



Control Number: 47587



Item Number: 1

Addendum StartPage: 0



PURSUANT TO PUC CHAPTER 24, SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS, SUBCHAPTER G: CERTIFICATES OF CONVENIENCE AND NECESSITY

Application to Obtain or Amend a Water or Sewer Certificate of Convenience and Necessity (CCN)

Docket Number: **47587**

(this number will be assigned by the Public Utility Commission after your application is filed)

7 copies of the application, including the original, shall be filed with

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

RECEIVED
2017 SEP - 5 PM 4:12
PUBLIC UTILITY COMMISSION
FILING CLERK

If submitting digital map data, two copies of the portable electronic storage medium (such as CD or DVD) are required.

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Application to Obtain or Amend a Water or Sewer Certificate of Convenience and Necessity (CCN)

Purpose of Application		
<input type="checkbox"/> Obtain	<input type="checkbox"/> New Water CCN	<input type="checkbox"/> New Sewer CCN
<input checked="" type="checkbox"/> Amend	<input checked="" type="checkbox"/> Water CCN# (s)	<u>11234 (City of Aubrey); 11856 (Mustang S.U.D.)</u>
<input checked="" type="checkbox"/> Amend	<input checked="" type="checkbox"/> Sewer CCN#(s)	<u>20491 (City of Aubrey); 20930 (Mustang S.U.D.)</u>

1. Applicant Information

Applicant	
Utility name: City of Aubrey	
Certificate number: 11234; 20491	
Street address (City/ST/ZIP/Code): 107 S. Main St.	
Mailing address(City/ST/ZIP/Code): Aubrey, TX 76227	
Utility Phone Number and Fax: (940) 440-9343	
Contact information	
Please provide information about the person(s) to be contacted regarding this application. Indicate if this person is the owner, operator, engineer, attorney, accountant manager, or other title related to the applicant.	
Name: Stephen C. Dickman	Title: Attorney
Mailing address: 6005 Upvalley Run; Austin, TX 78731	
Email: sdickmanlaw@att.net	Phone and Fax: (512) 922-7137
List all counties in which service is proposed: Denton	

A. Check the appropriate box and provide information regarding the legal status of the applicant:

- Investor Owned Utility Individual Partnership
- Home or Property Owners Association For-profit Corporation
- Non-profit, member-owned, member-controlled cooperative corporation
(Water Code Chapter 67, Water Supply or Sewer Service Corporation)
- Municipality District Other - Please explain:

B. If the applicant is a For-Profit business or corporation, please include the following information:

- i. A copy of the corporation's "Certification of Account Status" from the Texas State Comptroller of Public Accounts.
- ii. The corporation's charter number as recorded with the Office of the Texas Secretary of State: _____
- iii. A listing of all stockholders and their respective percentages of ownership.
- iv. A copy of the company's organizational chart, if available.
- v. A list of all directors and disclose the title of each individual.
- vi. A list of all affiliated organizations (if any) and explain the affiliate's business relationship with the applicant.

C. If the applicant is a Texas Water Code (TWC) Chapter 67 water supply or sewer service corporation please provide:

- i. A copy of the Articles of Incorporation and By-Laws.
- ii. The corporation's charter number as recorded with the Office of the Texas Secretary of State.
- iii. Identification of all board members including name, address, title, and telephone number.
- iv. A copy of the corporation's *Certificate of Account Status* from the Texas Comptroller of Public Accounts.

2. Location Information

- A. Are there people already living in the proposed area? Yes No
- If YES, are any currently receiving utility service? Yes No
- If YES, from WHOM? Mustang S.U.D. (see Attachment 1)

B. Demonstrate the Need for Service by providing the following:

Have you received any requests for service in the requested service area?

Yes No

If YES, provide the following: See Attachment 2

- i. Describe the service area and circumstances driving the need for service in the requested area. Indicate the name(s) and address(es) of landowner(s), prospective landowner(s), tenant(s), or resident(s) that have requested service; and/or
- ii. Describe the economic need(s) for service in the requested area (i.e. plat approvals, recent annexation(s) or annexation request(s), building permits, septic tank permits, hospitals, etc.); and/or
- iii. Discuss in detail the environmental need(s) for service in the requested area (i.e. failing septic tanks in the requested area, fueling wells, etc.); and/or
- iv. Provide copies of any written application(s) or request(s) for service in the requested area; and/or
- v. Provide copies of any reports and/or market studies demonstrating existing or anticipated growth in the requested area.
- vi. If none of these items exist or are available, please justify the need for service in the proposed area in writing.

Note: Failure to demonstrate a need for additional service in the proposed service area may result in the delay and /or possible denial of the application.

C. Is any portion of the proposed service area inside an incorporated city or district?

Yes No

If YES, within the corporate limits of: City of Aubrey; Mustang S.U.D.

