

Control Number: 44069



Item Number: 4

Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83rd
Legislature, Regular Session, transferred the functions
relating to the economic regulation of water and sewer
utilities from the TCEQ to the PUC effective
September 1, 2014

RECEIVED

2015 JAN -6 PM 3:29

SOAH DOCKET NO. 582-06-1697
TCEQ DOCKET NO. 2005-2092-UCR

PUBLIC UTILITY COMMISSION
FILING CLERK

APPLICATION OF THE CITY OF	§	BEFORE THE STATE OFFICE
COLLEGE STATION TO AMEND	§	
SEWER CERTIFICATES OF	§	OF
CONVENIENCE AND NECESSITY IN	§	
BRAZOS COUNTY	§	ADMINISTRATIVE HEARINGS

SOAH DOCKET NO. 582-07-1251
TCEQ DOCKET NO. 2006-1664-UCR

APPLICATION OF WELLBORN	§	BEFORE THE STATE OFFICE
SPECIAL UTILITY DISTRICT AND	§	
MAIN STREET HOMES TO OBTAIN	§	
A SEWER CERTIFICATE OF	§	OF
CONVENIENCE AND NECESSITY	§	
IN BRAZOS COUNTY, TEXAS;	§	
(APPLICATION NO. 35206-C)	§	ADMINISTRATIVE HEARINGS

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is by and between the City of College Station, Texas ("College Station"), Wellborn Special Utility District ("Wellborn") and Main Street Homes-CS, Ltd. ("MSH"), each of whom may be referenced herein as a "Party" and collectively as the "Parties". This Agreement is entered into on November 10, 2009 ("Effective Date").

RECITALS

WHEREAS, College Station is a home rule city, a municipal corporation organized and operating in accordance with the laws of the State of Texas; and

WHEREAS, College Station provides retail sewer service under Certificate of Convenience and Necessity No. 20126 ("CCN No. 20126"); and,

WHEREAS, College Station filed with the Texas Commission on Environmental Quality ("TCEQ") an application to amend CCN No. 20126 ("College Station Application") to certificate an area within its extraterritorial jurisdiction, which College Station Application is pending; and,

WHEREAS, Wellborn is a special utility district, which provides retail water service under Certificate of Convenience and Necessity No. 11340; and

WHEREAS, MSH owns and is developing certain property known as the Meadow Creek Subdivision ("Meadow Creek Subdivision"), and

WHEREAS, Wellborn and MSH filed with the TCEQ a joint application for a sewer CCN (the "Joint Application") to serve the Meadow Creek Subdivision, which Joint Application is pending; and

WHEREAS, the College Station Application and the Joint Application overlap in area; and

WHEREAS, Wellborn and MSH filed with the TCEQ protests to the approval of the College Station Application; and

WHEREAS, College Station filed with the TCEQ a protest to the approval of the Joint Application; and

WHEREAS, the College Station Application has been docketed as TCEQ Docket No. 2005-2092-UCR and SOAH Docket No. 582-06-1697 ("College Station Docket"), respectively; and

WHEREAS, the Joint Application has been docketed as TCEQ Docket No. 2006-1664-UCR and SOAH Docket No. 582-07-1251 ("Joint Docket"), respectively; and;

WHEREAS, College Station, Wellborn, and MSH mutually desire to resolve the dispute between them regarding the College Station Application and the Joint Application; and

WHEREAS, College Station, Wellborn, and MSH mutually desire to enter into this Agreement setting forth the terms and conditions pursuant to which College Station will exclude area including the Meadow Creek Subdivision from the College Station Application and withdraw its protest of the Joint Application and Wellborn and MSH will withdraw their protest of the College Station Application.

NOW, THEREFORE, in consideration of the promises, mutual agreements, and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in settlement of disputed claims, College Station, Wellborn, and MSH contract and agree as follows:

ARTICLE I

AMENDMENT TO THE COLLEGE STATION SEWER CCN APPLICATION

1.1 College Station agrees to amend the College Station Application to exclude areas mutually agreed to by College Station, MSH, and Wellborn including the Meadow Creek Subdivision. The areas to be removed are identified in the map attached hereto as Exhibit "A".

