



Control Number: 45656



Item Number: 1

Addendum StartPage: 0

PUC DOCKET NO. **45656**

PETITION BY AQUA TEXAS, INC. §
AND MONTGOMERY COUNTY §
MUNICIPAL UTILITY DISTRICT NO. §
126 FOR APPROVAL AND §
ENFORCEMENT FOR CERTAIN §
CONTRACT TERMS DESIGNATING §
CERTIFICATE OF CONVENIENCE §
AND NECESSITY (CCN) SERVICE §
AREAS UNDER TEXAS WATER CODE §
§13.248 AND FOR DECERTIFICATION §
OF AREAS UNDER §13.254 IN §
MONTGOMERY COUNTY §

BEFORE THE PUBLIC UTILITY

COMMISSION OF TEXAS

RECEIVED
2016 FEB 24 PM 3:11
PUBLIC UTILITY COMMISSION
FILING CLERK

PETITION BY AQUA TEXAS, INC. AND MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 126 FOR APPROVAL AND ENFORCEMENT FOR CERTAIN CONTRACT TERMS DESIGNATING CERTIFICATE OF CONVENIENCE AND NECESSITY SERVICE AREAS UNDER TEXAS WATER CODE §13.248 AND FOR DECERTIFICATION OF AREAS UNDER §13.254

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COME NOW, Aqua Texas, Inc. d/b/a Aqua Texas (“Aqua”) and Montgomery County Municipal Utility District No. 126 (“MUD 126”) (collectively, “Applicants”) and hereby file this Petition for Approval and Enforcement of Certain Contract Terms Designating Certificate of Convenience and Necessity (“CCN”) Service Areas under Texas Water Code §13.248 and for Decertification of Areas under §13.254 (“Petition”). The relief requested affects a portion of Aqua’s water CCN No. 13203 and a portion of Aqua’s sewer CCN No. 21065 located in Montgomery County, Texas. In support thereof, Aqua Texas would show the following.

I. PURPOSE OF THE PETITION

Applicants file this petition primarily to seek a transfer to MUD 126 of Aqua water CCN No. 13203 and sewer CCN No. 21065 portions located inside the MUD 126 boundaries. The specific transfer areas are identified in **Exhibit A**.¹ No Aqua facilities physically located within these areas

¹ All exhibits are hereafter attached and incorporated by reference.

Additionally, in preparing **Exhibit A**, Aqua learned that there are certain slivers of CCN No. 13203 and 21065 areas that would be left behind adjacent to the west side of MUD 126 if the transfer described above is approved. These areas would be difficult or impossible for Aqua to serve without also possessing the area within MUD 126 proposed for transfer. MUD 126 does not wish to possess these areas and there are no present customers or facilities. Thus, Aqua voluntarily seeks decertification in this Petition of those areas under Texas Water Code §13.254(a) and P.U.C. SUBST. R. 24.113(a) with the support of MUD 126.

Granting the complete relief sought in this Petition will facilitate development within MUD 126 and its surrounding areas. All areas within CCN Nos. 13203 and 21065 not proposed for transfer or decertification would remain served by Aqua, while MUD 126 will be able to serve the portions of CCN Nos. 13203 and 21065 within its boundaries without interfering with Aqua CCN areas. The adjacent decertified portions may be served by others if necessary.⁷

II. REQUEST FOR TRANSFER/DECERTIFICATION

Applicants seek Commission approval in this Petition for transfer of only CCN No. 13203 and 21065 areas comprised of approximately 173.63 acres and decertification of only CCN No. 13203 and 21065 areas comprised of approximately 6.42 acres as identified in **Exhibit A** (the “Property”). The Property is located approximately 6.3 miles northwest of downtown Conroe, Texas and is generally bounded on the north by League Line Rd.; on the east by Longmire Rd.; on the south by Longmire Way; and on the west by Lake Conroe. Aqua Texas, Inc.’s President, Robert L. Laughman, provides factual information in support of this Petition in **Exhibit C**.⁸

⁷ Applicants believe most of the decertified strip areas do not and will not require service and that parts may already be located within City of Conroe CCN Nos. 10339 and 20135. **Exhibit C**. Regardless, if needed, those areas could be served by City of Conroe, which already serves in close proximity to these areas. Like districts, municipalities may serve areas that are not within another retail public utility’s service area without a CCN. TEX. WATER CODE §13.242(a).

⁸ Additionally with the filing, Applicants are providing 2 compact discs with shape files of the areas requested for transfer.

