

Control Number: 46380



Item Number: 1

Addendum StartPage: 0

**AQUA TEXAS, INC.'S NOTICE OF
INTENT TO PROVIDE RETAIL
SEWER UTILITY SERVICE TO AREA
DECERTIFIED FROM GULF COAST
WASTE DISPOSAL AUTHORITY,
CERTIFICATE OF CONVENIENCE
AND NECESSITY NO. 20465, IN
CHAMBERS COUNTY**

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**BEFORE THE PUBLIC UTILITY
COMMISSION OF TEXAS**
2016 SEP 19 PM 3:51
PUBLIC UTILITY COMMISSION
FILED CLERK

**AQUA TEXAS, INC.'S NOTICE OF INTENT TO PROVIDE RETAIL SEWER UTILITY
SERVICE TO TRACT DECERTIFIED FROM GULF COAST WASTE DISPOSAL
AUTHORITY**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, Aqua Texas, Inc. d/b/a Aqua Texas ("Aqua" or "Applicant") and files this Notice of Intent to Provide Retail Sewer Utility Service ("NOI" or "Application") to property previously decertified from Gulf Coast Waste Disposal Authority's ("GCWDA") Certificate of Convenience and Necessity ("CCN") No. 20465 in Chambers County, Texas, by expedited release in P.U.C. Docket No. 45337. In support thereof, Aqua would show the following.

I. PURPOSE OF NOTICE OF INTENT

Texas Water Code (TWC) §13.254(d)-(e) and P.U.C. SUBST. R. §24.113(h)-(i) set forth a procedure by which a retail public utility seeking to provide retail water or sewer service to an area decertified under TWC §13.254 or P.U.C. SUBST. R. §24.113 must provide a notice of intent to provide such service to the Commission prior to commencing same. The purpose of this NOI is to enable the Commission to consider whether compensation must be paid to the decertified CCN holder for any property the commission determines is rendered useless or valueless to the decertified retail public utility as a result of the decertification before the intended service is

provided by the new retail public utility filing the NOI. The Commission has recently clarified that there may be cases where no property is rendered useless or valueless by a decertification.¹ In such cases, Aqua submits the appraisal process set forth elsewhere within TWC §13.254 and P.U.C. SUBST. R. §24.113 is not necessary.

II. NOTICE OF INTENT TO SERVE DECERTIFIED PROPERTY

Aqua hereby provides notice that it intends to provide retail sewer utility service within the 94.247 acres released from CCN No. 20465 by expedited decertification in Docket No. 45337 (the “Property”).² Here, however, the property and compensation issues are undisputed.

GCWDA is the decertified sewer CCN holder for the Property and GCWDA has determined that no property was rendered useless or valueless as a result of the decertification by expedited release approved in Docket No. 45337.³ The sewer CCN release for the Property occurred with GCWDA’s consent.⁴ GCWDA’s counsel has reviewed and approved this NOI filing. Applicant is sending a copy of this Application to GCWDA on the same day as its submission to the Commission so that this NOI to the Commission also provides notice to GCWDA of Aqua’s intent to provide retail sewer utility service to the Property.

For all these reasons, Aqua seeks Commission approval to provide retail sewer utility service to the Property as may be permitted by other applicable law without providing compensation to GCWDA or seeking out an appraisal for same. Aqua respectfully requests that

¹ PUC Docket No. 45679 (Zipp Road Utility Company LLC’s Notice of Intent to Provide Sewer Service to Area Decertified from Guadalupe-Blanco River Authority in Guadalupe County) Item No. 25 Memorandum from Commissioner Anderson.

² PUC Docket No. 45337 (Petition by LGI Home-Texas, LLC to Amend Gulf Coast Waste Disposal Authority Certificate of Convenience and Necessity No. 20465 in Chambers County by Expedited Release), Item No. 11 (Notice of Approval). Aqua notes that GCWDA did not and does not hold a water CCN that includes the Property. Thus, this NOI relates to Aqua sewer service only.

³ **Exhibit A** (Affidavit of Ricky Clifton).

⁴ *Id.*

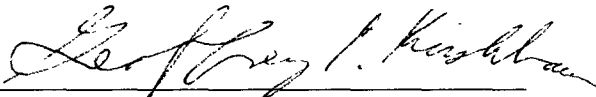
the Commission approve this matter administratively as an uncontested application without a hearing through informal disposition under P.U.C. PROC. R. 22.35 after applicable time frames are met so that Aqua is approved to begin service as soon as possible.