1.2 Within five (5) business days after the Effective Date, College Station will file an amendment to the College Station Application ("Amended College Station Application") to modify the areas it seeks to certificate to reflect only the areas set forth in Exhibit "A". Upon

filing of the Amended College Station Application, College Station will promptly provide each Party a file marked copy of the Amended College Station Application.

ARTICLE II

SETTLEMENT OF TCEQ DISPUTE

2.1 The Parties agree that the filing of the Amended College Station Application by College Station after the Effective Date shall trigger the settlement, and withdrawal for all purposes, of all the outstanding protests and objections by any Party against any other Party in the College Station Docket and in the Joint Docket.

2.2 To acknowledge the settlement and withdrawal of protests as set forth in Section 2.1, within ten (10) business days after College Station files the Amended College Station Application, College Station, MSH and Wellborn will file a joint motion in, and captioned for, both the College Station Docket and the Joint Docket which provides that: 1) Wellborn and MSH have withdrawn their protests of the College Station Application and acknowledges that each are withdrawing as Parties to the College Station Docket and in which College Station may request the ALJ to remand the Amended College Station Application to the Executive Director of TCEQ for an Agreed Order granting the Amended College Station Application; and 2) which provides that College Station has withdrawn its protest of the Joint Application and acknowledges that it is withdrawing as a party to the Joint Docket and in which Wellborn and/or MSH may request the ALJ to remand the Joint Application to the Executive Director of TCEQ for an Agreed Order granting the Joint Application.

2.3 If Wellborn and MSH fail to withdraw as Parties from the College Station Docket, College Station will have the rights and remedies provided by Article III of this Agreement. If College Station fails to withdraw as a party from the Joint Docket, Wellborn and MSH will have the rights and remedies provided by Article III of this Agreement.

2.4 So long as this Agreement is in effect and College Station, Wellborn and MSH are in compliance with their obligations in this Agreement, following execution of this Agreement College Station, Wellborn and MSH shall not assist, directly or indirectly, any party to oppose the Amended College Station Application or the Joint Application, except as necessary to seek to correct any differences between the TCEQ order or map and this Agreement. Further, College Station, Wellborn and MSH shall instruct their officers, directors and employees of this Agreement and make it clear that such persons shall take no action in any representative capacity for College Station, Wellborn or MSH, as the case may be, to oppose the Amended College Station Application or the Joint Application.

ARTICLE III

TERM; TERMINATION; DEFAULT AND REMEDIES

3.1. Unless otherwise terminated pursuant to the provisions hereof, this Agreement shall remain in full force and effect until such time as the TCEQ Commissioners or the Executive Director of the TCEQ issues a final order granting the Amended College Station Application and the Joint Application. If this Agreement is terminated prior to completion of the term, the Parties will have the right to proceed with the College Station Application and the Joint Application, as

applicable, and the right to protest, re-assert a previous protest or challenge, or otherwise oppose the College Station Application or Joint Application, as applicable.

3.2 If an event of default occurs under this Agreement, the defaulting Party must be given notice of the default and 30 days from the date the notice is delivered in which to cure the default before the non-defaulting Party may exercise any of the remedies set forth in Section 3.3 other than injunctive relief. Each Party agrees to mediate in good faith, prior to exercising the rights under 3.3(b), 3.3(c) or filing suit for damages.

3.3 If an event of default is not remedied within the cure period, then each non-defaulting Party, whose rights under this Agreement are directly affected by the default, shall have the following rights and remedies:

- (a) to seek specific performance, or injunctive relief, without the necessity of having to prove the inadequacy of legal remedies or irreparable harm;
- (b) to terminate its obligations under this Agreement, and pursue the College Station Application or the Joint Application, as applicable, and/or
- (c) to pursue all rights and remedies available at law or equity.

All such rights and remedies are cumulative and not exclusive, and to the greatest extent practicable may be exercised concurrently and successively.

