



Control Number: 45318



Item Number: 9

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**SouthWest  
Water Company**

SWWC Utilities, Inc.  
12535 Reed Road  
Sugar Land, TX 77478  
Phone 281.207.5800  
Fax 281.207.5940  
www.swwc.com

February 1, 2016

RECEIVED  
2016 FEB -1 PM 3:20  
PUBLIC UTILITY COMMISSION  
FILING CLERK

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

Re: Docket No. 45318 Application of SWWC Utilities, Inc. dba Huntington Utility Company, LLC and SWWC Utilities, Inc. Water Services, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Hays County

To Whom it May Concern:

Please accept this response of SWWC Utilities, Inc. to the voice mail message from Mary Lupo of January 20, 2016. She indicated that the Resolution of the Board of Directors of SWWC Utilities, Inc. included in our application was not adequate to meet the requirement of an agreement between the parties to support the proposed transaction.

Attached in an executed Asset Transaction Agreement between the two parties. Additionally, SWWC Utilities, Inc. is aware that our proposed asset transfer cannot be executed until PUC approval.

I hope this agreement will satisfy the requirement, but please contact me if there are questions or if additional information is needed.

Sincerely,

George Freitag, P.E.  
Texas Regulatory Manager  
SouthWest Water Company  
SWWC Utilities, Inc.  
(512) 219-2288  
gfreitag@swwc.com

## **ASSET TRANSACTION AGREEMENT**

THIS ASSET TRANSACTION AGREEMENT (the "Agreement") dated as of this 25th day of January, 2016, by and between SWWC Utilities, Inc. doing business as Water Services, Inc., (the "Transferee") and SWWC Utilities, Inc. doing business as Huntington Utility Company, LLC (the "Transferor") sets forth the terms and conditions by which the Transferee shall acquire all the assets of the Transferor used in the Transferor's operation of a water utility. The Transferee and the Transferor are referred to collectively as the "Parties."

### **RECITALS**

WHEREAS, SWWC Utilities, Inc. (the Company) owns and operates water utilities doing business as Huntington Utility Company, LLC and doing business as Water Services, Inc.; and

WHEREAS, the Company desires to transfer all the assets of the utility doing business as Huntington Utility Company, LLC to the utility doing business as Water Services, Inc.; and

NOW, THEREFORE, in consideration of the promises and the mutual promises herein made, and in consideration of the covenants herein contained, the Parties agree as follows:

### **Section I – Definitions**

**1.1 Definitions:** In this Agreement each of the following terms has the meaning specified or referred to in this Section 1:

"Assets" shall mean all right, title and interest in and to all the assets owned by Transferor which are more fully described in Exhibit A attached hereto and incorporated herein by reference.

"Business" shall have the same meaning set forth above.

"Transferee" shall have the same meaning set forth above.

"Closing" shall have the meaning set forth in Section 2.3.

"Closing Date" shall have the meaning set forth in Section 2.3.

"Parties" shall have the same meaning set forth above.

"Regulatory Approval" shall mean the consent of the Texas Public Utilities Commission to the transactions contemplated by this Agreement.

"Transferor" shall have the same meaning set forth above.

"Tax" shall mean any federal, state, or local income, or gross receipts, license, payroll, employment, severance, unemployment, disability, real property, personal property, sales, use, transfer, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not.

## **Section II – Transfer of Assets; Closing**

**2.1 Transfer of Assets:** Subject to the terms and conditions of this Agreement, the Transferee agrees to transfer from the Transferor and the Transferor agrees to transfer and deliver to the Transferee, all of the Assets on the Closing Date.

**2.2 The Closing:** The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at Transferee's office located at 12535 Reed Rd, Sugar Land, Texas 77478, on the next meter read date after Regulatory Approval (the "Closing Date"). At the Closing, the Transferor shall deliver to the Transferee a Bill of Sale in the form attached as Exhibit B and such other instruments of transfer, assignment, and conveyance in form and substance reasonably satisfactory to the Transferee sufficient to transfer to and effectively vest in the Transferee all right, title, and interest in the Assets together with possession of the Assets free and clear of all encumbrances.

