill WSC water system has a sustainable water supply purchased from Aqua Texas. Current customer water rates will not change.

12. Please describe the nature of the proposed transaction:

Aqua Texas will acquire the water assets owned by Union Hill WSC through an asset purchase and will also acquire the existing service area of the Transferor. For further details, please see a copy of the purchase agreement included in Attachment 3.

13. If the transferee applicant is an Investor Owned Utility (IOU) and will be under the rate jurisdiction of the PUC, please provide the following information. Water supply or sewer service corporations and political subdivisions of the state should mark this section N/A:

- A.
- Total Purchase Price: \$348,000.00, plus closing costs\*
  - Total Original Cost (as recorded on books of seller or merging entity):
  - Accumulated Depreciation as of the proposed effective date of the transaction:
  - Contributions in Aid of Construction:

\$1,008,330.00\*\*

\$270,693.00\*\*

- Specific surcharges approved by TCEQ or PUC:

\$ 0.00

- Revenues from explicit customer agreements:

\$ 0.00

- Developer Contributions (please explain):

\$0.00

- Other Contributions (please explain):

\$0.00

Total Contributions in Aid of Construction

\$ 0.00 \*\*\*

- Net Book Value:

\$737,637.00\*\*

13. A.

\* Please see "Agreement to Purchase Water System Assets" and its assignment to Aqua Texas, Inc. included in Attachment 3 ("APA"). The purchase price of \$324,000.00 was agreed upon as part of the consideration for the proposed transaction in the APA, but is subject to an increase of \$2,000.00 per connection over 162 at Closing per APA terms. Currently, there are 174 connections. If the closing occurred today, the total purchase price would be \$348,000.00. But that could change prior to closing. Aqua Texas ("Buyer") also expects to pay 5-10% of the final consideration amount as closing costs. The purchase price will be used to pay off Union Hill WSC's outstanding debts. Seller and Buyer represent and warrant that the agreed upon consideration to be exchanged for the Union Hill WSC assets is not the original cost, less depreciation, value (*i.e.*, net book value) of the acquired assets.

\*\* The transaction is not allowed to close without PUC approval. Therefore, the "proposed effective date of the transaction" is not yet determined. The values provided were current as of Union Hill WSC's last available Federal Asset Report for the tax year ended 12/31/2013. Certain Union Hill WSC assets were sold in 2014 and are not included in the totals provided here. These values will be different on the closing date and require re-analysis at that time.

\*\*\* Seller represents and warrants that the assets it will transfer to Aqua Texas were not and will not be funded with customer or developer contributions in aid of construction. Union Hill WSC has not recorded any such amounts on its books. All customer deposits and membership fees held by Union Hill WSC will be refunded prior to closing and will not be received by Aqua Texas.

- ☞ If the Original Cost or any of the above items has been established in a rate case proceeding by the PUC, the TWC or the TCEQ, please provide the Application/Docket Number and date:

Application/Docket Number:

Date:

- ☞ If the applicant is not under the rate jurisdiction of the TCEQ, only the purchase price and information related to Contributions in Aid of Construction is required.

Please provide any other information concerning the nature of the transaction you believe should be given consideration if not explained elsewhere in the application.

[attach additional sheet(s) if necessary]:

The transaction strictly involves an asset sale/acquisition/transfer between Union Hill WSC and Aqua Texas, Inc. d/b/a Aqua Texas. This is not a stock purchase transaction. Legal ownership and responsibility for the assets will be transferred to Aqua Texas which will become the certificated retail public water utility for Union Hill water customers in place of Union Hill Water Supply Corporation. Day-to-day utility operations will remain the same or improve under Aqua Texas' experienced management and operations personnel. Aqua Texas has been the contract operator for the Union Hill WSC water system (PWS No. 1070032) for over four years. Further, the Union Hill WSC water system was interconnected with an Aqua Texas water system (Phoenix Water Works, PWS No. 1070211) in 2010. Prior to the interconnect, Union Hill WSC's water well was failing. Now, the Union Hill WSC water system has a sustainable water supply purchased from Aqua Texas. The applicants note that all rights under the Asset Purchase Agreement included in Attachment 3 were assigned by Aqua Utilities, Inc. d/b/a Aqua Texas, Inc. to Aqua Texas, Inc. d/b/a Aqua Texas as reflected in the assignment document also included within Attachment 3. Aqua Texas is not requesting a water rate change upon completion of the transaction, but is requesting that its service policies be incorporated into a "Water Utility Tariff for North Region – Union Hill" as there are requirements for investor-owned utilities that do not apply to non-profit water supply corporations.

- C. Complete the following proposed entries listed below as shown in books of purchasing (or surviving) company. Additional entries may be made; the following are suggested only, and not intended to pose descriptive limitations.

Utility Plant in Service:

\$1,008,330.00\*\*

Plant Acquisition Adjustment:

Not yet known\*\*

Extraordinary Loss on Purchase:

Not applicable.

Accumulated Depreciation of Plant:

\$270,693.00\*

Cash:

Not applicable.

Notes Payable:

Not applicable.

Mortgage Payable:

Not applicable.

Others (please list):

Net Book Value: \$737,637.00\*

As the purchaser, I understand that it is **my responsibility** in any future rate proceeding to provide written evidence and support for the original cost and installation date of all facilities used and useful for providing utility service.

Purchaser's Initials:

Aqua Texas

Date:

December 15, 2014

14. Please indicate the proposed effect of this transaction on the rates to be charged to the affected customers:

☒

All the customers will be charged the same rates as they were charged before the transaction.

☐

Some

☐

All customers will be charged different rates than they were charged before the transaction.

SEE ATTACHMENT 4 (which includes the current Union Hill WSC Tariff and the proposed Aqua Texas, Inc. d/b/a Aqua Texas Water Utility Tariff for North Region – Union Hill).

13. C.

\* The transaction is not allowed to close without PUC approval. Therefore, the “proposed effective date of the transaction” is not yet determined. The values provided were current as of Union Hill WSC’s last available Federal Asset Report for the tax year ended 12/31/2013. Certain Union Hill WSC assets were sold in 2014 and are not included in the totals provided here. These values will be different on the closing date and require re-analysis at that time. Further, Aqua Texas notes that the values presented are only associated with the assets proposed for transfer and not other existing Aqua Texas assets.

\*\* Aqua Texas will likely book a plant acquisition adjustment amount since the purchase price is expected to be less than net book value of the assets acquired on the closing date. However, that amount is not yet finally determined. A negative acquisition adjustment amount may not be used in a future rate proceeding even if it is included on Aqua Texas’ books under prevailing water utility rate base requirements.

If rates are changing, please explain:

Not applicable.

☐ Applicant is an IOU and intends to file with the commission or municipal regulatory authority an application to change rates of some/all of its customers as a result of this transaction. If so, please explain:

Not applicable.

☐ Other. Please explain:

Not applicable.

15. List all neighboring water and /or sewer utilities, cities, and political subdivisions providing the same service within two (2) miles of area affected by this proposed transaction. This information should be available from the water utility database (WUD) or Applicant's licensed water operator.

SEE ATTACHMENT 5.

Aqua Texas respectfully requests that the PUC staff specifically identify any additional entities for which notice is requested if the notice is otherwise approved.

16. Financial, Managerial and Technical information for the acquiring entity.

Waiver of production requested except for documents included in Attachment 6.

