



Control Number: 45552



Item Number: 15

Addendum StartPage: 0

From: barlife <barlife@aol.com>
To: wferebee <wferebee@ofmflaw.com>; kreyer <kreyer@shenandoahtx.us>
Cc: jlleveston <jlleveston@sbcglobal.net>
Subject: USDA Correspondence Re: Agreement - City of Shenandoah
Date: Tue, Apr 8, 2014 10:58 am
Attachments: DenialofWholeSale_Wastewater_Agreement.pdf (117K)

RECEIVED
2016 FEB -1 PM 12:56
PUBLIC UTILITY COMMISSION
FILING CLERK

Mr. Ferebee:

Attached is a copy of the response from the USDA concerning paragraphs 4.01 and 9 of the City's proposed sewer and wastewater agreement. I ask that you seek an expedited resolve of the provisions that are of concern to the USDA.

Sincerely,

/s/ Ramond W. Howard
Ramond W. Howard, P.C.
1303 Turtle Creek Drive
Missouri City, TX 77489
281-437-5900 Tel
281-416-9517 Fax

(dictated not read)

CONFIDENTIALITY NOTICE: This email is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you have received this communication in error, please do not distribute, deliver or copy this material. Please do not disclose its contents or take action in reliance on the information it contains. Please notify the sender by email at the address shown and delete the original message from any computer.

—Original Message—

From: Kathie Reyer <kreyer@shenandoahtx.us>
To: barlife <barlife@aol.com>
Cc: William C. Ferebee <wferebee@ofmflaw.com>
Sent: Fri, Mar 28, 2014 12:35 pm
Subject: Agreement - City of Shenandoah

Mr. Howard –

Please find correspondence attached from Mr. Ferebee, the City Attorney.

Thanks,
Kathie Reyer
City Secretary

—
Kathie Reyer
City of Shenandoah
29955 I-45 N
Shenandoah, TX 77381
(281) 298-5522 (Main)
(281) 367-2225 (Fax)
kreyer@shenandoahtx.us
www.shenandoahtx.us

15

This e-mail may contain information and documents being sent to members of the City Council for review. If so, this matter will be discussed at a future City Council meeting. Please remember that City Council members may not engage in deliberations on any City matter by email correspondence. If you have comments or questions, please only reply to the City Attorney, City Secretary or the City Administrator for the City.



April 7, 2014

COPY

Old Tamina Water Supply Corporation
P.O. Box 7402
The Woodlands, TX 77387

SUBJECT: Old Tamina Water Supply Corporation (WSC)
Wholesale Wastewater Agreement

A review of the subject draft Agreement between Old Tamina WSC and the City of Shenandoah has been completed. **The Agreement is not acceptable to the Agency.** In accordance with 7 C.F.R. 1780, §1780.63, we note the following concerns that must be addressed:

1. The Agreement does not set out details regarding the amount of any connection or demand charges. A clause should be added to the Agreement that clarifies that each party will pay for the construction identified and that there will be no further charges placed upon the WSC other than as detailed in the Agreement.
2. The Agreement does not state that, if there is a reduction in the amount of sewer that can be treated by Shenandoah, all users will share proportionately in the reduction.
3. Paragraph 3.02 provides that Shenandoah retains the right to change rates at will with 90 days notice. This is not acceptable because the WSC does not have an opportunity to accept or reject any rate escalations, there is no basis given for rate escalations and there is no explanation that any rate escalations will be shared proportionately by all customers.
4. Paragraph 3.02 also provides for the WSC to "pledge" its revenues from the service area to the payment of its obligations under the Agreement. The definition of "pledge" is not provided, but that would indicate that the WSC is required to provide to Shenandoah a security interest in its revenues. Such an arrangement would be unacceptable if the security interest were to be placed ahead of the interest of the Agency.
5. The Agreement does not provide that it can be pledged or assigned to the United States as collateral for a loan. This must be added.
6. Paragraph 4.01 provides for the Agreement to last for a term of 15 years, or to 40 years if there is underlying debt used to construct the "current phase of construction". No definition of "current phase of construction" is provided. The Agency must ensure that

Rural Development • Huntsville Area Office
2 Financial Plaza, Suite 745, Huntsville, Texas 77445
Voice (936) 291-1901 • Fax (936) 294-0533

*USDA is an equal opportunity provider and employer.

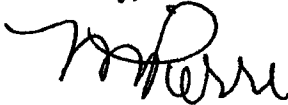
If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at http://www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442, or email at program.intake@usda.gov.

the Agreement provides, unambiguously, for a term at least as long as the term of its loan.

7. Paragraph 5.03 provides that Shenandoah shall never be liable for its inability to treat a specific amount of sewage. This exclusion of liability is too broad as it provides the WSC with no recourse if Shenandoah decides, for any reason, to decline to treat sewage.
8. Paragraph 9 provides that Old Tamina WSC must abandon and release any joint Certificate of Convenience and Necessity that covers property that becomes annexed by Shenandoah. This provision of the Agreement is unacceptable as it leaves Old Tamina WSC with no protection against the possibility of its source of revenue (and thus its loan repayment ability) from being diminished by future annexations by Shenandoah.

Once the corrections have been completed, please re-submit for review, prior to executing. If you have any questions, please contact our office, at (936) 291-1901, ext. 4.

Sincerely,



MONICA PIERRE
Assistant Area Director

david collins

To: brian.dickey@tceq.texas.gov
Cc: Richard Howard; Harold Hunter; James or Julia Leveston; 'Frank Mbachu'
Subject: Application from Old Tamina Water Supply Corporation (WSC) to Amend Certificate of Convenience and Necessity (CCN) No. 12289 and to Obtain Dual Certification With a portion of CCN No. 13146 held by the City of Shenandoah in Montgomery County;

Hello Mr. Dickey:

I am David L. Collins, Sr. Engineer of Record for design of Sanitary Sewer System for Old Tamina Water Supply Corporation, and received a copy of TCEQ Letter from Tammy Benter, Manager Utilities and Districts Sections, Water Supply Division dated May 15, 2014 to Mr. James Leveston, President of OTWSC, requesting additional information on their CCN Application. Mr. Richard Howard, representing the Attorney for OTWSC. The letter is requesting information and clarifications for two (2) from the EOR. The items are as follows:

4. Conroe Independent School District has requested exclusion of 60 acres from the proposed CCN areas. The TCEQ has reviewed the request and finds that they meet the criteria of Title 30 of the Texas Administrative Code & 291.102(h). Please work with the requestor to obtain sufficient information to exclude their property from the proposed CCN areas. Please provide revised maps and digital data, excluding the land mentioned above.