ARTICLE IV **MISCELLANEOUS**

4.1 This Agreement is the entire agreement between the Parties hereto with respect to the subject matter hereof.

4.2 No Party may assign this Agreement without the written consent of the other Parties. This Agreement shall be binding on and inure to the benefit of College Station, Wellborn and MSH and their respective successors and assigns and legal representatives.

4.3 Except as expressly provided otherwise in this Agreement for waivers, or other documents to be executed by fewer than all of the Parties, no modifications of this Agreement shall be of any force or affect whatsoever, except as by subsequent modification in writing signed by the Parties.

4.4 The provisions of this Agreement shall be governed by and construed and entered into in accordance with the substantive laws of the State of Texas. This Agreement is performable in Brazos County, Texas. Any action at law or in equity brought to enforce any provision of this Agreement shall be brought in a court of competent jurisdiction with venue in Brazos County, Texas.

4.5 Time is of the essence. As used in this Agreement, the term "business day" means Monday through Friday of each week, exclusive of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day after Thanksgiving Day, Christmas

Day, the day after Christmas Day, and any other holiday generally recognized by banks in College Station, Texas. If the final date of any period which is set out in, or determined in accordance with, the provisions of this Agreement falls on a day which is not a business day, then the final date for such period will be extended to the next business day.

4.6 If any provision in this Agreement shall for any reason be invalid, illegal or unenforceable in any respect, then, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been continued herein and in lieu thereof shall be substituted a new provision that is as near to the intent of the Parties without being invalid, illegal or unenforceable.

4.7 The Parties agree to cooperate to implement the terms of this Agreement and covenant and agree that they shall execute and deliver such other and further instruments and documents, and perform such other acts, as are or may be necessary or convenient to effectuate and carry out the intent of this Agreement.

4.8 This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which counterparts, when taken together, shall constitute one and the same Agreement. The Parties agree that delivery of a signed counterpart, or the signed Agreement or amendment by facsimile or electronic mail, shall be deemed the same as the delivery of an original document.

4.9 The Parties agree that there are no third party beneficiaries to this Agreement.

4.10 Nothing in this Agreement may be used as an admission in any litigation or other contested matter, except to enforce the terms of this Agreement.

4.11 No Party will be penalized for alleged authorship of a particular provision on judicial construction of this Agreement.

4.12 No Party to this Agreement shall initiate any litigation or arbitration challenging the validity or enforceability of any provision of this Agreement once it has been signed. The Parties reserve only their right to enforce the terms of this Agreement to the extent they are not fully performed by any other Party.

4.13 All provisions of the Agreement which state that they survive termination of the Agreement or which are performable after termination of this Agreement, shall survive termination of this Agreement.

4.14 The respective signatories to this Agreement covenant that they are fully authorized to sign and execute this Agreement on behalf of their respective Party, and by such signature each such person represents that they have obtained all the necessary authority and approval, including the actual approval of their Board, to execute the Agreement.

4.15 The Parties agree that this Agreement constitutes the legal, valid and binding obligation of each Party hereto, enforceable in accordance with its terms, and that each Party is entering into this Agreement in reliance upon the enforceability of this Agreement.

ARTICLE V
NOTICE

5.1 All notices required to be given must be in writing. Any notice or communication required or permitted hereunder shall be deemed to be delivered, whether actually received or not, when deposited in the United States mail, postage fully prepaid, registered or certified mail, and addressed to the intended recipient at the address set forth below, with a copy sent concurrently by facsimile, or on the date hand-delivered by a national courier service, as evidenced by written acknowledgment of receipt for such hand-delivery. Notice given in any other manner will be deemed delivered only if and when actually received. Notice may not be given exclusively by email. Any address for notice may be changed by written notice delivered as provided herein.