# Part D – Historical Financial Information

<b>HISTORICAL BALANCE SHEETS</b>	<b>CURRENT YEAR (A)</b>	<b>A-1 YEAR</b>	<b>A-2 YEAR</b>	<b>A-3 YEAR</b>	<b>A-4 YEAR</b>	<b>A-5 YEAR</b>
<b>CURRENT ASSETS</b>						
Cash						
Accounts Receivable						
Inventories						
Income Tax Receivable						
Other						
<b>Total</b>						
<b>FIXED ASSETS</b>						
Land						
Collection/Distribution System						
Buildings						
Equipment						
Other						
Less: Accum. Depreciation or Reserves						
<b>Total</b>						
<b>TOTAL ASSETS</b>						
<b>CURRENT LIABILITIES</b>						
Accounts Payable						
Notes Payable, Current						
Accrued Expenses						
Other						
<b>TOTAL</b>						
<b>LONGTERM LIABILITIES</b>						
Notes Payable, Long-term						
Other						
<b>TOTAL LIABILITIES</b>						
<b>OWNER'S EQUITY</b>						
Paid in Capital						
Retained Equity						
Other						
Current Period Profit or Loss						
<b>TOTAL OWNER'S EQUITY</b>						
<b>TOTAL LIABILITIES AND EQUITY</b>						
<b>WORKING CAPITAL</b>						
<b>CURRENT RATIO</b>						
<b>DEBT TO EQUITY RATIO EQUITY TO TOTAL ASSETS</b>						

<b>HISTORICAL INCOME STATEMENT</b>	<b>CURRENT YEAR (A)</b>	<b>A-1 YEAR</b>	<b>A-2 YEAR</b>	<b>A-3 YEAR</b>	<b>A-4 YEAR</b>	<b>A-5 YEAR</b>
<b>METER NUMBER</b>						
Existing Number of Taps						
New Taps Per Year						
<b>Total Meters at Year End</b>						
<b>METER REVENUE</b>						
Fees Per Meter						
Cost Per Meter						
<b>Operating Revenue Per Meter</b>						
<b>GROSS WATER REVENUE</b>						
Fees						
Other						
<b>Gross Income</b>						
<b>OPERATING EXPENSES</b>						
General & Administrative						
Interest						
Other						
<b>NET INCOME</b>						



<b>HISTORICAL EXPENSE DETAIL</b>	<b>CURRENT YEAR (A)</b>	<b>A-1 YEAR</b>	<b>A-2 YEAR</b>	<b>A-3 YEAR</b>	<b>A-4 YEAR</b>	<b>A-5 YEAR</b>
<b>GENERAL/ADMINISTRATIVE EXPENSES</b>						
Salaries						
Office Expense						
Computer Expense						
Auto Expense						
Insurance Expense						
Telephone Expense						
Utilities Expense						
Depreciation Expense						
Property Taxes						
Professional Fees						
Other						
<b>Total</b>						
<b>% Increase Per Year</b>						
<b>OPERATIONAL EXPENSES</b>						
Salaries						
Auto Expense						
Utilities Expense						
Depreciation Expense						
Repair & Maintenance						
Supplies						
Other						
<b>Total</b>						
<b>% Increase Per Year</b>						
<b>ASSUMPTIONS</b>						
Interest Rate/Terms						
Utility Cost/gal.						
Depreciation Schedule						
Other						

# Part E – Projected Information

## PROJECTED BALANCE SHEETS

	START UP	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5
<b>CURRENT ASSETS</b>						
Cash						
Accounts Receivable						
Inventories						
Income Tax Receivable						
Other						
<b>Total</b>						
<b>FIXED ASSETS</b>						
Land						
Collection/Distribution System						
Buildings						
Equipment						
Other						
Less: Accum. Depreciation or Reserves						
<b>Total</b>						
<b>TOTAL ASSETS</b>						
<b>CURRENT LIABILITIES</b>						
Accounts Payable						
Notes Payable, Current						
Accrued Expenses						
Other						
<b>Total</b>						
<b>LONGTERM LIABILITIES</b>						
Notes Payable, Long-term						
Other						
<b>TOTAL LIABILITIES</b>						
<b>OWNER'S EQUITY</b>						
Paid in Capital						
Retained Equity						
Other						
Current Period Profit or Loss						
<b>TOTAL OWNER'S EQUITY</b>						
<b>TOTAL LIABILITIES AND EQUITY</b>						
<b>WORKING CAPITAL</b>						
<b>CURRENT RATIO</b>						
<b>DEBT TO EQUITY RATIO</b>						
<b>EQUITY TO TOTAL ASSETS</b>						

**PROJECTED INCOME STATEMENT**

	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	TOTALS
<b>METER NUMBER</b>						
Existing Number of Taps						
New Taps Per Year						
<b>Total Meters at Year End</b>						
<b>METER REVENUE</b>						
Fees Per Meter						
Cost Per Meter						
<b>Operating Revenue Per Meter</b>						
<b>GROSS WATER REVENUE</b>						
Fees						
Other						
<b>Gross Income</b>						
<b>OPERATING EXPENSES</b>						
General & Administrative						
Interest						
Other						
<b>NET INCOME</b>						


**PROJECTED EXPENSE DETAIL**

	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	TOTALS
<b>GENERAL/ADMINISTRATIVE EXPENSES</b>						
Salaries						
Office Expense						
Computer Expense						
Auto Expense						
Insurance Expense						
Telephone Expense						
Utilities Expense						
Depreciation Expense						
Property Taxes						
Professional Fees						
Other						
<b>Total</b>						
<b>% Increase Per Year</b>	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
<b>OPERATIONAL EXPENSES</b>						
Salaries						
Auto Expense						
Utilities Expense						
Depreciation Expense						
Repair & Maintenance						
Supplies						
Other						
<b>Total</b>						
<b>% Increase Per Year</b>	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
<b>ASSUMPTIONS</b>						
Interest Rate/Terms						
Utility Cost/gal.						
Depreciation Schedule						
Other						

**PROJECTED SOURCES AND USES OF CASH STATEMENTS**

	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	TOTALS
<b>SOURCES OF CASH</b>						
Net Income						
Depreciation (If Funded)						
Loan Proceeds						
Other						
<b>Total Sources</b>						
<b>USES OF CASH</b>						
Net Loss						
Principle Portion of Pmts.						
Fixed Asset Purchase						
Reserve						
Other						
<b>Total Uses</b>						
<b>NET CASH FLOW</b>						
<b>DEBT SERVICE COVERAGE</b>						
Cash Available for Debt						
<b>SERVICE (CADS)</b>						
Net Income (Loss)						
Depreciation, or Reserve Interest						
<b>Total</b>						
<b>REQUIRED DEBT SERVICE (RDS)</b>						
Principle Plus Interest						
<b>DEBT SERVICE COVERAGE RATIO</b>						
CADS Divided by RDS						

## Part F – TCEQ Public Water or Sewer System Information

 Please answer questions 17 through 22 on a different sheet for each physically Distinct system being transferred or acquired.

17. A. For Water Systems. TCEQ Public Water System Identification Number:

1	0	7	0	0	3	2
---	---	---	---	---	---	---

Date of last inspection: 3-27-14

**B. For Wastewater Systems:**

**-TCEQ Discharge Permit Number:**

W Q  - 

**-Name of Permittee:**

**-Date of application to transfer Discharge Permit submitted:**

-Date of application to transfer Discharge Permit approved by TCEQ:

18. A. Are any improvements required to meet TCEQ or PUC standards?

☐ Yes ☒ No. If yes, please explain:

B. Is there a moratorium on new connections? ☐ Yes ☒ No. If yes, please explain:

C. Provide details of each required major capital improvement to correct the deficiencies and meet the TCEQ or PUC standards (attach additional sheets if necessary):

Description of the Required Improvement	Schedule to Complete	Estimated Cost

19. Does the system being transferred operate within the city limits of a municipality or within district boundaries? ☐ Yes ☒ No

If yes, indicate the number of customers within the city limits or district boundaries:

Water Sewer

 **Attach copy of franchise agreement or consent letter from the city or district.**

Not applicable.