Based on Item 4 above we are attaching copies of the following:

Exhibit "A"-The original Tamina Proposed Sanitary Sewer CCN which was in our original Proposed CCN Boundary/ Application. Conroe ISD was never included in our Old CCN and New CCN Application.

Exhibit "B" & "C"-The updated Tamina Proposed Sanitary Sewer & Water CCN included the 60 Acre area north of our original CCN and Proposed CCN Application was added at the request of TCEQ and we complied. If we are mistaken, we apologize and will remove from all of our maps.

Exhibit "1"-This is the original survey of the Conroe ISD 60 Acre Survey, which we used to add the 60 acres to the north boundary of our CCN. This is for your information only. We will request that Mr. Richard Howard send a letter to Conroe ISD granting their wish to be excluded from OTSWC CCN Application.

Exhibit "D" & "E" -This is a copy of our digital area map that was included in our original CCN Application showing the surrounding area. Is this map ok and will serve for that purpose?

5. Please provide four (4) copies of the capital improvement Plan including a budget and estimated time line for construction of all facilities necessary to provide full service to the proposed service areas. This information should be keyed to maps showing where such facilities will be located to provide service as required in 30 Texas Administrative Code (TAC) section 291.105(6).

Based on Item 5 above we are attaching copies of the following:

Exhibit "F"-This is the latest budget estimate prepared for USDA dated April 14, 2014. This budget includes all cost required to construct and place the new Sanitary Sewer System in operations.

Exhibit "G"-This is a map of the overall Sanitary Sewer System with line alignment and location with sizes. This map is being sent in the PDF format, which can be enlarged for your review of the system. If this meets with your approval, we will provide four (4) full size copies with our response to the TCEQ letter dated May 15, 2014.

With regards to the estimate time line for construction, we submit the following:

1. Final plans and Specification have been submitted USDA for their review. USDA will not officially approve the final plans and specs as well as the preliminary title opinion until after OTWSC receives notice from TCEQ of approval of CCN;
2. USDA review of final plans and specs could be more than 30 days after the CCN is approved;
3. In order for the engineer to advertise for bids, USDA must issue closing instructions. The preliminary title opinion is issued by Mr. Howard on behalf of Old Tamina. USDA will not start looking at the preliminary title opinion until the CCN is approved. The Office of General Council (OGC) for USDA will take about 60 days in review. Should everything go well, Shenandoah accepts our proposal and the CCN is issued in the next three months, it may take an additional three months to get closing instructions.
4. Then the engineer must advertise for at least three weeks, usually 30 days
5. Engineer at bid opening, & reviews the low bidder. Should they be in good stead, the engineer then issues a notice of clearance to USDA who then sets a loan closing day. This process could take another two to three weeks;
6. After loan closing, the engineer can issue notice to proceed. Contractors usually take about two weeks to set up their temporary facilities;
7. Finally, the engineer estimated construction time of approximately one year, more or less.

The above information and input is submitted for you and I to discuss. The official response to The TCEQ Letter dated May 15, 2014 will be officially responded to by Mr. Richard Howard and OTWSC.

If we agree on the information provided, this will become a part of Mr. Howards response to Ms. Tammy Benter and you.

Thanks in advance for your time, and look forward to discussing this matter with you.

Thanks;

David L. Collins, P.E. RPLS., F.ASCE
713-569-4493

Steven W. Shaw, Ph.D. *Chairman*
Edy Baker *Commissioner*
Zakiya K. Williams *Commissioner*
Richard A. Hyde, Ph.D. *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 15, 2014

BY CERTIFIED MAIL

Mr. James Leveston, President
Old Tamina WSC
19521 Simons Lane
Conroe, Texas 77385

FINAL NOTICE OF DEFICIENCY

Re: Application from Old Tamina Water Supply Corporation (WSC) to Amend Certificate of Convenience and Necessity (CCN) No. 12289 and to Obtain Dual Certification with a portion of CCN No. 13146 held by the City of Shenandoah in Montgomery County; Application No. 37615-C

Application from Old Tamina WSC to Obtain a Sewer CCN in Montgomery County; Application No. 37616-C

CN: 602895005; RN: 102677473 (water)
CN: pending; RN: pending (sewer)

Dear Mr. Leveston:

The Texas Commission on Environmental Quality (TCEQ or Commission) sent you a letter on October 24, 2013 requesting the following items which were due by November 25, 2013. As of today, those items have not been received.

1. Please provide written documentation from the City of Shenandoah agreeing to the proposed dual certification. The agreement provided was for a previous application that was dismissed.
2. Please provide a copy of the signed wholesale wastewater contract with the City of Shenandoah.
3. Please provide four copies of requests seeking service from all sewer utilities within 2 miles and their written responses or documentation that they failed to respond as required in question 4A of the CCN application. If your request for service were not denied please provide a detailed analysis which justifies your reason for not accepting service. A separate analysis must be prepared and submitted for each utility that granted your request for service. The request for service provided were over six years old and were for an application that was dismissed.