Applicants are not providing an affidavit that notice was provided under Texas Water Code §13.301 as contemplated by 24.117(b)(3) only “if applicable.”¹¹ Texas Water Code §13.301 is not applicable here where Applicants have not agreed to the sale/acquisition of a “water or sewer system.”¹² The Contract terms sought for approval only speak to a sale/transfer of portions of Aqua’s water and sewer CCN service areas without a transfer of facilities.¹³

Conversely, the Applicants recognize that Texas Water Code §13.251 states that “a utility may not sell, assign, or lease a certificate of public convenience and necessity or any right obtained under a certificate unless the utility commission has determined that the purchaser, assignee, or lessee is capable of rendering adequate and continuous service to every consumer within the certified area, after considering the factors under Section 13.246(c).” TEX. WATER CODE §13.251. Further, the “sale, assignment, or lease shall be on the conditions prescribed by the utility commission.” *Id.* Here, however, TEX. WATER CODE §13.248 replaces TEX. WATER CODE §13.251 as the procedural vehicle and the conditions for the sale/transfer are already agreed upon between the Applicants in the Contract. The Commission should approve those Contract terms since the MUD 126 is already legally authorized to serve within its boundaries and should be able to do so unconstrained by Aqua CCNs. But the Applicants recognize the Commission may require submission of “any other information requested by the Commission” under P.U.C. SUBST. R. 24.117(b)(4) and Applicants will provide such information upon request. Further, Applicants are uncertain whether or what type of public notice the Commission may require for this type of application.

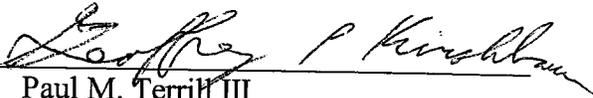
¹¹ “[I]f applicable, an affidavit that notice has been provided under TWC, §13.301.” P.U.C. SUBST. R. 24.117(b)(3).

¹² TEX. WATER CODE §13.301.

¹³ See **Exhibit B**.

Respectfully submitted,

THE TERRILL FIRM, P.C.

By: 

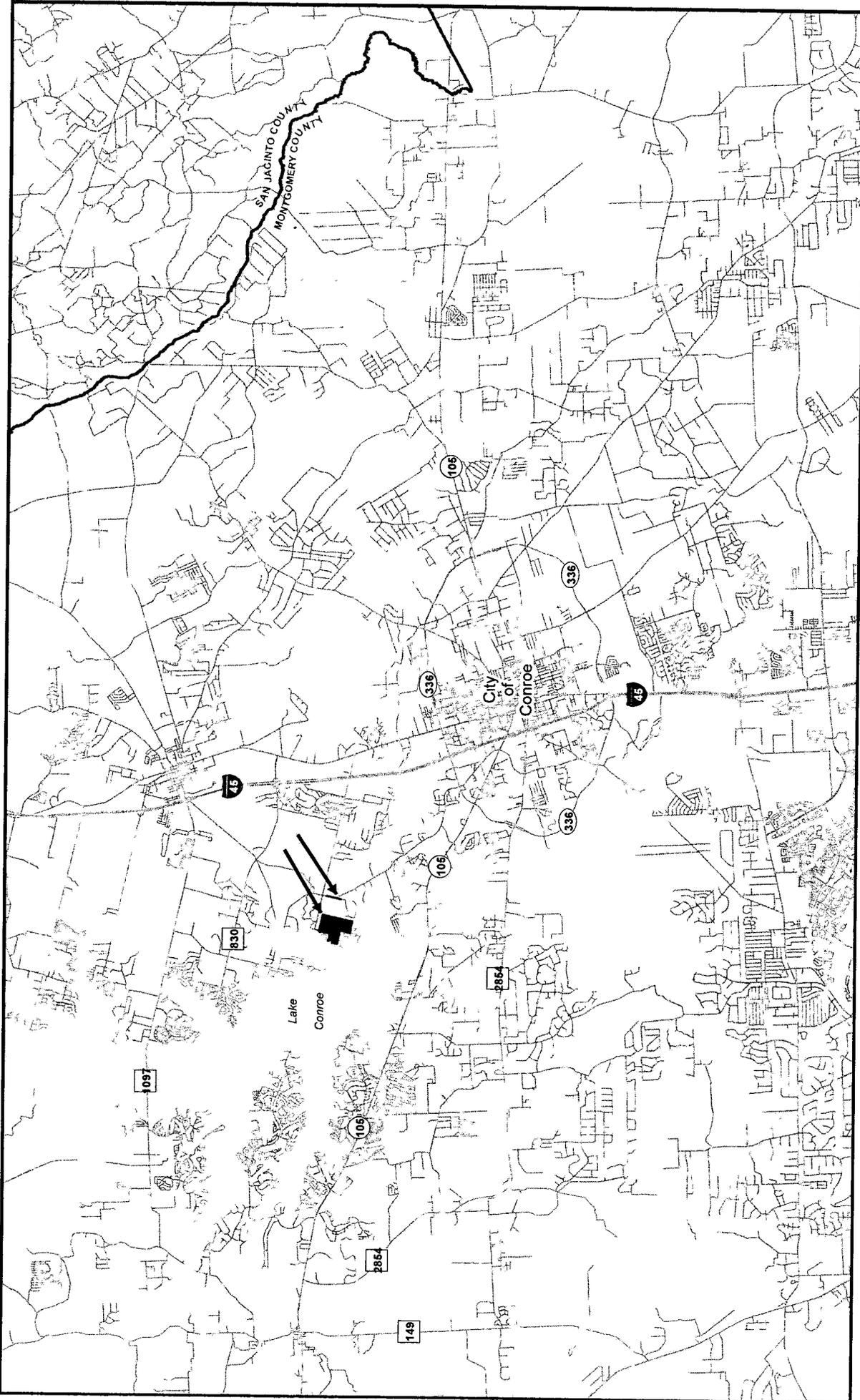
Paul M. Terrill III
State Bar No. 00785094
Geoffrey P. Kirshbaum
State Bar No. 24029665
810 West 10th Street
Austin, Texas 78701
Tel: (512) 474-9100
Fax: (512) 474-9888