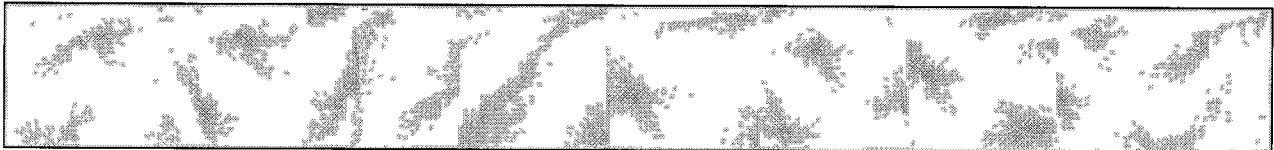
20. Do you currently purchase water or sewer treatment capacity from another source? ☒ Yes ☐ No  
☒ Water ☐ Sewer Purchased on a ☒ Regular ☐ Seasonal ☐ Emergency Basis

• Source: Aqua Texas, Inc. % of total supply: 100.00%

21. List the number of existing connections to be effected by this transaction.

Water			Sewer		
	-Non Metered		-2"meter		
174	-5/8" or 3/4" meter		-3" meter		
	-1" meter		-4" meter		
	-1 1/2" meter		-Other		
Total Water Connections:			174	Total Sewer Connections	

22. Has the system reached 85% of its capacity based on TCEQ's minimum requirements? ☐ Yes ☒ No  
 If yes, please explain what steps are being taken to address the capacity issues:



23. List the name, class, and license number of the operator(s) that will be responsible for the system:

Name	Class	License#
See Attachment 7		

24. Attach the following maps with each copy of the application:

- One small scale map clearly showing affected service area with enough detail to accurately locate the area if the application is for the transfer of all or a portion of a CCN.
- One large scale map showing the proposed service area boundaries being sold, transferred, or merged and, if available, the existing and proposed facilities. Color coding should be used to differentiate existing from proposed facilities. Facilities and service area boundaries should be shown with such exactness that they can be located on the ground. If transferring area not currently in a CCN or a portion of an existing CCN area please attach the following hard copy maps with each copy of the application:
  - A general location map delineating the proposed service area with enough detail to accurately locate the proposed area within the county.
  - A map showing only the proposed area by:
    - metes and bounds survey certified by a licensed state or registered professional land surveyor; or
    - projectable digital data with metadata (proposed areas should be in a single record and clearly labeled, data disk should be included); or
    - following verifiable natural and man-made landmarks, or
    - a copy of recorded plat map with metes and bounds.
  - A written description of the proposed service area.

SEE ATTACHMENT 8 – The entire facilities + 200' CCN No. 11439 held by Union Hill Water Supply Corporation as shown on the map included in Attachment 8 is proposed for transfer without change. This map was obtained from the PUC Water and Sewer CCN Viewer. Applicant requests waiver of production for all additional map information. If additional map information is required, please contact Aqua Texas, Inc. d/b/a Aqua Texas.



Part G – Oaths and Notices

**OATH FOR SELLER OR FORMER SERVICE PROVIDER**

STATE OF

Texas

COUNTY OF

I, [REDACTED], being duly sworn, file this application for sale, lease, rental or merger or consolidation as [REDACTED] (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 documents filed with this application, and have complied with all the requirements contained in the application; and, that all such statements made and matters set forth therein with respect to applicant are true and correct. Statements about other parties are made on information and belief. I further state that the application is made in good faith and that this application does not duplicate any filing presently before the Commission.

I further state that I have provided to the purchaser or transferee a written disclosure statement about any contributed property as required under Section 13.301(i) and copies of any outstanding Orders of the Texas Commission on Environmental Quality, the Public Utility Commission of Texas, or Attorney General and have also complied with the notice requirements in Section 13.301(k) of the Texas Water Code.

*Kyle J. Edwards*

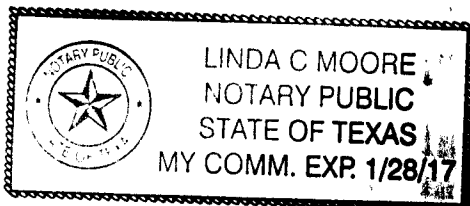
AFFIANT

(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 [REDACTED] of [REDACTED], 20 [REDACTED].

SEAL



*Linda C. Moore*

NOTARY PUBLIC IN AND FOR THE  
STATE OF TEXAS

*Linda Moore*

PRINT OR TYPE NAME OF NOTARY

MY COMMISSION EXPIRES

1/28/17

One copy of this page must be submitted for each utility involved in this transaction.

**OATH FOR PURCHASER OR ACQUIRING ENTITY**

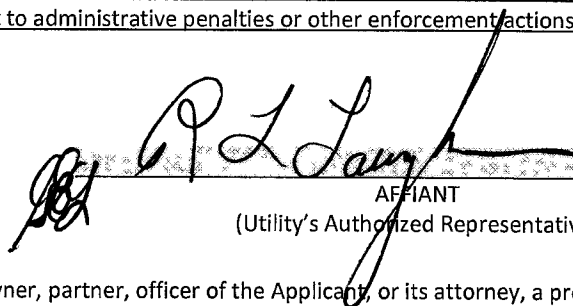
STATE OF Texas

COUNTY OF Travis

I, Robert L. Laughman, being duly sworn, file this application for

sale, lease, rental or merger or consolidation as President, Aqua Texas, Inc.  
**(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 documents filed with this application, and have complied with all the requirements contained in the application; and, that all such statements made and matters set forth therein with respect to applicant are true and correct. Statements about other parties are made on information and belief. I further state that the application is made in good faith and that this application does not duplicate any filing presently before the Commission.

I am also authorized and do agree to be bound by and comply with any outstanding orders of the Texas Commission on Environmental Quality, the Public Utility Commission of Texas or the Attorney General which have been issued to the system or facilities being acquired and recognize that I will be subject to administrative penalties or other enforcement actions if I do not comply.

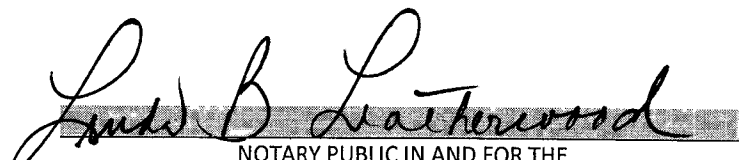
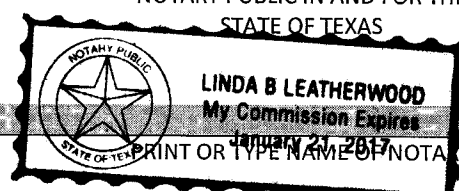
  
AFFIANT  
(Utility's Authorized Representative)

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.

Applicant represents that all other parties to this transaction have been furnished copies of this completed application.

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public in and for the State of Texas, this  
day 18th of December 20 11.

SEAL

  
NOTARY PUBLIC IN AND FOR THE  
STATE OF TEXAS  
  
LINDA B LEATHERWOOD  
My Commission Expires  
January 21, 2017  
PRINT OR TYPE NAME OF NOTARY  
MY COMMISSION EXPIRES

One copy of this page must be submitted for each utility involved in this transaction.

## Notice to Current Customers, Neighboring Systems and Cities

Union Hill Water Supply Corporation 'S  
(Seller's or Transferor's Name)

**NOTICE OF INTENT TO SELL FACILITIES AND TRANSFER CERTIFICATE OF CONVENIENCE AND  
NECESSITY (CCN) NO**

11439

TO

Aqua Texas, Inc.

(Purchaser's or Transferee's Name)

IN Henderson COUNTY, TEXAS

To: \_\_\_\_\_ Date Notice Mailed \_\_\_\_\_, 20 \_\_\_\_  
(Name of Customer, Neighboring System or City)

\_\_\_\_\_  
(Address)

City State Zip

Union Hill Water Supply Corporation

PO Box 197

Brownsboro, Texas 75756

Sellers or Transferors' Name

Address

City/State/Zip Code

has submitted an application with the Public Utility Commission of Texas to sell facilities and transfer  
water or sewer (please select) CCN No. 11439 in Henderson [County Name]

County to:

Aqua Texas, Inc.

1106 Clayton Ln, Suite 400W

Austin, Texas 78723

Purchasers or Transferee's Name

Address

City/State/Zip Code

The sale is scheduled to take place as approved by the Commission (V.T.C.A., Water Code §13.301). The transaction and the transfer of the CCN include the following subdivision(s):

Union Hill

The area subject to this transaction is located approximately 1 miles east [direction] of  
downtown Brownsboro, [City or Town] Texas, and is **generally** near FM 3204, U.S. Highway 31, and confined  
to the location of Union Hill Water Supply Corporation's water system (PWS No. 1070032) facilities, plus 200 feet outward from same.