III. CONCLUSION

Aqua respectfully requests the Commission accept this Notice of Intent as administratively complete, proceed with processing, and approve this Application expeditiously so the Property decertified by expedited release from Gulf Coast Waste Disposal Authority CCN No. 20465 in Docket No. 45337 may receive retail sewer utility service from Aqua. If for any reason the Commission finds the information submitted with this Application is insufficient, Applicant respectfully request it be notified immediately and provided an opportunity to cure any deficiencies identified.

Respectfully submitted,

TERRILL & WALDROP

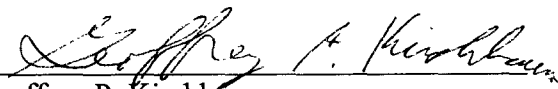
By: 

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 September 19, 2016 in accordance with P.U.C. Procedural Rule 22.74.


Geoffrey P. Kirshbaum

**AFFIDAVIT OF RICKY CLIFTON
ON BEHALF OF GULF COAST WASTE DISPOSAL AUTHORITY
IN SUPPORT OF AQUA TEXAS NOTICE OF INTENT TO SERVE -
LGI HOMES – TEXAS, L.L.C. PROPERTY**

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Ricky Clifton, whose identity is known to me. Upon being duly sworn he stated:

1. My name is Ricky Clifton. I am of sound mind and capable of making this Affidavit. The facts stated in this Affidavit are within my personal knowledge and are true and correct.

2. I am the General Manager of Gulf Coast Waste Disposal Authority ("GCA"), a political subdivision of the State of Texas created by the Texas Legislature in 1969. I have held that position since January 13, 2011.

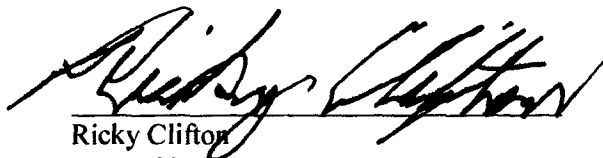
3. **Exhibit 1** attached hereto and incorporated by reference (all exhibits are hereafter attached hereto and incorporated by reference) is an agreement reached between GCA and Aqua Texas, Inc. d/b/a Aqua Texas ("Aqua Texas") in November 2015 ("Aqua Texas Agreement"). GCA holds sewer Certificate of Convenience and Necessity ("CCN") No. 20465 which includes service areas in Chambers, Galveston, and Harris Counties, Texas. GCA does not possess a water CCN covering property within its sewer CCN No. 20465 area. The Aqua Texas Agreement provides that GCA consents for Aqua Texas to provide sewer service within a portion of the area in Chambers County, as more particularly described in the Aqua Texas Agreement as the Subject Area and for Aqua Texas to seek Public Utility Commission of Texas ("PUC") approval for a sewer CCN for the Subject Area. The Subject Area includes property owned by LGI Homes—Texas, L.L.C. ("LGI") that was the subject of the Petition for Expedited Release filed by LGI in PUC Docket No. 45337 ("Petition") (the "LGI Property").

4. **Exhibit 2** is an agreement GCA entered into with LGI in September 2015 ("LGI Agreement"), which was included with the Petition. In the LGI Agreement, GCA agreed that it would not oppose a petition to the PUC to release the LGI Property from sewer CCN No. 20465.

5. GCA understands that water or sewer service within a quarter mile by Aqua Texas without a CCN may be feasible for at least a portion of the LGI Property. GCA consents to such service to the LGI Property without a CCN as may be otherwise permitted under applicable law.

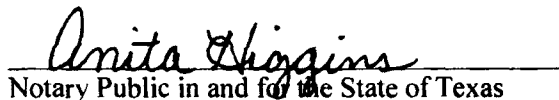
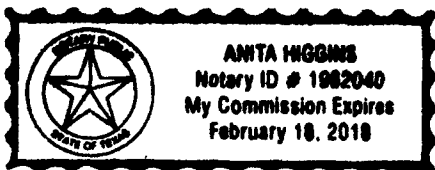
6. GCA notes that Aqua Texas has committed to reimburse it for certain legal expenses incurred as a result of the LGI Petition and other decertification applications within the Subject Area specified in the Aqua Texas Agreement. Otherwise, GCA has determined that no GCA property was rendered useless or valueless as a result of the decertification by expedited release approved in PUC Docket No. 45337, no compensation is owed to GCA for same, and no appraisal is needed to determine just compensation owed to GCA for the release in response to Aqua Texas' Notice of Intent to Serve the released LGI Property. GCA has no wastewater treatment or collection facilities to provide sewer service in the immediate area of the LGI Property and GCA has not made plans to install same.

