

**MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 126**  
**NOTES TO THE FINANCIAL STATEMENTS**  
**JULY 31, 2015**

**NOTE 6. MAINTENANCE TAX**

On May 9, 2009, the voters of the District approved the levy and collection of a maintenance tax not to exceed \$1.50 per \$100 of assessed valuation of taxable property within the District. This maintenance tax is to be used by the General Fund to pay expenditures of operating the District's waterworks and wastewater system. During the year ended July 31, 2015, the District levied an ad valorem maintenance tax rate of \$0.90 per \$100 of assessed valuation, which resulted in a tax levy of \$22,157 on the adjusted taxable valuation of \$2,461,900 for the 2014 tax year.

On May 9, 2009, the voters of the District approved the levy and collection of a maintenance tax not to exceed \$0.10 per \$100 of assessed valuation of taxable property within the District to be used by the General Fund to pay expenditures for maintenance and other authorized purposes related to recreational facilities. As of the end of the current fiscal year, the District has not yet levied this particular tax.

- Levy Date               - October 1, or as soon thereafter as practicable.
- Lien Date               - January 1.
- Due Date               - Not later than January 31.
- Delinquent Date       - February 1, at which time the taxpayer is liable for penalty and interest.

**NOTE 7. UTILITY SERVICES AND DEVELOPMENT AGREEMENT**

On March 13, 2008, and as supplemented on November 8, 2012, the District entered into the Utility Services and Development Agreement with the City of Conroe (the "City"). Pursuant to this agreement, the City agreed to consent to the creation of the District within its city limits. The District is responsible for acquiring and constructing the water distribution, wastewater collection and drainage facilities (the "facilities") to serve development within the District.

The agreement provides that the facilities shall be designed and constructed in accordance with the City's requirements. The City agrees to provide the District with its ultimate requirements for water supply capacity and wastewater treatment capacity without charging the District any type of capital charge.

In accordance with the agreement, the City is to provide water supply and wastewater services to the District at rates established by the City for general application to commercial customers of the City.

In accordance with the agreement, the District is authorized to issue bonds for the purpose of financing the construction and acquisition of the facilities. Prior to issuing any bonds, the District must provide the City with a copy of the Commission order authorizing the issuance of the bonds and such order must provide that under the Commission rules governing the issuance

**MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 126**  
**NOTES TO THE FINANCIAL STATEMENTS**  
**JULY 31, 2015**

**NOTE 7. UTILITY SERVICES AND DEVELOPMENT AGREEMENT (Continued)**

of bonds it is feasible to sell the bonds at a District tax rate that does not exceed \$0.90 per \$100 of assessed valuation. The agreement provides that such condition is not a limitation on the District's authority to levy an unlimited tax and that the District's bonds are secured by a pledge of the proceeds of an ad valorem tax without limit as to rate or amount.

The agreement provides that the City will pay an annual rebate to the District. The annual rebate is equal to the total assessed value in the District for the given year multiplied by the portion of the City's tax rate that is attributable to water, sewer and drainage facilities. This annual rebate is to be deposited into the District's Debt Service Fund.

The term of the agreement is the earlier of the dissolution of the District by the City or 40 years. The City's right to dissolve the District is restricted per the agreement. Under the terms of the agreement, the City agrees that it will not dissolve the District until 90% of the District's facilities have been developed and the Developers have been reimbursed for advancing funds to construct the facilities to the maximum extent permitted by the rules of the Commission or the City assumes any obligations for such payment by the District under such rules.

**NOTE 8. UNREIMBURSED DEVELOPER COSTS**

The District has executed developer financing agreements with Developers within the District. The agreements call for the Developers to fund costs associated with water, sewer, and drainage facilities until such time as the District can sell bonds. As reflected in the Statement of Net Position, \$2,538,237 has been recorded as a liability for facilities financed by Developers. Reimbursement to the Developers will come from future bond sales.

A Developer has also advanced money to the District's General Fund in order for the District to meet its ongoing financial obligations. The Developer has made operating advances of \$404,500 to help cover the operating deficits, of which \$80,000 was advanced during the current fiscal year. The District has recorded a liability for this amount in the Statement of Net Position at July 31, 2015.

**NOTE 9. RISK MANAGEMENT**

The District is exposed to various risks of loss related to torts, theft of, damage to and destruction of assets, error and omission, and natural disasters for which the District carries commercial insurance. There have been no significant reductions in coverage from the prior year and settlements have not exceeded coverage in the past three years.

**MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 126**  
**NOTES TO THE FINANCIAL STATEMENTS**  
**JULY 31, 2015**

**NOTE 10. ECONOMIC DEPENDENCY AND DEFICIT FUND BALANCE**

The District has experienced operating deficits and is dependent on operating advances to be made to meet its financial obligations during the startup period. The District has recorded a deficit fund balance in the General Fund of \$22,487. The District expects the deficit to be alleviated as growth in the number of residents and the accompanying tax base continues.

**MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 126**

**REQUIRED SUPPLEMENTARY INFORMATION**

**JULY 31, 2015**

**MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 126**  
**SCHEDULE OF REVENUES, EXPENDITURES AND CHANGES**  
**IN FUND BALANCE - BUDGET AND ACTUAL - GENERAL FUND**  
**FOR THE YEAR ENDED JULY 31, 2015**

	Original Budget	Amended and Final Budget	Actual	Variance Positive (Negative)
<b>REVENUES</b>				
Property Taxes	\$ 23,000	\$ 21,049	\$ 22,157	\$ 1,108
Water Service	8,497	8,497	29,656	21,159
Wastewater Service	9,324	9,324	12,180	2,856
Regional Water Authority Fee	3,575	3,575	404	(3,171)
Penalty and Interest	645	645	1,112	467
Tap Connection and Inspection Fees	97,680	87,600	119,102	31,502
Miscellaneous Revenues	<u>228</u>	<u>228</u>	<u>474</u>	<u>246</u>
<b>TOTAL REVENUES</b>	<u>\$ 142,949</u>	<u>\$ 130,918</u>	<u>\$ 185,085</u>	<u>\$ 54,167</u>
<b>EXPENDITURES</b>				
Services Operations:				
Professional Fees	\$ 95,000	\$ 97,000	\$ 111,627	\$ (14,627)
Contracted Services	21,200	23,600	37,356	(13,756)
Purchased Water Service/Water Authority Fees	8,064	8,064	32,240	(24,176)
Purchased Wastewater Service	4,570	4,570		4,570
Repairs and Maintenance	15,000	9,000	8,355	645
Other	53,558	53,558	55,200	(1,642)
Capital Outlay	<u></u>	<u></u>	<u>28,215</u>	<u>(28,215)</u>
<b>TOTAL EXPENDITURES</b>	<u>\$ 197,392</u>	<u>\$ 195,792</u>	<u>\$ 272,993</u>	<u>\$ (77,201)</u>
<b>EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES</b>	<u>\$ (54,443)</u>	<u>\$ (64,874)</u>	<u>\$ (87,908)</u>	<u>\$ (23,034)</u>
<b>OTHER FINANCING SOURCES(USES)</b>				
Developer Advances	<u>\$ 54,443</u>	<u>\$ 64,874</u>	<u>\$ 80,000</u>	<u>\$ 15,126</u>
<b>NET CHANGE IN FUND BALANCE</b>	<u>\$ -0-</u>	<u>\$ -0-</u>	<u>\$ (7,908)</u>	<u>\$ (7,908)</u>
<b>FUND BALANCE - AUGUST 1, 2014</b>	<u>(14,579)</u>	<u>(14,579)</u>	<u>(14,579)</u>	<u></u>
<b>FUND BALANCE - JULY 31, 2015</b>	<u>\$ (14,579)</u>	<u>\$ (14,579)</u>	<u>\$ (22,487)</u>	<u>\$ (7,908)</u>

See accompanying independent auditor's report.

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**MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 126**  
**SUPPLEMENTARY INFORMATION – REQUIRED BY THE**  
**WATER DISTRICT FINANCIAL MANAGEMENT GUIDE**  
**JULY 31, 2015**





**MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 126**  
**SERVICES AND RATES**  
**FOR THE YEAR ENDED JULY 31, 2015**

**2. RETAIL SERVICE PROVIDERS (Continued)**

**b. WATER AND WASTEWATER RETAIL CONNECTIONS: (Unaudited)**

<u>Meter Size</u>	<u>Total Connections</u>	<u>Active Connections</u>	<u>ESFC Factor</u>	<u>Active ESFCs</u>
Unmetered	_____	_____	x 1.0	_____
≤¾"	_____	_____	x 1.0	_____
1"	_____	_____	x 2.5	_____
1½"	_____	_____	x 5.0	_____
2"	_____	_____	x 8.0	_____
3"	_____	_____	x 15.0	_____
4"	_____	_____	x 25.0	_____
6"	_____	_____	x 50.0	_____
8"	_____	_____	x 80.0	_____
10"	_____	_____	x 115.0	_____
Total Water Connections	_____*	_____*		_____
Total Wastewater Connections	_____*	_____*	x 1.0	_____

**3. TOTAL WATER CONSUMPTION DURING THE FISCAL YEAR ROUNDED TO THE NEAREST THOUSAND: \***

\* Information unavailable at time of audit.

See accompanying independent auditor's report.

**MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 126**  
**SERVICES AND RATES**  
**FOR THE YEAR ENDED JULY 31, 2015**

**4. STANDBY FEES** (authorized only under TWC Section 49.231):

Does the District have Debt Service standby fees? Yes ☐ No ☒

Does the District have Operation and Maintenance standby fees? Yes ☐ No ☒

**5. LOCATION OF DISTRICT:**

Is the District located entirely within one county?