The total area being requested includes approximately 200 feet in either direction of the Union Hill WSC water system (PWS No. 1070032) facilities.

This transaction will have the following effect on the current customer's rates and services:

(1) current customer water rates will remain unchanged; (2) service quality will remain the same or improve; and (3) Aqua Texas service policies will apply at the completion of this transaction when it becomes the certificated retail public water utility for Union Hill customers.

Affected persons may file written protests and/or request a public hearing within 30 days of this notice.

To request a hearing, you must:

- (1) state your name, mailing address and daytime telephone number;
- (2) state the applicant's name, application number or another recognizable reference to this application;
- (3) include the statement "I/we request a public hearing";
- (4) write a brief description of how you, the persons you represent, or the public interest would be adversely affected by the proposed transaction and transfer of the CCN; and
- (5) state your proposed adjustment to the application or CCN which would satisfy your concerns and cause you to withdraw your request for a hearing.

Only those persons who submit a written request to be notified of a hearing will receive notice if a hearing is scheduled. The Commission will issue the CCN requested in the referenced application unless a hearing is scheduled to consider the transaction. If no protests or requests for hearing are filed during the comment period, the Commission may issue the CCN 30 days after publication of this notice.

Persons who wish to protest or request a hearing on this application should write the:

Filing Clerk  
Public Utility Commission of Texas  
1701 North Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326

**Se desea informacion en Espanol, puede llamar al  
1-888-782-8477**

---

Utility Representative

---

Utility Name

**Notice to Current Customers, Neighboring Systems, Landowner and Cities****'S NOTICE OF INTENT TO SELL FACILITIES TO**\_\_\_\_\_  
(Seller's or Transferor's Name)\_\_\_\_\_  
(Purchaser's or Transferee's Name)

AND FOR \_\_\_\_\_

\_\_\_\_\_  
Purchaser's or Transferee's Name)

TO OBTAIN OR AMEND A CERTIFICATE OF CONVENIENCE AND NECESSITY (CCN) IN

\_\_\_\_\_  
COUNTY, TEXASTo: \_\_\_\_\_  
(Name of Customer, Neighboring System, Landowner or City)

Date Notice Mailed \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
(Address)\_\_\_\_\_  
City\_\_\_\_\_  
State\_\_\_\_\_  
Zip\_\_\_\_\_  
Sellers or Transferors' Name\_\_\_\_\_  
Address\_\_\_\_\_  
City/State/Zip Codehas submitted an application with the Public Utility Commission of Texas to sell water or sewer (please select) Facilities in \_\_\_\_\_ [County Name] County to:\_\_\_\_\_  
Purchasers or Transferee's Name\_\_\_\_\_  
Address\_\_\_\_\_  
City/State/Zip Code

The transferee has also requested to obtain/amend a CCN in this application. The sale is scheduled to take place as approved by the Commission (Texas Water Code §13.301). The transaction and the proposed service area include the following subdivision(s):

The area subject to this transaction is located approximately \_\_\_\_\_ miles \_\_\_\_\_ [direction] of downtown \_\_\_\_\_, [City or Town] Texas, and is generally bounded on the north by \_\_\_\_\_; on the east by \_\_\_\_\_; on the south by \_\_\_\_\_; and on the west by \_\_\_\_\_

The total area being requested includes approximately \_\_\_\_\_ acres and serves \_\_\_\_\_ current customers. This transaction will have the following effect on the current customer's rates and services: \_\_\_\_\_

Affected persons may file written protests and/or request a public hearing within 30 days of this notice.

To request a hearing, you must:

- (1) state your name, mailing address and daytime telephone number;
- (2) state the applicant's name, application number or another recognizable reference to this application;
- (3) include the statement "I/we request a public hearing";
- (4) write a brief description of how you, the persons you represent, or the public interest would be adversely affected by the proposed transaction and transfer of the CCN; and
- (5) state your proposed adjustment to the application or CCN which would satisfy your concerns and cause you to withdraw your request for a hearing.


Only those persons who submit a written request to be notified of a hearing will receive notice if a hearing is scheduled. The Commission will issue the CCN requested in the referenced application unless a hearing is scheduled to consider the transaction. If no

protests or requests for hearing are filed during the comment period, the Commission may issue the CCN 30 days after publication of this notice.


Persons who wish to protest or request a hearing on this application should write the:

Filing Clerk  
Public Utility Commission of Texas  
1701 North Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326

**Se desea informacion en Espanol, puede llamar al  
1-888-782-8477**



Utility Representative



Utility Name

# **ATTACHMENT**

**1**

## OFFICERS OF AQUA TEXAS, INC.

Nicholas DeBenedictis	Chairman and Chief Executive Officer
Christopher H. Franklin	Executive Vice President and Chief Operating Officer
David P. Smeltzer	Executive Vice President and Chief Financial Officer
Karl M. Kyriss	Executive Vice President
William C. Ross	Senior Vice President, Engineering and Environmental Affairs
Christopher P. Luning	Senior Vice President, General Counsel and Assistant Secretary
Robert L. Laughman	President
Richard S. Fox	Regional President
Daniel Rimann	Vice President, Operations
Robert A. Kopas	Regional Controller – Midwest and Southern Division
Crandal McDougall	Controller
Diana Moy Kelly	Treasurer
Robert A. Rubin	Assistant Treasurer
Stan Szczgiel	Assistant Treasurer
Maria Gordiany	Secretary
Jacqueline Peyreferry	Assistant Secretary



# **ATTACHMENT**

**2**



## Franchise Tax Account Status

As of: 12/09/2014 01:00:56 PM

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**This Page is Not Sufficient for Filings with the Secretary of State**

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AQUA TEXAS, INC.	
Texas Taxpayer Number	32014405503
Mailing Address	1106 CLAYTON LN STE 400W AUSTIN, TX 78723-2476
Right to Transact Business in Texas	ACTIVE
State of Formation	TX
Effective SOS Registration Date	02/13/2004
Texas SOS File Number	0800304878
Registered Agent Name	CORPORATION SERVICE COMPANY D/B/A CSC- LAWYERS INCO
Registered Office Street Address	211 E. 7TH STREET SUITE 620 AUSTIN, TX 78701

# **ATTACHMENT**

**3**

## AGREEMENT TO PURCHASE WATER SYSTEM ASSETS

**THIS AGREEMENT TO PURCHASE WATER SYSTEM ASSETS** (the "Agreement"), is made and entered into effective the 24 day of JUNE, 2010, by and between **UNION HILL WATER SUPPLY CORPORATION**, a Texas non-profit corporation which owns and operates a public drinking water system located in Henderson County, Texas ("Seller" or "Union Hill WSC"), and **AQUA UTILITIES, INC. D/B/A AQUA TEXAS, INC.**, a Texas corporation with an address of 1106 Clayton Lane, Suite 400-W, Austin, Texas 78723, or its assigns ("AQUA TEXAS") (collectively, the "Parties"), with reference to the following RECITALS:

### RECITALS

A. Seller owns, maintains and operates a water production, treatment and distribution system (the "Water System") that provides retail water utility service to customers pursuant to Certificate of Convenience and Necessity No. 11439 and under Public Water System ID No. 1070032 within a service area located in Henderson County, Texas (the "Service Area").

B. AQUA TEXAS is a public water utility that furnishes retail water utility service to the public in various portions of Texas, including Henderson County, Texas.

C. Seller desires to sell certain assets, properties and rights of Seller owned and used in connection with its Water System, all upon the terms and conditions set forth herein.

D. AQUA TEXAS desires to operate Seller's Assets, hereinafter defined, pursuant to a separate Professional Services Agreement beginning on July 1, 2010, but further desires to purchase Seller's assets upon the terms and conditions set forth in this Agreement if Seller fulfills certain conditions precedent.

E. Seller currently owes the United States Department of Agriculture ("USDA") approximately \$368,000.00 and it will cost approximately \$200,000.00, but not more than \$225,000.00, to design, construct, and install the Interconnect Facilities, hereinafter defined, needed to provide a wholesale water supply to Union Hill WSC.