Further affiant sayeth not.



Ricky Clifton
General Manager
Gulf Coast Waste Disposal Authority

SWORN TO and SUBSCRIBED before me by Ricky Clifton on August 15, 2016.



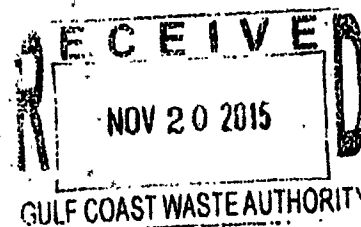
Notary Public in and for the State of Texas

My commission expires: February 18, 2018

AQUA

November 17, 2015

Mr. Ricky Clifton
General Manager
Gulf Coast Waste Disposal Authority
910 Bay Area Boulevard
Houston, Texas 77058



Re: Request to Remove Certain Properties from Sewer Certificate of Convenience and Necessity (CCN) No. 20465

Dear Mr. Clifton:

Aqua Texas, Inc. d/b/a Aqua Texas ("Aqua") has received several requests for sewer service from landowners within a certain area covered by the Gulf Coast Waste Disposal Authority ("Authority") CCN No. 20465. The landowners requesting sewer service from Aqua are all within the area identified as "Proposed CCN Decertification" indicated in blue and outlined in black on Attachment "A" ("Subject Area").

To allow Aqua to provide sewer service to landowners within the Subject Area, Aqua and the Authority hereby agree as follows:

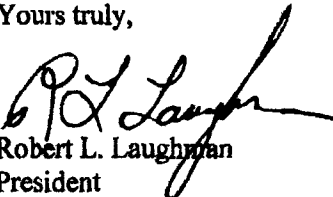
1. The Authority does not currently have sewer lines or wastewater treatment facilities in the immediate area of the Subject Area or plans to install same such that it is reasonable for the Authority to cooperate with Aqua to remove land within the Subject Area from CCN No. 20465.
2. To allow Aqua to provide sewer service to landowners within the Subject Area, Aqua has asked the Authority to seek approval from the PUC for decertification of the Subject Area from CCN No. 20465 via an application prepared and prosecuted for the Authority by Aqua for land within the Subject Area not otherwise decertified from CCN No. 20465 through expedited release pursuant to Texas Water Code Section 13.254 (a-1) or (a-5).
3. Based upon Aqua's commitments set out below, the Authority agrees to seek the requested PUC approval and cooperate with Aqua as Aqua prosecutes the application(s) through the PUC. Aqua commits to the Authority that Aqua will prepare and provide drafts of any necessary applications to the Authority for review and comment by no later than January 31, 2016, and will provide final documents to the Authority for signature by no later than February 29, 2016, as the current CCN holder in the Subject Area. Aqua agrees that the applications will

be filed with the PUC by March 4, 2016. The Authority acknowledges that it will coordinate with Aqua and provide any necessary public information about the Authority that Aqua needs to prepare the applications and any such information that is requested by the PUC to remove the Subject Area from CCN No. 20465. Aqua commits to the Authority that it will be responsible for preparing the appropriate administratively and technically complete applications and will undertake all necessary coordination with the PUC, respond to all requests for information from the PUC and be responsible for all required notices necessary to remove the Subject Area from CCN No. 20465 except for expedited release petitions filed for property within the Subject Area by landowners. Aqua shall reimburse the Authority for its legal expenses incurred related to submittal of applications and acceptance of expedited releases for removal of land within the Subject Area from CCN No. 20465 up to \$8,000.00. Aqua shall reimburse the Authority for its legal expenses incurred related to prosecution of the applications up to \$2,000.00.

4. To allow Aqua to provide sewer service to landowners within the Subject Area, the Authority agrees that once petitions for expedited release and an application or applications have been filed with the PUC to remove the land within the Subject Area from CCN No. 20465, Aqua may file an application or applications with the PUC to amend Aqua's CCN to add the land within the Subject Area to Aqua's CCN and the Authority consents to and will not contest any such applications.

Should any protest be filed with the PUC to the applications or should the PUC deny any applications needed to accomplish removal of the Subject Area or any portion thereof or should Aqua or the Authority fail to cooperate with each other as described herein, including but not limited to failure by Aqua to remit payment within sixty (60) days following written request by the Authority for reimbursement of legal expenses incurred by the Authority as described above, the acknowledgements and agreements in this letter are subject to revocation by either Aqua or the Authority by sending written notice to the other entity.