Mr. James Leveston, President

Page 2

May 15, 2014

4. Conroe Independent School District has requested exclusion of 60 acres from the proposed CCN areas. The TCEQ has reviewed the requests and finds that they meet the criteria of Title 30 of the Texas Administrative Code §291.102(h). Please work with the requestors to obtain sufficient information to exclude their property from the proposed CCN areas. Please provide revised maps and digital data, excluding the land mentioned above.
5. Please provide four (4) copies of the capital improvement plan including a budget and estimated time line for construction **of all facilities** necessary to provide full service to the proposed service areas. This information should be keyed to maps showing where such facilities will be located to provide service as required in 30 Texas Administrative Code (TAC) section 291.105(6).
6. Please provide the current status of the USDA loan. If the loan is conditioned on the granting of the CCN application please provide a letter from USDA stating that funding will be released once the CCN has been granted.

Processing of the above referenced application cannot proceed until we receive the requested items. These items must be provided to our office by **May 30, 2014**. If we do not receive the requested information by this date, your application will be returned for failure to prosecute.

If you have any questions, please contact Mr. Brian Dickey at 512/239-0963, or if by correspondence, include Mail Code 153 in the letterhead address.

Sincerely,

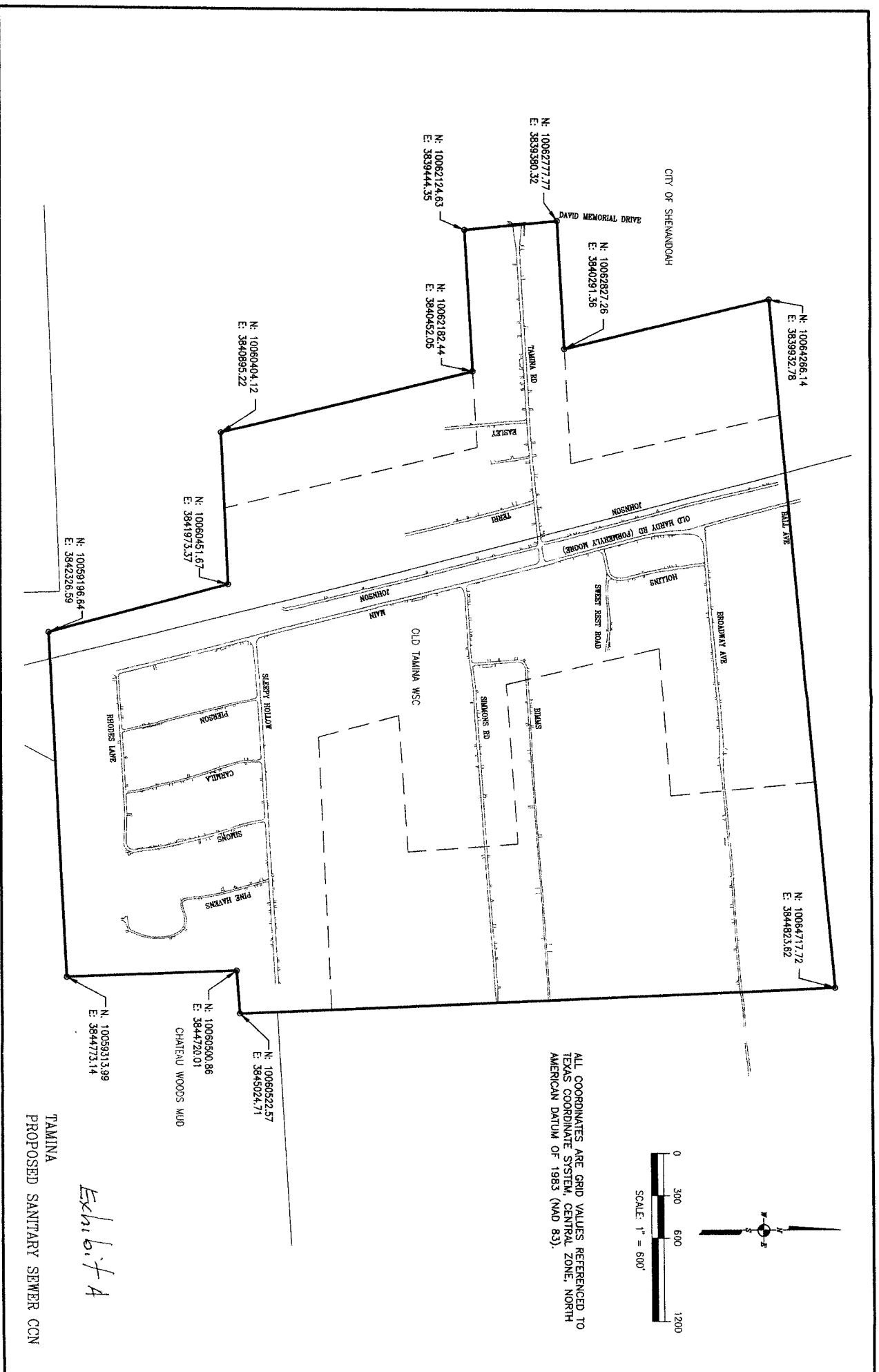


Tammy Benter, Manager
Utilities & Districts Section
Water Supply Division
Texas Commission on Environmental Quality

TB/BDD/

cc: Richard Howard
TCEQ Region 12 Office

Brian.Dickey@tceq.Texas.gov Texas.gov
Tx.gov



CITY OF SHEWANDOAH

N: 10062777.77
E: 3839380.32

N: 10062827.26
E: 3840291.36

N: 10064266.14
E: 3839932.78

N: 10062124.63
E: 3839444.35

N: 10062182.44
E: 3840452.05

N: 10060404.12
E: 3840895.22

N: 10060451.67
E: 3841973.37

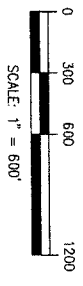
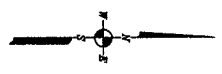
N: 10059196.64
E: 3842326.59