**NOW, THEREFORE**, in consideration of the recitals and the covenants, representations, warranties and agreements herein contained, and intending to be legally bound hereby, the Parties hereto agree as follows:

#### 1. SPECIAL CONDITIONS PRECEDENT TO AQUA TEXAS OBLIGATIONS

Before any AQUA TEXAS obligation under this Agreement becomes effective, unless waived by AQUA TEXAS, Seller must fulfill or satisfy each of the following special conditions precedent:

- 1.1. Contemporaneous with the execution of this Agreement, Seller shall execute a Professional Services Agreement in form and content acceptable to AQUA TEXAS that will allow AQUA TEXAS to operate the Water System for Union Hill WSC as an independent contractor until such time as AQUA TEXAS owns the Water System Assets of Union Hill WSC.

- 1.2. Within 30 days of the execution of this Agreement, Seller shall execute a Wholesale Water Supply Agreement in form and content acceptable to AQUA TEXAS before AQUA TEXAS delivers water under such an agreement that will commit Union Hill WSC to purchase water on a wholesale basis from AQUA TEXAS at a rate of \$3.00 per 1,000 gallons;
- 1.3. In return for AQUA TEXAS designing, constructing, and installing transmission line facilities needed to provide a wholesale water supply to Seller's Water System from existing AQUA TEXAS water supply facilities located in Henderson County, Texas ("Interconnect Facilities"), Seller shall execute instruments, including but not limited to a Mortgage and Promissory Note that place AQUA TEXAS in at least a second lien position, in form and content acceptable to AQUA TEXAS that will: (1) commit Union Hill WSC to repay AQUA TEXAS with interest at a rate of 4.75% per annum, notwithstanding any default interest rate that may apply, over a 10-year period for financing the cost of designing, constructing, and installing the Interconnect Facilities, however, such cost is not to exceed \$225,000.00; and (2) provide AQUA TEXAS with a first position security interest in the Interconnect Facilities and at least a second position security interest in all other Water System Assets and other assets owned by Union Hill WSC, but, if Seller's United States Department of Agriculture ("USDA") debt is paid off in full, will provide AQUA TEXAS a first position security interest in all Seller's assets;
- 1.4. Seller shall reduce its combined total debt amount owed to both the USDA and to AQUA TEXAS for construction of the Interconnect Facilities down to a total outstanding amount owed collectively to the USDA and AQUA TEXAS that is less than \$324,000.00, but the Parties agree that AQUA TEXAS may pay off Union Hill WSC's USDA debt on its behalf at any time as an offset to the purchase price stated in **Section 2.3** of this Agreement;
- 1.5. During the term of the Parties' Professional Services Agreement, unless otherwise agreed upon by the Parties after the effective date of this Agreement, Union Hill WSC shall not set or charge retail water utility service rates, currently set as reflected in the rate schedule attached as Exhibit 1.5(a) and which may be modified from time to time, that are less than the retail water utility service rates charged by AQUA TEXAS under its "Water Utility Tariff for North Region" as such may be modified from time to time with appropriate regulatory approval; Aqua Texas' current "Water Utility Tariff for North Region" is provided in attached Exhibit 1.5(b); and
- 1.6. Seller shall notify AQUA TEXAS in writing within 7 days after all special conditions precedent identified in this **Section 1** are fulfilled or satisfied. Further, if not already provided to AQUA TEXAS, Seller shall also provide documents to AQUA TEXAS demonstrating same within the same 7-day timeframe.

2. **SALE AND PURCHASE OF THE SELLER'S WATER SYSTEM ASSETS**

If Seller complies with all the special conditions precedent set forth in **Section 1** of this Agreement, then, subject to the terms and conditions hereinafter set forth, AQUA TEXAS shall

purchase from Seller, and Seller shall sell, assign, transfer, grant, convey and deliver to AQUA TEXAS at Closing (hereinafter defined), all the Seller's Water System assets, properties and rights of Seller (whether tangible or intangible, real, personal or mixed) which are held, used or useful in connection with the production, treatment and distribution of water within the Service Area (the "Assets").

At Closing, the Assets will be sold free and clear of all mortgages, liens, pledges, security interest, charges, taxes, claims, restrictions and encumbrances of any nature whatsoever. Except with respect to Seller's warranties and representations set forth in **Section 7** of this Agreement, all of which warranties and representations shall survive the Closing: (i) the Assets will be sold, transferred, conveyed and accepted in their "AS IS" and "WITH ALL FAULTS" condition and with any and all latent and patent defects; (ii) there is no warranty by Seller that the Assets are fit for a particular purpose; and (iii) there are no express or implied warranties with respect to the Assets.

2.1. Assets Further Defined

The Assets shall, without limitation to the definition stated above, include the specific assets, properties and rights of Seller set forth on Schedule 2.1, and the following:

- 2.1.a. all the land, buildings, pipes, pipelines, water mains, wells, pumping stations, storage tanks, standpipes, fire hydrants, structures, improvements, fixtures, rights-of-way, rights, uses, licenses and easements owned by Seller, or in which Seller has an interest, and all hereditaments, tenements and appurtenances belonging or appertaining thereto, including, but not limited to, all of the underground water, percolating water, artesian water, and any other water from any and all depths and reservoirs, formations, depths and horizons beneath the surface of the Property, and Certificate of Convenience and Necessity No. 11439;
- 2.1.b. all machinery, equipment, tools, vehicles, furniture, furnishings, leasehold improvements, goods, and other tangible personal property relating to the Water System owned by Seller or in which Seller has an interest;
- 2.1.c. all supplies and inventories relating to the Water System;
- 2.1.d. all rights of Seller under any written or oral contract, easement, license, agreement, lease, plan, instrument, registration, permit, surface water right, surface water permit, groundwater right, groundwater conservation district right, groundwater conservation district permit, certificate or other authorization or approval of any nature, or other document, commitment, arrangement, undertaking, practice or authorization, relating to the Water System, including, but not limited to: (a) Texas Commission on Environmental Quality ("TCEQ") Certificate of Convenience and Necessity No. 11439 (subject to TCEQ approval); (b) Neches and Trinity Valleys Groundwater Conservation District Permit No. \_\_\_\_ (subject to NTVGCD approval); and (c) 162 active water customer connection accounts (minimum);

*Handwritten initials/signature*

2.1.e. all rights and choses in action of Seller arising out of occurrences before or after the Closing relating to the Water System;

2.1.f. all information, files, records, data, plans, contracts and recorded knowledge, including customer and supplier lists and property records, related to the foregoing.

2.2. Excluded Assets

Notwithstanding the foregoing, the Assets shall not include any of the following:

2.2.a. any and all customer water service lines that run from outside the meter box to each individual residence, commercial or industrial structure served by the Assets;

2.2.b. all piping and fixtures internal to each individual customer's structure or external to each individual customer's structure on the customer's side of the meter box;

2.2.c. Seller's cash and accounts receivables as of the date of Closing, including but not limited to any membership fee or deposit payment to Seller made prior to Closing and held by Seller; and

2.2.d. any asset listed in Schedule 2.2(d) which is attached hereto and incorporated herein by reference.

2.3. Consideration

The total purchase price ("Purchase Price") for the Assets will be Three Hundred Twenty-four Thousand and no/100 Dollars (\$324,000.00) payable at and subject to any Purchase Price modification required at Closing in accordance with the following formula: if there are more than 162 active water customer connection accounts on the date of Closing, an additional \$2,000.00 per active water customer connection account above 162 on the date of Closing shall be added to the Purchase Price and AQUA TEXAS shall pay the adjusted amount.

2.4. Contractual Obligations

AQUA TEXAS shall not assume any obligations of Seller under any contract, agreement, commitment, lease, certificate, permit or other instrument, whether oral, written, express or implied, except with respect to those listed on Schedule 2.4 attached hereto, made part hereof and incorporated herein by reference.

