



Control Number: 45212



Item Number: 12

Addendum StartPage: 0



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2016 MAR -9 PM 4:50

PUBLIC UTILITY COMMISSION
FILING CLERK

March 9, 2016

Ralph Daigneault
Attorney-Legal Division
Public Utility Commission of Texas
1701 N. Congress Ave, 8th Floor
Austin, Texas 78701

Re: City of Copperas Cove – CCN Application
Docket No. 45212
Response to Staff Comments

Below is an itemized response to comments received on February 10th, 2016:

Mapping:

- 1) A revised general location (small scale) map only showing the proposed service area with enough detail to accurately locate the service area within the nearest city, town or county.

A revised small scale map is attached to this response to comments.

- 2) A revised large scale (detailed) map only delineating the proposed service area with enough detail to accurately locate the proposed service area(s) in reference to verifiable man-made and natural landmarks such as roads, railroads or rivers.

A revised large scale map is attached to this response to comments.

- 3) Revised digital data for the proposed service area only including the portion of Kempner's Water CCN to be transferred to the City in a shapefile format. File the digital data on a CD with the projection (.prj) file used to create the shapefile.

A CD with the revised digital data for only the portion of Kempner Water Supply Corporation's CCN area to be transferred to the City of Copperas Cove is attached to this response to comments.

- 4) Clarification on the differences in the larger service areas and larger total acreage to transfer between these utilities as shown in the Exhibit A map and the proposed service area shown on hard copy maps and digital data.

The agreement included in Attachment "A" of the application and dated May 6th, 2005 represents the basis for which the City of Copperas Cove purchases CCN area from

Kempner Water Supply. The actual request and purchase for the Bradford Oaks Ranch Subdivision was included in Attachment "C" and is attached to this response to comments.

Technical:

- 1) Please provide the agreement for Topsey Water Supply Corporation to serve the requested area (Bradford Oaks subdivision) including the terms (i.e. cost, fees, revenues, etc.).

A copy of the City of Copperas Cove water supply contract with Topsey Water Supply Corporation is attached to this response to comments.

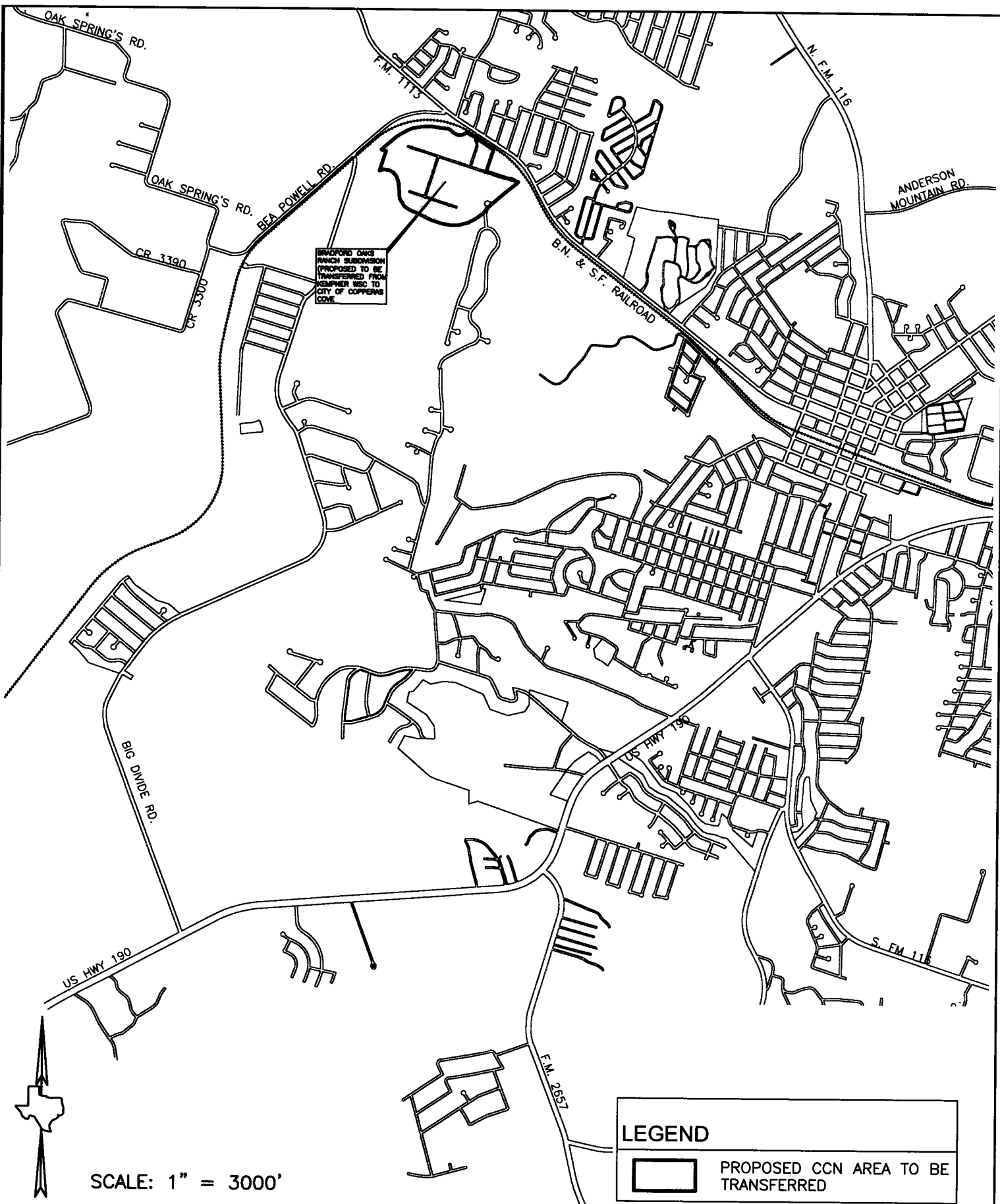
Please contact me if you have any questions concerning the responses above.