Addresses for Notice:

Wellborn: Attn.: Stephen Cast, General Manager
 P.O. Box 250
 Wellborn, Texas 77881
 Phone: (979) 690-9799
 Fax: (979) 690-1260

With Copy to: Leonard H. Dougal
 Jackson Walker L.L.P.
 100 Congress Avenue, Suite 1100
 Austin, Texas 78701
 Facsimile: (512) 391-2112

College Station: Attn.: David M. Coleman, PE, Director, Water Services Department
 City of College Station
 PO Box 9960
 College Station, TX 77842
 Phone:(979)-764-3432
 Fax:(979)-764-3452

With Copy to: Bill Dugat
 Bickerstaff Heath Delgado Acosta LLP
 3711 S. MoPac Expressway
 Building One, Suite 300
 Austin, Texas 78746
 Facsimile: (512) 320-5638

MSH: Rick Jenkins
 900 Congress Ave., #L-100
 Austin, TX 78701
 Work: 512-801-8832
 Fax: 512-478-5678

with Copy to:

Allen Halbrook
Sneed, Vine & Perry
901 Congress Avenue
Austin, Texas 78701
(512) 476-6955
(512) 476-1825 (facsimile)

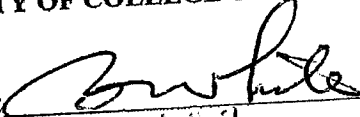
ARTICLE VI
LIST OF EXHIBITS

6.1 The following Exhibits are attached hereto and incorporated herein:

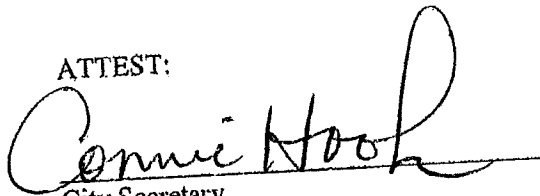
Exhibit A Amended map of College Station sewer CCN areas


AGREED TO AND EXECUTED, to be effective as of the date set forth in the opening paragraph to this agreement.


CITY OF COLLEGE STATION, TEXAS

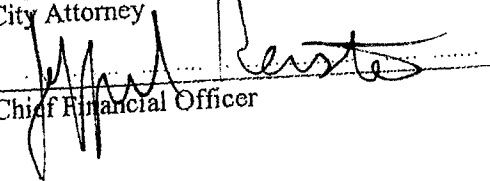
By: 
Name: Ben White
Title: Mayor
Date: 9 Nov 2009

ATTEST:


City Secretary


City Manager


City Attorney


Chief Financial Officer

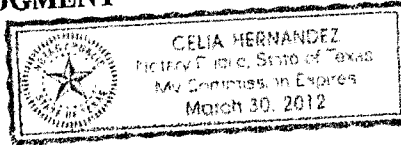
ACKNOWLEDGMENT

THE STATE OF TEXAS

COUNTY OF BRAZOS

§

§



This instrument was acknowledged before me on the 9 day of November, 2009, by Ben White, Mayor of the City of College Station, Texas.

Celia Hernandez
Notary Public, State of Texas

WELLBORN SPECIAL UTILITY DISTRICT

By: Jerry Ransom

Name: Jerry Ransom

Title: President

Date: 10 Nov 2009

ACKNOWLEDGMENT

THE STATE OF TEXAS

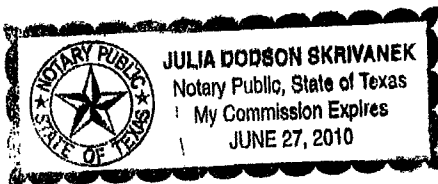
§

COUNTY OF BRAZOS

§

This instrument was acknowledged before me on the 10th day of November,
2009, by Jerry Ransom, President of Wellborn Special Utility District.