2.5. Non-Assumption of Liabilities

2.5.a. With the exception of the ongoing obligation to provide water service to the customers of the Seller served by the Water System, all liabilities and obligations of Seller shall remain the sole responsibility of Seller, including:



- 2.5.a.1. Any liabilities or obligations of Union Hill WSC relating to employees of Union Hill WSC, including without limitation liabilities or obligations under any employee benefit plan, practice or arrangement, or under any pension, retirement or savings plan;
  - 2.5.a.2. Any liability or obligation relating to federal, state, or local income, franchise, sales, use, payroll, unemployment or withholding taxes of Union Hill WSC, including interest or penalties related thereto; and,
  - 2.5.a.3. Any and all suits, actions, losses, damages, claims, penalties, fines, or liability of any character, type, or description, including all expenses of litigation, court costs, and attorney's fees, for violation of any law or regulation, injury or death to any person, or injury to any property, received or sustained by any person or persons or property, arising out of, or occasioned by, directly or indirectly, the operation of the Water System Assets and accruing prior to Closing.
- 2.5.b. AQUA TEXAS shall not assume and shall not be liable for any liabilities or obligations of Union Hill WSC of any nature whatsoever, whether express or implied, fixed or contingent, whatsoever. At Closing, the Assets shall be conveyed to AQUA TEXAS free and clear of any lien or financial encumbrance of any kind whatsoever.

The provisions of this **Section 2.5** shall survive the Closing.

2.6. Casualty Loss

Prior to Closing, the risk of loss to the Assets shall remain with Seller. After Closing, the risk of such loss shall be transferred to AQUA TEXAS. In the event that any of the Assets are materially damaged or destroyed by fire or other casualty prior to the Closing, Seller shall (i) immediately notify AQUA TEXAS promptly after Seller learns of such event, (ii) preserve all insurance proceeds for the benefit of AQUA TEXAS, and (iii) upon Closing comply with the direction of AQUA TEXAS with respect to all insurance claims or proceeds to which Seller may be entitled as a result of such fire or other casualty.

3. CLOSING

Subject to the provisions of **Sections 1, 5 and 6**, Closing hereunder (the "Closing") shall take place at the offices of AQUA TEXAS located at 1106 Clayton Lane, Suite 400-W, Austin, Texas 78723, commencing at 10:00 a.m. local time, on or before a date thirty five (35) days after the receipt of final regulatory approvals, including without limitation those described in **Section 6.5** below, or at such other time and places as may be agreed upon by the Parties. The date of the Closing is referred to herein as the "Closing Date". The effective time of the legal transfer hereunder shall be 12:01 a.m.



on the day following the Closing Date and shall be no later than May 31, 2020. The Parties agree to take reasonable efforts to coincide the Closing Date with the monthly meter reading.

3.1. Items to be delivered at Closing

At the Closing and subject to the terms and conditions herein contained:

3.1.a. Seller shall deliver to AQUA TEXAS the Assets, including, without limitation, the following:

- 3.1.a.1. instruments and documents of conveyance and transfer, all in form reasonably satisfactory to AQUA TEXAS and its counsel, as shall be necessary and effective to transfer and assign to, and vest in, AQUA TEXAS good and marketable title to the Assets and all rights to operate the Water System as such is now being operated, including, but not limited to the following documents: a Deed for each parcel to be conveyed; a Bill of Sale and Assignments; an Assignment and Grant of Easement for any easement AQUA TEXAS requires to utilize, maintain, repair and replace any facilities located outside of any parcels to be conveyed and/or publicly dedicated roadways; and an appropriate Well Sanitary Control Easement for each well within the well protection area AQUA TEXAS requires.
- 3.1.a.2. copies of, or the originals as appropriate, of all the agreements, contracts, commitments, leases, plans, bids, quotations, proposals, instruments, certificates, permits and other instruments belonging to Seller that are part of or related to the Assets;
- 3.1.a.3. a complete and accurate list of the names and addresses of all customers of Seller, both in paper form and in electronic form on a diskette that can be downloaded to a computer, along with a billing history for each customer;
- 3.1.a.4. a letter from the Texas Commission on Environmental Quality ("TCEQ") evidencing that Seller is free from any pending TCEQ enforcement actions;
- 3.1.a.5. if applicable, the written disclosure statement required by TEX. WATER CODE §13.301(j) related to customer contributions in aid of construction;
- 3.1.a.6. keys to any and all buildings and gates;
- 3.1.a.7. a certificate duly executed by the Secretary of the Seller certifying the resolutions of the Board of Directors and members of the Seller approving this Agreement and authorizing the



transactions contemplated by this Agreement;

and simultaneously with such delivery, all such steps shall be taken as may be required to put AQUA TEXAS in actual possession and operating control of the Assets.

3.1.b. Seller shall deliver to AQUA TEXAS, the certificates and other documents and instruments referred to in **Section 6** hereof.

3.1.c. AQUA TEXAS and Seller agree that final meter readings shall be conducted within seven (7) days immediately prior to Closing, used by the Seller for the purpose of issuing final bills, and shall constitute the opening readings for AQUA TEXAS. Seller is responsible for collecting amounts due Seller for final bills, but may permit AQUA TEXAS to carry out this responsibility for Seller in accordance with the Parties' Professional Services Agreement.

3.2. Transfer of Utilities

Seller and AQUA TEXAS will cooperate to transfer utility service, including telephone, electric and gas service providing such service to any of the Assets as of the Closing Date. In the event service cannot be transferred in the name of AQUA TEXAS as of the Closing Date, the bills shall be pro-rated as of the Closing Date, and AQUA TEXAS shall retain from the Purchase Price its estimate of the amount of such bills not yet paid by Seller. Following the receipt of the final bills from Seller's utility providers, AQUA TEXAS agrees to remit to Seller any amounts by which its estimate of the final bills exceeded the actual amount of such bills not paid by Seller.

3.3. Remedy

Seller and AQUA TEXAS acknowledge that the Assets are unique and not otherwise available and agree that, in addition to any other available remedy, Seller and AQUA TEXAS, as applicable, may invoke any equitable remedy to enforce performance hereunder, including, without limitation, the remedy of specific performance.

3.4. Further Assurances

Seller, from time to time after the Closing, at AQUA TEXAS' request, and without compensation, will execute, acknowledge and deliver to AQUA TEXAS such other instruments of sale, conveyance, assignment and transfer and will take such other actions and execute and deliver such other documents, certifications and further assurances as AQUA TEXAS may reasonably require in order to vest in AQUA TEXAS, and/or to place AQUA TEXAS fully in possession of, all of the Assets. Each of the parties hereto, without compensation, will cooperate with the other and execute and deliver to the other such other instruments and documents and take such other actions as may be reasonably requested from time to time by any other party hereto as necessary to carry out, evidence and confirm the purposes of this Agreement.

4. CONDUCT OF PARTIES PENDING CLOSING

- 4.1. Seller agrees that, with respect to the Assets, pending the Closing and except as otherwise agreed to in writing by AQUA TEXAS:
- 4.1.a. Seller shall not enter into or conduct any discussions with any other prospective purchaser of the Seller's Water System Assets between the effective date of this Agreement and the Closing, and the business of Seller shall be conducted solely in the ordinary course consistent with past practice.
  - 4.1.b. Seller shall continue to maintain and service the tangible Assets in good working order such that they will be in proper working order at Closing, but may use Seller's Professional Services Agreement with AQUA TEXAS to satisfy this obligation.
  - 4.1.c. Seller will use its reasonable efforts to preserve intact its business organization, service territory, and to maintain its relations and goodwill with its suppliers, customers and any others having business relations with it.
  - 4.1.d. Seller shall not knowingly fail to comply with any law, ordinance, rule, regulation or order applicable to it and to the conduct of its business.
  - 4.1.e. Seller will promptly advise AQUA TEXAS in writing of all events between the date hereof and Closing which could render any representation or warranty under the Agreement, if restated and republished as of Closing, untrue or incorrect in any material respect.
  - 4.1.f. Seller will promptly advise AQUA TEXAS in writing promptly after Seller receives knowledge of the threat or commencement of any dispute, claim, action, suit, proceeding, arbitration or investigation against or involving the Assets or the sale and transfer thereof to AQUA TEXAS, or of the occurrence of any event (exclusive of general economic factors affecting business in general) of a nature that is or may be materially adverse to the business, operations, properties, assets, prospects or condition (financial or otherwise) of Seller.
  - 4.1.g. Seller will conduct its business in such a manner that at the Closing the representations and warranties of Seller contained in this Agreement shall be true as though such representations and warranties were made on and as of such date. Furthermore, Seller will use good faith efforts to the best of its ability to cause all of the conditions to this Agreement to be satisfied on or prior to the Closing Date.
  - 4.1.h. Seller agrees to cooperate fully with AQUA TEXAS to consummate the transaction described in this Agreement if all conditions are fulfilled.