Sincerely,

A handwritten signature in black ink, appearing to read 'David Kneuper', with a long horizontal line extending to the right.

David Kneuper, P.E.

FILE: Q:\Projects\2019 (Copperas Cove)\110-2014 Kemper WSC Boundary STM Application\CAD\Exhibits\BRADFORD OAKS RANCH OVERALL EXHIBIT 8.5x11 11-20-15.dwg
PLOTTER: 3/3/2016 1:36 PM
BY: JONATHAN COMPTON
TAB: LOC-MAP



**RIVER CITY
ENGINEERING**
Texas Registered Engineering Firm R-0001546
CIVIL, ENVIRONMENTAL & CONSULTING

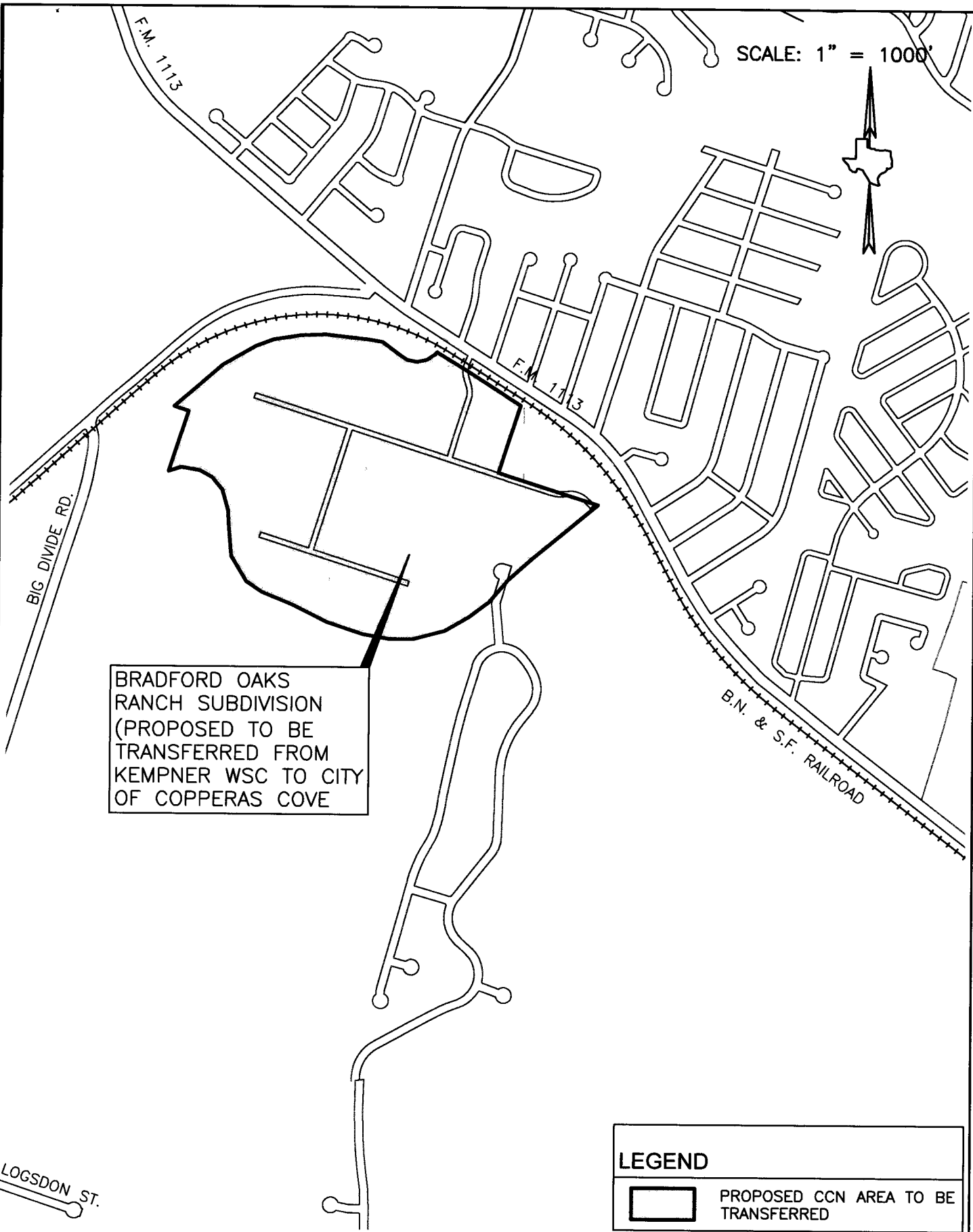
3801 SOUTH 1ST STREET
AUSTIN, TEXAS 78704-7047
PHONE-(512) 442-3008
FAX-(512) 442-6522