Yes ☒ No ☐

County in which District is located:

Montgomery County, Texas

Is the District located within a city?

Entirely ☒ Partly ☐ Not at all ☐

City in which District is located:

Conroe, Texas.

Are Board Members appointed by an office outside the District?

Yes ☐ No ☒

See accompanying independent auditor's report.

**MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 126**  
**GENERAL FUND EXPENDITURES**  
**FOR THE YEAR ENDED JULY 31, 2015**

PROFESSIONAL FEES:	
Engineering	\$ 14,584
Legal	97,043
	<hr/>
TOTAL PROFESSIONAL FEES	\$ 111,627
	<hr/>
PURCHASED SERVICES FOR RESALE:	
Purchased Water Service/Water Authority Fees	\$ 32,240
	<hr/>
CONTRACTED SERVICES:	
Appraisal District	\$ 171
Bookkeeping	9,585
Operations and Billing	24,000
Tax Collector	3,600
	<hr/>
TOTAL CONTRACTED SERVICES	\$ 37,356
	<hr/>
REPAIRS AND MAINTENANCE	\$ 8,355
	<hr/>
ADMINISTRATIVE EXPENDITURES:	
Director Fees	\$ 6,450
Insurance	3,768
Office Supplies and Postage	1,620
Payroll Taxes	493
Travel and Meetings	64
Other	1,730
	<hr/>
TOTAL ADMINISTRATIVE EXPENDITURES	\$ 14,125
	<hr/>
CAPITAL OUTLAY	\$ 28,215
	<hr/>
TAP CONNECTIONS	\$ 38,420
	<hr/>
OTHER EXPENDITURES:	
Permit Fees	\$ 209
Other	2,446
	<hr/>
TOTAL OTHER EXPENDITURES	\$ 2,655
	<hr/>
TOTAL EXPENDITURES	\$ 272,993
	<hr/>

See accompanying independent auditor's report.

**MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 126**  
**TAXES LEVIED AND RECEIVABLE**  
**FOR THE YEAR ENDED JULY 31, 2015**

	<u>Maintenance Taxes</u>	
TAXES RECEIVABLE -		
AUGUST 1, 2014	\$	
Adjustments to Beginning		
Balance	<u>                    </u>	\$    -0-
Original 2014 Tax Levy	\$    22,157	
Adjustment to 2014 Tax Levy	<u>                    </u>	<u>          22,157</u>
TOTAL TO BE		
ACCOUNTED FOR		\$    22,157
TAX COLLECTIONS:		
Prior Years	\$	
Current Year	<u>          22,157</u>	<u>          22,157</u>
TAXES RECEIVABLE -		
JULY 31, 2015		<u>\$    -0-</u>

See accompanying independent auditor's report.

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**MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 126  
TAXES LEVIED AND RECEIVABLE  
FOR THE YEAR ENDED JULY 31, 2015**

	<u>2014</u>
PROPERTY VALUATIONS:	
Land	\$ 3,448,160
Improvements	6,460
Exemptions	<u>(992,720)</u>
TOTAL PROPERTY VALUATIONS	<u>\$ 2,461,900</u>
TAX RATES PER \$100 VALUATION:	
Maintenance	<u>\$ 0.90</u>
ADJUSTED TAX LEVY*	<u>\$ 22,157</u>
PERCENTAGE OF TAXES COLLECTED TO TAXES LEVIED	<u>100.00 %</u>

\* Based upon the adjusted tax levy at the time of the audit for the fiscal year in which the tax was levied.

Maintenance Tax – Maximum tax rate of \$1.50 per \$100 of assessed valuation approved by voters on May 9, 2009.

See accompanying independent auditor's report.

**MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 126**  
**COMPARATIVE SCHEDULE OF REVENUES AND EXPENDITURES**  
**GENERAL FUND - FIVE YEARS**

	Amounts		
	2015*	2014	2013
<b>REVENUES</b>			
Property Taxes	\$ 22,157	\$	\$
Water Service	29,656		
Wastewater Service	12,180		
Regional Water Authority Fees	404		
Penalty and Interest	1,112		
Tap Connection and Inspection Fees	119,102		
Miscellaneous Revenues	474		
<b>TOTAL REVENUES</b>	<b>\$ 185,085</b>	<b>\$</b>	<b>\$</b>
<b>EXPENDITURES</b>			
Professional Fees	\$ 111,627	\$	\$
Contracted Services	37,356		
Purchased Water Service/Water Authority Fees	32,240		
Repairs and Maintenance	8,355		
Other	55,200		
Capital Outlay	28,215		
<b>TOTAL EXPENDITURES</b>	<b>\$ 272,993</b>	<b>\$</b>	<b>\$</b>
<b>EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES</b>	<b>\$ (87,908)</b>	<b>\$</b>	<b>\$</b>
<b>OTHER FINANCING SOURCES (USES)</b>			
Developer Advances	\$ 80,000	\$	\$
<b>NET CHANGE IN FUND BALANCE</b>	<b>\$ (7,908)</b>	<b>\$</b>	<b>\$</b>
<b>BEGINNING FUND BALANCE</b>	<b>(14,579)</b>		
<b>ENDING FUND BALANCE</b>	<b>\$ (22,487)</b>	<b>\$ N/A</b>	<b>\$ N/A</b>
<b>TOTAL ACTIVE RETAIL WATER CONNECTIONS</b>	<b>**</b>	<b>N/A</b>	<b>N/A</b>
<b>TOTAL ACTIVE RETAIL WASTEWATER CONNECTIONS</b>	<b>**</b>	<b>N/A</b>	<b>N/A</b>

\* First year audit.

\*\* Information unavailable at time of audit.

See accompanying independent auditor's report.

		Percentage of Total Revenue				
2012	2011	2015*	2014	2013	2012	2011
\$	\$	12.0 %				
		16.0				
		6.6				
		0.2				
		0.6				
		64.3				
		0.3				
\$	\$	100.0 %				
\$	\$	60.3 %				
		20.2				
		17.4				
		4.5				
		29.8				
		15.2				
\$	\$	147.4 %				
\$	\$	(47.4) %	N/A	N/A	N/A	N/A
\$	\$					
\$	\$					
\$ N/A	\$ N/A					
N/A	N/A					
N/A	N/A					

See accompanying independent auditor's report.



**MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 126**  
**BOARD MEMBERS, KEY PERSONNEL AND CONSULTANTS**  
**JULY 31, 2015**

District Mailing Address - Montgomery County Municipal Utility District No. 126  
c/o Schwartz, Page & Harding, L.L.P.  
1300 Post Oak Boulevard, Suite 1400  
Houston, TX 77056

District Telephone Number - (713) 623-4531

<b>Board Members:</b>	<b>Term of Office (Elected or Appointed)</b>	<b>Fees of Office for the year ended <u>July 31, 2015</u></b>	<b>Expense Reimbursements for the year ended <u>July 31, 2015</u></b>	<b><u>Title</u></b>
Gary Calfee	05/2012 05/2016 (Elected)	\$ 1,650	\$ -0-	President
James D. Poole	04/2015 05/2016 (Appointed)	\$ 900	\$ -0-	Vice President
Adam Soffar	05/2012 05/2016 (Elected)	\$ 1,050	\$ -0-	Secretary
Dan Dominey	05/2014 05/2018 (Elected)	\$ 1,650	\$ -0-	Assistant Secretary
Irving A. Wolf	05/2014 05/2018 (Elected)	\$ 1,200	\$ -0-	Assistant Secretary

Notes: No Director has any business or family relationships (as defined by the Texas Water Code) with major landowners in the District, with the District's developers or with any of the District's consultants.

Submission date of most recent District Registration Form (TWC Sections 36.054 and 49.054):  
April 24, 2015.

The limit on Fees of Office that a Director may receive during a fiscal year is the maximum amount allowed by law as set by Board Resolution (TWC Section 49.060) on February 20, 2009. Fees of Office are the amounts actually paid to a Director during the District's current fiscal year.

See accompanying independent auditor's report.

**MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 126**  
**BOARD MEMBERS, KEY PERSONNEL AND CONSULTANTS**  
**JULY 31, 2015**

<b>Consultants:</b>	<u>Date Hired</u>	<u>Fees / Compensation for the year ended July 31, 2015</u>	<u>Title</u>
Schwartz, Page & Harding, L.L.P.	02/20/09	\$ 100,914	Attorney
McCall Gibson Swedlund Barfoot PLLC	07/09/15	\$ -0-	Auditor
Municipal Accounts & Consulting, L.P.	02/20/09	\$ 10,524	Bookkeeper
Perdue, Brandon, Fielder, Collins & Mott, L.L.P.	02/13/14	\$ -0-	Delinquent Tax Attorney
Edminster, Hinshaw, Russ & Associates, Inc.	02/20/09	\$ 14,584	Engineer
First Southwest Company, LLC	02/20/09	\$ -0-	Financial Advisor
Mark Burton	02/20/09	\$ -0-	Investment Officer
Aqua Texas, Inc.	02/20/09	\$ 95,801	Operator
Assessments of the Southwest	06/07/13	\$ 3,625	Tax Assessor/ Collector

See accompanying independent auditor's report.