- 4.1.i. Seller will not take any action which would result in a material breach of any of the representations and warranties of Seller hereunder.
- 4.1.j. Seller will provide AQUA TEXAS with such financial and other reports of its business as AQUA TEXAS may reasonably request.
- 4.1.k. Seller will give to AQUA TEXAS, its officers, employees, accountants, counsel, and other representatives free and full access to and the right to inspect, during normal business hours, all of the premises, properties, assets, records, contracts and other documents relating to Union Hill WSC's business and operations, and shall permit them to consult with the officers, employees, accountants, counsel and agents of Union Hill WSC for the purpose of making such investigation of the business and operations of Seller as AQUA TEXAS shall desire to make, provided that such investigation shall not unreasonably interfere with the business or operations of Seller.
- 4.1.l. Seller will cooperate with AQUA TEXAS in sending any customer notices that in AQUA TEXAS' judgment are necessary or desirable in connection with the transactions contemplated herein.

5. CONDITIONS PRECEDENT TO SELLER'S OBLIGATIONS

All obligations of Seller under this Agreement are subject to the fulfillment or satisfaction, or waiver by Seller, prior to or at the Closing, of each of the following conditions precedent:

5.1. Performance by AQUA TEXAS

AQUA TEXAS shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing.

5.2. Litigation Affecting Closing

On the Closing Date, no proceeding shall be pending or threatened before any court or governmental agency in which it is sought to restrain or prohibit or to obtain damages or other relief in connection with this Agreement or in the consummation of the transactions contemplated hereby, and no investigation that might eventuate in any such suit, action or proceeding shall be pending or threatened.

6. CONDITIONS PRECEDENT TO AQUA TEXAS' OBLIGATIONS

In addition to the Special Conditions Precedent to AQUA TEXAS Obligations identified in **Section 1**, all obligations of AQUA TEXAS under this Agreement are subject to the fulfillment or satisfaction, or waiver by AQUA TEXAS, prior to or at the Closing, of each of the following conditions precedent:

6.1. Satisfaction with Operational and Real Estate Title Issues

AQUA TEXAS shall be satisfied, within 90 days of receiving the written notice described in **Section 1.6**, with the results of its due diligence inspections of the overall operational functionality of the Assets that AQUA TEXAS may elect to perform, and at Closing that there has been no material deterioration therein between the expiration of such 90-day period and Closing. Additionally, prior to Closing, AQUA TEXAS shall be satisfied with its review of the real estate and the quality of title to be conveyed to AQUA TEXAS from Seller.

6.2. Performance by Seller

Seller shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing; and AQUA TEXAS shall have been furnished with a certificate or certificates of Seller dated the Closing Date, signed by the appropriate officials of Seller, certifying, in such detail as AQUA TEXAS may reasonably request, to the fulfillment of the foregoing conditions and that all representations and warranties are true and correct as of Closing, except as disclosed by Seller pursuant to **Section 4.1(e)**, and the facts as contained in such disclosure(s) shall not result, as determined by AQUA TEXAS in its reasonable judgment, in a material adverse change in the condition of the Assets or business and operations of Seller relating to the Water System.

6.3. Litigation Affecting Closing

On the Closing Date, no proceeding shall be pending or threatened before any court or governmental agency in which it is sought to restrain or prohibit or to obtain damages or other relief in connection with this Agreement or the consummation of the transactions contemplated hereby, and no investigation that might eventuate in any such suit, action or proceeding shall be pending or threatened.

6.4. Seller Authorizations

Seller shall have furnished AQUA TEXAS with certified copies of all proceedings of Seller, including a signed and certified copy of the appropriate document(s) authorizing the transactions hereby contemplated, as AQUA TEXAS reasonably shall require.

6.5. Governmental Approvals

AQUA TEXAS shall have received all governmental authorizations needed for the transfer of the Assets, including, but not limited to, adoption and approval of an Order and a Certificate of Convenience and Necessity from the Texas Commission on Environmental Quality ("TCEQ"), authorizing: (a) the transfer of the Assets as contemplated by this Agreement; (b) AQUA TEXAS to provide water service to metered water connections in the Service Area; and (c) Seller to abandon such Service Area. Such governmental authorizations, orders, authorizations and approvals by the TCEQ shall be in form and substance satisfactory to AQUA TEXAS in its sole

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discretion.

6.6. Material Damage

The Assets shall not be, or be threatened to be, materially adversely affected by fire, explosion, earthquake, disaster, accident, cessation or interruption of utility or other services, flood, drought, lack of water supply, contamination of water supply, embargo, riot, civil disturbance, uprising, activity of armed forces or act of God or public enemy, or any other event or occurrence.

6.7. Satisfaction of AQUA TEXAS

All actions, proceedings, resolutions, instruments and documents required to carry out this Agreement, or incidental hereto and all other related matters shall have been approved on the Closing Date by AQUA TEXAS in the exercise of its reasonable judgment.

6.8. Service Policies and Rates

On the Closing Date, the service policies and rates adopted by Union Hill WSC must match those set forth in AQUA TEXAS' "Water Utility Tariff for North Region" as approved by TCEQ on the Closing Date. Aqua Texas' current "Water Utility Tariff for North Region" is provided in attached Exhibit 1.5(b), but may be modified with TCEQ approval prior to the Closing Date.

6.9. Refund of Membership Fees/Deposits

Prior to Closing, Seller shall refund any membership fee or deposit payment made to Seller prior to the Closing Date and held by Seller on the Closing Date.

7. REPRESENTATIONS AND WARRANTIES OF SELLER

7.1. Seller hereby represents and warrants to AQUA TEXAS as follows:

7.1.a. Organization. Seller is a non-profit corporation and water supply corporation duly organized, validly existing, and in good standing under the laws of the State of Texas.

7.1.b. System Ownership. Seller holds the exclusive right, title and interest to the Assets and facilities comprising the Water System.

7.1.c. Current Operations. Seller has all requisite power and authority and all agreements, contracts, commitments, leases, certificates, licenses, permits, regulatory authorizations and other instruments required to conduct the business of the Water System as it has been and is now being conducted and to own and operate the Water System.

7.1.d. Legal Authority. Seller has the full power and lawful authority to transfer

to AQUA TEXAS the rights, title and interest in and to the Water System.

- 7.1.e. Due Authorization; Valid and Binding. Seller has the full power and lawful authority to execute and deliver this Agreement and all related agreements and to consummate and perform the transactions contemplated hereby and has duly and validly authorized the execution of this Agreement and all related documents and agreements by all necessary proceedings. Seller has obtained the consent of at least two-thirds (2/3) of the Seller's members present in person or by proxy at a meeting or special meeting of the Seller authorizing and approving this Agreement and all transactions contemplated by this Agreement. This Agreement and all related agreements constitute the valid and binding obligation of Seller.
- 7.1.f. No Approvals or Violations. This Agreement does not require any further approvals of any other party, does not violate any law, ordinance or regulation, does not conflict with any order or decree, and does not conflict with or result in a breach of any contract, lease or permit to which Seller is a party.
- 7.1.g. Party to Decree. Seller is not party to, or subject to the provision of, any judgment, order, writ, injunction or decree of any court or of any governmental official, agency or instrumentality relating to the Water System or the Assets.
- 7.1.h. Removal of Liens, etc. As of the Closing, any and all liens and encumbrances on the Assets will have been removed in a proper and lawful manner.
- 7.1.i. List of Assets. Schedule 2.1 contains a true and complete list of the Assets.
- 7.1.j. Customer Records. The data contained in the customer records provided to AQUA TEXAS is true and accurate.
- 7.2. Except as set forth on Schedule 7.2, Seller hereby represents and warrants to AQUA TEXAS as follows:
  - 7.2.a. Title of Assets. Seller has good and marketable title to the Assets, free and clear of all liens, encumbrances and security interests.
  - 7.2.b. Undisclosed Liabilities. There are no liabilities or obligations of Seller, either accrued, absolute, contingent or otherwise, relating to the Assets. For purposes of this Agreement, the term liabilities shall include, without limitation, any direct or indirect indebtedness, guaranty, endorsement, claim, loss, damage, deficiency, cost, expense, obligation or responsibility, either accrued, absolute, contingent or otherwise.
  - 7.2.c. Condition of Assets. To the best of Seller's knowledge, all the tangible

property included in the Seller's Assets are in good operating condition and repair, are usable in the regular course of business and conform to all applicable laws, ordinances, codes, rules and regulations relating to their construction, use and operation, and are free from any known material defects except such minor defects as do not substantially interfere with the continued use thereof in the conduct of normal operations.