**ATTORNEYS FOR AQUA TEXAS, INC. D/B/A
AQUA TEXAS**

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on February 24, 2016 in accordance with P.U.C. Procedural Rule 22.74.


Geoffrey P. Kirshbaum



General Location Map

Aqua Texas, Inc. / Montgomery County MUD 126
 13.248 Agreement to Transfer a Portion of CCN 13203 and 21065 from Aqua Texas, Inc. to Montgomery County MUD 126
 and Petition to Decertify Other Portions of CCN 13203 and 21065
 in Montgomery County



Map by: S. Burt
 Date created: January 14, 2016
 Base map: StratMap.Transportation
 Project: MCMUD126 general location map.mxd

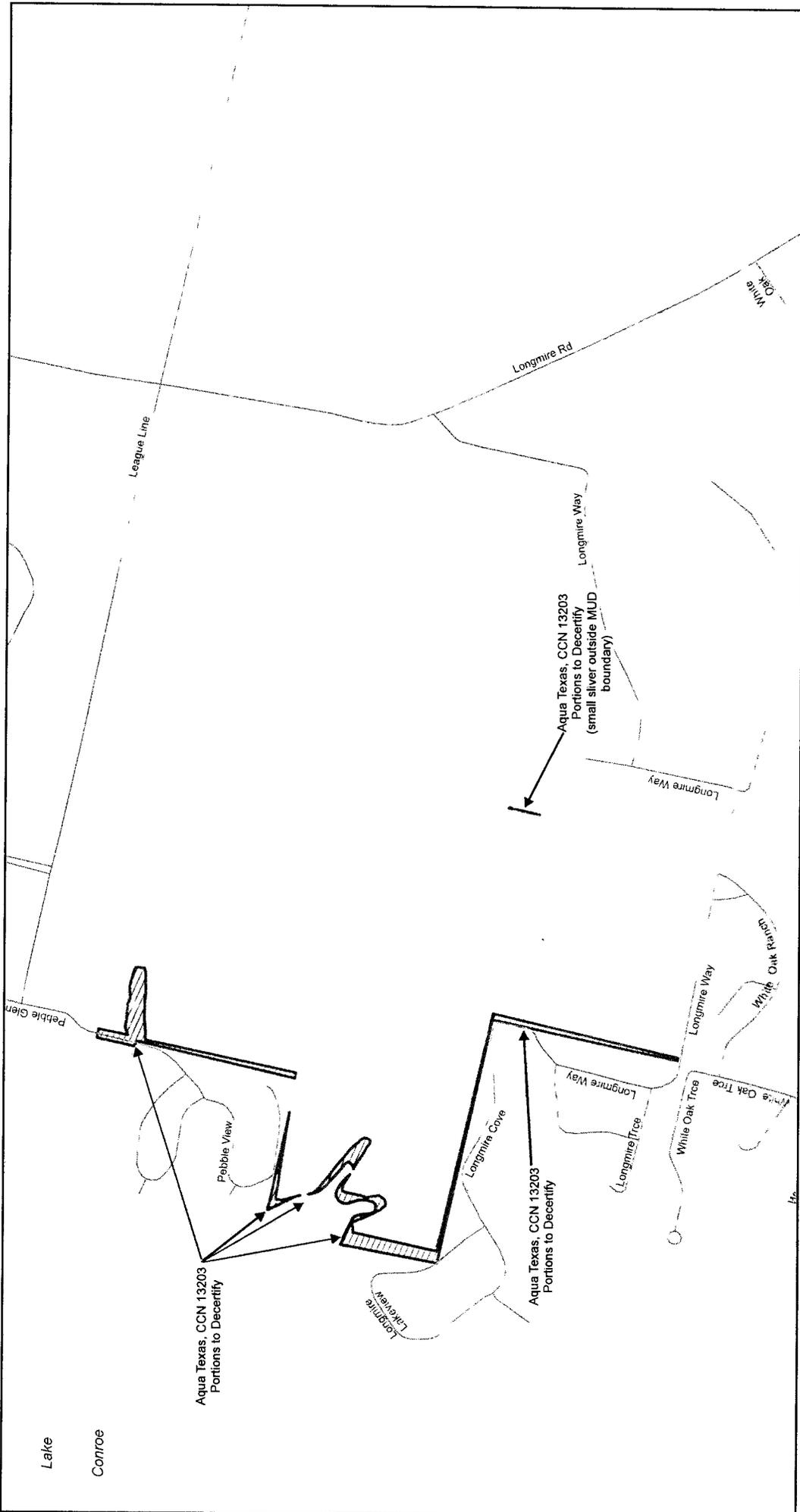
Proposed CCN Areas



Exhibit A

Lake

Conroe



Aqua Texas, CCN 13203
Portions to Decertify

Aqua Texas, CCN 13203
Portions to Decertify

Aqua Texas, CCN 13203
Portions to Decertify
(small sliver outside MUD
boundary)

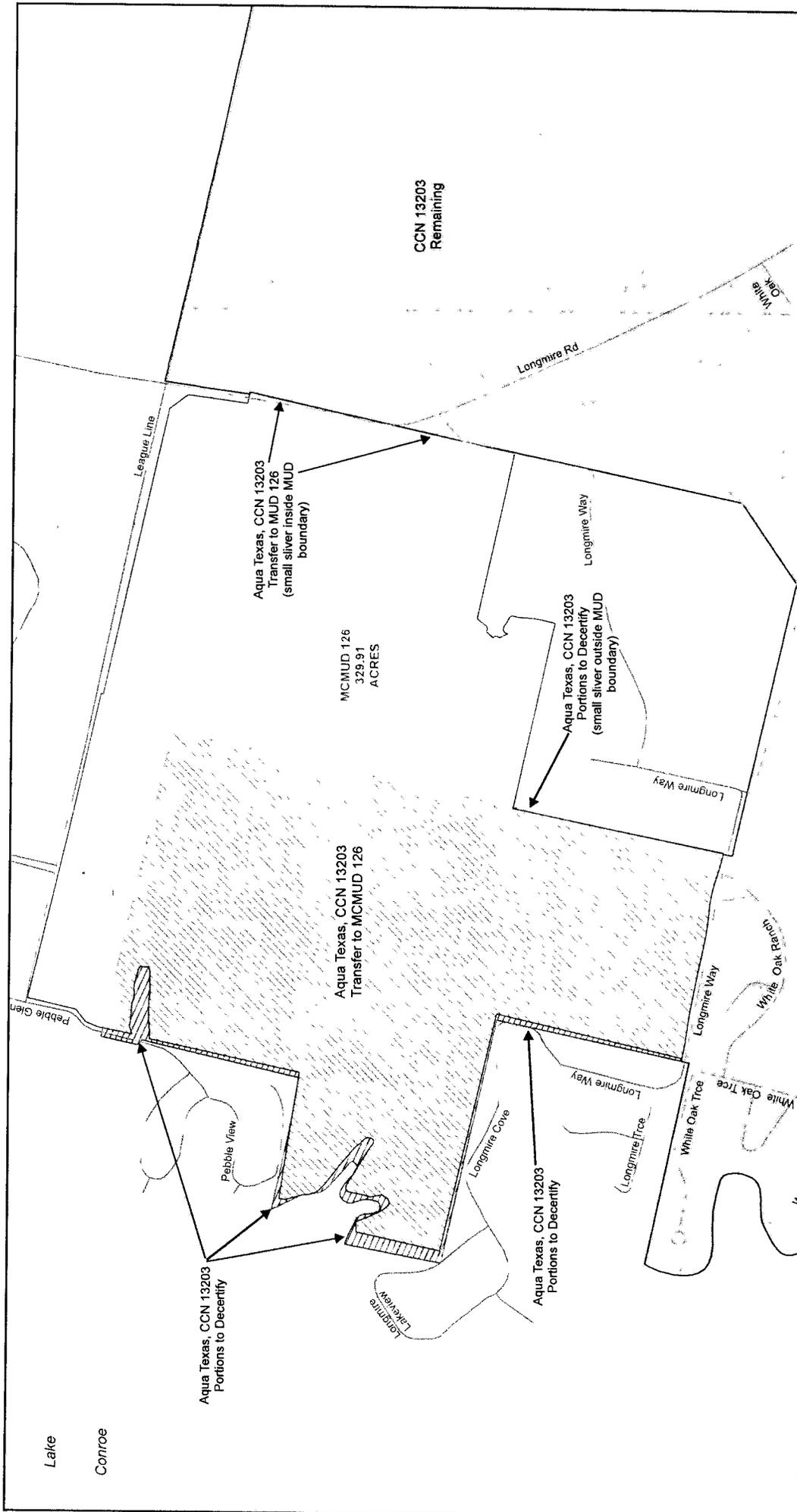


Map by: S. Burt
 Date created: February 11, 2016
 Base map: SraMap Transportation
 Project: 13203 DecertArea Only-Large Scale.mxd