# **ATTACHMENT**

## **3**

**COMPROMISE AND SETTLEMENT, MUTUAL RELEASE, AND AMENDMENT AND  
RESTATEMENT OF OPERATIONS AND MAINTENANCE AGREEMENT**

This Compromise and Settlement, Mutual Release, and Amendment and Restatement of Operations and Maintenance Agreement (the "Agreement") is entered into effective as of January 1, 2016 (the "Effective Date") by and among **MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 126**, a body politic and corporate and a governmental agency of the State of Texas organized under the provisions of Article XVI, Section 59 of the Texas Constitution and Chapters 49 and 54, Texas Water Code, as amended (the "District"), **AQUA OPERATIONS, INC.**, a Delaware corporation ("Aqua Operations"), **AQUA DEVELOPMENT, INC.**, a Texas corporation ("Aqua Development"), and **AQUA TEXAS, INC.**, a Texas corporation (Aqua Operations, Aqua Development, and Aqua Texas sometimes referred to collectively herein as "Aqua".) (The District, Aqua Operations, Aqua Development, and Aqua Texas sometimes referred to individually herein as a "Party" and collectively herein as "Parties".)

**RECITALS**

WHEREAS, pursuant to that certain Operations and Maintenance Agreement dated January 18, 2008 (but effective pursuant to its terms on December 10, 2013), by and between David B. Hendricks ("Hendricks") and Houston Intercontinental Trade Center, Ltd., a Texas limited partnership ("HITC") (Hendricks and HITC referred to collectively herein as "Developer"), on behalf of the then-proposed District, Aqua Operations and Aqua Development, as subsequently assigned to the District pursuant to that certain Assignment of Operations and Maintenance Agreement between Developer, Aqua Operations and Aqua Development dated December 10, 2013 (the "Operations Agreement"), a copy of which is attached hereto as Exhibit "A", Aqua Texas currently provides operations, maintenance, and management services to the District; and

WHEREAS, Aqua Operations, Aqua Development, and Aqua Texas are affiliated entities; and

[WHEREAS, as of the date the Operations Agreement was executed (January 18, 2008), Aqua Development was the holder and owner of a water Certificate of Convenience and Necessity No. 12902 and a sewer Certificate of Convenience and Necessity No. 20867 issued by the Texas Natural Resource Conservation Commission (now known as the Texas Commission on Environmental Quality ["TCEQ"]) on August 7, 2000, which granted to Aqua Development the exclusive right to provide retail water and sewer services to the area covered by such Certificates of Convenience and Necessity, which area includes certain land located within the boundaries of the District; and

WHEREAS, on June 4, 2010, Aqua Development filed an application with the Public Utility Commission of Texas (the "PUC") to assign water Certificate of Convenience and

Necessity No 12902 and sewer Certificate of Convenience and Necessity No. 20867 to Aqua Texas, which assignment was completed on March 12, 2012 with the issuance of water Certificate of Convenience No. 13203 and sewer Certificate of Convenience and Necessity No. 21065 (collectively referred to herein as the "CCNs") to Aqua Texas, granting to Aqua Texas the exclusive right to provide retail water and sewer services to the area covered by the CCNs, including the aforementioned land located within the boundaries of the District; and

WHEREAS, pursuant to Article V of the Operations Agreement, Aqua Development agreed to take any and all action required to either release the approximately 175 acres of land located within the boundaries of the District and the certificated areas of the CCNs (the "CCN Property") from the certificated area of the CCNs or, at the option of the Developer or its successor under the Operations Agreement, to assign all rights, title, and interests in and to the CCNs relative to the CCN Property to the Developer or its successor under the Operations Agreement; and

WHEREAS, the District, as successor to the Developer under the Operations Agreement, desires that Aqua Texas, as the successor in ownership of the CCNs, assign all rights, title, and interests in and to the CCNs relative to the CCN Property to the District as soon as possible; and

WHEREAS, the initial term of the Operations Agreement is twenty-five (25) years and, pursuant to Article VI of the Operations Agreement, said initial term commenced on December 10, 2013 upon the assignment of the Operations Agreement by the Developer to the District; and

WHEREAS, during the first two (2) years of the initial term of the Operations Agreement, various disputes have arisen between the District and Aqua concerning the standard of performance of operations, maintenance, and management services provided to the District by Aqua Operations; and

WHEREAS, in the interest of compromise and settlement of said disputes, the District and Aqua desire to amend and restate the terms of the Operations Agreement, whereby Aqua will cease providing operations, maintenance, and management services to the District, the Parties will release each other from prior claims under the Operations Agreement, and Aqua will assign the CCNs rights relative to the CCN Property to the District in consideration for certain compensation, all as more specifically set forth herein below.

#### **AGREEMENT**

NOW, THEREFORE, FOR AND IN CONSIDERATION OF the mutual obligations hereinafter set forth and for the above recited purposes and other good and valuable consideration, the sufficiency of which the Parties acknowledge, the Parties hereby agree as follows:

Section 1. Incorporation of Recitals. The recitals set forth above are true and correct and are incorporated herein for all purposes.

Section 2. Entire Agreement. This Agreement, which amends and restates in its entirety the Operations Agreement as of the Effective Date, shall constitute the sole and only agreement of the Parties and shall supersede any prior understanding or written or oral agreements between the Parties respecting the within subject matter, which are of no further force or effect.

Section 3. General Statement of Intent. The District and Aqua hereby acknowledge that, at the present time, Aqua has the exclusive right to provide retail water and sewer services to the CCN Property within the District. The District acknowledges that it could not provide water supply and wastewater treatment services to the CCN Property without Aqua's assignment to it of the CCNs relative to said CCN Property or the release of the CCN Property from the certificated area of said CCNs. The District and Aqua hereby acknowledge that the consideration provided to Aqua pursuant to this Agreement shall effectively constitute the purchase price for the CCN rights relative to the CCN Property.

Section 4. Assignment of CCN Rights Relative to the CCN Property. In consideration for the compensation to be paid by the District to Aqua as set forth in Section 15 of this Agreement, Aqua agrees that it shall take any and all action required, at its sole cost and expense and at no cost to the District, to complete the assignment to the District of all rights, title, and interests in and to the CCNs relative to the CCN Property (the "Assignment") as soon as reasonably possible. Aqua shall properly file the application for the Assignment (the "Application") within sixty (60) days of the Effective Date of the Agreement, and shall diligently monitor and pursue the approval of said Application at the earliest possible time. In connection therewith, Aqua shall respond timely to any and all requests from the PUC relative to the Application and the Assignment, and shall further take any and all actions required of it to ensure the timely and successful approval of said Application and Assignment by the PUC.

In order to facilitate completion of the Assignment, the District agrees to provide any existing records or documents reasonably available to the District which may be reasonably required by Aqua or the PUC relative to the Application or the Assignment.

Section 5. Operations, Maintenance, and Management Services. As of the Effective Date hereof, Aqua shall cease providing operations, maintenance, and management services to the District and shall have no further obligations under Article II, Article IV, or Article V, Section (A)(1) of the Operations Agreement. Aqua hereby acknowledges that the District will, as of the Effective Date, employ another entity or entities during the Term (as defined below) of this Agreement to perform such services (the "New Operator") on the District's behalf. Aqua shall work in good faith and use all reasonable efforts to assist the District and the New Operator in this transition. Accordingly, Aqua agrees to provide the District and the New Operator with

any and all records in its possession concerning the operation, maintenance, and management of the District's system as soon as reasonably possible following the execution of this Agreement.

Section 6. Release of Aqua. The District, for itself and on behalf of its past and present successors and assigns and all other persons, natural or corporate, in privity with them, or any one of them, separately or severally, hereby releases, acquits, and forever discharges Aqua, its officers, directors, legal representatives, personal representatives, agents, consultants (including its attorneys, auditors, and bookkeepers), insurers, successors and assigns, and all persons, natural or corporate, in privity with them, or any one of them, separately or severally, from any and all claims, debts, demands, contracts, agreements, damages (including consequential damages, damages related to loss of business opportunity or business interruption, or damages related to loss of reputation), attorney's fees, costs, actions, causes of action, or any other liabilities of any kind whatsoever, both in law or in equity, whether based upon tort, contract, extra contractual claims, implied or express agreements, or any other theory of recovery, including contribution and indemnification, whether known or unknown, that are based upon, or in any way arise from, or is in any way related to, whether directly or indirectly, Aqua's obligations under the Operations Agreement, related to the period from January 18, 2008 to December 31, 2015 (the "Relevant Period"). Without limitation, this release shall include all claims against Aqua which could, should, or might have been, or be in the future, asserted by the District that are in any way related to Aqua's obligations under the Operations Agreement related to the Relevant Period. However, nothing in this Agreement shall be construed to release Aqua from any of its obligations relative to Section 4 herein until the Assignment is complete.

Section 7. Release of the District. Aqua, for itself and on behalf of its past and present successors and assigns and all other persons, natural or corporate, in privity with them, or any one of them, separately or severally, hereby releases, acquits, and forever discharges the District, its officers, directors, legal representatives, personal representatives, agents, consultants (including its attorneys, auditors, and bookkeepers), insurers, successors and assigns and all persons, natural or corporate, in privity with them, or any of them, separately or severally, of and from any and all claims, debts, demands, contracts, agreements, damages (including consequential damages, damages related to loss of business opportunity or business interruption, or damages related to loss of reputation), attorney's fees, costs, actions, causes of action, or any other liabilities of any kind whatsoever, both in law or in equity, whether based upon tort, contract, extra contractual claims, implied or express agreements, or any other theory of recovery, including contribution and indemnification, whether known or unknown, that are based upon, or in any way arise from, or is in any way related to, whether directly or indirectly, the District's obligations under the Operations Agreement related to the Relevant Period. Without limitation, the foregoing shall include all claims against the District which could, should, or might have been, or be in the future, asserted by Aqua that are in any way related to the District's obligations under the Operations Agreement related to the Relevant Period.