1011 W. COUNTY LINE ROAD, SUITE C
NEW BRAUNFELS, TEXAS 78130
PHONE-(830)-626-3588
FAX-(830)-626-3601

CITY OF COPPERAS COVE

BRADFORD OAKS RANCH
OVERALL EXHIBIT

SHEET 1 OF 1



LEGEND	
	PROPOSED CCN AREA TO BE TRANSFERRED

TEXAS RIVER CITY ENGINEERING
Civil, Environmental and Surveying
Texas Engineering Firm F-1546 Texas Survey Firm 10193949

3801 SOUTH 1ST STREET
AUSTIN, TEXAS 78704-7047
PHONE-(512) 442-3008
FAX-(512) 442-6622

1011 W. COUNTY LINE ROAD, SUITE C
NEW BRAUNFELS, TEXAS 78130
PHONE-(830)-626-3588
FAX-(830)-626-3801

CITY OF COPPERAS COVE
CCN TRANSFER EXHIBIT
BRADFORD OAKS RANCH SUBDIVISION



City of Copperas Cove

"The City Built for Family Living"

January 10, 2014

Ms. Vanita Craft
President
Kempner Water Supply Corporation
11986 East Highway 190
Kempner, Texas 76539

**RE: Bradford Oaks Ranch Subdivision
CCN Transfer Request**

Ms. Craft:

This letter is to provide a written request, per the agreement between Kempner Water Supply Corporation and the City of Copperas Cove dated May 6th, 2005, of the City of Copperas Cove's desire to transfer the Certificate of Convenience and Necessity (CCN) from Kempner Water Supply Corporation to the City of Copperas Cove for the remaining portion of the Bradford Oaks Ranch Subdivision. The Bradford Oaks Ranch Subdivision, 112.69 acres remaining in Kempner Water Supply Corporations CCN area, is located south of the intersection of Grimes Crossing Road and F.M. 1113, within the city limits of Copperas Cove, Texas. The remaining Kempner Water Supply Corporation CCN area within the subdivision contains individual tracts listed in the Coryell County Appraisal District records as Property I.D. No.'s 117419, 117421 - 117429, 117431- 117441, 117443, 117444, 117447, 117451 - 117454, 134127, 138891 & 141977.

As noted in the Agreement, the City of Copperas Cove will provide payment for the release of this area. Additionally, the City will process the necessary Sale, Transfer, Merger application with the Texas Commission on Environmental Quality in order to effectuate the release of the CCN.

Attached to this CCN transfer request letter is a copy of the Agreement, map of the area, and a CCN transfer exhibit showing the location of the remaining Bradford Oaks Ranch Subdivision Kempner Water Supply Corporation CCN area. If you have any questions or need additional information, feel free to contact me.