Julia Dodson Skrivaneck
Notary Public, State of Texas



MAIN STREET HOMES-CS, LTD

By: MSH-CS, Inc., its General Partner

By: _____

Name: rick jenkins

Title: VICE PRESIDENT

Date: 11-3-09

ACKNOWLEDGMENT

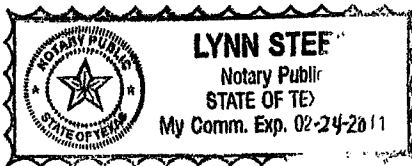
THE STATE OF TEXAS

§

COUNTY OF Travis

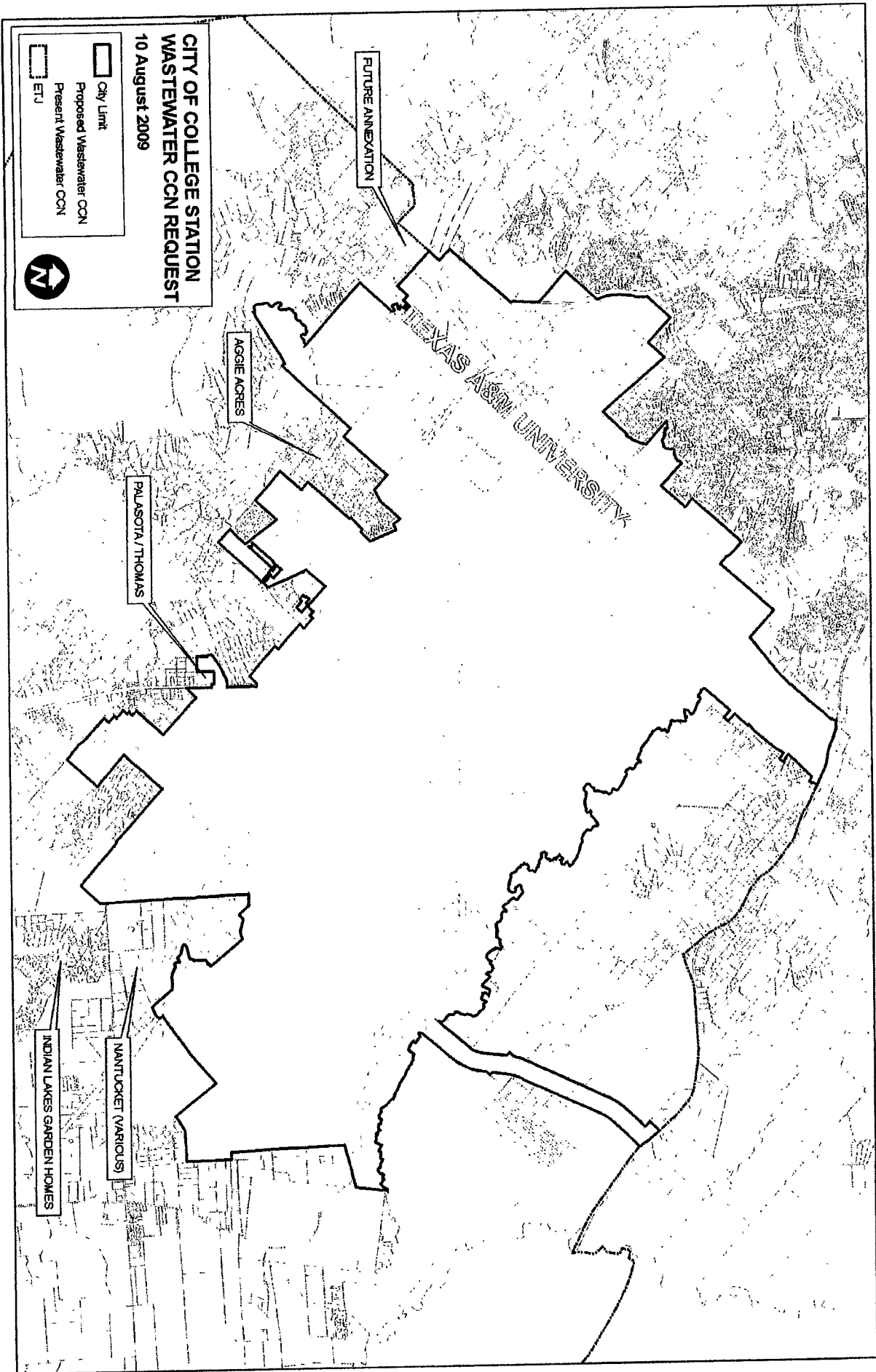
§

This instrument was acknowledged before me on the 3rd day of November, 2009, by Rick Jenkins, Vice President of Main Street Homes-CS, Ltd..