Section 8. Future Claims. Nothing herein shall be construed to release any Party from liability for any action (or inaction) that occurs on or after the Effective Date and that constitutes a breach of this Agreement.

Section 9. No Assignment of Claims. As a further material inducement to each Party to enter into this Agreement, the District and Aqua warrant, each to the other, that no assignment, transfer, conveyance, or other disposition of any claims, demands, causes of action, obligations, damages and liabilities described above has been made, and that each Party is fully entitled to give its full and complete release of all such claims and demands.

Section 10. Denial of Liability. This Agreement constitutes a compromise and settlement of disputed claims. This Agreement shall not constitute or be construed as an admission of any liability or fault by any Party hereto, all such liability being herein expressly denied. Further, this Agreement shall not be construed as an admission of the truth or correctness of any claim asserted by any Party hereto.

Section 11. Representations and Warranties of the District. The District hereby expressly warrants and represents to Aqua that:

A. The District is legally competent and fully authorized to enter into the agreements and obligations in this Agreement and to execute this Agreement in the capacity or capacities in which this Agreement has been executed and no other action, approval, authorization, or signature is necessary or required in connection therewith;

B. The District's execution of this Agreement in the capacity or capacities so executed will not violate any provision of any instrument to which the District is bound or, to the best of the District's knowledge and belief, any applicable laws, statutes, or regulations by which the District is bound;

C. The District has read and understands this Agreement, and has had the advice or the opportunity to seek the advice of its attorneys with regard to the legal consequences of this Agreement; and

D. No promise or representation of any kind has been expressed or implied to the District by Aqua or by anyone acting on behalf of Aqua, except as is expressly stated in this Agreement.

The District expressly acknowledges and understands that the representations and warranties set forth above have been made as a material inducement to Aqua to enter into this Agreement, and that Aqua would not have entered into this Agreement but for each of such representations and warranties being made.

Section 12. Representations and Warranties of Aqua. Aqua hereby expressly warrants and represents to the District that:



A. Aqua is legally competent and fully authorized to enter into the agreements and obligations in this Agreement and to execute this Agreement in the capacity or capacities in which this Agreement has been executed and no other actions, approvals, authorizations, or signatures are necessary or required in connection therewith;

B. Aqua is the owner of the CCNs and has the legal authority to prepare, submit and pursue to completion the Application and Assignment of the CCNs to the District;

C. As of the Effective Date of this Agreement, the CCNs cover all of the CCN Property described herein;

D. Neither Aqua nor any entity related to Aqua owns any Certificate of Convenience and Necessity affecting the CCN Property other than the CCNs;

E. Aqua's execution of this Agreement in the capacity or capacities so executed will not violate any provisions of any contracts, agreements, partnership agreements, partnership resolutions, or any such incorporations, bylaws, board resolutions, or any such other instruments to which Aqua is bound or any applicable laws, statutes, or regulations by which Aqua is bound;

F. Aqua has read and understands this Agreement, and has had the advice or the opportunity to seek the advice of its attorneys with regard to the legal consequences of this Agreement; and

G. No promise or representation of any kind has been expressed or implied to Aqua by the District or by anyone acting on behalf of the District, except as is expressly stated in this Agreement.

Aqua expressly acknowledges and understands that the representations and warranties set forth above have been made as a material inducement to the District to enter into this Agreement, and that the District would not have entered into this Agreement but for each of such representations and warranties being made.

Section 13. Survival. The representations, warranties, and covenants set forth in Section 6, Section 7, Section 9, Section 11, and Section 12 herein shall be deemed to be material and continuing, shall not be merged, and shall survive any termination of this Agreement.

Section 14. Term. The term of this Agreement shall commence on the Effective Date and end on November 30, 2038 (the "Term").

Section 15. Compensation for CCN Rights. In consideration for Aqua's Assignment to the District of its CCN rights relative to the CCN Property, as described in Section 4 herein, the District shall pay Aqua \$10.00 per Connection per month (the "Monthly Rate") on or about the fifteenth (15<sup>th</sup>) day of each month of the Term of this Agreement (the "Monthly Payment").

except as otherwise specifically set forth in this Agreement. The term "Connection" shall mean each separate connection made to the District's water distribution and sanitary sewer collection system (collectively constituting one (1) Connection) from a completed residential or commercial structure that is habitable and capable of receiving water and sanitary sewer services, whether said services are then being utilized or not; provided, however, that no residential or commercial structure shall be deemed to be a Connection until the District has actually commenced providing said services to such structure.

With each Monthly Payment, the District shall submit to Aqua a copy of the previous month's Operator's Report as presented at the District's regular monthly meeting of the Board of Directors of the District, which shall include the total number of Connections used to calculate Aqua's compensation hereunder.

Section 16. Initial Payment. Notwithstanding any provision herein to the contrary, the District shall not be obligated to make any payment to Aqua under this Agreement until Aqua has completed the Assignment to the District of its CCN rights relative to the CCN Property as described in Section 4 herein (the "Interim Period"). Monthly Payments payable to Aqua hereunder shall accrue during the period between the Effective Date and the date on which Aqua completes its obligation under Section 4 herein, without interest, and shall be paid by the District to Aqua in one single payment (the "Initial Payment"). During the Interim Period, the District shall set aside the amounts that would be due to Aqua as Monthly Payments each month and shall hold all such amounts to be paid collectively as the Initial Payment. The District shall pay the Initial Payment to Aqua within 30 days after the first meeting of the District's Board of Directors occurring after Aqua has completed the assignment to the District of its CCN rights relative to the CCN Property. Thereafter, Monthly Payments shall be paid as set forth in Section 15 above.

Section 17. Late Payment. The District agrees to pay interest to Aqua at the maximum rate that may be charged to a political subdivision under Texas Government Code § 2251.025, not to exceed ten percent (10%) per annum, for all amounts remaining unpaid forty-five (45) days after the applicable due date. Interest shall accrue from the forty-sixth (46<sup>th</sup>) day following the date payment is due until the date payment in full is made. Further, in the event of a dispute or disagreement between Aqua and the District concerning any amounts payable by the District to Aqua hereunder, no interest charges shall begin to accrue until the thirty-first (31<sup>st</sup>) day following the date of final resolution of said dispute.

Section 18. Accelerated Payment. At any time during the Term of this Agreement, the District, at its sole option, may terminate this Agreement by paying Aqua the "Accelerated Payment" (defined below). The Accelerated Payment is intended to compensate Aqua for the remaining value of the CCN rights assigned to the District, and equates to Aqua's projected stream of revenues remaining through the Term of this Agreement, as described herein,

discounted back to the effective date of said termination. The Accelerated Payment may be paid by the District from any lawfully available funds of the District.

The "Accelerated Payment" shall be calculated by multiplying the number of then-current Connections within the District, plus the number of Remaining Projected Connections (defined below), by 50% of the Monthly Rate, and then multiplying said figure by the number of months remaining under the Term of this Agreement, and discounting said total sum back to the effective date of termination. The "Remaining Projected Connections" shall be calculated by subtracting the number of then-current Connections from the total number of projected Connections within the District, which shall be the greater of the actual number of platted lots within the District when the calculation is performed or the projected ultimate number of platted lots within the District based upon the most recent engineering report submitted by the District to the TCEQ. For purposes of this calculation, the Remaining Projected Connections shall be assumed to become active Connections, in equal amounts, over the next five (5) year period, commencing on January 1 of the year following the year of termination. In other words, if 300 Remaining Projected Connections then exist, it shall be assumed that said Remaining Projected Connections will become active Connections for the purpose of calculating the Accelerated Payment hereunder at the rate of sixty (60) Connections per year, commencing on January 1 of the year following the year of termination.

The total projected revenues remaining through the Term of this Agreement as calculated herein shall then be discounted back to the effective date of termination using bankers days and the yield of the U.S. Treasury Bill, Note or Bond that is commonly quoted by a nationally recognized publication or website and which is of a maturity that most closely matches the remaining number of years of the Term of this Agreement (the "Discount Rate"). The Discount Rate shall be established as of the first day of the month in which the Parties determine that the calculation of the Accelerated Payment must be performed.

Since the District may be required to sell bonds to generate the funds required to pay the Accelerated Payment, the District shall have one (1) year from the effective date of the termination of this Agreement to make such payment to Aqua. Aqua shall be entitled to earn interest on the unpaid amount of the Accelerated Payment from the effective date of the termination of the Agreement to the date of full and final payment of the Accelerated Payment at the Discount Rate established above.

The Payment to Aqua of the Accelerated Payment pursuant to this Section 18 shall constitute full and final payment of any and all amounts owed to Aqua by the District pursuant to this Agreement, and Aqua hereby agrees to execute any reasonable documentation requested by the District to evidence same, including a mutual termination of this Agreement or an appropriate release relative thereto.

Section 19. Remedies. This Agreement is not intended to specify (and shall not be considered as specifying) an exclusive remedy for any future default, but all remedies, existing at law or in equity, including, without limitation, specific performance and mandamus of Aqua's obligation pursuant to Section 4 hereinabove and the District's obligations herein, may be availed of by either Party and shall be cumulative.

Section 20. No Modification of Prior Invoices. Unless otherwise agreed by the Parties subsequent to the Effective Date hereof, the Parties agree that there shall be no modification of any prior invoices or amounts due from the District to Aqua for services rendered prior to the Effective Date of this Agreement. All outstanding invoices for services provided by Aqua to the District prior to the Effective Date of this Agreement shall be presented to the District by Aqua on or before January 14, 2016.

Section 21. Amendment. No alteration, modification, or amendment of this Agreement shall be made except in writing and signed by the District and Aqua Texas.