N: 10064717.72
E: 3844823.62

N: 10060522.57
E: 3845024.71

N: 10060500.86
E: 3844720.01

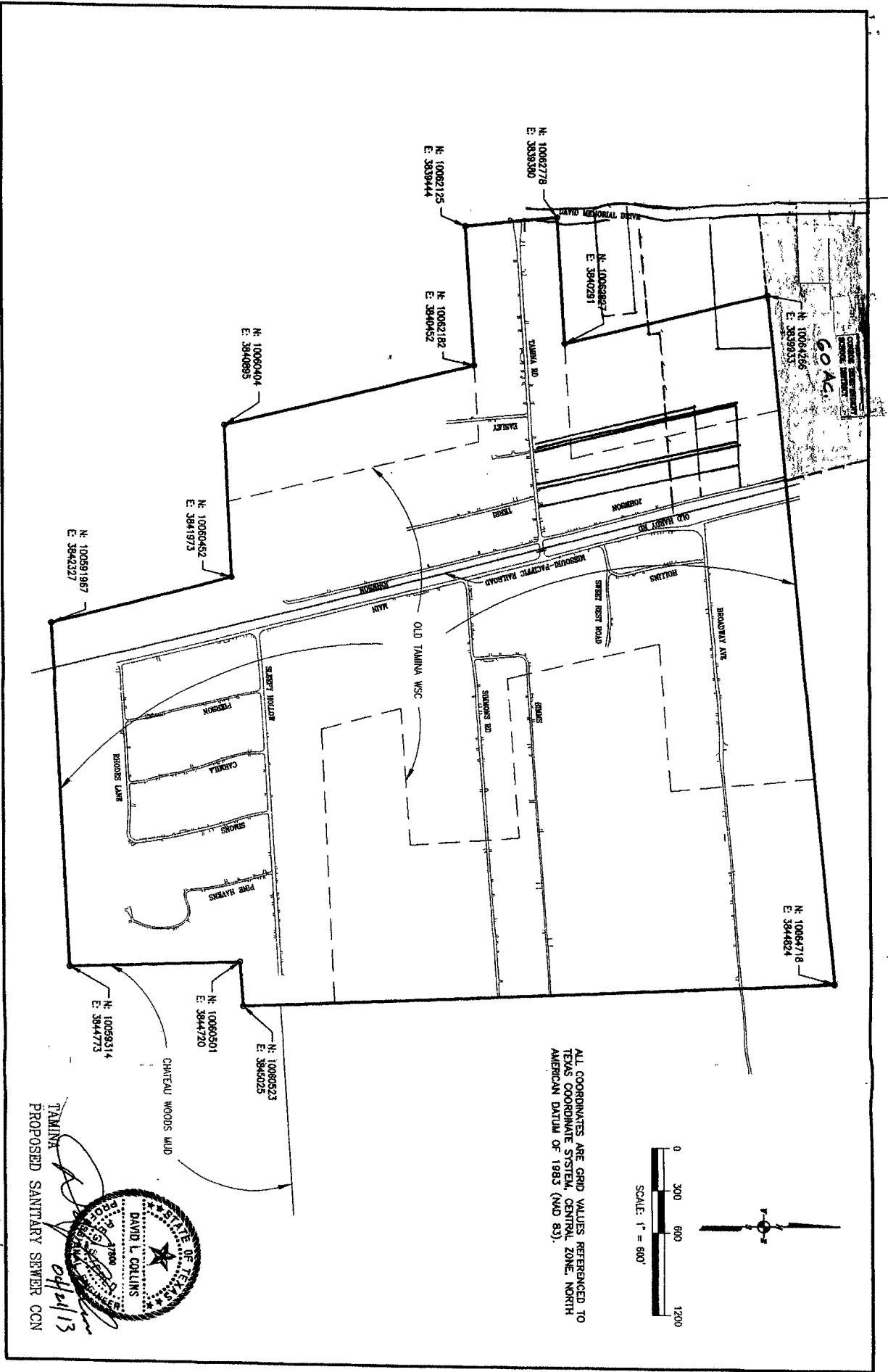
N: 10059313.99
E: 3844773.14



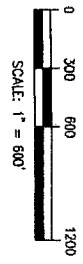
ALL COORDINATES ARE GRID VALUES REFERENCED TO TEXAS COORDINATE SYSTEM, CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983 (NAD 83).

TAMINA
PROPOSED SANITARY SEWER CCN

Exhibit A



ALL COORDINATES ARE GRID VALUES REFERENCED TO TEXAS COORDINATE SYSTEM, CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983 (NAD 83).