Yours truly,

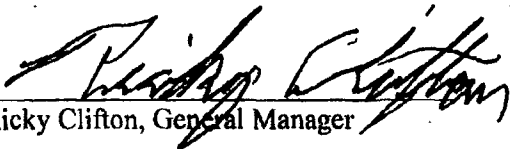


Robert L. Laughman
President

Aqua Texas, Inc, d/b/a Aqua Texas

Mr. Clifton
November 17, 2015
Page 3

AGREED AND ACCEPTED:
GULF COAST WASTE DISPOSAL AUTHORITY

By:  Date: 11/23/15
Ricky Clifton, General Manager

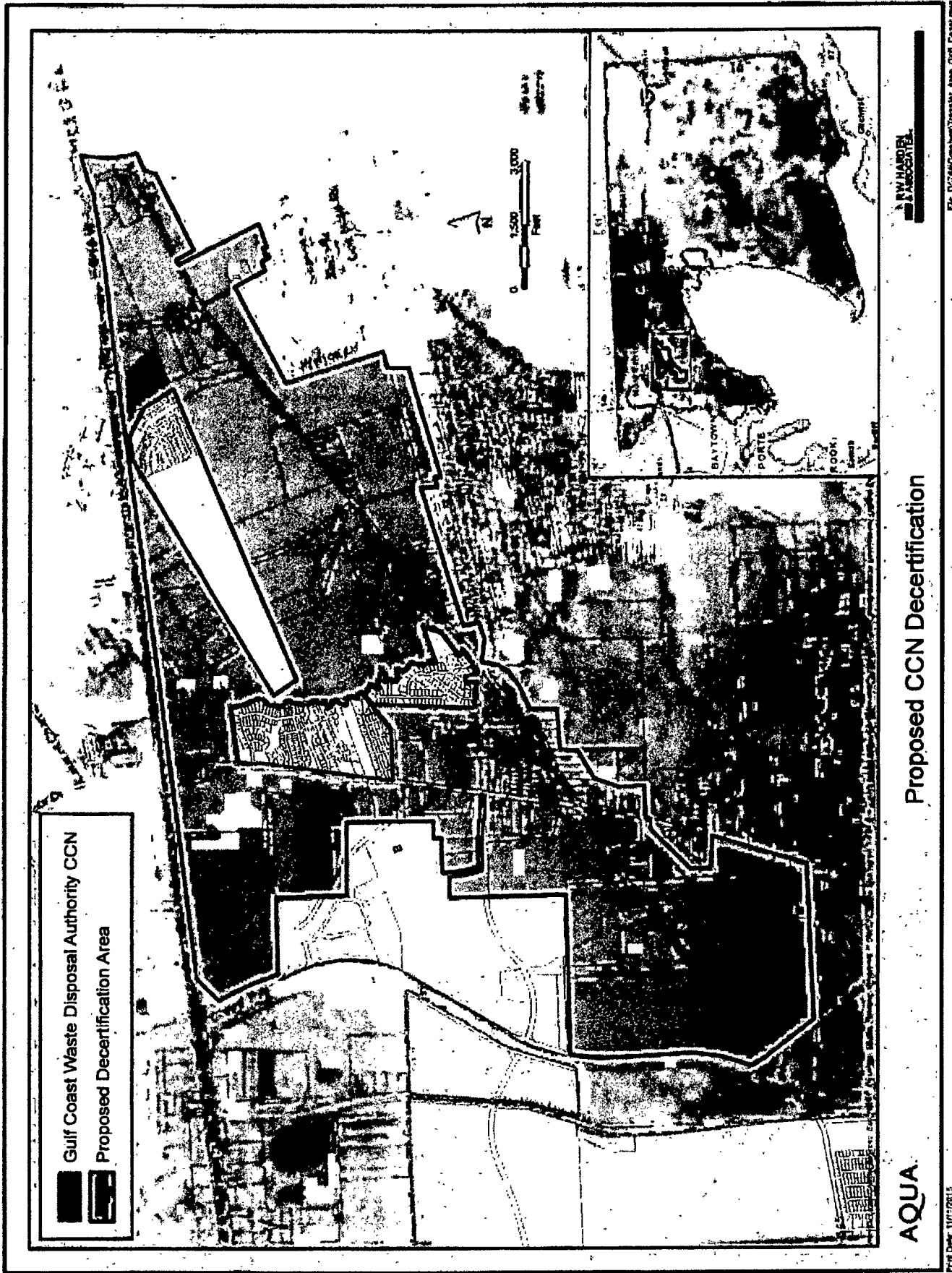
Enclosure - Attachment "A"

cc: Geoff Kirshbaum, The Terrill Firm, P.C.
Sara Burgin, Bracewell & Giuliani LLP