Section 22. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of each of the Parties hereto and their respective successors and assigns. However, each of the Parties shall be given thirty (30) days written notice of any assignment of this Agreement by any Party hereto.

Section 23. Texas Law Venue. This Agreement shall be construed under and governed by the laws of the State of Texas and venue shall be in a court of appropriate jurisdiction in Montgomery County, Texas.

Section 24. Captions. The section headings or paragraph captions herein are used for convenience of reference only and not intended to define, extend, or limit any provision of this Agreement.

Section 25. Counterparts. This Agreement may be executed in any number of counterparts, and such counterparts may be transmitted by facsimile or electronic mail, all of which counterparts when together shall constitute but one and the same instrument and shall be binding upon the Parties, notwithstanding that one Party or the other may not be a signatory to the same counterpart.

Section 26. Severability. If any provision of this Agreement shall be held invalid or unenforceable in any respect, such invalid or unenforceable provision shall be deemed severed herefrom and the balance of this Agreement shall remain in full force and effect and not be affected thereby.

Section 27. Notice. Any notice or demand required or permitted to be given under the terms of this Agreement shall be given in writing by certified or registered mail and addressed to

the Party for whom intended at its then address of record and such notice shall be deemed to have been given when the notice is mailed.

Notices required to be given to Aqua shall be addressed to:

Aqua Texas, Inc.  
1106 Clayton Lane, Suite 400W  
Austin, Texas 78723  
Attention: Robert L. Laughman, President

Notices required to be given to the District shall be addressed to:

Board of Directors  
Montgomery County Municipal Utility District No. 126  
c/o Schwartz, Page & Harding, L.L.P.  
1300 Post Oak Boulevard, Suite 1400  
Houston, Texas 77056  
Attention: Abraham Rubinsky

Section 28. Waiver of Governmental Immunity. The District and Aqua agree that this Agreement constitutes an agreement for providing goods and services to the District and is subject to the provisions of Subchapter I of Chapter 271, Texas Local Government Code, as amended, and any successor statute(s), as and if in effect. In accordance with Sections 271.152 and 271.153 thereof, to the extent limited, however, by the provisions thereof, the District hereby waives any constitutional, statutory or common law right to sovereign or governmental immunity from liability or suit and expressly consents to be sued and liable to the extent necessary for the Aqua to enforce this Agreement, but only as to Aqua and this Agreement.

IN WITNESS WHEREOF, Aqua Operations, Aqua Development, Aqua Texas and the District have each caused this Agreement to be executed by their duly authorized officers in multiple counterparts, each of which shall be deemed an original, as of the date specified below:

*[SIGNATURE PAGES FOLLOW]*

AGREED TO and ACCEPTED this 31<sup>st</sup> day of December, 2016, by:

AQUA OPERATIONS, INC.,  
a Delaware corporation,

By: 

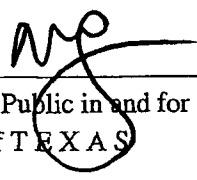
Name: Robert L. Laughman

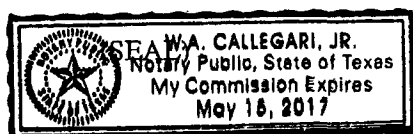
Title: President

"Aqua Operations"

THE STATE OF TEXAS     §  
  §  
COUNTY OF Montgomery §

This Agreement was acknowledged before me on this 31<sup>st</sup> day of December,  
2016, by Robert L. Laughman, President of Aqua Operations, Inc., a Delaware corporation,, on  
behalf of said corporation

  
Notary Public in and for the  
State of T E X A S



AGREED TO and ACCEPTED this 31<sup>st</sup> day of December, 2015, by:

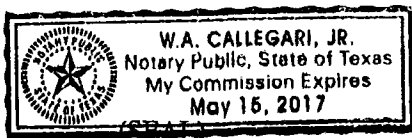
AQUA DEVELOPMENT, INC., a  
Texas corporation

By: [Signature]  
Name: Robert L. Laughman  
Title: President

"Aqua Development"

THE STATE OF TEXAS    §  
                                      §  
COUNTY OF Montgomery §

This instrument was acknowledged before me on this 31<sup>st</sup> day of December,  
2015 by Robert L. Laughman, President of Aqua Development, Inc., a Texas corporation, on  
behalf of said corporation.



[Signature]  
Notary Public in and for the  
State of TEXAS

AGREED TO and ACCEPTED this 31<sup>st</sup> day of December, 2015 by:

AQUA TEXAS, INC., a  
Texas corporation

By: 

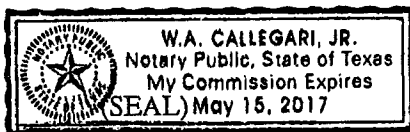
Name: Robert L. Laughman

Title: President

"Aqua Texas"

THE STATE OF TEXAS     §  
  §  
COUNTY OF Montgomery §

This instrument was acknowledged before me on this 31<sup>st</sup> day of December,  
20 15 by Robert L. Laughman, President of Aqua Texas, Inc., a Texas corporation, on behalf of  
said corporation.



  
Notary Public in and for the  
State of TEXAS



AGREED TO and ACCEPTED this 10<sup>th</sup> day of December, 2015, by:

MONTGOMERY COUNTY MUNICIPAL  
UTILITY DISTRICT NO. 126

By: Gary Calfee  
President, Board of Directors

"District"

THE STATE OF TEXAS   §  
                                  §  
COUNTY OF HARRIS   §

This instrument was acknowledged before me on this 10<sup>th</sup> day of December, 2015, by Gary Calfee, President of the Board of Directors of Montgomery County Municipal Utility District No. 126, a political subdivision of the State of Texas, on behalf of said political subdivision.



Katherine A. Mercer  
Notary Public in and for  
the State of T E X A S

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**EXHIBIT A**

**Operations Agreement**

**ASSIGNMENT OF OPERATIONS AND MAINTENANCE AGREEMENT BETWEEN  
DAVID B. HENDRICKS AND HOUSTON INTERCONTINENTAL  
TRADE CENTER, L.P. (ON BEHALF OF PROPOSED MONTGOMERY COUNTY MUNICIPAL  
UTILITY DISTRICT NO. 126), AND AQUA OPERATIONS, INC. D/B/A AQUA TEXAS, INC.  
AND AQUA DEVELOPMENT, INC.**

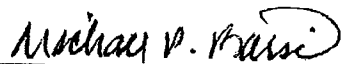
1. DAVID B. HENDRICKS and HOUSTON INTERCONTINENTAL TRADE CENTER, L.P., a Texas limited partnership (collectively, the "Assignors"), hereby assign unto MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 126 ("Assignee"), all of their respective rights, benefits and obligations, in and to that certain Operations and Maintenance Agreement between the Assignors and Aqua Operations, Inc., doing business as Aqua Texas, Inc., and Aqua Development, Inc., dated January 18, 2008, (the "Operations Agreement").
2. This Assignment is subject to all terms and provisions of the Operations Agreement and is authorized by Article V. H of said Operations Agreement.
3. By its execution of this Assignment, Assignee accepts the terms and conditions of the Operations Agreement and agrees to assume Assignors' covenants, duties and obligations under the Operations Agreement, and Assignors are hereby released from their obligations under the Operations Agreement.

WITNESS THE EXECUTION HEREOF in multiple originals, this the 10th day of December 2013.

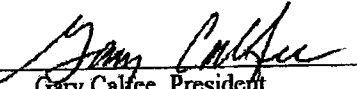
  
\_\_\_\_\_  
DAVID B. HENDRICKS

HOUSTON INTERCONTINENTAL TRADE  
CENTER, L.P., a Texas limited partnership

By: REVISTA, Inc., a Texas corporation and its General  
Partner

By:   
\_\_\_\_\_  
Michael P. Barsi  
President

MONTGOMERY COUNTY MUNICIPAL  
UTILITY DISTRICT NO. 126

By   
Gary Calce, President  
Board of Directors

310502\_1

## OPERATIONS AND MAINTENANCE AGREEMENT

THE STATE OF TEXAS           §  
  §     KNOW ALL MEN BY THESE PRESENTS THAT:  
COUNTY OF MONTGOMERY       §

THIS OPERATIONS AND MAINTENANCE AGREEMENT ("Agreement") is entered into as of the 19<sup>th</sup> day of January, 2008, but shall become effective only as provided in Article VIA. herein, by and between DAVID B. HENDRICKS ("Hendricks") and HOUSTON INTERCONTINENTAL TRADE CENTER, LTD., a Texas limited partnership ("HITC") (Hendricks and HITC sometimes referred to collectively herein as "Developer") or their respective successors or assigns, on behalf of proposed MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 126, to be created as a body politic and corporate and a governmental agency of the State of Texas organized under the provisions of Article XVI, Section 59 of the Texas Constitution and Chapters 49 and 54, Texas Water Code, as amended (the "District"), and AQUA OPERATIONS, INC., a Delaware corporation, doing business as AQUA TEXAS, INC. ("AQUA TEXAS") and AQUA DEVELOPMENT, INC., a Texas corporation ("AQUA DEVELOPMENT") (AQUA TEXAS and AQUA DEVELOPMENT sometimes referred to collectively herein as "AQUA". Developer, District, AQUA TEXAS and AQUA DEVELOPMENT sometimes referred to individually herein as "Party" and collectively herein as "Parties").