Sincerely,

Andrea Gardner

Attachments (3):

1. Kempner Water Supply Corporation / City of Copperas Cove Agreement (Dated May 6, 2005)
2. Bradford Oaks Ranch Subdivision Area Map
3. Bradford Oaks Ranch Subdivision Transfer Exhibit

CITY OF COPPERAS COVE - PO Drawer 1449 - Copperas Cove TX 76522 - (254) 547-4221

021980

VEND:52860 ** KEMPNER WATER SUPPLY CORP *
P.O. BOX 103
KEMPNER, TX 76539

03/21/2014

DATE	I.D.	PO #	DESCRIPTION	AMOUNT
03/18/2014	BRADFORD OAKS	14-5153	CCN PURCHASES-BRADFORD/FS	39,584.00

STUB TOTAL	39,584.00
CHECK TOTAL	39,584.00

PLEASE DETACH AND FILE

WHEREAS, City has previously supplied potable water to Topsey under contract dated August 31, 1971, as amended; said contract having expired under its own terms on December 31, 1999; and

WHEREAS, a new contract dated December 1, 2000 expired under its own terms on September 30, 2002; and

WHEREAS, City and Topsey entered into a new contract with an effective date of October 1, 2002 for a term of three (3) years to expire on September 30, 2005; and

WHEREAS, Topsey desires to continue purchasing wholesale potable water service from City; and

WHEREAS, Topsey desires a decrease in the volumetric rate of water purchased from City; and

WHEREAS, City is authorized to provide wholesale potable water service outside its corporate limits, has a supply of potable water which is not contracted to others and is available for Topsey's use and desires to continue its potable water supply service to Topsey subject to the conditions set forth in this Agreement, and

WHEREAS, City and Topsey desire to enter into a new contract that supercedes any previous contract that is in effect on the date of signing this agreement.

NOW, THEREFORE, for and in consideration of the foregoing premises and the mutual obligations, benefits and covenants herein contained, City and Topsey hereby agree and contract as follows:

1. Definitions.

The terms and expressions used in this Agreement, unless the context expressly indicates otherwise, shall have the following meaning:

- A. "Agreement" means this Water Supply Contract, inclusive of all recitals set forth hereinabove.
- B. "Bell County WCID No. 1" means Bell County Water Control and Improvement District No. 1.
- C. "City" means the City of Copperas Cove, Texas.
- D. "Effective date" of this Agreement means June 1, 2004.
- E. "ETJ" means the legal extraterritorial jurisdiction of the City of Copperas Cove as the same may be extended from time to time.

- F. "MGD" means million gallons per day.
- G. "Parties" means City and Topsey, collectively.
- H. "Topsey" or "Purchaser" means the Topsey Water Supply Corporation.
- I. "Service Area" means the geographical service area certificated to the Topsey Water Supply Corporation under Water CCN No. 10454 and the boundaries thereof existing on the effective date of this Agreement as reflected on the service area map attached hereto as Exhibit A.
- J. "TCEQ" means the Texas Commission on Environmental Quality and its statutory predecessors and successors.
- K. "Water" or "Potable Water" means water meeting the drinking water quality standards as established by the TCEQ at 30 T.A.C. Chapter 290.

2. Term.

Unless terminated earlier or extended by mutual written agreement of the parties hereto, this Agreement shall be in full force and effect from the effective date hereof and shall expire on May 31, 2014. The agreement will automatically renew under the same terms and conditions of this Agreement for one additional ten (10) year period unless either party gives written notice of its desire to terminate the Agreement sixty (60) days prior to the end of the agreement.

3. Water Conservation Plan.

It is the intent of the parties to this agreement to provide to the maximum extent practicable for the conservation of water, and Topsey agrees that it is a condition of this agreement that it shall maintain and operate its facilities in a manner that will prevent unnecessary waste of water. Topsey adopted a water conservation plan on or before September 1, 2000. Topsey represents that such water conservation plan meets all of the requirements contained in Title 30 of the Texas Administrative Code, Chapter 288. Topsey agrees to maintain and enforce its water conservation plan, as the same may be amended from time to time, to maintain compliance with applicable TCEQ requirements during the term of this Agreement. The City is bound to the Brazos River Authority, "BRA" by contract for receipt of water that will ultimately be supplied to Topsey. BRA in accordance with applicable law or regulation, may from time to time adopt reasonable rules and regulations relating to water conservation. Topsey agrees to abide by the "Brazos River Authority Drought Contingency Policy" adopted by the Board on January 16, 1989, or any

subsequent drought contingency policy duly adopted by the Board and any drought contingency plans developed under the Drought Contingency Policy. If required by applicable law or regulation or by B.R.A., the City has agreed to implement a Water Conservation and Drought Management Program in accordance with a water conservation plan and that the water made available to the City will be used in accordance with such conservation plan. Topsey agrees that in the event such conservation plan is implemented, Topsey shall implement the same plan as that to which the City must adhere.