Provide a copy of any franchise, permit, or consent granted by the city or district. If not available please explain:

Mustang S.U.D. has agreed to the transfer of the subject area from its water and sewer CCNs to the City of Aubrey's water and sewer CCNs. See copy of March 27, 2017 Transfer and Service Agreement provided as Attachment 3.

D. Is any portion of the proposed service area inside another utility's CCN area?

Yes No

If YES, has the current CCN holder agreed to decertify the proposed area?

Yes - See Attachment 3

If NO, are you seeking dual or single certification of the area? Explain why decertification of the area is in the public interest:

The northern approx. 25% portion of the subject tract is currently dually certificated to both the City of Aubrey and Mustang S.U.D. This application is requesting the transfer of the southern approx. 75% portion of the subject tract to the City of Aubrey's water CCN No. 11234 and sewer CCN No. 20491 from Mustang S.U.D.'s water CCN No. 11856 and sewer CCN No. 20930, and the release of the northern 25% portion of the subject tract from Mustang S.U.D.'s water CCN No. 11856 and sewer CCN No. 20930.

3. Map Requirements

Attach the following hard copy maps with each copy of the application:

- A. A location map delineating the proposed service area with enough detail to accurately locate the proposed area within the county. See Maps provided in Attachment 4
- B. A map showing only the proposed area by: See Maps provided in Attachment 5
 - i. metes and bounds survey certified by a licensed state or register professional land surveyor; or
 - ii. projectable digital data with metadata (proposed areas should be in a single record and clearly labeled). Also, a data disk labeled with the applicant's name must be provided; or
 - iii. following verifiable natural and man-made landmarks; or
 - iv. a copy of recorded plat map with metes and bounds.
- C. A written description of the proposed service area. See Attachment 6
- D. Provide separate and additional maps of the proposed area(s) to show the following: See Attachment 7
 - i. all facilities, illustrating separately facilities for production, transmission, and distribution of the applicant's service(s); and
 - ii. any facilities, customers or area currently being served outside the applicant's certificated area(s).

Note: Failure to provide adequate mapping information may result in the delay or possible denial of your application.

Digital data submitted in a format other than ArcView shape file or Arc/Info E00 file may result in the delay or inability to review applicant's mapping information.

For information on obtaining a CCN base map or questions about sending digital map data, please visit the Water Utilities section of the PUC website for assistance.

4. New System Information or Utilities Requesting a CCN for the First Time

- A. Please provide the following information: N/A
 - i. a list of public drinking water supply system(s) or sewer system(s) within a 2 mile radius of the proposed system;
 - ii. copies of written requests seeking to obtain service from each of the public drinking water systems or sewer systems listed in a. 1 above or documentation that it is not economically feasible to obtain service from each entity;
 - iii. copies of written responses from each system or evidence that they did not reply; and
 - iv. for sewer utilities, documentation showing that you have obtained or applied for a wastewater discharge permit.
- B. Were your requests for service denied? Yes No

- i. If yes, please provide documentation of the denial of service and go to c.
 - ii. If no, please provide a detailed analysis which justifies your reasons for not accepting service. A separate analysis must be prepared and submitted for each utility that granted your request for service.
- C. Please summarize how the proposed utility system will be constructed and describe each projected construction phase, if any:

D. Date of plat approval, if required: _____
 Approved by: _____

E. Date Plans & Specifications submitted to the TCEQ for approval:
 _____ Attach copy of approval letter, if available. If the letter is not available by the time your CCN application is submitted, please supplement your application with a copy of the letter once you receive it from the TCEQ.

F. Date construction is scheduled to commence: _____

G. Date service is scheduled to commence: _____

5. Existing System Information

A. Please provide the following information for each water and/or sewer system, attach additional sheets if necessary.

i. Water system(s): TCEQ Public Water System identification number(s):

0	6	1	0	0	0	1																				

ii. Sewer system(s): TCEQ Discharge Permit number(s)

TCEQ Water System			TCEQ Sewer System		
Other:			Other:		
Total Water	1,184	300	Total Sewer	1,135	300

E. If this application is for a water CCN only, please explain how sewer service is or will be provided:

This application is for both a water and sewer CCN for the City of Aubrey (transferred from Mustang S.U.D.'s existing CCN areas).

F. If this application is for a sewer CCN only, please explain how water service is or will be provided:

This application is for both a water and sewer CCN for the City of Aubrey (transferred from Mustang S.U.D.'s existing CCN areas).

G. Effect of Granting a Certificate Amendment. See Attachment 10.
 Explain in detail the effect of granting of a certificate or an amendment, including, but not limited to regionalization, compliance and economic effects on the following:

- i. the applicant,
- ii. any retail public utility of the same kind already serving the proximate area; and
- iii. any landowner(s) in the requested area.

H. Do you currently purchase or plan to purchase water or sewer treatment capacity from another source?

- i. No, (skip the rest of this question and go to #6)
- ii. Yes, Water

Purchased on a Regular Seasonal Emergency basis?