TAININA
PROPOSED SANITARY SEWER CCN

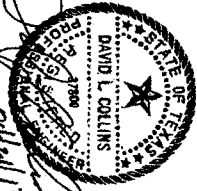
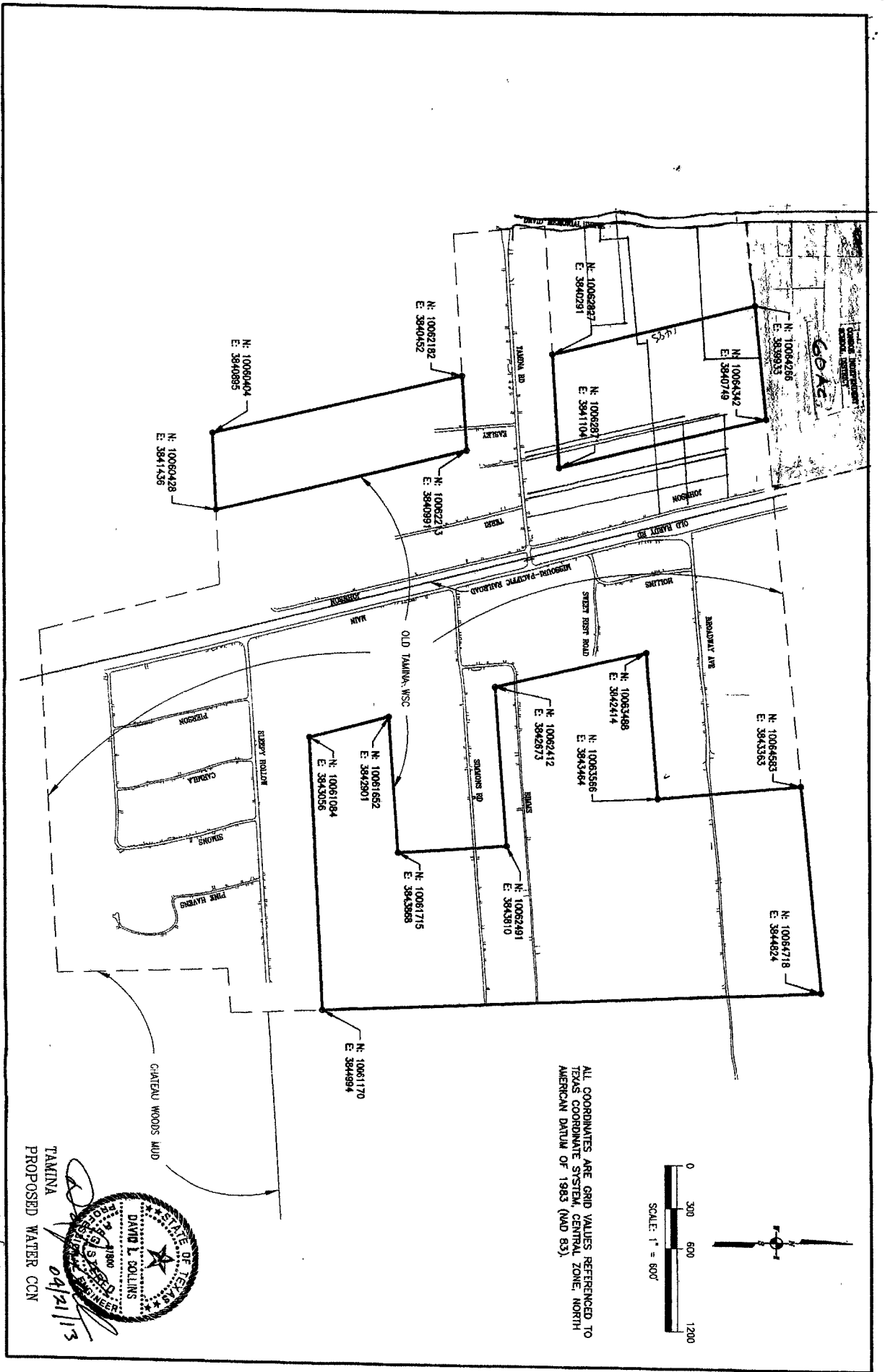
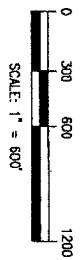


Exhibit B

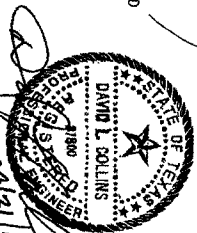
04/21/13



ALL COORDINATES ARE GRID VALUES REFERENCED TO TEXAS COORDINATE SYSTEM, CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983 (NAD 83).

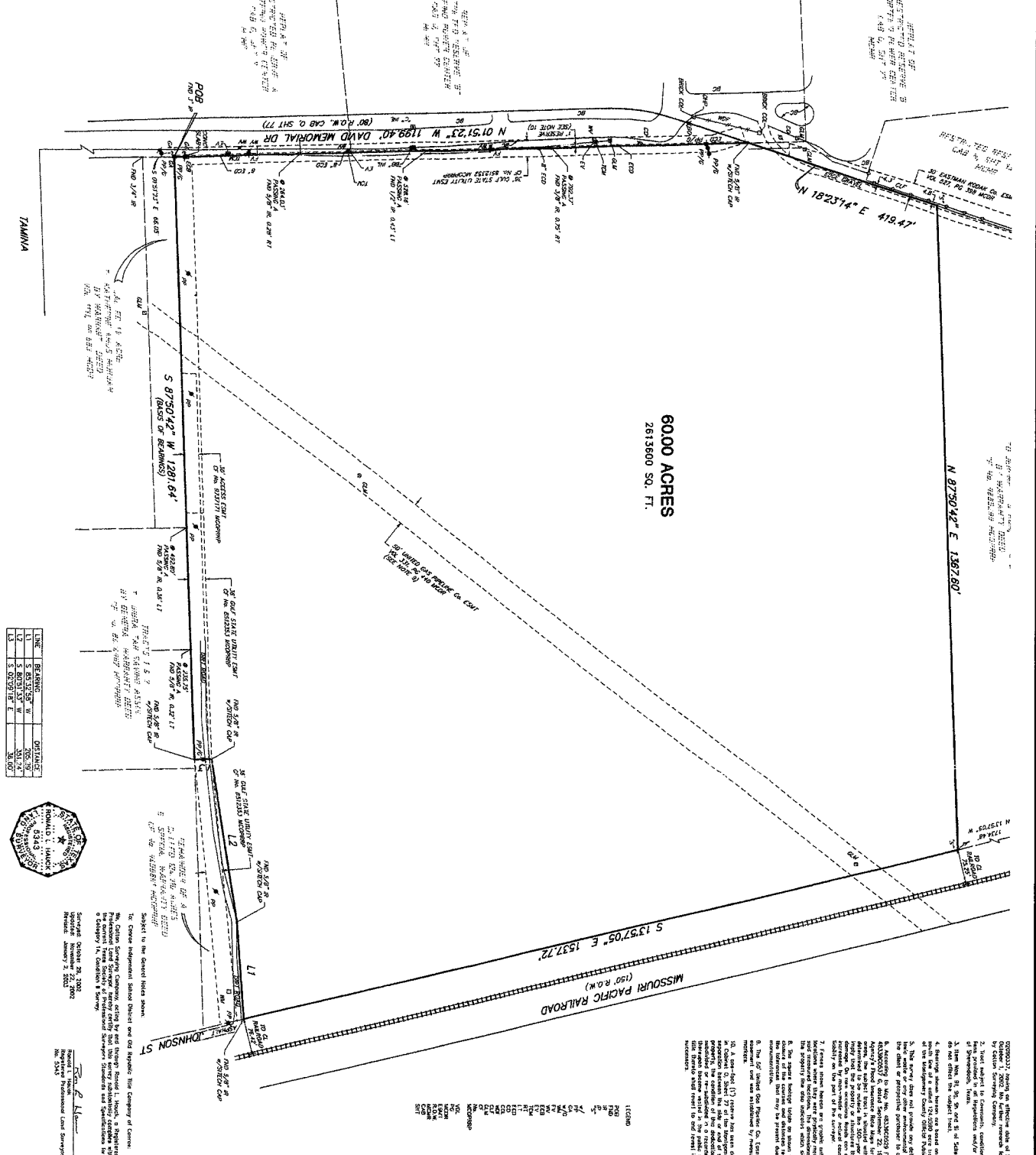


TAMINA
PROPOSED WATER CCN



04/21/13

Exhibit



TABLE

LINE	BEARING	DISTANCE
1	S 89°32'58" W	705.95'
2	S 89°32'58" W	501.94'
3	S 89°32'58" E	501.94'