4. Quantity.

A. Quantity Available to the City Subject to City's Water Supply Contract with Bell County WCID No. 1

This Agreement and the rights and obligations of City hereunder shall be subject to and be interpreted consistent with the terms and conditions of that Water Supply Contract, dated September 23, 1997, between City and Bell County WCID No. 1. Topsey acknowledges and agrees that the City's ability to supply water to Topsey is subject to the terms and conditions of said September 23, 1997 Water Supply Contract with Bell County Water Control and Improvement District No. 1.

B. Water to be Made Available and Delivered to Topsey

Subject to (i) the terms and conditions hereinafter set forth, (ii) the acquisition of any necessary permits and/or approvals (if any) from the TCEQ, (iii) the availability to City of an adequate supply of potable water from Bell County WCID No. 1, and (iv) the sale of City bonds, certificates of obligation or other instruments of indebtedness for the construction of the water system, City agrees to sell and to deliver to Topsey at the delivery point or points hereafter specified and Topsey agrees to purchase and take at such delivery point or points potable water during the period of this Agreement for Topsey's own use and for distribution to customers served by Topsey within its service area in an amount not to exceed three and a half (3.5) million gallons per month and not to exceed 350,000 gallons per day.

C. *Quantity Supplied for Topsey's Existing Service Area Only*

Topsey recognizes and acknowledges that the water supplied by City under this Agreement is for the exclusive use of Topsey and its retail water customers within the confines of its existing service area and agrees that it will neither enter into wholesale water supply agreements to make such water available to other retail or wholesale water service providers or suppliers or customers for the purpose of resale nor extend its retail service beyond its current service area boundaries without the City's express written consent except for those customers being currently served by Topsey who are outside of Topsey's service area and were actually receiving retail water service from Topsey on or before June 1, 2004.

D. *City's Obligation is for the Delivery of Water Only.*

This Agreement is for the delivery of water only and Topsey expressly recognizes and agrees that Topsey will at all times maintain adequate pressurization facilities to meet its own distribution system requirements under 30 T.A.C. Chapter 290 for all water delivered by City hereunder and that no rights or claims may arise under this Agreement for the utilization of any pressurizing facilities owned, operated or maintained by City. The Parties specifically agree that the City shall provide a minimum pressure of 35 psi at the meters under normal use conditions and a minimum pressure of 20 psi at the meters during any fire flow event on City's system. The Parties further agree that Topsey's payment of rates and charges for water service delivered hereunder does not and shall not give rise to any claim of ownership interest or equity in the facilities owned and operated by City, or in any contract to which City is a party, from which Topsey may be served with water under this Agreement. Topsey agrees that it is purchasing water from City, at the points of delivery, not equity or capacity in City's water system or its contracts with either the Bell County WCID No. 1 or the Brazos River Authority.

5. **Quality.**

The Parties hereto recognize that the only source of water supply currently available to the City for delivery to Topsey hereunder will be surface water stored in Lake Belton under agreement with the Brazos River Authority and the United States of America, which water is diverted, treated and transmitted to the City by Bell County WCID No. 1. Such water shall conform to the drinking water quality standards of the TCEQ under 30 T.A.C. Chapter 290 at the point or points of delivery described hereinbelow. Topsey shall install

and maintain at its own expense a backflow prevention device at said metered point(s) of delivery to preclude the introduction or passage of water from Topsey's water system into the City's transmission and distribution system. The design, location and installation of such backflow prevention device(s) shall be subject to City's approval prior to installation by Topsey which approval shall not be unreasonably withheld.

6. System Maintenance and Improvements.

City agrees to use reasonable diligence and care in operating, maintaining, improving and keeping in good repair the City's water system subject to Article 13 hereinbelow and those limitations set forth in Article 4 hereinabove, necessary to deliver water to Topsey pursuant to this Agreement.

7. Point of Delivery and Title.

Unless and until the parties by their mutual written agreement may designate either substitute or additional points of delivery the points of delivery of water by the City to Topsey shall be at

- (1) a four (4) inch meter located on the corner of Summers Road (east side) and Topsey Road, FM 1113 (north side),
- (2) a two (2) inch meter located on the (south side) Topsey Road, FM 1113, (south side of railroad tracks) on (west side) of Olive Street across railroad tracks,
- (3) a two inch meter (south side) of Topsey Road, FM 1113, (south side of railroad tracks) south of Seven-Eleven on Topsey Road, FM 1113,
- (4) a two (2) inch meter on the corner of north FM 116 (west side) and Lutheran Church Road (south side),
- (5) a two (2) inch meter at the proposed intersection of Big Divide Road and Grimes Crossing Road, to be installed at City's expense.

Title to water shall pass to Topsey when it passes through the meter located at each point of delivery.