Aqua Texas, Inc.
 Petition to Decertify Portions of CCN 13203
 in Montgomery County

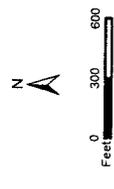


CCN 13203 Decertification - 6.30 acres

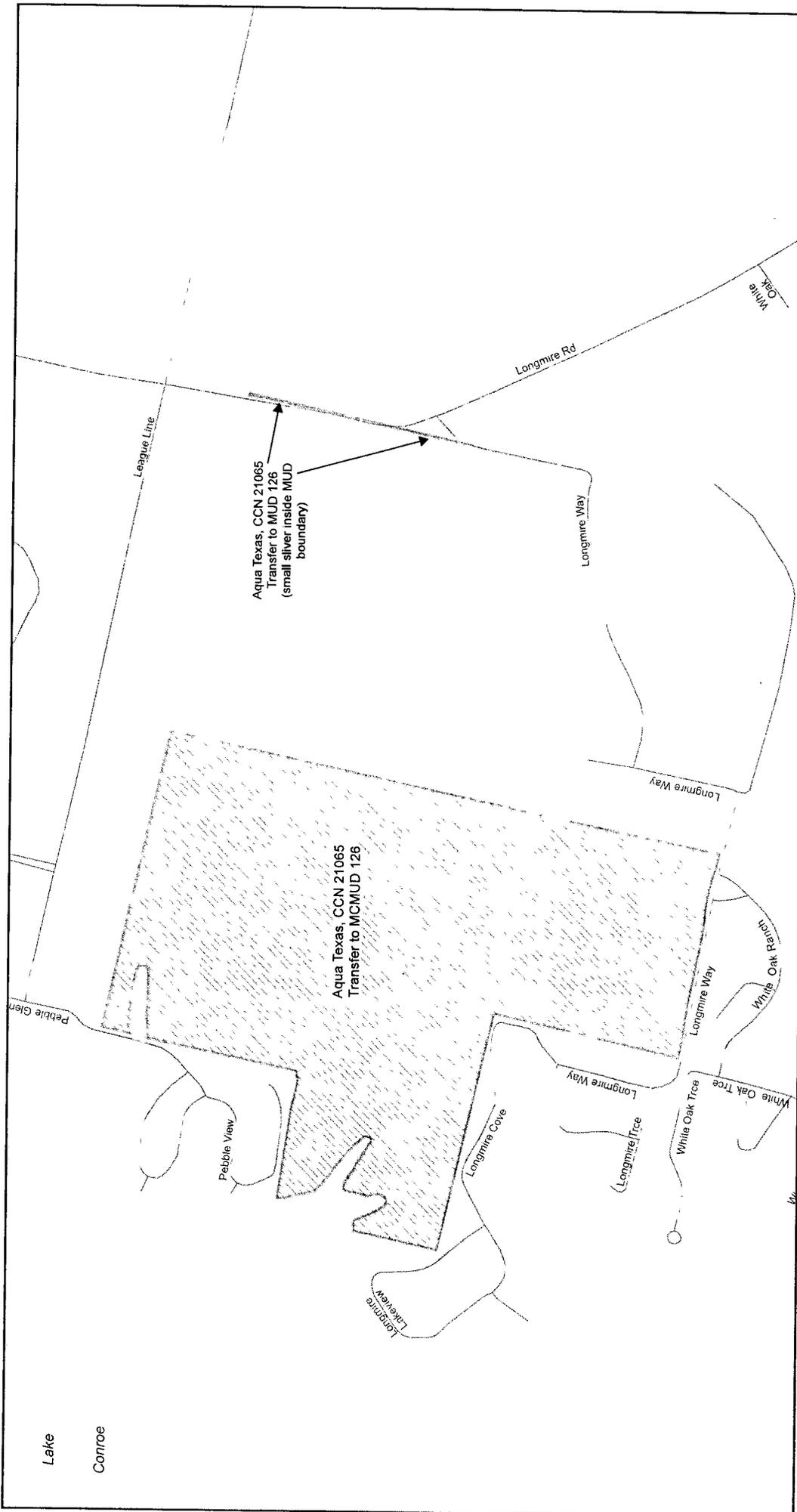


-  Montgomery County MUD 126 Boundary - 329.91 acres
-  Transfer of CCN 13203 to MCMUD 126 - 174.18 acres
-  CCN 13203 Decertification - 6.30 acres
-  CCN 13203 Following Transfer / Decertification

13.248 Agreement to Transfer a Portion of CCN 13203 from Aqua Texas, Inc. to Montgomery County MUD 126 and Petition to Decertify Other Portions of CCN 13203 in Montgomery County