### WITNESSETH:

1. AQUA DEVELOPMENT is the holder and owner of a water Certificate of Convenience and Necessity ("CCN") No. 12902 and a sewer CCN No. 20867 issued by the Texas Natural Resource Conservation Commission (now known as the Texas Commission on Environmental Quality ["TCEQ"]) on August 7, 2000, which grants to AQUA DEVELOPMENT the exclusive right to provide retail water and sewer services to the area covered by the CCNs. AQUA TEXAS and AQUA DEVELOPMENT are affiliated entities.
2. Developer owns and intends to develop, approximately 293 acres of land in Montgomery County, Texas, including approximately 175 acres located within the certificated areas of AQUA DEVELOPMENT's CCNs (the "CCN Property"), for residential and/or commercial purposes.
3. Subject to the consent of the City of Conroe, Texas ("Conroe") and the approval of the TCEQ, and further subject to either the release of the CCN Property from the AQUA DEVELOPMENT CCNs or the assignment of the CCN rights by AQUA DEVELOPMENT to Developer relative to said CCN Property, Developer intends to create the District for the purpose of providing water, sewer and drainage services to the property within the District.

4. Conroe has proposed to extend water distribution and sanitary sewer collection lines to the District's boundary and to provide the water supply and wastewater treatment services to the District for resale to the future customers of the District.
5. Developer plans to construct, on behalf of the District, a water distribution system and a sanitary wastewater collection and transportation system (including lift stations) and storm water system (collectively, the "System") to serve customers of the District, and is desirous of obtaining services for the competent operation, maintenance, and management of the System.
6. In consideration for AQUA DEVELOPMENT's assignment to Developer of its CCN rights relative to the CCN Property, and other good and valuable consideration between the Parties as set forth herein, Developer (on behalf of the District) desires to enter into this Agreement with AQUA TEXAS to provide for the operation, maintenance and management of the System.
7. AQUA TEXAS is desirous of providing operations, maintenance, and management services to the District.
8. Developer, on behalf of the District, and AQUA are desirous of entering into a definitive agreement pursuant to which AQUA DEVELOPMENT shall relinquish its right to provide retail water and sewer services to the CCN Property and AQUA TEXAS shall operate, maintain and manage the System on behalf of the District.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE mutual promises, benefits, covenants and considerations hereinafter set forth, the sufficiency and adequacy of which is hereby acknowledged, the Parties hereto agree as follows:

**ARTICLE I. GENERAL STATEMENT OF INTENT**

Developer and AQUA hereby acknowledge that, at the present time, AQUA DEVELOPMENT has the exclusive right to provide retail water and sewer services to the CCN Property that is proposed to be included within the District. Developer acknowledges that the proposed District could not provide water supply and wastewater treatment services to the CCN Property without AQUA DEVELOPMENT's assignment to it of its CCNs relative to said CCN Property or the release of the CCN Property from the certificated area of said CCNs. Developer and AQUA hereby acknowledge that the consideration provided to AQUA TEXAS pursuant to this Agreement shall effectively constitute, in addition to payment for operations, maintenance and management services provided to the District, the purchase price for the CCN rights relative to the CCN Property.

## ARTICLE II. SERVICES

In consideration for the compensation to be paid to AQUA TEXAS as set forth in Article III hereunder and other good and valuable consideration to AQUA TEXAS hereunder, AQUA TEXAS shall provide the following services to the District:

### A. ADMINISTRATIVE SERVICES

1. Organization. AQUA TEXAS shall administer the work, activities, and operations of the System in accordance with the items in this Agreement.
2. Personnel. AQUA TEXAS shall provide competent, trained personnel. System supervisors and/or operators shall be licensed or certified by the appropriate state governmental authority. Accounting, billing, and field personnel shall be trained to be professional and courteous in dealing directly with the District's customers.
3. Training. AQUA TEXAS shall provide adequate training for all employees to ensure its personnel are qualified to provide all necessary services to the District hereunder. Specifically, all System supervisors and operators shall attend a state certified or approved water or wastewater training course at least once each year or otherwise receive a minimum of 20 hours of training each year, to the greatest extent practicable.
4. Start Up. When first assuming operations management of the System, AQUA TEXAS shall:
  - a. Enter into and maintain in an appropriate computer program all of the District's customer and Rate Order information necessary to provide monthly billings to the District's customers.
  - b. Inventory and maintain a listing of all of the System equipment, including manufacturer's model and serial numbers, motor frame numbers and other such data as required to provide immediate information for the Scheduled Maintenance Program and repair or replacement of the System equipment.
  - c. Assist the District in preparing a Rate Order and, upon request, analyze the existing Rate Order and budget for adequacy and consistency.
  - d. Assist in the preparation of an annual operating budget for the District.
5. Maintenance Scheduling. AQUA TEXAS shall utilize an appropriate program that incorporates equipment manufacturer's recommendations and the System equipment inventory and any additional directives from the Board of Directors of the District and/or the District's engineer to generate maintenance schedules. The resulting monthly schedule shall list the specific System equipment to be serviced,

the detailed service procedure, specified oil or grease to be used, if applicable, and a history of service, maintenance and replacements.

6. 24 Hour Service. AQUA TEXAS shall maintain 24 hour telephone and dispatch service with qualified personnel to respond to the System's customer problems and equipment malfunctions.
7. Automatic Telephone Alarm. AQUA TEXAS shall monitor computer or automatic dialed telephone alarm systems at any of the System facilities which are installed and programmed to call the AQUA TEXAS 24-hour telephone dispatch service.
8. Employee Identification. AQUA TEXAS' operating and maintenance employees shall be readily identifiable to the District's customers by distinctive clothing. Service vehicles shall have the AQUA TEXAS logo prominently displayed.
9. Coordination with Consultants. AQUA TEXAS shall coordinate with the District's other consultants, such as attorneys, engineers, auditors, bookkeepers, tax assessors, and financial advisors as necessary to maintain efficient operation of the System.
10. Inquiries and Correspondence. AQUA TEXAS shall respond to routine inquiries or correspondence from the District's directors, customers or consultants in a prompt and professional manner.
11. District Meetings. AQUA TEXAS' Project Manager or Field Coordinator shall attend all regularly scheduled meetings of the District's Board of Directors which have an agenda item relating to System operations. AQUA TEXAS' representative shall have direct knowledge of the System's ongoing operations or agenda items as appropriate.
12. Customer Relations. AQUA TEXAS shall render reasonable assistance in the promotion of good relations with the District's customers.
13. District Funds. All funds collected by AQUA TEXAS on behalf of the District shall be deposited in the District's Operating Fund or Account on a weekly basis or as may otherwise be directed by the District. All such funds are public funds and may be pledged to the payment of debts or other obligations of the District; therefore, AQUA TEXAS agrees that all such funds shall be deposited as provided above without setoff, counterclaim, abatement, suspension, or diminution. In connection with the foregoing, AQUA TEXAS shall maintain a bond throughout the term of this Agreement in the minimum amount of \$100,000.
14. District Records. AQUA TEXAS shall maintain records that AQUA TEXAS initiates or receives on behalf of the District in compliance with the Texas Local Government Records Act, the rules of the Texas State Library and Archives Commission adopted thereunder and all records retention schedules adopted by the District thereunder, and any applicable rules of the TCEQ.



B. BASIC SERVICES

1. System Operations. AQUA TEXAS shall provide personnel, vehicles and hand tools necessary for the routine operation of the System.

2. Meter Reading, Billing and Collection. AQUA TEXAS shall read the System water meters once each month, bill the customers in accordance with the District's Rate Order and deposit the collections in the District's Operating Account at least weekly.

The District authorizes AQUA TEXAS to make adjustments to water bills for clerical errors, over or under registration of water meters, erroneous meter readings, establishment of water usage during time when meter has been inoperative, and other similar adjustments, provided that any proposed adjustment in excess of \$100.00 shall first be approved by the District's Board of Directors.

3. System Inspection. AQUA TEXAS shall monitor the System facilities daily, including weekends and holidays as required by state regulations. Said System facilities shall include any sanitary sewer lift stations. AQUA TEXAS shall further monitor the points of connection of Conroe's facilities to the District's System and shall report immediately any problem related thereto to Conroe.

AQUA TEXAS employees, whenever they are within the District boundaries, shall monitor the System in order to observe the condition of fire hydrants, leaks, defects, and damage, and to be alert for missing System equipment.

4. Daily Maintenance. AQUA TEXAS shall provide all necessary personnel and tools required for maintenance tasks.
5. Bulk Chemicals. AQUA TEXAS shall arrange for an adequate inventory of chlorine and other bulk chemicals required to operate the System, as and if required.
6. Expendable Items. AQUA TEXAS shall replace those items expended in the daily operation of the System. Those items include, but are not limited to, brooms, mops, dip nets, rakes, shovels, trash cans, hoses, nozzles, padlocks, and other such items used at the System facilities.
7. Operating Log. AQUA TEXAS shall maintain an operating log relative to the District's System which may be inspected by the District at any time. The log shall include, but not be limited to, the following:
  - a. Notations regarding repairs or replacements performed.
  - b. Notations regarding communications with any District customer or landowner.

- c. Such other matters within the scope of AQUA TEXAS' work which the District may reasonably request.
8. Monthly Operations Report. AQUA TEXAS shall render a monthly operations report, to the District, which shall include substantially the following information:
- a. Correspondence to and from regulatory authorities, including Conroe, as appropriate.
  - b. Total number of water and wastewater service connections.
  - c. Records regarding equipment repairs and replacements.
  - d. Abnormal change in condition of the System equipment, needed repairs and recommendations as to the repair of such equipment.
  - e. Insurance claims filed on behalf of the District.
  - f. Regular billing and collection reports, including cash receipts, billings and receivables.
  - g. Service customers' receivables, including 30, 60, and 90 day aged accounts.
  - h. Delinquent customer report, including information on termination of water service and protests or appeals made by customers.
  - i. Summary of taps installed, inspections performed and fees collected.
  - j. Damage to the System and the possible causes thereof. In instances where the damage may be attributable to a contractor, builder, utility company or other entity, AQUA TEXAS shall (on behalf of the District) backcharge the party responsible for such damage, including administrative costs thereof, and include such information in the monthly report.
  - k. Informational reports relating to compliance status of the System.
  - l. Statistics relating to overall System operations, as appropriate.
  - m. Summary and details of monthly invoices to the District, separated into specific budget categories.
  - n. Operations and maintenance cost data to bookkeeper for use in budget comparisons.
  - o. Information and reports as may be required for audit of the District's service accounts.
  - p. Information and reports as may be required by Conroe.