Water Source	% of Total Treatment
100,000-gal. contract with U.T.R.W.D. for emergencies	0.00%

Water Source	% of Total Treatment
	0.00%
	0.00%

- iii. Yes, Sewer treatment capacity
Purchased on a Regular Seasonal Emergency basis?

Sewer Source	% of Total Treatment
(No purchase of sewer treatment capacity)	0.00%
	0.00%
	0.00%

iv. Provide a signed and dated copy of the most current water or sewer treatment capacity purchase agreement or contract. See Attachment 11.

I. Ability to Provide Adequate Service. See Attachment 12.

Describe the ability of the applicant to provide adequate service, including meeting the standards of the commission, taking both of the following items into consideration:

- i. the current and projected density; and
- ii. the land use of the requested area.

II. Effect on the Land. Explain the effect on the land to be included in the certificated area.

The effect on the land will be to allow the City of Aubrey to provide retail water and sewer service to the 172 acres of land as it fully develops. The service will be more cost effective for the landowners as it will be a natural extension of the City's existing water and sewer systems rather than having to have Mustang S.U.D. provide lengthier and more costly extensions of Mustang S.U.D.'s existing water and sewer lines.

6. Financial Information

- A. For new water and/or sewer systems and for applicants with existing CCNs who are constructing a new stand-alone water and/or sewer system:
 - i. the applicant must provide an analysis of all necessary costs for constructing, operating, and maintaining the system, and the source of that capital (such as a financial statement for the developing entity) for which the CCN is requested for at least the first five years. In addition, if service has been offered by an existing retail water service provider as stated in #4.A., but the applicant has determined that the cost of service as finally offered renders the project not economically feasible, the applicant must provide a comparison analysis of all necessary costs for acquiring and continuing to receive service from the existing system for the same period.
 - ii. Attach projected profit and loss statements, cash flow worksheets, and balance sheets (projected five year financial plan worksheet is attached) for each of the first five years of operation. Income from rates

should correlate to the projected growth in connections, shown on the projected profit and loss statement.

- iii. Attach a proposed rate schedule or tariff. Describe the procedure for determining the rates and fees and indicate the date of last change, if applicable. Attach copies of any cost of service studies or rate analysis worksheets.
- B. For existing water and/or sewer systems:
 - i. Attach a profit and loss statement and current balance sheet for existing businesses (end of last fiscal year is acceptable). Describe sources and terms for borrowed capital such as loans, bonds, or notes (profit and loss and balance sheet worksheets are attached, if needed). See Attachment 13.
 - ii. Attach a proposed rate schedule or tariff. See Attachment 14.
- C. **Note: An existing water and/or sewer system may be required to provide the information in 6.A.i. above during the technical review phase if necessary for staff to completely evaluate the application**
- C. Identify any funds you are required to accumulate and restrict by lenders or capital providers. None.
- D. In lieu of the information in #6.A. thru #6.C., you may provide information concerning loan approvals within the last three (3) years from lending institutions or agencies including the most recent financial audit of the applicant. See Attachment 15.
- ❖ **Note: Failure to provide adequate financial information may result in the delay or possible denial of your application.**

7. Notice Requirements

- A. All proposed notice forms must be completed and submitted with the application. Do not mail or publish the notices until you receive written approval from the commission to do so.
- B. The commission cannot grant a CCN until proper notice of the application has been given. Commission rules do not allow a waiver of notice requirements for CCN applicants.
- C. It is the applicant's responsibility to ensure that proper notice is given to all entities that are required to receive notice.
- D. Recommended notice forms for publication, neighboring cities and systems, landowners with 25 acres or more, and customers are included with this application for use in preparing proposed notices. (Notice forms are available in Spanish upon request.)
- E. After reviewing and, if necessary, modifying the proposed notice, the commission will send the notice to the applicant after the application is accepted for filing along with instructions for publication and/or mailing. Please review the notice carefully before providing the notice.
- F. Notice For Publication:
The applicant shall publish the notice in a newspaper with general circulation in the county(ies) where a CCN is being requested. The notice must be published once each week for two consecutive weeks beginning with the week after the notice is received from the commission. Proof of publication in the form of a publisher's affidavit shall be submitted to the commission within 30 days of the last publication date. The affidavit shall state with specificity each county in which the newspaper is of general circulation.
- G. Notice To Neighboring Utilities:
 - i. List all neighboring retail public utilities and cities providing the same utility service within the following vicinities of the applicant's proposed certificate area.
 - ii. For applications for the issuance of a NEW CCN, the applicant must mail the notice with a copy of the proposed CCN map to all cities and neighboring retail public utilities providing the same utility service within five (5) miles of the requested service area.