8. Measuring and Control Equipment.

A. Equipment Operation

Topsey will furnish, install, and replace, when necessary, at its own expense at said delivery point or points the necessary equipment and devices of standard type for properly measuring and controlling the quantity of water delivered under this Agreement and which will permit the flow of water to Topsey as contracted for hereunder. Such meter or meters or other equipment so furnished and installed shall be operated and maintained by the City. Topsey shall have access to such metering equipment at all reasonable times, but the reading, calibration, adjustment, operation and repair thereof shall be done only by the employees or independent contractors of the City. For the purpose of this Agreement, the original record or reading of the meter or meters shall be in a journal or other record book or record keeping system of the City in its office in which the records of the employees or independent contractors of the City who take the readings are or may be transcribed or input into the City's computer system. Upon written request of Topsey, the City will give Topsey a copy of such journal, record book or computer printout or will permit Topsey to have access to the same in the office of the City during reasonable business hours.

B. Equipment Calibration

Once each calendar year or as required by state and federal law, at City's expense, or if requested in writing by Topsey to be conducted more frequently, at Topsey's sole expense, on a date as near to end of the calendar month as practicable, the City shall calibrate its delivery meters in the presence of a representative of Topsey. The parties shall jointly observe any adjustments made to the meters. Any check meters installed pursuant to paragraph C below shall be calibrated by Topsey, at its own expense, in the presence of a representative of the City.

If Topsey requests the City, in writing, to calibrate the City's meters, the City shall give Topsey notice of the time when any such calibration is to be made. If the representative of Topsey is not present at the time set, the City may proceed with calibration and adjustment.

C. Check Meter

Topsey may, at its option and own expense, install and operate a check meter to

check each meter maintained by the City, but the measurement of water for the purposes of this Agreement shall be solely by the meters maintained by the City, except in the cases hereinafter specifically provided to the contrary. All such check meters shall be of standard make and shall be subject at all reasonable times to inspection and examination by any employee or independent contractor of the City, but the reading, calibration and adjustment thereof shall be made only by Topsey, with prior notice to City in the event that calibration or adjustment of such check meter is to be performed, except during any period when the check meter may be used under the provisions hereof for measuring the amount of water delivered, in which case the reading, calibration and adjustment thereof shall be by the City, at City's expense, with like effect as if such check meter or meters had been maintained by the City.

D. Meter Testing and Correction

If upon any test, the percentage of inaccuracy of any metering equipment is found to be in excess of two percent (2%), registration thereof shall be corrected for a period extending back to the time when such inaccuracy began, if such time is ascertainable, and if such time is not ascertainable, then for a period extending back one-half(1/2) of the time elapsed since the last date of calibration, but in no event further back than a period of six (6) months. If for any reason any meters are out of service or out of repair so that the amount of water delivered cannot be ascertained or computed from the reading thereof, the water delivered through the period such meters are out of service or out of repair shall be estimated and agreed upon by the parties hereto upon the basis of the best data available. For such purpose, the best data available shall be deemed to be the registration of any check meter or meters if the same have been installed and are accurately registering. Otherwise, the amount of water delivered during such period may be estimated (i) by correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculation, or (ii) by estimating the quantity of water delivered by deliveries using delivery data from the preceding billing period under similar conditions when the meter or meters were registering accurately.

9. Unit of Measurement.

For the purpose of allocating any operating charges or surcharges under Article 10, the unit of measurement for water delivered hereunder shall be 1,000 gallons of water, U.S. Standard Liquid Measure. For purposes of allocating any fixed, capacity related,

charges under Articles 2 and 10, the unit of measurement shall be based upon a rate of flow or unit of capacity stated in millions of gallons per day (MGD).

10. Price of Water.

The parties hereto recognize that it is neither practical nor possible to enter into a long-term contract setting a specific rate which will control the price to be paid by Topsey to the City for water delivered throughout the term of a long-time Agreement because the price which the City must pay for water stored in and diverted from Lake Belton, and then treated, may vary from time to time. Subject to any and all price increases in the cost of water the City purchases from the Brazos River Authority and/or Bell County WCID NO. 1, which increases shall be passed through to Topsey when charged to City, the parties agree to the following rate structure during the term of this Contract:

A. Base Rate Between June 1, 2004 and May 31, 2009

The base rate for water delivered under this Agreement is \$2.85 per thousand gallons up to 0.20 MGD or three and a half (3.5) million gallons per thirty day billing period beginning on June 1, 2004 and ending on May 31, 2009. There will be no base rate on any meter through which City supplies water to Topsey. If a customer currently served by Topsey opts to transfer to the City system City will pay Topsey Two Hundred Fifty (\$250) dollars when such service by the City begins. City shall disconnect the service at Topsey's main service line to that customer or five feet (5 ft.) from the meter, whichever is less.