Map by S. Burt
 Date created February 11, 2016
 Base map, StreetMap Transportation
 Project: Aqua Texas, MCMUD 126 Large Scale Water.mxd



Lake
Conroe



Map by: S. Burt
 Date created: February 11, 2016
 Base map: SitrinMap Transportation
 Project: 21065 Transfer Area Only-Large Scale.mxd

**Aqua Texas, Inc. / Montgomery County MUD 126
 13.248 Agreement to Transfer a Portion of CCN 21065 from Aqua Texas, Inc. to Montgomery County MUD 126
 in Montgomery County**

Transfer of CCN 21065 to MCMUD 126 - 174.18 acres

Exhibit B

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

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

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:

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 (46th) 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 (31st) 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,

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

AGREED TO and ACCEPTED this 31st day of December, 2015, by:

AQUA OPERATIONS, INC.,
a Delaware corporation,

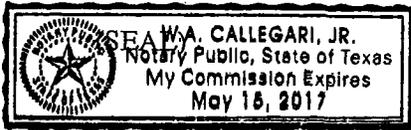
By: [Signature]
Name: Robert L. Laughman
Title: President

"Aqua Operations"

THE STATE OF TEXAS §
§
COUNTY OF Montgomery §

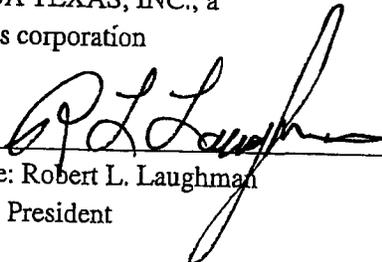
This Agreement was acknowledged before me on this 31st day of December, 2015, by Robert L. Laughman, President of Aqua Operations, Inc., a Delaware corporation,, on behalf of said corporation

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



AGREED TO and ACCEPTED this 31st day of December, 2015, by:

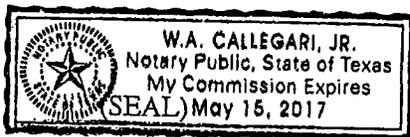
AQUA TEXAS, INC., a
Texas corporation

By: 
Name: Robert L. Laughman
Title: President

"Aqua Texas"

THE STATE OF TEXAS §
§
COUNTY OF Montgomery §

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



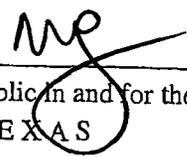
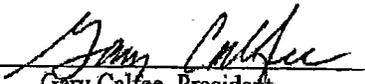

Notary Public in and for the
State of TEXAS

EXHIBIT A
Operations Agreement

MONTGOMERY COUNTY MUNICIPAL
UTILITY DISTRICT NO. 126

By 
Gary Calfee, President
Board of Directors

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.

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 Districts 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.

- 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.

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.

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

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 31st 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 |

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 Conroe 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.

shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States or of the state or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, disturbances, explosions, partial or entire failure of utilities, shortages of labor, material, supplies or transportation, or any other similar or different cause not reasonably within the control of the Party claiming such inability.

B. NON-COMPENSABLE ITEMS

The compensation to be paid to AQUA TEXAS herein is exclusive of any tax, assessment, regulatory expense or other charge which may be imposed upon AQUA TEXAS by any governmental authority as a result of performing its obligations pursuant to this Agreement. In the event AQUA TEXAS is required by applicable law or regulation to pay or collect any such tax, assessment or regulatory expense or other charge on account of this Agreement or its performance hereunder, then the amount thereof shall be reimbursed to AQUA TEXAS by the District (in addition to the compensation provided herein). However, AQUA TEXAS shall be responsible at its own expense for all corporate income and franchise taxes arising out of its operations. AQUA TEXAS shall indemnify and hold the District harmless from any liability for any and all such taxes or contributions or interest or penalties for failure to pay same.

F. AMENDMENT

No alteration, modification or amendment of this Agreement shall be made except in writing and signed by the District and AQUA TEXAS.

G. NOTICE

Whenever the provisions of this Agreement require notice to be given, such notice 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 TEXAS shall be addressed to:

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

Notices required to be given to AQUA DEVELOPMENT shall be addressed to:

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

terminated in the manner set forth in B. 3 below. The "Effective Date" of this Agreement shall be deemed to be the earlier of (i) the date on which the District's Board of Directors accepts the assignment of this Agreement from Developer pursuant to Article V.H. above, or (ii) the date on which the first tap is made into the District's System. The Parties agree that they shall provide formal written notification to each other of the occurrence of either of such events, which written notification shall serve to formally establish the Effective Date of this Agreement.