- iii. For applications for the AMENDMENT of a CCN, the applicant must mail the notice with a copy of the proposed CCN map to all cities and neighboring retail public utilities providing the same utility service within two (2) miles of the requested service area. See Attachment 16.
- H. Notice to Customers:
Investor Owned Utilities (IOUs) that are currently providing service without a CCN must provide individual mailed notice to all current customers. The notice must contain the current rates, the date those rates were instituted and any other information required in the application.
- I. The commission may require the applicant to deliver notice to other affected persons or agencies.

Do not publish or send copies of the proposed notices to anyone at the time you submit the application to the commission. Wait until you receive written authorization to do so. Authorization occurs after the commission has reviewed the notices for completeness, and your application has been accepted for filing. Once the application is accepted for filing, you will receive written authorization to provide notice. Please check the notices for accuracy before providing them to the public. It is the applicant's burden to ensure that correct and accurate notice is provided.

OATH

STATE OF TEXAS
COUNTY OF DENTON

I, Janet Meyers, being duly sworn, file this application as Mayor of the City of Aubrey (indicate relationship to Applicant, that is, owner, member of partnership, title as officer of corporation, or other authorized representative of Applicant); that, in such capacity, I am qualified and authorized to file and verify such application, am personally familiar with the maps and financial information filed with this application, and have complied with all the requirements contained in this application; and, that all such statements made and matters set forth therein are true and correct. I further state that the application is made in good faith and that this application does not duplicate any filing presently before the Public Utility Commission of Texas.

I further represent that the application form has not been changed, altered or amended from its original form.

I further represent that the Applicant will provide continuous and adequate service to all customers and qualified applicants for service within its certificated service area.

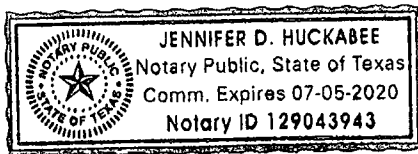
Janet Meyers, Mayor
AFFIANT
(Utility's Authorized Representative)

If the Affiant to this form is any person other than the sole owner, partner, officer of the Applicant, or its attorney, a properly verified Power of Attorney must be enclosed.

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public in and for the State of Texas, This day 5th of September 20 17

SEAL

Jennifer D. Huckabee
NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS



Jennifer Huckabee
PRINT OR TYPE NAME OF NOTARY

MY COMMISSION EXPIRES 07-05-2020

Notice for Publication

NOTICE OF APPLICATION FOR CERTIFICATE OF CONVENIENCE AND NECESSITY (CCN) TO PROVIDE WATER/SEWER UTILITY SERVICE IN

Denton COUNTY(IES), TEXAS

Name of Applicant The City of Aubrey has filed an application for a CCN to obtain or amend CCN No. (s) 11234 and 20491 and to decertify a portion(s) of Mustang Special Utility District (CCN Nos. 11856 and 20930) with the
(Name of Decertified Utility)

Public Utility commission of Texas to provide water & sewer
(specify 1) water or 2) sewer or 3) water & sewer)

utility service in Denton County
(ies).

The proposed utility service area is located approximately 1 miles south
[direction] of downtown Aubrey, [City or Town] Texas, and is generally bounded on the north by Hodges Easement; on the east by 0.9 mile east of State Hwy. 377; on the south by 500 ft. North of Brumley Ct.; and on the west by State Highway 377

The total area being requested includes approximately 172 acres and 1 current customers.

A copy of the proposed service area map is available at (Utility Address and Phone Number): City of Aubrey City Hall, 107 S. Main St., Aubrey, TX 76227 (Tel: 940-440-9343)

A request for a public hearing must be in writing. You must state (1) your name, mailing address, and daytime telephone number; (2) the applicant's name, application number or another recognizable reference to this application; (3) the statement, "I/we request a public hearing"; (4) a brief description of how you or the persons you represent, would be adversely affected by the granting of the application for a CCN; and (5) your proposed adjustment to the application or CCN which would satisfy your concerns and cause you to withdraw your request for a hearing.

Persons who wish to intervene or comment should file with the PUC at the following address:

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

within thirty (30) days from the date of this publication or notice. A public hearing will be held only if a legally sufficient hearing request is received or if the commission on its own motion requests a hearing. Only those individuals who submit a written hearing request or a written request to be notified if a hearing is set will receive notice if a hearing is scheduled.

If a public hearing is requested, the commission will not issue the CCN and will forward the application to the State Office of Administrative Hearings (SOAH) for a hearing. If no settlement is reached and an evidentiary hearing is held, the SOAH will submit a recommendation to the commission for final decision. If an evidentiary hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

If you are a landowner with a tract of land at least 25 acres or more, that is partially or wholly located within the proposed area, you may request to be excluded from the proposed area (or "opt out") by providing written notice to the commission within (30) days from the date that notice was provided by the applicant. All requests to opt out of the requested service area must include a scaled, general location map and a metes and bounds description of the tract of land.

Persons who meet the requirements to opt out, and wish to request this option should file the required documents with the:

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

A copy of the request to opt out of the proposed area must also be sent to the applicant. Staff may request additional information regarding your request.