B. Escalation Clause

Between June 1, 2009, and May 31, 2014, and any option period, the base rate will increase no more than the same percentage as inside City rates increase.

C. Excess Volume Surcharge

City's annual revenue requirement for water deliveries to Topsey and Topsey's rate derived therefrom are calculated based upon Topsey's representation and agreement that its volumetric requirements will not exceed three and a half (3.5) million gallons during any one calendar month. Topsey recognizes that its contractual capacity under this Agreement cannot be exceeded without encroaching upon the design capacity allocated to other City customers and Topsey hereby agrees not to exceed such capacity. In the event that City's deliveries to Topsey do exceed said three and a half (3.5) million gallons per month, in addition to the base rate then in effect, Topsey agrees to pay to City an excess gallonage

surcharge at the rate of seven percent (7 %) of said base gallonage rate for each thousand gallons of water delivered in excess of the above-stated maximum deliveries. Nothing herein contained, however, shall be construed to restrict City's ability to limit its deliveries of water to Topsey to the aforesaid maximum monthly average or otherwise waive or impair City's ability to seek judicial or administrative relief, at law or in equity, to enforce such contractual volume limitations, nor shall any failure on the part of City to enforce such limitations in any Contract is executed.

11. Billing and Payment.

The City shall read all of the meters monthly and will promptly render monthly bills to Topsey based on such readings. All bills are due upon receipt by Topsey. If a bill remains unpaid after fifteen (15) days from the billing date, as stated on the face of the bill, a second notice shall be sent by mail to Topsey along with a notice of penalty of five percent (5 %) not to exceed five dollars (\$5.00).

If payment is not received by 8:00 a.m. on the next working date after the expiration of twenty-five (25) days from the billing date, water service is subject to disconnection and an additional charge of twenty-five dollars (\$25.00) is assessed over the usage charges for such delinquency, whether or not service is actually disconnected. If service is disconnected, such disconnection shall not excuse or serve as credit against Topsey's obligation to pay its monthly fees set forth hereinabove for water delivered by City to Topsey.

12. Force Majeure.

If the City should be prevented, wholly or in part, from furnishing water to the Purchaser under this Agreement by reason of an act of God, unavoidable accident, acts of the public enemy, strikes, floods, fires, governmental restraint or regulations, breaks in the City pipelines not caused by the negligence of the City, or for any other cause beyond the City's control, then the obligation of the City to deliver water to Topsey shall be temporarily suspended during the continuance of such force majeure.

No damage shall be recoverable by Topsey from the City by reason of the temporary suspension of delivery of water due to any of the causes above mentioned. If the City's ability to deliver water to Topsey is affected by any of the causes above mentioned, the City shall promptly notify Topsey in writing, giving the particulars as soon as practicable after the occurrence of the cause or causes for such interruption.

If the supply of water available to the City is insufficient for any reason to serve the requirements of all of its customers as a result of a period of drought or for any other reason then the available amount of water will be allocated and prorated by the City in such manner that all shall suffer alike and preference be given to none. During such period of allocation or proportion, Topsey agrees to reduce the delivery of water to its own retail customers in the same ratio or proportion that City's supply to its retail customers is diminished.

13. Alterations and Repairs.

It is expressly recognized by Topsey that the City may be compelled to make necessary alterations, repairs and extensions of new or additional water supply, treatment or transmission facilities from time to time during the life of this Agreement, and any suspension of delivery to Topsey due to such operation shall not be cause for claim or damage on the part of Topsey, provided all reasonable effort is used by the City to provide Topsey with water in accordance with this Agreement. In such case, the City shall give Topsey seven (7) days advance notice of the suspension of delivery and of the estimated duration thereof.

14. Topsey to Facilitate Dual Certification Approval.

Topsey agrees to join with City to apply for, make, and pursue applications, from time to time, to the TCEQ to finality, to provide for a dual service area allowing Topsey and City to serve and sell water to customers within the City limits, the City's ETJ over the next ten (10) to twenty (20) years that is now served, owned or certificated to Topsey.

It is understood and agreed between the parties to this Agreement that if TCEQ fails to approve, refuses to accept, or rejects the application for dual certification, this Agreement shall be null and void and the contract between City and Topsey with an effective date October 1, 2002 shall be resurrected and be of full force and effect throughout its term as though this Agreement had not superseded it.