B. TERMINATION

1. During Initial Term Without Cause. During the Initial Term of this Agreement, the District may terminate the Agreement without cause by giving written notice of termination to AQUA TEXAS by certified or registered mail, return receipt requested, or by fax with proof of receipt by AQUA TEXAS, at least ninety (90) days prior to termination, subject to the District's payment to AQUA TEXAS of the "Accelerated Payment" described in C. below.
2. During Initial Term With Cause. During the Initial Term of this Agreement, if the District determines that AQUA TEXAS has committed a material breach of this Agreement, the District may provide written notice of said breach ("Notice of Breach") to AQUA TEXAS by certified or registered mail, return receipt requested, or by fax with proof of receipt, setting forth a reasonable description of the purported material breach. AQUA TEXAS shall commence curing such purported material breach within fifteen (15) calendar days after receipt of such Notice of Breach and shall diligently pursue and complete such cure without unreasonable cessation of activities within sixty (60) days from the date of said Notice. In the event that AQUA TEXAS fails to cure the purported material breach within such sixty (60) day period, the District shall have the right to declare AQUA TEXAS in default of this Agreement and to proceed with the termination of same provided, however, if the breach is not reasonably susceptible to cure by AQUA TEXAS within such sixty (60) day period, the District agrees that it will not declare AQUA TEXAS in default of this Agreement and will not proceed with the termination of this Agreement so long as AQUA TEXAS has diligently pursued such cure within the foregoing sixty (60) days and diligently completes the work, without unreasonable cessation, within a reasonable time thereafter. The time authorized by this Agreement to cure the breach is the "Cure Period." The District shall provide written notice to AQUA TEXAS immediately upon acceptance of the cure of any such breach. Conversely, in the event that AQUA TEXAS fails to cure a material breach of this Agreement within the Cure Period provided for herein, the District shall have the right to declare AQUA TEXAS in default of this Agreement and to proceed with the termination of this Agreement, in which event the District shall not be required to make the Accelerated Payment to AQUA TEXAS as described in C. below.

As supplemental and additional means of termination of this Agreement during the Initial Term, the occurrence of any of the following events shall cause AQUA

the choice to either (i) require AQUA TEXAS to cure any outstanding breaches in accordance with the decision of the arbitration panel and to maintain this Agreement in force and effect, in which case AQUA TEXAS shall be responsible for paying all reasonable and verifiable costs incurred by the DISTRICT in connection with said arbitration proceedings, or (ii) terminate this Agreement thirty (30) days following the conclusion of such proceedings, or such other date as may be agreed to by the Parties or as specified in the proceedings, in which event the District shall not be required to pay AQUA TEXAS the Accelerated Payment described in C. below.

Conversely, if the District's position is not upheld, AQUA TEXAS shall have the choice to either (i) maintain this Agreement in force and effect for the remainder of the Initial Term, in which case the District shall be responsible for paying all reasonable and verifiable costs incurred by AQUA TEXAS in connection with said arbitration proceedings, or (ii) consent to the termination of this Agreement by the District and require that the District pay AQUA TEXAS the Accelerated Payment described in C. below, as and in the same manner as would be required if the Agreement was terminated without cause as described in B. 1. above. After the expiration of the Initial Term, the Accelerated Payment provisions in C. below shall no longer apply or be of any force or effect.

3. After the Initial Term. After the expiration of the Initial Term, either Party may terminate this Agreement at any time and for any reason, with or without cause, by giving written notice of termination by certified or registered mail, return receipt requested, or by fax with proof of receipt to the other Party, at least sixty (60) days prior to the effective date of termination.

C. ACCELERATED PAYMENT

In the event that the District elects to terminate this Agreement during the Initial Term (i) without cause, or (ii) with cause, but does not obtain a favorable ruling to support such termination in arbitration proceedings initiated by AQUA TEXAS pursuant to the provisions of Article VII hereunder, the District shall be required to pay AQUA TEXAS the "Accelerated Payment" described herein. The "Accelerated Payment" is intended to compensate AQUA TEXAS for the remaining value of the CCN rights assigned to Developer relative to the CCN Property to be included within the District, and equates to AQUA TEXAS' projected stream of net revenues remaining through the Initial 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.

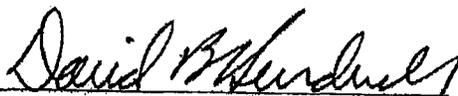
The Accelerated Payment shall be calculated by multiplying the number of then-current Connections within the District, plus the number of Remaining Projected Connections (as defined herein), by 50% of the then-current Base Rate calculated under Article III above, and then multiplying said figure by the number of months remaining under the Initial Term of this Agreement, and discounting said total sum back to the effective date of