- q. Report on water plant (s) and wastewater treatment plant(s) which serve the District, to the extent reasonably available.
- r. Other information reasonably requested by the District.

Details of the above reports will be available to provide a clear audit trail of the System water and sewer service transactions.

- 9. Regulatory Reports. AQUA TEXAS shall prepare and submit on a timely basis all routine reports required by regulatory authorities and authorized by the District to receive such reports and shall provide a copy of all of said reports to the District.

#### C. INSTALLATION AND INSPECTION SERVICES

- 1. General. All meters and installation materials shall meet American Water Works Association standards and be in compliance with applicable District, Conroe, Montgomery County, or state codes. All installation and inspection fees shall be collected from the District's customers in advance, in accordance with the District's Rate Order.

In order to allow AQUA TEXAS to accurately account for meter services installed, inspections performed and tap fees paid for each customer of the District, AQUA TEXAS shall maintain permanent records of meter services installed and tap fees paid. This shall include a plat or map, as available, which shows the location of each meter installed and each sewer inspection performed.

- 2. Standard Residential Taps. All residential water connections of one- inch (1") or less shall be installed by AQUA TEXAS for a cost of \$200.00, which shall include all labor and materials, including the water meter and any related appurtenances.
- 3. Commercial and Non-Standard Residential Taps. All commercial connections, single-family residential connections larger than one-inch (1"), and other special connections shall be installed by AQUA TEXAS for a cost equal to AQUA TEXAS' actual costs of all labor and materials, including the water meter and any related appurtenances, which shall be provided in the form of a written quote approved by the District's Board of Directors or its duly authorized representative prior to AQUA TEXAS making said tap.
- 4. Sanitary Sewer Inspections. AQUA TEXAS shall inspect, at its sole cost and expense and at no cost to the District, each sanitary sewer connection to the System to assure compliance with the District's specifications and procedures. In the event that any additional inspections of the same sanitary sewer connection are required to assure compliance with the District's specifications and procedures, AQUA TEXAS shall perform said inspection(s) and shall be compensated for same in accordance with the fee schedule set forth in Exhibit "A"

attached hereto, which may be amended from time to time upon the mutual agreement of AQUA TEXAS and the District.

5. Customer Service Inspections. AQUA TEXAS shall perform all residential and commercial customer service inspections on behalf of the District as requested or as required by the District's Rate Order and/or applicable regulations of Conroe, and shall be responsible for providing an appropriate customer service inspection certification required thereunder or pursuant to other applicable state law. AQUA TEXAS shall perform one (1) customer service inspection for each separate connection to the System, at its sole cost and expense and at no cost to the District, and shall be compensated thereafter for any additional customer service inspections required to be performed for the same customer at a location previously inspected in accordance with the fee schedule set forth in Exhibit "A" attached hereto.
6. Backflow Prevention Device Inspections. AQUA TEXAS shall perform all backflow prevention device inspections on behalf of the District as requested or as required by the District's Rate Order and/or applicable regulations of Conroe, and shall be responsible for providing any appropriate certification required thereunder or pursuant to other applicable state law. AQUA TEXAS shall perform one (1) inspection for each backflow prevention device installed within the District, at its sole cost and expense and at no cost to the District, and shall be compensated thereafter for any additional inspections required of the same backflow prevention device for the same customer in accordance with the fee schedule set forth in Exhibit "A" attached hereto.
7. Other Inspections. AQUA TEXAS shall perform such other inspections as requested or authorized by the District. Such inspections include, but are not limited to, the inspection of grease traps, sample wells, cross connections or new facilities prior to acceptance of same by the District. AQUA TEXAS may also participate in site inspections with contractors prior to the start of building activity to assist in verifying the condition of the System. AQUA TEXAS shall be compensated for said services on a "per quote" basis approved by the District's Board of Directors prior to the performance of said work.

D. MAINTENANCE, REPAIR AND REPLACEMENT SERVICES

1. Maintenance. AQUA TEXAS shall provide all personnel, tools and equipment necessary to perform maintenance on the System facilities and equipment as authorized by the District. Maintenance shall include, but not be limited to the following:
  - a. Maintenance or replacement of pumps, motors, valves and other equipment or facilities.
  - b. Calibration and servicing of instrumentation, control systems and other equipment.

- c. Other maintenance, as necessary, performed in conformance with equipment manufacturer's recommendations to maintain warranties and to extend the useful life of System equipment.
2. Repair. AQUA TEXAS shall provide all personnel and equipment necessary to perform repairs on System facilities, equipment, plants, collection and distribution systems as authorized by the District including, but not limited to, service line leaks, leaks at water meters, water main breaks, repairs to valves and fire hydrants, manhole repairs, and sewer line repair and cleaning, as needed.
3. Replacement. AQUA TEXAS shall use a reasonable degree of care with respect to replacement of System equipment or facilities but shall not be responsible to the District for any guarantees or warranties offered by others in connection with such equipment or facilities. AQUA TEXAS agrees to make reasonable efforts to obtain for and assign to the District the normal guarantees or warranties associated with any replacement equipment.
4. Maintenance, Repair and Replacement Costs. AQUA TEXAS shall be responsible for performing all routine maintenance, repair and/or replacement services described above, in addition to all other services described herein, for the compensation set forth in Article III hereunder; provided, however, that the District shall pay AQUA TEXAS for any costs related to a single maintenance, repair or replacement project performed hereunder in excess of \$2,500, based upon itemized statements and/or invoices provided by AQUA TEXAS (and any other supporting documentation reasonably requested by the District) that sufficiently describes and supports said costs. The District shall be responsible for all costs related to any non-routine maintenance, repair or replacement project performed hereunder and all damages, claims, fines and penalties arising from failure by the District, after receipt of written notice from AQUA TEXAS, to undertake capital repairs and/or replacements to the System in a timely fashion, including capital repairs and/or replacements related to any design limitations of the System, and to provide flow from and into the System at levels and characteristics within permit requirements and/or design limits.
5. Emergency Response. AQUA TEXAS shall maintain personnel and equipment for emergency response 24 hours per day, seven days per week, 365 days per year. Emergencies shall include, but not be limited to, water leaks, water line breaks, loss of water pressure, degradation of water quality, blockage in the sewage collection system, any response requested by the District or its representative or response to insistent resident concerns when necessary to maintain good District relations.
6. Materials and Supplies. Except as otherwise provided herein, AQUA TEXAS shall be reimbursed the actual cost, without markup, for all materials and supplies used to provide maintenance, repair or replacement services under this Agreement.

E. ADDITIONAL SERVICES

1. Infiltration/Inflow Survey. AQUA TEXAS shall conduct, with the District's prior approval, sewer line infiltration/inflow surveys consisting of on-site visual inspection of facilities, smoke testing and video monitoring (TV inspection) as appropriate. AQUA TEXAS will perform or participate in the rehabilitation of the sewer system to correct defects discovered by the infiltration/inflow survey.
2. Landscape Services. AQUA TEXAS shall provide services to maintain the landscape appearance compatible with the neighborhood at the System facilities with routine trimming and lawn mowing as requested by the Board.
3. Delinquency Notices. AQUA TEXAS shall prepare and mail delinquency notices to District customers and collect past due accounts in accordance with the District's Rate Order and policy.
4. Service Account Transfers. AQUA TEXAS shall transfer water and sewer service from the current customer to the new customer and, when requested, usage shall be prorated to each customer based on the number of days each customer received service during the billing period in which the transfer is requested.
5. Meter Disconnects/Reconnects. AQUA TEXAS shall terminate water service only in accordance with the terms of the District's Rate Order or policy, or when otherwise requested by the District's Board of Directors. Within one (1) week after service termination and periodically thereafter, AQUA TEXAS shall check the terminated service to assure that service has not been restored by unauthorized personnel.
6. Meter Removal. AQUA TEXAS shall remove a customer's water meter if service is restored by unauthorized personnel prior to the customer paying the amount owed to the District, or at the request of the District's Board of Directors.
7. Fire Hydrants. AQUA TEXAS shall thoroughly inspect the System fire hydrants at least once each year, or more frequently if requested by the District. A written report shall be submitted to the District's Board of Directors and designated fire departments as requested by the District.
8. Sampling and Testing. AQUA TEXAS shall perform, or have performed, all sampling, testing and/or analyses as required by regulatory authorities or necessary for process control. A summary of test results shall be submitted to the District each month.
9. Special Studies/Reports. AQUA TEXAS shall conduct studies or prepare special reports as may be reasonably requested by the District. The District shall compensate AQUA TEXAS for such work on the basis of a written proposal outlining the scope of the work to be performed and the cost thereof, which shall

be agreed to by the District prior to the commencement of any such work by AQUA TEXAS.