Surveyed by the undersigned and by assistants under his immediate supervision and control, and by means of instruments lawfully used, and found to be in good order, and in accordance with the laws and regulations of the State of Texas, on this 28th day of January, 2002.

Donald L. Hancock
Registered Professional Land Surveyor
No. 51443

- 1572000
- PUB. 2002
 - REC. 2002
 - PLAT 2002
 - DATE 2002
 - BY DONALD L. HANCOCK
 - REGISTERED PROFESSIONAL LAND SURVEYOR
 - NO. 51443
 - STATE OF TEXAS



LAND TITLE SURVEY
OF
6000 ACRES
SITUATED IN THE
MONTGOMERY COUNTY SCHOOL LAND
SURVEY, A-980
MONTGOMERY COUNTY, TEXAS
NOVEMBER 2002



SECTION 27, TOWNSHIP 25 N., RANGE 12 E., MERIDIAN 10 W., 2002 and an amended map produced by Dallas Surveying Company, for the purpose of establishing a survey and plat for the same. The survey and plat were made in accordance with the laws and regulations of the State of Texas, and the same are hereby certified to be correct and true.

1. This plat is a subdivision of the land shown on the map and is intended to be a permanent record of the same.

2. The plat is a subdivision of the land shown on the map and is intended to be a permanent record of the same.

3. The survey and plat were made in accordance with the laws and regulations of the State of Texas, and the same are hereby certified to be correct and true.

4. The survey and plat were made in accordance with the laws and regulations of the State of Texas, and the same are hereby certified to be correct and true.

5. The survey and plat were made in accordance with the laws and regulations of the State of Texas, and the same are hereby certified to be correct and true.

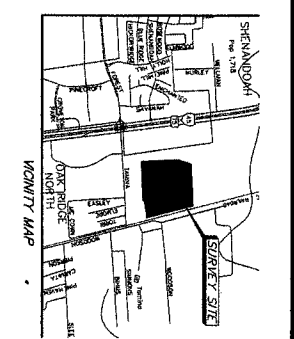
6. The survey and plat were made in accordance with the laws and regulations of the State of Texas, and the same are hereby certified to be correct and true.

7. The survey and plat were made in accordance with the laws and regulations of the State of Texas, and the same are hereby certified to be correct and true.

8. The survey and plat were made in accordance with the laws and regulations of the State of Texas, and the same are hereby certified to be correct and true.

9. The survey and plat were made in accordance with the laws and regulations of the State of Texas, and the same are hereby certified to be correct and true.

10. The survey and plat were made in accordance with the laws and regulations of the State of Texas, and the same are hereby certified to be correct and true.



STATE OF TEXAS
COUNTY OF MONTGOMERY

NOTICE: A copy of this survey plat is on file in the office of the County Clerk, Montgomery County, Texas, at Dallas, Texas, and is available for public inspection during regular business hours.

The survey and plat were made in accordance with the laws and regulations of the State of Texas, and the same are hereby certified to be correct and true.