controversy for arbitration, who shall, in turn, within five (5) days of their appointment select a third arbitrator. Failure of either Party or both Parties to timely select the required arbitrators shall result in their appointment, without selection from a panel, in accordance with the Commercial Rules of Arbitration of the American Arbitration Association. Failure of the two arbitrators to timely select a third arbitrator shall be resolved by selection from a panel of arbitrators in accordance with the Commercial Rules of Arbitration of the American Arbitration Association, with the Party instituting arbitration striking first from the panel. The arbitrators to whom any controversy which is subject to arbitration under the terms of this Agreement shall be submitted, in accordance with the provisions hereof, shall have jurisdiction and authority to determine the relevant facts and to interpret and apply the applicable provisions of this Agreement in accordance with the laws of the State of Texas. Such application or interpretation of the provisions of this Agreement must conform to the spirit and letter of this Agreement. No arbitrators shall have the jurisdiction or authority to add to, take from, nullify or modify any of the terms of this Agreement, either directly or indirectly, under the guise of interpretation. The arbitrators shall be bound by the evidence submitted to them in the hearing and may not go beyond the terms of this Agreement in rendering their decision. It is further understood and agreed that the power of the arbitrators shall be strictly limited to determining the relevant facts and the meaning and interpretation of the explicit terms of this Agreement, as relate only to the termination provisions, as herein expressly set forth, and that no arbitrators shall have the power to base any decision on any alleged practices or oral understandings not incorporated herein. This provision for arbitration is made pursuant to and in accordance with Chapter 171, Texas Civil Practice and Remedies Code, as amended, and subject to the limitations described in B, below, any decision shall be subject to judicial review, as therein provided. Within their power as herein limited and upon the concurrence of any two (2) of the three (3) arbitrators, the arbitrators may enter a decision based upon any remedy available to the parties pursuant to this Agreement. All arbitration proceedings hereunder, and all judicial proceedings to enforce any of the provisions hereof, shall take place in Montgomery County, Texas, unless otherwise mutually agreed by the Parties. Any expenses incurred by either Party in connection with any such arbitration proceedings shall be adjudged equitably among the Parties by the decision of the arbitrators. The arbitrators may, within their discretion, enter a decision or award requiring the provision of deposits or security by either Party in order to insure continued compliance with the terms of this Agreement.

B. FINALITY OF DECISION; APPEAL

A decision made by the arbitrators shall be final, conclusive and binding on the Parties, except that judicial review may be sought by any Party based solely on any claim by a Party that the decision or award of the arbitrators exceeds their power and authority herein, provides for a remedy not available to the Parties under the terms of this Agreement or requires a Party to take any action not authorized or permitted by the Act or other law.

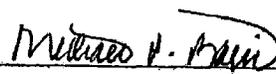
IN WITNESS WHEREOF, Developer (on behalf of the District), AQUA TEXAS and AQUA DEVELOPMENT have each caused this Agreement to be executed by their duly authorized officers in multiple counterparts, each of which shall be deemed an original, effective as of the date first written above.



DAVID B. HENDRICKS

HOUSTON INTERCONTINENTAL TRADE
CENTER, a Texas limited partnership

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

By: 

Name: Michael P. Barsi

Title: President

EXHIBIT "A"

SCHEDULE OF FEES

The following fees or charges shall be paid to AQUA TEXAS for services provided to the District in accordance with the terms of this Agreement:

Sanitary Sewer Inspection	\$ 50.00 each
Customer Service Inspections	
Residential	\$ 50.00 each
Commercial	Per written quote based upon size and nature of construction and extent of services required
Backflow Prevention Device Inspections	\$ 50.00 each

*The fees or charges set forth on this Exhibit "A" may be adjusted from time to time throughout the term of this Agreement, upon the mutual written consent of AQUA TEXAS and the District, to ensure that AQUA TEXAS is compensated fairly for the services provided consistent with the general industry standards in the Conroe, Texas area.

5. Additionally, the transfer necessitates Aqua Texas seek decertification of certain areas outside the MUD 126 boundaries which it will not be able to serve after transferring the agreed upon CCN areas to MUD 126. These areas are very small strips of land on the west side of MUD 126. The agreement w/ MUD 126 does not address these issues as the issue was not known at the time of the agreement. MUD 126 has informed Aqua Texas that it does not want these areas outside its boundaries to be part of its CCN. Aqua Texas is not certain whether these small areas are physically able to be served by anyone and is not aware of a current need for service in those areas. However, if a need arises, other entities will be free to serve them if desired and part of those areas may already lie within CCN service areas held by the City of Conroe. Aqua Texas does not seek compensation from any other entity as consideration for voluntarily releasing these small areas. No property will be rendered useless or valueless to Aqua Texas as a result of these minor decertifications.

6. Aqua Texas does not now, nor has it ever, supplied drinking water or wastewater collection/treatment for customers within the portions of CCN No. 13203 or 21065 for which it seeks transfer or decertification and has no facilities located in those locations. An affiliate of Aqua Texas, Aqua Operations, Inc., has served as a contract operator for MUD 126 in the areas proposed for transfer, but Aqua Texas has not acted as the retail public utility or installed any facilities of its own within those areas. No existing Aqua Texas customers will be affected by the transfer agreed upon by Aqua Texas and MUD 126 or by the decertification proposed.