- 7.2.d. No Other Parties. No person other than Seller owns or has any interest in any equipment or other tangible assets or properties currently utilized or necessary to the operations or business of the Seller's Assets.
- 7.2.e. Adequacy of Rights. All agreements, contracts, commitments, leases, certificates, permits and other instruments related to the Assets to which Seller is a party are valid and enforceable in accordance with their terms, are in good standing, and the parties thereto are in compliance with the provisions thereof. No party is in default in the performance, observance or fulfillment of any material obligation, covenant or condition contained therein, and no event has occurred, which with or without the giving of notice or lapse of time, or both, would constitute a default thereunder.
- 7.2.f. Adequacy of Property Rights. All leases, licenses, rights of way, and easements related in any manner to the assets and properties comprising the Seller's Assets and all other instruments, documents and agreements pursuant to which Seller has obtained the right to use any real property in connection with the Assets are in good standing, valid and effective in accordance with their respective terms, and with respect thereto, there is no existing default or event which could constitute a default.
- 7.2.g. Rights to Facilities. Seller has good and valid rights to occupy and to obtain access to the areas where the distribution lines and other facilities of the Assets are located.
- 7.2.h. Pending Litigation. There are no pending claims, actions, investigations or legal or administrative proceedings regarding the Assets or Seller's ability to transfer the Assets, and there are no pending TCEQ enforcement actions against Seller.
- 7.2.i. Threatened Litigation. To the best of Seller's knowledge, there are no threatened claims, actions, investigations or legal or administrative proceedings, including TCEQ enforcement actions against the Seller, regarding the Assets or Seller's ability to transfer the Assets, nor does Seller know of any basis for any such claim, action or proceeding.
- 7.2.j. Contract for Refunds. Seller is not a party to any contract for future payment of refunds under any agreement with respect to the Assets or, if so, Seller will ensure that any such refund payment owed is paid prior to Closing.

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- 7.2.k. Refund of Membership Fees/Deposits. Prior to Closing, Seller will ensure that any membership fee or deposit payment to Seller made prior to the Closing Date and held by Seller on the Closing Date is refunded.
- 7.2.l. Contract with Suppliers. Seller is not a party to any contract for the purchase of, or payment for supplies, equipment or for services related to the Assets, except such contracts that shall not survive Closing.
- 7.2.m. No Material Change. Within the past two years and prior to Closing, Seller has not and will not have: 1) made or suffered any amendment or termination of any material agreement, contract, commitment or lease or any governmental permit or authorization to which it is a party or by which it is bound; or 2) canceled, modified or waived any debts or claims held by it; or 3) waived any rights of substantial value.
- 7.2.n. No Material Adverse Conditions. There are no conditions or developments existing or, to the knowledge of Seller, threatened which would have a material adverse effect on the Assets.
- 7.2.o. Compliance with Law. To the best of Seller's knowledge, Seller is not in any material violation of any law, ordinance or governmental rule or regulation to which it or its business, operations, assets or properties is subject and has not failed to obtain, or to adhere to the requirements of, any certificate, license, permit or other governmental authorization necessary to the ownership of its assets and properties or to the conduct of its business.
- 7.3. Seller hereby represents and warrants to and with AQUA TEXAS as follows with respect to compliance with environmental laws:
- 7.3.a. Compliance with Law. To the best of Seller's actual knowledge, Seller has been and is in compliance with all Environmental Laws (as hereinafter defined).
- 7.3.b. Adequacy of Permits. To the best of Seller's actual knowledge, after diligent inquiry and investigation, Seller has obtained and continues to possess all permits, licenses, approvals or other authorizations which are required under the Environmental Laws, has filed such timely and complete renewal applications as may be required prior to the Closing Date, and also has complied with all reporting and record keeping requirements under the Environmental Laws.
- 7.3.c. Environmental Conditions. To the best of Seller's actual knowledge, following diligent inquiry and investigation, there are no past or present events, conditions, circumstances, activities, practices, incidents, actions or plans pertaining or relating to the Assets which may impede or prevent continued compliance with the Environmental Laws or which may give rise to any civil or criminal liability under the Environmental Laws.

- 7.3.d. Compliance with Decrees. Seller has been and is in compliance with all orders, decrees, judgments and notices issued against the Seller under or in connection with the Environmental Laws.

As used in this Agreement, the following terms shall have the following meaning:

The term "Environmental Laws" shall include all federal, state and, local environmental laws and regulations, including, without limitation, the Clean Water Act ("CWA"), also known as the Federal Water Pollution Control Act ("FWPCA"), 33 U.S.C. § 1251 et seq., the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601 et seq., the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. §§ 136 et seq., the Safe Drinking Water Act ("SDWA"), 42 U.S.C. §§ 300 (f) et seq., the Surface Mining Control and Reclamation Act ("SMCRA"), 30 U.S.C. §§ 1201 et seq., the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., the Superfund Amendment and Reauthorization Act of 1986 ("SARA"), Public Law 99-499, 100 Stat., 1613, the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901, the Atomic Energy Act ("AEA"), Act of August 30, 1954, Ch. 1073, 68 Stat. 919 (codified as amended in scattered sections of 5 U.S.C. and 42 U.S.C.), the Texas Solid Waste Disposal Act, TEX. HEALTH & SAFETY CODE §§ 361.001, et seq., Texas Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act, TEX. HEALTH & SAFETY CODE §§ 363.001, et seq., Texas County Solid Waste Control Act, TEX. HEALTH & SAFETY CODE §§ 364.001, et seq., Texas "Sanitary Standards of Drinking Water; Protection of Public Water Supplies and Public Bodies of Water," TEX. HEALTH & SAFETY CODE §§ 341.031-341.050, .001, Texas "Water Rates and Services" statutes, TEX. WATER CODE §§ 13.001, et seq., and Texas "Water Quality Control" statutes, TEX. WATER CODE §§ 26.001, et seq., and all relevant and applicable TCEQ regulations adopted pursuant to any of the statutes listed above. Any reference to a legislative act or regulation shall be deemed to include all amendments thereto and all regulations, orders, decrees, judgments, opinions directives or notices issued thereunder.

The term "Environmental Condition" shall mean any condition or circumstance related to the Assets, whether created by Seller or any other party, which (1) required or requires abatement or correction under an Environmental Law, or (2) has given or may give rise to any civil or criminal liability under an Environmental Law, or (3) has created or may create a public or private nuisance, including the presence of asbestos, PCBs, hazardous substances, solid wastes, petroleum products, radioactive waste or radon, on, in or about the Assets.

7.4. No Misleading Statements

No representation or warranty by Seller in this Agreement or in any document delivered or to be delivered pursuant hereto or in connection herewith, and no statement, document, agreement, information or certificate made or furnished or to be made or furnished to AQUA TEXAS pursuant hereto or in connection with the negotiation, execution or performance of this Agreement, now and as of the Closing Date, contain any untrue statement of a material fact, or fail to state any fact necessary to make any statement herein or therein not misleading.