Si desea informacion en Espanol, puede llamar al 1-888-782-8477

Notice to Neighboring Systems, Landowners and Cities

NOTICE OF APPLICATION FOR CERTIFICATE OF CONVENIENCE AND NECESSITY (CCN) TO PROVIDE WATER/SEWER UTILITY SERVICE IN

Denton COUNTY(IES), TEXAS

To: See attached list Date Notice Mailed 20 17
(Neighboring System, Landowner or City)

(Address)

City State Zip

Name of Applicant City of Aubrey has filed an application for a CCN to obtain or amend CCN No. (s) 11234 and 20491 and to decertify a portion(s) of Mustang Special Utility District (CCN Nos. 11856 and 20930) with the (Name of Decertified Utility)

Public Utility Commission of Texas to provide water & sewer utility service in Denton County(ies).
(specify 1) water or 2) sewer or 3) water & sewer

The proposed utility service area is located approximately 1 miles south [direction] of downtown Aubrey, [City or Town] Texas, and is generally bounded on the north by Hodges Easement; on the east by 0.9 miles east of State Hwy. 377; on the south by 500 ft. North of Brumley Ct.; and on the west by State Highway 377

See enclosed map of the proposed service area.

The total area being requested includes approximately 172 acres and 1 current customers.

A request for a public hearing must be in writing. You must state (1) your name, mailing address, and daytime telephone number; (2) the applicant's name, application number or another recognizable reference to this application; (3) the statement, "I/we request a public hearing"; (4) a brief description of how you or the persons you represent, would be adversely affected by the granting of the application for a CCN; and (5) your proposed adjustment to the application or CCN which would satisfy your concerns and cause you to withdraw your request for a hearing.

Persons who wish to intervene or comment should write the:

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

within thirty (30) days from the date of this publication or notice. A public hearing will be held only if a legally sufficient hearing request is received or if the commission on its own motion requests a hearing. Only those individuals who submit a written hearing request or a written request to be notified if a hearing is set will receive notice if a hearing is scheduled.

If a public hearing is requested, the commission will not issue the CCN and will forward the application to the State Office of Administrative Hearings (SOAH) for a hearing. If no settlement is reached and an evidentiary hearing is held, the SOAH will submit a recommendation to the commission for final decision. If an evidentiary hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

If you are a landowner with a tract of land at least 25 acres or more, that is partially or wholly located within the proposed area, you may request to be excluded from the proposed area (or "opt out") by providing written notice to the commission within (30) days from the date that notice was provided by the applicant. All requests to opt out of the requested service area must include a scaled, general location map and a metes and bounds description of the tract of land.

Persons who meet the requirements to opt out, and wish to request this option should file the required documents with the:

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

A copy of the request to opt out of the proposed area must also be sent to the applicant. Staff may request additional information regarding your request.

Si desea informacion en Espanol, puede llamar al 1-888-782-8477

List of Attachments

Attachment 1: Question 2.A. re: Existing Service.

Attachment 2: Question 2.B. re: Request for Service.

Attachment 3: Question 2.C. and 2.D. re: Agreement of Mustang S.U.D. to transfer of CCN areas to City of Aubrey (March 27, 2017 Transfer and Service Agreement).

Attachment 4: Question 3.A. re: Location map of proposed service area.

Attachment 5: Question 3.B. re: Smaller scale maps showing just the proposed service area with projectible digital data with metadata in Drawing File (.dwg) format.

Attachment 6: Question 3.C. re: Description of proposed service area.

Attachment 7: Question 3.D. re: Map showing water and sewer lines for proposed service area.

Attachment 8: Question 5.A.iv. re: TCEQ inspection letters for Aubrey public water system and wastewater treatment plant, and City of Aubrey response to noted deficiencies.

Attachment 9: Question 5.B. re: PWS and Wastewater plant operators for City of Aubrey.

Attachment 10: Question 5.G. re: Effect of granting CCN amendment.

Attachment 11: Question 5.H.iv. re: U.T.R.W.D. contract for sale of 100,000 gals. of emergency water supply to City of Aubrey.

Attachment 12: Question 5.I. re: Ability of City of Aubrey to provide adequate service.

Attachment 13: Question 6.B.i. re: Financial statements for City of Aubrey.

Attachment 14: Question 6.B.ii. re: Water and sewer rate schedules for proposed service area.

Attachment 15: Question 6.D. re: Aubrey Certificate of Obligation Series 2016 to be used to finance extension of water and sewer facilities to proposed service area.

Attachment 16: Question 7.G.iii. re: List of cities and retail public utilities providing water and sewer service within two miles of proposed service area.

Attachment 1

Question 2.A. – Existing Service

There are three water connections served by Mustang S.U.D. and no existing sewer connections. Only one of the three water connections is currently active: a water connection serving the Hopper Ranch. The other two inactive water connections are located on a 70.372-acre tract owned by Aubrey Realty & Development LLC which is currently being annexed into the City of Aubrey.