Mr. Clifton
November 17, 2015
Page 4

ATTACHMENT "A"

SUBJECT AREA MAP



Proposed CCN Decertification

AQUA

ENVIRONMENTAL
ENGINEERING

Exhibit 2



1450 Lake Robbins Drive, Suite 430
The Woodlands, TX 77380
Tel: 281.362.8998
Fax: 281.210.2601
lgihomes.com

September 11, 2015

Mr. Ricky Clifton
Gulf Coast Waste Disposal Authority
910 Bay Area Boulevard
Houston, Texas 77058

Re: Request for Agreement Not to Object to Petition

Dear Mr. Clifton:

The purpose of this letter is to seek Gulf Coast Waste Disposal Authority's ("Authority") agreement that it will not object to a petition to be filed by LGI Homes-Texas, LLC ("LGI Homes") with the Public Utility Commission of Texas ("PUC") for expedited release of approximately 95.053 acres of land in Chambers County, Texas, more particularly described as a 87.247 acre tract and a 7.806 acre tract on the attached Exhibit A ("Subject Property") from Certificate of Convenience and Necessity ("CCN") No. 20465 held by the Authority to provide sewer service in Chambers County, and subsequent inclusion of the Subject Property into the CCN service area of another service provider.

It is the understanding of LGI Homes that the Authority does not currently have wastewater treatment facilities in the immediate area to provide sewer service to the Subject Property. LGI Homes intends to begin development of the Subject Property soon after the purchase and will need sewer service. By its execution below, the Authority hereby evidences that it does not and covenants that it shall not object to either (i) the expedited release of the Subject Property from the Authority's CCN, or (ii) the Subject Property's subsequent receipt of sewer service from another entity, as long as LGI Homes receives final PUC approval and acknowledgement that the Subject Property is no longer within the Authority's CCN. LGI Homes shall promptly forward evidence of such release to the Authority following its receipt thereof.

LGI Homes has determined that once it owns the Subject Property, LGI Homes will be eligible to file a petition for expedited release with the PUC pursuant to Texas Water Code Section 13.254(a-1) or (a-5) and to subsequently include the Subject Property into the certificate of convenience and necessity service area of another service provider. LGI Homes intends to file such a petition(s) for expedited release as soon as it finalizes the purchase. LGI Homes recognizes that it is responsible for filing a complete petition with the PUC and to timely respond to any inquiries of the PUC until the Subject Property is released.

It is the Authority's understanding that in signing this letter and agreeing not to object to expedited release of the Subject Property, the Authority will not be required to file or participate in the filing of any application for Sale, Transfer Merger or Amendment of any portion of its CCN No. 20465 related to the Subject Property. However, the Authority acknowledges and agrees that to the extent permitted by the PUC, LGI may file or cause to be filed applications with the PUC as necessary to receive sewer service from another provider, which application may be subject to PUC approval and acknowledgement that the Subject Property is no longer within the Authority's CCN.

LGI Homes requests that the Authority sign this letter at the signature block below indicating its agreement and acknowledgement that the Authority does not and will not object to LGI Homes' filing of a

Gulf Coast Waste Disposal Authority
September 11, 2015
Page 2

petition for expedited release of the Subject Property from CCN No. 20465 or the Subject Property's subsequent inclusion in the certificate of convenience and necessity service area of an another service provider. By his/her execution below, the undersigned covenants and agrees that s/he has the requisite authority to execute this letter on behalf of the Authority.