DITTMER SURVING
COMPANY, INC.
1401 EAST PAPER STREET, SUITE 100
DALLAS, TEXAS 75216

Surveyors at Work

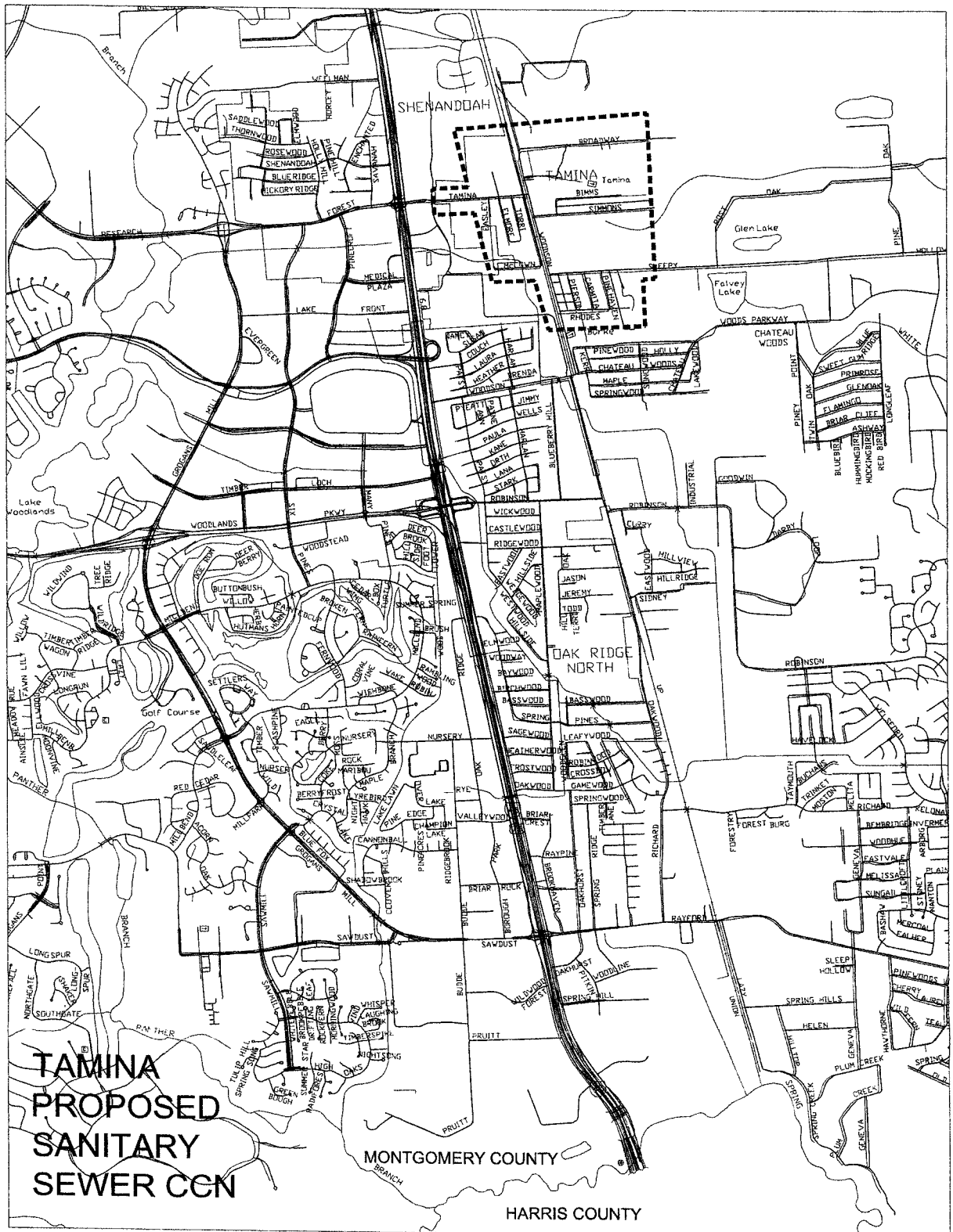
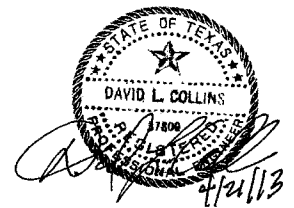


Exhibit D



**TAMINA SANITARY SEWER PROJECT PHASE I
MONTGOMERY COUNTY, TEXAS
Final Estimate**

SCHEDULE OF UNIT PRICE WORK

BASE UNIT PRICES FOR:

Item No.	Item Description	Unit	Unit Quantity	Unit Price In Figures	Total In Figures
GENERAL ITEMS					
1	Mobilization (The entire Job, 4% Total Cost)	LS	1	\$27,000.00	\$27,000.00
2	Traffic Control System	LS	1	\$6,000.00	\$6,000.00
3	Flagmen	HRS	100	\$26.00	\$2,600.00
4	Storm Water Pollution Prevention Systems	LS	1	\$3,000.00	\$3,000.00
5	Reinforced Filter Fabric Fence	LF	100	\$5.00	\$500.00
General Subtotal					\$39,100.00
PAVING ITEMS					
6	Saw Cut Asphalt or Concrete Pavement	LF	75	\$3.00	\$225.00
7	Remove Existing Asphalt Pavement with or without Curb, All Thickness	SY	42	\$10.00	\$420.00
8	8" Crushed Concrete Base (for Gravel Road)	SY	300	\$15.00	\$4,500.00
9	6" Crushed Concrete Base (for Asphalt Road)	SY	42	\$12.00	\$504.00
10	2" Type "D" Hot Mix Asphalt Concrete (HMAC)	TON	1	\$150.00	\$150.00
11	Re-grading Existing Roadside Ditch, All Depths	LF	400	\$5.00	\$2,000.00
12	Sodding	SY	200	\$5.00	\$1,000.00
13	Hydromulch Seeding	AC	1	\$2,000.00	\$1,000.00
Paving Subtotal					\$9,799.00
SANITARY SEWER ITEMS					
14	Trench System	LF	500	\$2.00	\$1,000.00
15	4' Dia. Sanitary Sewer Manhole - All Depths	EA	109	\$2,200.00	\$239,800.00
16	15" Sanitary Sewer - 0-8 Feet Depth	LF	150	\$60.00	\$9,000.00
	15" Sanitary Sewer - 8-12 Feet Depth	LF	800	\$63.00	\$50,400.00
	15" Sanitary Sewer - 12-16 Feet Depth	LF	675	\$65.00	\$43,875.00
17	8" Sanitary Sewer, 0-8 Feet Depth	LF	9,209	\$28.00	\$257,852.00
	8" Sanitary Sewer, 8-12 Feet Depth	LF	1,790	\$29.00	\$51,910.00
	8" Sanitary Sewer, 12-16 Feet Depth	LF	1,224	\$31.00	\$37,944.00
	8" Sanitary Sewer, 16-20 Feet Depth	LF	110	\$34.00	\$3,740.00

Exhibit F

**TAMINA SANITARY SEWER PROJECT PHASE I
MONTGOMERY COUNTY, TEXAS
Final Estimate**

BASE UNIT PRICES FOR:

Item No.	Item Description	Unit	Unit Quantity	Unit Price In Figures	Total In Figures
18	10" Sanitary Sewer, 0-8 Feet Depth	LF	5,091	\$38.00	\$193,458.00
	10" Sanitary Sewer, 12-16 Feet Depth	LF	2,793	\$46.00	\$128,478.00
	10" Sanitary Sewer, 16-20 Feet Depth	LF	100	\$49.00	\$4,900.00
19	12" Sanitary Sewer, 0-8 Feet Depth	LF	980	\$43.50	\$42,630.00
	12" Sanitary Sewer, 8-12 Feet Depth	LF	750	\$45.00	\$33,750.00
	12" Sanitary Sewer, 16-20 Feet Depth	LF	70	\$47.75	\$3,342.50
	12" Sanitary Sewer, 20 Feet Depth & Above	LF	657	\$50.00	\$32,850.00
20	Sanitary Sewer Lift Station	EA	1	\$100,000.00	\$100,000.00
21	4" Sanitary Sewer Force Main	LF	900	\$25.00	\$22,500.00
22	4" Service Connection Complete in Place	EA	249	\$250.00	\$62,250.00
23	Removal and Closure of Existing Septic Tanks	EA	249	\$500.00	\$124,500.00
	Sanitary Sewer Subtotal				\$1,578,957.50
	EXTRA WORK ITEMS				
22	Special Hand Excavation	CY	50	\$100.00	\$5,000.00
23	Extra Cement Stabilized Sand	TON	100	\$40.00	\$4,000.00
	Extra Items Subtotal				\$9,000.00
				GENERAL ITEMS	\$39,100.00
				PAVING ITEMS	\$9,799.00
				SANITARY SEWER ITEMS	\$1,578,957.50
				EXTRA WORK ITEMS	\$9,000.00
				SUB-TOTAL	\$1,636,856.50
				CONTINGENCIES (5%)	\$81,842.83
				ENGINEERING FEE (Design & Construction Management)	\$208,174.20
				TOPOGRAPHIC SURVEY	\$54,250.00
				GEOTECHNICAL ENGINEERING	\$49,759.50
				INSPECTION SERVICES (24 hrs per week for 7 months)	\$48,300.00
				TOTAL	\$2,079,183.03

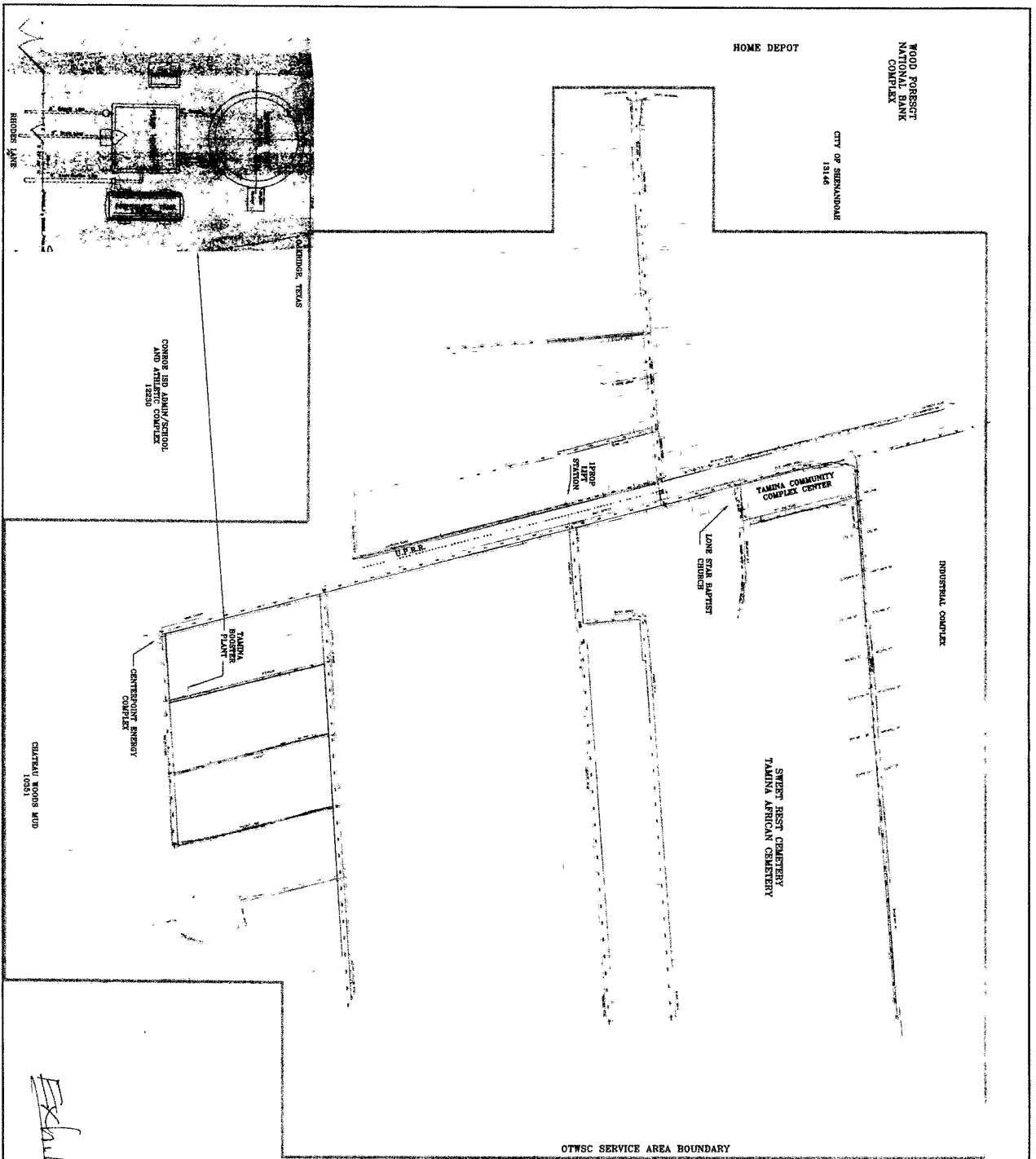



Exhibit 2

LEGEND
 PROPOSED WATER
 PROPOSED SEWER

 PCMB ENGINEERS, P.C. 11700 N. 10th St., Suite 100 Phoenix, AZ 85021 Phone: (602) 998-1170 Fax: (602) 998-1171 Email: info@pcmb.com	
FACILITIES MAP	
PROPOSED SANITARY SEWER SYSTEM	
OLD TAMINA WATER SUPPLY CORPORATION SEWER APPROVALS	
Scale: 1" = 200' DWG NO. 6-103	Date: 10/13/10

04-1000 SANI_1010.dwg

OVERSIZED MAP(s) or DOCUMENT(s)

TO VIEW

OVERSIZED MAP(s) or DOCUMENT(s)

**PLEASE CONTACT
CENTRAL RECORDS
512.936.7180**

Thank you