**2.3 No Assumption of Liability:** Other than the obligations arising subsequent to the Closing under the Contracts which the Transferee shall assume, the Transferee shall not assume and not be obligated to pay, perform or discharge any debts, liabilities, or obligations of the Transferor, whether or not related to the Assets (the "Excluded Liabilities").

**2.4 Property Tax:** Transferor shall pay all sales, use and transfer taxes arising out of the transfer of the Assets to Transferee and shall pay its portion, prorated as of the Closing Date, of state and local real and personal property taxes of the business.

## **Section III – Representations and Warranties of the Transferor**

- 3 Except as otherwise disclosed in an attached schedule, the Transferor represents and warrants that:
- (a) the Transferor has all the requisite power and capacity to enter into this Agreement;
  - (b) this Agreement constitutes a legally binding and enforceable obligation of the Transferor enforceable against the Transferor in accordance with its terms;
  - (c) this Agreement and its consummation will not conflict with or result in a breach of any agreement, judgment, order, or governmental entity except for the Regulatory Approval;
  - (d) the Transferor has good and indefeasible title to all Real Property purported to be owned in fee, and good and merchantable title to all of its other Assets;
  - (e) Transferor has the right to use all express, implied and/or constructive easements;
  - (f) the Assets are capable of being used without the present need for repair

- or replacement except in the Ordinary Course of Business in a manner consistent with the Transferor's past practice; and
- (g) the representations and warranties of the Transferor contained in this Agreement and all other documents and information furnished to the Transferee are complete and accurate and do not and will not include any untrue statement of a material fact or omit to state any material fact necessary to make the statements made and to be made not misleading.

#### **Section IV – Representations and Warranties of Transferee**

4 The Transferee represents and warrants to the Transferor as follows:

- (d) the Transferee has all the requisite power and capacity to enter into this
- (a) Agreement;
- (b) this Agreement constitutes a legally binding and enforceable obligation of the Transferee enforceable against the Transferee in accordance with its terms; and
- (c) there are no proceedings or other actions commenced against the Transferee that may prevent or delay the closing of the transactions contemplated hereby.

#### **Section V – Agreements Through Closing**

5 During the period from the date hereof until the Closing:

- (a) the Transferor shall provide the Transferee with reasonable access to the Assets;
- (b) the Transferor shall not, without the consent of the Transferee, acquire or dispose of any Assets, terminate or amend any Contract, or commit to do any of the foregoing or make any other commitments or take any actions that are outside the Ordinary Course of Business; and
- (c) the Transferee shall prepare and process at its expense applications for Regulatory Approval and Transferee and the Transferor shall cooperate to the maximum extent possible to satisfy all regulatory requirements necessary for the transactions contemplated hereby, including obtaining the Regulatory Approval.
- (d) No public announcements will be made without mutual agreement between both parties.

#### **Section VI – Transferee's Conditions to Close**

6 The Transferee's obligation to consummate the transactions contemplated by this Agreement is subject to the following conditions:

- (a) the representations and warranties of the Transferor will be accurate at and as of the Closing Date as though such representations and warranties had been made at and as of such date;
- (b) all statutory requirements for the valid consummation of the transactions contemplated herein shall have been fulfilled and all governmental consents, approval, or authorizations necessary for the valid

- consummation of the transactions contemplated herein shall have been obtained including, but not limited to, the Regulatory Approval;
- (c) Contracts, permits, held interests deemed material to the transaction should be assigned to Transferee prior to close.
  - (d) No action or suit shall have been commenced and no statute, rule, regulation, or order shall have been enacted or proposed, that reasonably may be expected to prohibit the Transferee's ownership of the Assets or render the Transferee unable to purchase the Assets, make the sale of the Assets illegal or impose material limitations on the ability of the Transferee to exercise full rights of ownership of Assets;

### **Section VII – Termination**

**7** **Termination:** Anything herein to the contrary notwithstanding, this Agreement shall terminate upon the occurrence of any of the following events: (i) by mutual consent of the Transferee and the Transferor; (ii) on written notice from the Transferee to the Transferor or the Transferor to the Transferee if the Closing shall not have occurred on or before 12 months from the date of this Agreement, or (iii) if Regulatory Approval shall have been denied.

### **Section VIII – General Provisions**

**8.1** **Expenses:** Each Party shall be responsible for its own expenses incurred in connection with this Agreement including any broker's fees.