Very truly yours,



LGI Homes Texas, LLC

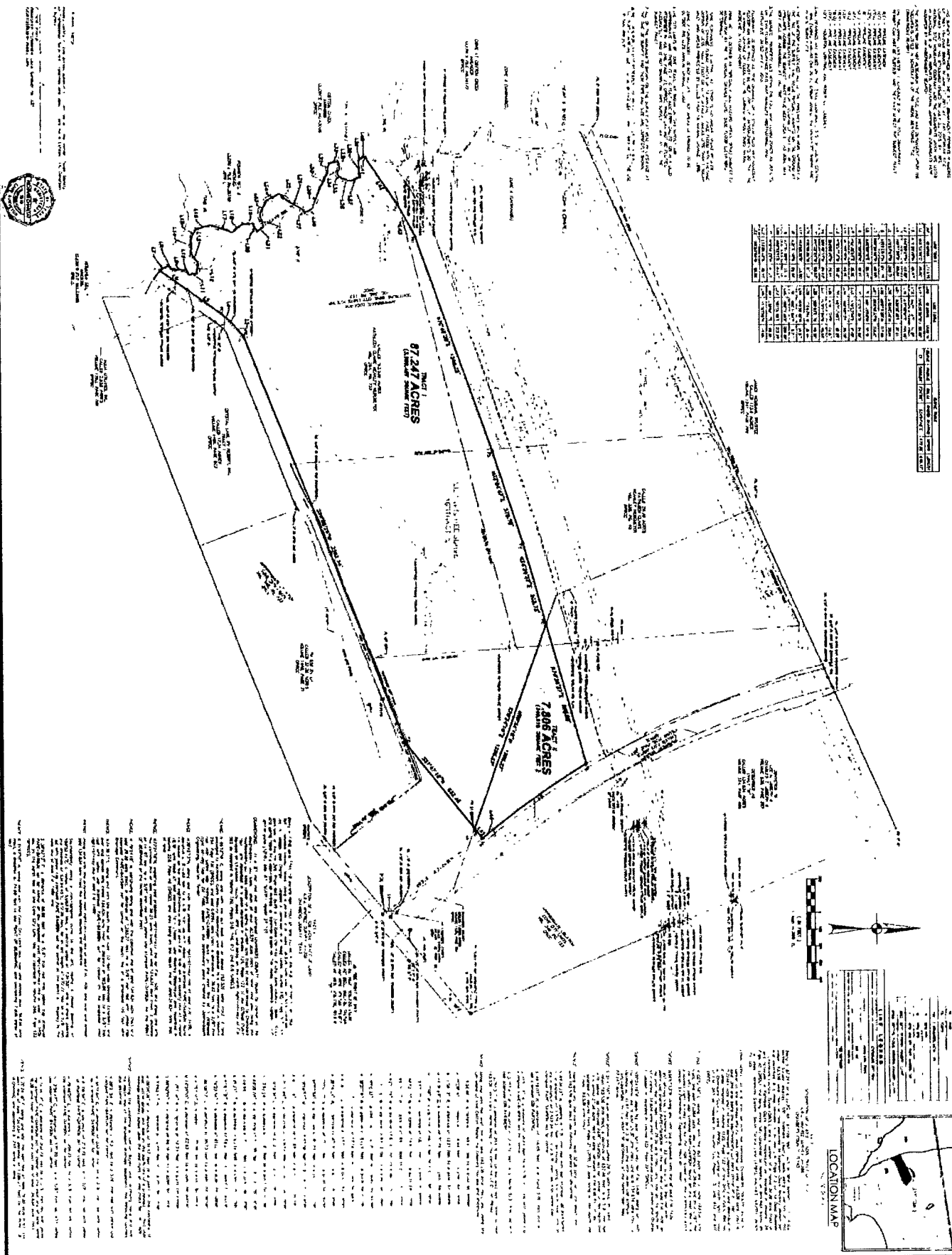
Attachment

AGREED AND ACCEPTED:
GULF COAST WASTE DISPOSAL AUTHORITY

By: 

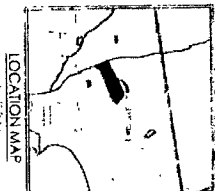
Ricky Clifton, General Manager

Date: 9/11/15



ACRES		SQUARE FEET	
TRACT	ACRES	SQ. FT.	PERCENT
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TRACT 2	7.806	337,000	100.00
TOTAL	95.053	4,137,000	100.00

DEED RECORD	
BOOK	PAGE
100	100
101	101
102	102
103	103
104	104
105	105
106	106
107	107
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112	112
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LAND TITLE SURVEY
95.053 ACRES
A.B.J. WINFREE SURVEY, ABSTRACT 306
CHAMBERS COUNTY, TEXAS

PAPE-DAWSON ENGINEERS
SURVEYORS
1001 N. W. 10th St., Ft. Worth, Texas 76102
(817) 335-1111

EXHIBIT "A"