Attachment 2

Question 2.B. - Requests for Service

See attached 09/23/2015 response of City of Aubrey to request for utility service from Allison Engineering Group on behalf of MQ Development Partners (acquiring the property from Big D Commercial Ventures, LLC).

Furthermore, a voluntary petition for annexation of 70.372 acres of the proposed service area has been filed with the City of Aubrey by the current landowner, Aubrey Realty & Development LLC. Pursuant to this petition for annexation, the City of Aubrey is in the process of annexing this acreage into the city.



CITY OF AUBREY

Library
(940) 365-9162
(940) 365-9411 Fax

Police Department
(940) 365-2601
(940) 365-1216 Fax

CITY HALL
107 S. MAIN STREET
AUBREY, TX 76227
(940) 440-9343
(940) 365-1215 FAX

Fire Department
(940) 365-9785
(940) 365-9911 Fax

Public Works
(940) 440-9343
(940) 365-1215 Fax

September 23, 2015

VIA EMAIL

Mr. Lee Allison
Allison Engineering Group
4401 N. I-35, Suite 102
Denton, Texas 76207

Re: Request for Utility Service from the City of Aubrey, Texas (the "City") for approximately 68 acres on the east side of SH 377 and 1,850 feet south of Highmeadow Dr. and further identified as R77029 and R51694 on the Denton County Appraisal District on line records.

Dear Mr. Allison:

The City received correspondence dated September 9, 2015, from Allison Engineering Group on behalf of MQ Development Partners, (the "Developer") who is acquiring property from Big D Commercial Ventures, LLC (property owner) requesting water and wastewater service from the City as retail provider for approximately 68 acres to be eventually located within the boundaries of the City (the "Project"). We understand that the Project will require and the City is requested to provide water and wastewater service for up to 150 Living Unit Equivalents ("LUEs") per the current land plan and subject to change after the Developer concludes the floodplain study, any such change being subject to City approval. The City intends to consider adoption of a development agreement governing the rights and obligations of the City and Developer as relates to the Project ("Development Agreement"), which will include without limitation development regulations, design standards, performance standards, and land use regulations. The Development Agreement will further require that the property within the Project be annexed into the City's corporate boundaries prior to development and that the City will provide continuous and adequate water and wastewater service to the property(ies) within the Project.

Based on the information we have received and contingent on the adoption of the Development Agreement and annexation of the Project as described above, the City commits to provide service for 150 LUEs of water and wastewater capacity for the Project pursuant to the terms and restrictions in the Development Agreement. This commitment, however, is subject to the following conditions:

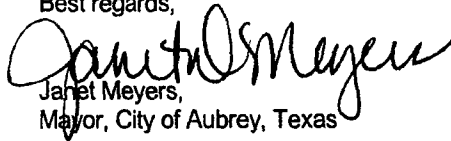
- Measurement of LUEs as 795 gallons per day maximum per LUE for water;
- Measurement of LUE's as 265 gallons per day average per LUE for Wastewater Treatment and 1,000 gallons per day peak wet weather flow per LUE for Wastewater Conveyance;
- Certification by project engineers for the Developer upon completion of construction of the internal public improvements that the Project has been constructed in accordance with the Development Agreement;

October 26, 2015

- The City's inspection and approval of said construction of the internal public improvements constructed to serve the Project in accordance with the Development Agreement;
- Approval by the parties of the funding source for offsite improvements necessary to serve the Project;
- Conveyance of the Project water lines, wastewater lines, drainage systems, roadway and related infrastructure to the City;
- To the extent necessary, decertification or release of water and sewer CCNs affecting the Project to the extent held by any entity other than the City; and
- To the extent necessary, the Developer shall apply for decertification or release with the PUC reasonably promptly after upon approval of this commitment and take all necessary steps so that the City becomes the sole provider of retail water and wastewater service to the Property.

This commitment shall remain in effect for a period of one year from the date this letter, subject to the foregoing conditions. The commitment may be extended at such time as the Developer and the City execute agreements addressing the issues identified above. If you agree to the terms of this commitment, please sign below and return this executed letter agreement to my attention at 107 S. Main St., Aubrey, Texas 76227. We look forward to working with the Developer to provide water and wastewater service to the Project.

Best regards,


Janet Meyers,
Mayor, City of Aubrey, Texas

AGREED TO BY THE DEVELOPER

Signature: _____
Name: _____
Title: _____
Date : _____

Attachment 3

Question 2.C. and 2.D. – Consent of Mustang S.U.D.

See the attached March 27, 2017 Transfer and Service Agreement (Sections 12 and 13) under which Mustang S.U.D. has agreed to transfer of the proposed water and sewer CCN service area to the City of Aubrey.