Lynn Stee
Notary Public, State of Texas

EXHIBIT "A"



SOAH Docket No. 582-06-1697;
Application from the City of College
Station to Amend Certificate of
Convenience and Necessity ("CCN") No.
20126 in Brazos County; Application No.
35107-C; CN: 600732598; RN:
101411239

November 11, 2009

Bickerstaff Heath Delgado Acosta LLP

Bickerstaff Heath Delgado Acosta LLP

2005-2092-UCR

3711 S. MoPac Expressway Building One, Suite 300 Austin, Texas 78746 (512) 472-8021 Fax (512) 320-5638 www.bickerstaff.com

November 12, 2009

Via Hand-Delivery

Mr. Kamal Adhikari
Utilities & Districts Section
Water Supply Division -- Mail Code 153
Texas Commission on Environmental Quality
12100 Park 35 Circle
Building F, 3rd Floor
Austin, TX 78759

CHIEF CLERK'S OFFICE

NOV 12 PM 9:25

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Re: SOAH Docket No. 582-06-1697; Application from the City of College Station to Amend Certificate of Convenience and Necessity ("CCN") No. 20126 in Brazos County; Application No. 35107-C

CN: 600732598

RN: 101411239

Dear Mr. Adhikari:

The purpose of this letter is to amend the City of College Station's ("City" or "College Station") above-described Application to remove areas the City seeks to certificate.

On November 9, 2009, the College Station City Council approved a Settlement Agreement between the City, Wellborn Special Utility District, and Main Street Homes in SOAH Docket No. 582-06-1697. Under the terms of the Settlement Agreement, College Station revises its Application to Amend its Sewer CCN to delete areas that were within the original Application. The remaining area to be certificated under College Station's Application is identified on the enclosed map. Also enclosed is a CD which contains digital images of the map attached to the Application and a copy of the executed Settlement Agreement.

If you have any questions, please contact me.

Sincerely,



William D. Dugat III

WDD/db
Enclosures

cc: All Parties on Mailing List

**MAILING LIST
CITY OF COLLEGE STATION
SOAH DOCKET NO. 582-06-1697
TCEQ DOCKET NO. 2005-2092-UCR**

State Office of Administrative Hearings

Honorable Lilo D. Pomerleau
Administrative Law Judge
State Office of Administrative Hearings
300 West 15th Street, Suite 504
Austin, TX 78701
(512) 475-4993
(512) 475-4994 (Fax)

City of College Station

Bill Dugat
Bickerstaff, Heath, Pollan & Caroom
816 Congress Avenue, Suite 1700
Austin, TX 78701
(512) 472-8021
(512) 320-5638 (Fax)

Office of Public Interest Counsel

Blas J. Coy, Jr.
Office of Public Interest Counsel, MC-103
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Austin, TX 78711-3087
(512) 239-6363
(512) 239-6377 (Fax)

Office of the Chief Clerk

LaDonna Castanuela
Office of the Chief Clerk
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Austin, TX 78711-3087
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(512) 239-3311 (Fax)

Main Street Homes - CS

Mark Zeppa
Law Offices of Mark H. Zeppa, P.C.
4833 Spicewood Springs Road
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Austin, TX 78759-8436
(512) 346-4011
(512) 346-6847 (Fax)

TCEQ Executive Director

Paul Tough, Staff Attorney
TCEQ, Environmental Law Division
P.O. Box 13087, MC-173
Austin, TX 78711
(512) 239-6996
(512) 239-0606 (Fax)

Wellborn Special Utility District

Leonard H. Dougal
Jackson Walker, LLP
100 Congress Avenue, Suite 1100
Austin, TX 78701
(512) 236-2000
(512) 236-2002 (Fax)