15. Modification, Assignment, and Benefit.

This Agreement shall be subject to change or modification at any time but only with the mutual written consent of the governing bodies of each of the parties hereto. This Agreement shall not be assignable by either party hereto without the prior written consent of the governing bodies of the parties hereto. This Agreement shall be for the sole and

exclusive benefit of the City and Topsey. The City is, however, granted the specific right to assign, mortgage, transfer, trust, pledge or otherwise hypothecate or encumber Topsey's obligations to make payments under this Agreement.

16. Additional Customers by City.

The City shall have the right to contract with any customers or persons to treat, transmit or supply water through its water supply, treatment and transmission facilities and to enlarge or extend such facilities to provide such services. Any such contracts shall not, however, impair the right of Topsey to receive water at the maximum rate set forth in this Agreement, except with the written consent of Topsey.

The City has constructed a trunk line loop to serve it's city customers in the northern portion of the City's CCN and to provide alternate (looped) service for its customers along FM 1113. This loop is located within the existing rights-of-way of FM 116, Lutheran Church Road, Summers Road, and FM 1113 which locations are within Topsey CCN. Topsey gives authorization to the City to construct, maintain, repair and replace as necessary, and operate such water facilities within Topsey's CCN. City guarantees not to serve any customer within the Topsey CCN without written authorization from Topsey.

17. Specific Performance; No Waiver.

It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default by either the City or Topsey, but all such remedies existing at law or in equity may be availed of by the City and Topsey and shall be cumulative. Recognizing, however, that the City's undertaking to provide and maintain services as provided herein is an obligation, failure in the performance of which cannot be adequately compensated in money damages alone, the City agrees, in the event of any default on its part, that Topsey shall have available to it the equitable remedy of specific performance. No waiver or waivers of any breach or default (or any breaches or defaults) by either party hereto of any term, covenant, condition, or liability hereunder, or of performance by the other party of any duty or obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind.

18. Indemnification

Without limitation of Topsey's own rights under this Agreement, Topsey agrees to indemnify City and hold City harmless from and against any and all suits and claims for damages of whatsoever kind or character, whether real or asserted, arising out of or in any way connected with a negligent act or omission of Topsey in the (1) furnishing or failure to furnish water under this Agreement or (2) with Topsey's execution, performance and enforcement of this Agreement, insofar as such suits or claims may be brought or asserted by or on behalf of Topsey's customers or other persons or properties within Topsey's certificated service area.

Without limitation of the City's own rights under this Agreement, the City agrees to indemnify Topsey and hold Topsey harmless from and against any and all suits and claims for damages of whatsoever kind or character, whether real or asserted, arising out of or in any way connected with a negligent act or omission of the City in the (1) furnishing or failure to furnish water under this Agreement or (2) with the City's execution, performance and enforcement of this Agreement.

19. Choice of Law and Venue.

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and venue of any judicial dispute arising hereunder shall be in Coryell County, Texas.

20. Right of First Refusal.

If Topsey receives a bona fide offer to purchase the entire Topsey Water Supply system, Topsey agrees to present that offer to City and allow the City to purchase the system at that bona fide offer. The City shall exercise this option by entering into a contract to purchase Topsey's system within sixty (60) days from the date City receives notice from Topsey in writing of the bona fide offer.

21. Severability.

If any provision of this Agreement shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provisions of any Constitution, statute, administrative rule, regulation or finding, rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision

in question invalid, inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions of this Agreement invalid, inoperative or unenforceable to any extent whatever.

22. Notice to TCEQ.

Pursuant to Section 13.144, Texas Water Code, the Parties agree that City will file a certified copy of this Agreement with TCEQ within thirty (30) days of the date the same is fully executed.

23. Effective Date.

Although this Agreement was executed on June 1, 2004, this Contract is effective as of June 1, 2004.

IN WITNESS WHEREOF, the Parties hereto, acting under the express authority of their respective governing bodies, have caused this Agreement to be duly executed in multiple counterparts, each of which shall constitute an original.

EXECUTED this the 1 day of June, 2004 in Coryell County, Texas.

CITY OF COPPERAS COVE, TEXAS

by: Bradi D. Diaz
BRADI D. DIAZ, Mayor

TOPSEY WATER SUPPLY
CORPORATION

by: Henry Jost
HENRY JOST, President

ATTEST:

Pamela J. Russell
PAMELA J. RUSSELL, City Secretary

ATTEST:

Ralph Williams
Corporate Secretary

APPROVED AS TO FORM:

James R. Thompson
JAMES R. THOMPSON
City Attorney

APPROVED AS TO FORM:

Charles Olson
CHARLES OLSON, Attorney for
Topsey Water Supply Corporation

OVERSIZED DOCUMENT

CD ATTACHED

**TO VIEW OVERSIZED
DOCUMENT PLEASE CONTACT
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