As set forth in Tx. Water Code Sec. 13.248:

“CONTRACTS VALID AND ENFORCEABLE. Contracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities, when approved by the utility commission after public notice and hearing, are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity.”

CERTIFICATION OF CITY SECRETARY

STATE OF TEXAS)
)
COUNTY OF DENTON)

THIS IS TO CERTIFY that I, Jenny Huckabee, am the City Secretary of the City of Aubrey, Texas, and am competent and capable of making this certification in that capacity.

Attached hereto are 29 pages, constituting a Transfer and Service Agreement (“Agreement”) by and between the City of Aubrey, Texas, Mustang Special Utility District, CADG Comanche 248, LLC, and Pulte Homes of Texas, LP. The Agreement attached hereto is an original or a true and correct copy of the original, which is kept and maintained by me as an official document of the City in my capacity as the City Secretary for the City of Aubrey, Texas.

The Agreement was duly and lawfully approved by the City Council (the City’s governing body) on March 21, 2017, at a formal meeting which was called and held pursuant to law and with all public notice required by law and at which a quorum was present and acting throughout. The approval was conditioned on approval as to form by the City Attorney, who approved the form on March 29, 2017. The Agreement was placed in my office on March 29, 2017, and has not been returned to the governing body by the mayor with a statement of objections. The Agreement is in effect as an obligation of the City and all conditions precedent to its validity have been met and satisfied, notwithstanding the refusal of the Mayor to sign the agreement on the City’s behalf pursuant to section 52.003(b) of the Texas Local Government Code.

ATTESTED AND EXECUTED by the City Secretary of the City of Aubrey, Texas, on this the 5th day of April, 2017.

[SEAL]



Jenny Huckabee
Jenny Huckabee, City Secretary
City of Aubrey, Texas

TRANSFER AND SERVICE AGREEMENT

This Transfer and Service Agreement (this "Agreement") is entered into by the **City of Aubrey**, a Type A General-Law municipality located in Denton County, Texas, acting by and through its duly authorized mayor ("Aubrey"); **Mustang Special Utility District**, a conservation and reclamation district created and operated as a special utility district pursuant to Article 16, Section 59 of the Texas Constitution and Chapters 49 and 65 of the Texas Water Code, acting by and through its duly authorized President ("Mustang"); **CADG Comanche 248 LLC**, a Texas limited liability company ("CADG"); and **Pulte Homes of Texas, L.P.**, a Texas limited partnership ("Pulte"). The mutual consideration for this Agreement is set forth below.

DEFINITIONS

All references to "**Aubrey**" shall mean and refer to the "City of Aubrey, Texas", a Texas general law municipality which is located in Denton County, Texas, and all of its officers, agents, representatives, elected officials, successors, and assignees, if any.

All references to "**Aubrey Creek Estates**" shall mean and refer to the area comprised of approximately 172 acres located within the City of Aubrey, Texas and being depicted in Exhibit "A", attached hereto and made a part hereof.

All references to "**CADG**" shall mean and refer to CADG Comanche 248, LLC.

All references to "**CCN**", "**CCNs**", or "**Certificate of Convenience and Necessity**" shall refer to and mean any Certificate of Convenience and Necessity issued by the Public Utility Commission of Texas ("**PUC**"), or its predecessor/successor agency as prescribed by the Texas Water Code, to any Party hereto, relating to Jackson Ridge.

All references to “**Decertification**” shall mean and refer to either a decertification permitted by either Section 13.254 and/or Section 13.255 of the Texas Water Code and/or any other means by which a CCN of a holder may be decertified.

All references to “**Jackson Ridge**” shall mean and refer to the subdivisions known as Jackson Ridge and Winn Ridge comprised of approximately 393.77 acres and 52.613 acres, respectively, more particularly described in Exhibit “B”, attached hereto and made a part hereof, which were the subject of Cause No. D-1-GN-15-004299 and Cause No. D-1-GN-15-004311 formerly pending in the 98th Judicial District Court in Travis County identified below as a PUC Proceeding.

All references to “**Mustang**” shall mean and refer to “Mustang Special Utility District,” which is located in Denton County, Texas, and all of its officers, directors, agents, representatives, elected officials, successors, and assignees if any.

All references to “**Party**” or “**Parties**” shall mean and refer collectively to Mustang, Aubrey, CADG, and Pulte.