**8.2** **Further Assistance:** The Transferor shall execute and deliver with additional expense to the Transferee such additional documents and take such additional actions as are reasonably necessary to transfer the Assets and the Business to the Transferee.

**8.3** **Governing Law:** This Agreement supersedes all previous agreements and understandings between the Parties and shall be governed by and construed in accordance with the laws of the State of Texas without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than the State of Texas.

**8.4** **Notice:**

(a) **Addresses.** Any and all notices or other communications which the Parties shall be required or may elect to provide to another party pursuant to this Agreement shall be in writing unless otherwise so agreed. Any notice or communication hereunder shall be personally delivered, telecopied (receipt confirmed), or sent by certified or registered mail, postage prepaid, return receipt requested, or sent by overnight courier service providing evidence of delivery to the other party at the applicable address set forth below.

If to the Transferor:

SWWC Utilities, Inc.  
12535 Reed Rd.  
Sugar Land, Texas 77478

If to Transferee:

SWWC Utilities, Inc.  
12535 Reed Road  
Sugar Land, Texas 77478

- (b) Delivery Standards. Delivery or service of any written notice or communication shall be deemed completed (i) upon personal delivery, (ii) if telecopied, upon electronic acknowledgment thereof, (iii) if mail, three (3) business days after deposit in the United States mail, postage prepaid, and (iv) if by overnight courier service, one business day after deposit with the courier service.
- (c) Change of Address. Any party may change the address to which notices are to be addressed by giving the other party notice in the manner provided in this Section 8.4.

**8.5** Sales and Transfer Taxes: The Transferor shall be responsible for and pay any applicable sales, stamp, transfer, documentary, use, registration, filing and other taxes and fees (including any penalties and interest) that may become due or payable in connection with this Agreement and the transactions contemplated hereby.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement which is effective as of the date first written above.

TRANSFEEE

TRANSFEROR

By: Charles W. Profilet, Jr.  
Name: Charles W. Profilet, Jr.  
Title: Vice President

By: Charles W. Profilet, Jr.  
Name: Charles W. Profilet, Jr.  
Title: Vice President

**EXHIBIT A**

**Huntington Utility Company, LLC Assets and CCNS**





**HUNTINGTON UTILITY COMPANY, LLC**

**REAL PROPERTY**

Lot 23, Block F, of Huntington Estates Subdivision, an addition in Hays County, Texas, according to the map or plat thereof recorded in Volume 4, Page 71-76, Plat Records, Hays County, Texas.

**EASEMENT TRACTS**

**SANITARY CONTROL EASEMENT**

Dedicated to the Publis as set out on the Exhibit "D" attached to the General Warranty Deed recorded in Volume 687, Page 667, Real Property Records, Hays County, Texas

**PUBLIC UTILITY EASEMENTS**

Public utility easements dedicated to the Public as recorded in Volume 640, Page 309 and Volume 574, Page 469 of the Real Property Records, Hays County, Texas

**EXHIBIT B**

**BILL OF SALE AND ASSIGNMENT**

FOR GOOD AND VALUABLE CONSIDERATION, receipt, adequacy, and sufficiency of which are hereby acknowledged, [TRANSFEROR'S NAME] ("Transferor") shall, subject to the receipt of the consent of the [REGULATORY AUTHORITY], hereby sells, grants, conveys, assigns, transfers and sets over to [TRANSFeree'S NAME] ("Transferee"), its successors and assigns, all right, title and interest in and to all the Assets, as such term is defined in the Asset Purchase Agreement dated \_\_\_\_\_ between Transferor and Transferee.

TO HAVE AND TO HOLD the Assets, together with all rights and appurtenances thereto in any way belonging, unto Transferee, its successors and assigns, forever, and Transferor does hereby bind itself and its successors to WARRANT and FOREVER DEFEND title to the Assets unto the Transferee, its successors and assigns, against the lawful claims of any and all persons lawfully claiming or to claim the same or any part hereof.

Transferor warrants that there are no liens, encumbrances or security agreements affecting the Assets.

IN WITNESS WHEREOF, Transferor has executed this Bill of Sale and Assignment as of this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

[TRANSFEROR]

By: \_\_\_\_\_  
Name: Charles W. Profilet, Jr.  
Title: Vice President