F. **SUBCONTRACT SERVICES**

1. AQUA TEXAS Subcontractors. AQUA TEXAS may subcontract such services hereunder as may, in AQUA TEXAS' opinion, be desirable. These services will be provided by a subcontractor retained by AQUA TEXAS and payment of the costs associated therewith shall be the sole responsibility of AQUA TEXAS. Such AQUA TEXAS subcontractors shall be considered, for the purpose of this Agreement, as employees of AQUA TEXAS with AQUA TEXAS retaining responsibility for such subcontractors' performance.
2. District Subcontractors. The District reserves the right to directly employ subcontractors for certain maintenance work within the System. AQUA TEXAS shall receive no supervision and inspection fees unless authorized by the District in advance, and shall not be responsible in any way for services performed by subcontractors employed or paid directly by the District. AQUA TEXAS shall not receive any compensation for subcontractors employed directly by the District.

**ARTICLE III. COMPENSATION FOR OPERATIONS, MAINTENANCE AND MANAGEMENT SERVICES**

In consideration for AQUA TEXAS' performance of all services described in Article II above, except as otherwise specifically set forth therein, the District shall pay AQUA TEXAS \$30.00 per Connection per month ("Base Rate"). The term "Connection", as used in this Article III, shall mean each separate connection made to the District's water distribution and sanitary sewer collection system (collectively constituting one (1) Connection) from a completed residential or commercial structure that is habitable and capable of receiving water and sanitary sewer services, whether said services are then being utilized or not; provided, however, that no residential or commercial structure shall be deemed to be a "Connection" for purposes of this section unless the District has collected the applicable tap fees and inspection fees associated with such Connection and has actually commenced providing said services to such structure. AQUA TEXAS shall submit a statement or invoice to the District each month reflecting the total number of Connections within the District as of the last day of the prior month, which shall serve as the basis for calculating AQUA TEXAS' compensation for the services provided to the District under Article II hereof for said month. Said statements or invoices shall also include an itemized listing of any additional fees or charges due to AQUA TEXAS for services provided during the prior month, which are authorized by this Agreement or which have been otherwise approved by the District's Board of Directors. The District shall pay such statement and/or invoice within 30 days of receipt of same. The District agrees to pay interest to AQUA TEXAS at the maximum rate that may be charged to a political subdivision under Texas Government Code § 2251.025 not to exceed 10% per annum for all amounts unpaid after 30 days. Interest shall accrue from the 31st day following receipt of statements and/or invoices until the date payment in full is made. Items awaiting backup data shall be excluded from interest charges. Further in the event

of a dispute or disagreement between AQUA TEXAS and the District concerning the legitimacy of amounts invoiced to the District by AQUA TEXAS hereunder, no interest charges shall begin to accrue until the 31<sup>st</sup> day following the date of final resolution of said dispute.

Notwithstanding the immediately preceding paragraph, AQUA TEXAS and the District agree that commencing on the first day of the month next following the Effective Date of this Agreement (as defined in Article VI A. hereinbelow) and continuing until the first day of the month next following the month in which the District first begins serving 33 Connections, the District shall pay AQUA TEXAS \$1,000 per month as compensation for all services provided hereunder (the "Interim Payment"). The Interim Payment shall be made in lieu of any Base Rate that would otherwise be payable pursuant to this Article III. Thereafter, the Base Rate charged by AQUA TEXAS for the services described in Article II above shall remain fixed at \$30.00 per Connection per month and shall not be adjusted for changes in the CPI (as hereinafter defined) for a period of three (3) years. Commencing on January 1 of the year following the expiration of such three (3) year period, and continuing annually on each January 1 throughout the term of this Agreement, upon thirty (30) days' prior written notice to the District, which notice shall include evidence of such increase or decrease in the CPI (as defined below) for the relevant period, the Base Rate for the services described in Article II above shall be adjusted by the same percentage as the Consumer Price Index for All Urban Consumers (published by the United States Bureau of Labor Statistics, Consumer Price Index, U.S. City Average, All Urban Consumers, Base Period 1982-84 = 100) (the "CPI") shall have increased or decreased during the preceding twelve (12) months. The increase or decrease in the CPI shall be determined by calculating the percentage increase or decrease of such index during the prior twelve (12) month period, by determining the percentage difference between (a) the average CPI for the most recent twelve (12) months for which data is available (the "Most Recent Year"), and (b) the average CPI for the twelve (12) month period immediately prior to the Most Recent Year. In the event the U.S. Department of Labor, Bureau of Labor Statistics ceases to publish the CPI, the parties hereto agree to substitute another equally authoritative measure of change in the purchasing power of the U.S. dollar as may be then available so as to carry out the intent of this provision.

#### ARTICLE IV. INSURANCE AND INDEMNIFICATION

##### A. INSURANCE

Immediately following the execution of this Agreement and periodically thereafter upon the request of the District, AQUA TEXAS shall furnish to the District Certificates of Liability Insurance evidencing the following minimum insurance coverage:

- |    |                                    |             |
|----|------------------------------------|-------------|
| 1. | Comprehensive General Liability    | \$1,000,000 |
|    | Bodily Injury and Property Damage  | \$1,000,000 |
| 2. | Comprehensive Automobile Liability | \$1,000,000 |



	Bodily Injury and Property Damage	\$1,000,000
3.	Worker's Compensation and Employer's Liability	Statutory \$1,000,000
4.	Excess Liability	\$1,000,000
5.	Pollution Coverage	\$1,000,000

The District shall be named as an additional insured on the above policies with the exception of No. 3 above. The District shall be notified of any material change in said coverages or cancellations of policies thirty (30) days prior to the effective date of said event. AQUA TEXAS agrees that the above insurance policies will be maintained in force at all times throughout the term of the Agreement. Failure to maintain the above specified insurance policies throughout the term of this Agreement may result in termination of this Agreement by the District.

#### B. INDEMNIFICATION

The District, to the extent permitted by law, and AQUA TEXAS each agree to indemnify and save each other harmless from the other's negligence or intentional conduct arising or done under this Agreement and resulting in harm to another or another's property. The indemnity extends to all costs and expenses incurred, including reasonable attorney's fees, to defend against, settle or pay the claim asserted by another. In the event a claim is made by another against either the District or AQUA TEXAS, notice shall immediately be given of the claim (unless the other has prior actual notice), in order that the other may determine whether its indemnity duty must be performed and in order to allow the indemnitor to perform indemnity. It is understood and agreed that since the District is immune from damages beyond certain limits under the Texas Tort Claims Act, the mutual indemnities given by each only extend and are limited by the limits of liability of the District under such law. Notwithstanding anything to the contrary set forth herein, AQUA TEXAS shall not be liable for any claims relating to environmental damages, including any fines or penalties imposed by any regulatory authority, if not the result of or arising from, directly or indirectly, the action of AQUA TEXAS, its officers, employees, representatives or agents, including subcontractors, hereunder.

The District shall be responsible for all damages, claims, fines and penalties arising from failure by the District, after receipt of written notice from AQUA TEXAS, to undertake capital repairs and replacements to the System in a timely fashion. AQUA TEXAS shall not be liable to the District, the Developers or the District's customers for any diminution or interruption of service within the System not the result of AQUA TEXAS's gross negligence, or for any delay which results from causes beyond AQUA TEXAS's reasonable control. Under no circumstances, shall AQUA TEXAS be responsible for special, punitive, incidental or consequential damages. AQUA TEXAS will not be responsible for conditions or failures that arise due to the limitations and configuration of

the System, unless AQUA TEXAS was aware or, in the exercise of ordinary care, should have been aware of the existence of said conditions or failures.

To the extent permitted by law and subject to the limitations of the Texas Tort Claims Act, the District agrees to indemnify and save AQUA TEXAS harmless from and against any and all claims, damages, loss or liability for or on account of any injury or damages (including death) to any person or property, resulting from following the written instructions or policies of the District, from any inadequacies or failures of the System unless due to the negligence or willful misconduct of AQUA TEXAS, or by reason of any willful act or negligence on the part of the District's agents, employees or subcontractors.

In the event that any of the foregoing indemnification provisions shall be inapplicable or held unenforceable, AQUA TEXAS and the District shall each contribute to any judgment against any party for which indemnity would otherwise be due from it hereunder, according to the percentage of fault reflected in a final, non-appealable judgment with respect to such indemnifying party, in accordance with the laws of the State of Texas.

#### ARTICLE V. MISCELLANEOUS PROVISIONS

##### A. RESPONSIBILITIES

1. AQUA TEXAS Responsibilities. AQUA TEXAS shall exercise a reasonable degree of care and diligence in the operation and maintenance of the System in conformance with all applicable laws, rules and regulations, including specifically the rules and regulatory requirements of the TCEQ. However, AQUA TEXAS is not responsible for the failure of the System to meet local, state or federal wastewater treatment or disposal standards, the adequacy, quality or quantity of the water supply provided by the System or for any direct or indirect loss, injury or damage resulting from the diminution or interruption of service within the System, unless due to AQUA TEXAS' negligence or willful conduct.
2. AQUA DEVELOPMENT Responsibilities. AQUA DEVELOPMENT shall (i) not contest the Developer's (or its successors or assigns) petitions to Comroe or to the TCEQ for the creation of the District within a portion of the certificated area of its CCNs; (ii) reasonably assist the Developer (or its successors or assigns) with the creation of the District, to the extent necessary due to the location of a portion of the District within the certificated area of its CCNs ; and (iii) take any and all action reasonably required, at its sole cost and expense and at no cost to Developer or the District, to either release the CCN Property from the certificated area of its CCNs or, at the option of the Developer, to assign all rights, title and interests in and to the CCNs relative to the CCN Property to the Developer (or its successors or assigns) as soon as possible following the Effective Date of this Agreement as defined in Article VI. A. below.