All references to “**PUC Proceedings**” or “**PUC Action**” shall mean and collectively refer to any and all of the following:

1. Docket No. 44581 entitled “Petition of CADG Comanche 248, LLC, to Amend Mustang Special Utility District’s Certificate of Convenience and Necessity in Denton County by Expedited Release” filed originally with the PUC and on appeal in Cause No. D-1-GN-15-004299 entitled “Mustang Special Utility District, Plaintiff, v. Public Utility Commission of Texas, Defendant”, pending in the 98th Judicial District Court of Travis County, Texas;
2. Docket No. 44580 entitled “Petition of Comanche 52 Ridge Partners, Ltd., to Amend Mustang Special Utility District’s Certificate of Convenience and Necessity in Denton County by Expedited Release” filed originally with the PUC and on appeal in Cause No. D-1-GN-15-004311 entitled “Mustang Special Utility District, Plaintiff, v. Public Utility Commission of Texas, Defendant”, pending in the 98th Judicial District Court of Travis County, Texas;

3. Any "Notice of Intent to Serve" issued, filed or later withdrawn by Aubrey expressing an intent to serve or provide retail water or retail wastewater service in Jackson Ridge;
4. Any Application filed by Aubrey to acquire or secure a CCN or to provide retail water or retail wastewater service in Jackson Ridge;
5. Any and all boundary disputes regarding water and wastewater service areas that may exist between the Parties;

All references to "Pulte" shall mean and refer to Pulte Homes of Texas, L.P.

All references to "Water and Wastewater Infrastructure" shall mean and refer to all water and wastewater facilities constructed and/or financed by PID Bonds for the Jackson Ridge Public Improvement District.

All references to "Venable Ranch" shall mean and refer to the area comprised of approximately 1,551 acres, being a portion of the land commonly known as the Venable Ranch development and being depicted in Exhibit "C".

RECITALS

WHEREAS, in 2015, the CCNs to provide retail water and retail wastewater service to Jackson Ridge were decertified from Mustang in favor of Aubrey in PUC docket Nos. 44581 and 44580;

WHEREAS, the Parties desire, agree and intend that Mustang is to be the sole certified provider of retail water and retail wastewater service to Jackson Ridge provided the terms and conditions set out herein are satisfied in full by Mustang;

WHEREAS, the Parties desire to establish the ownership or transfer of certain water and wastewater utility and right of way facilities serving Jackson Ridge located both within Jackson Ridge and offsite for the benefit of Jackson Ridge; and

WHEREAS, the Parties desire, agree, and intend that any improvements constructed by the Jackson Ridge Public Improvement District and subsequently conveyed to Mustang should be conveyed to Aubrey in the event Mustang ceases providing service to Jackson Ridge; and

WHEREAS, the Parties desire, intend and agree that Aubrey is to eventually become the sole certified provider of retail water and retail wastewater service to the Venable Ranch and Aubrey Creek Estates providing the terms and conditions set out herein are satisfied in full by Aubrey;

WHEREAS, the Parties desire that to better provide for retail water and retail wastewater service to the areas affected herein, this Agreement shall be executed;

NOW, THEREFORE, FOR AND IN CONSIDERATION of the contractual terms and conditions, recitals, the warranties and representations, acknowledgements and agreements set out herein, and other good and valuable consideration the Parties agree as follows:

Consideration

1. Sufficiency of Consideration. The Parties expressly acknowledge and confess the adequacy and sufficiency of the consideration provided herein.

Jackson Ridge

2. Transfer or Certification of Jackson Ridge CCNs to Mustang. Aubrey agrees that the right to provide retail water and retail wastewater service Jackson Ridge shall be transferred or certified to Mustang under CCNs pursuant to applicable PUC requirements. In addition, Aubrey intends for Mustang to be the sole retail water and retail wastewater provider in Jackson Ridge and expressly acknowledges that all current or future water customers or properties located within Jackson Ridge will be exclusively the retail water and retail wastewater customers of Mustang. The Parties

agree that, to the extent allowed by PUC rules, Mustang may file a Notice of Intent to Serve Jackson Ridge, and may also, at its option, initiate retail water and retail wastewater services to Jackson Ridge prior to the filing for or receiving certification from the PUC. Subject to Mustang's compliance with the terms and conditions of this Agreement, Aubrey, CADG and Pulte agree to not oppose or object to: 1.) any Notice of Intent to Serve filed by Mustang; 2.) Mustang's initiation of any water service undertaken prior to any certification or issuance of a CCN for Jackson Ridge; or 3.) any application or request for Certification filed by Mustang with the PUC to obtain exclusive retail water and retail wastewater certification or the issuance of CCN's for Jackson Ridge.

3. Service Area Agreement and Decertification Prohibition. Upon execution of this Agreement, Aubrey intends and agrees that the area shown in Exhibit "B", attached hereto and made a part hereof, shall be serviced by Mustang under Mustang's CCN. Aubrey, CADG and Pulte agree, warrant and represent that Aubrey, CADG, and Pulte will not directly seek to decertify Mustang's CCNs for Jackson Ridge once certificated, nor indirectly encourage, cooperate with, require, sponsor or facilitate another in decertifying Mustang's CCNs for Jackson Ridge once certificated. In exchange for such transfer and the covenant not to seek decertification in the future, Mustang shall pay to Aubrey a total of Five Hundred Seventy-Nine Thousand Four Hundred And No/100 Dollars (\$579,400.00) within thirty (30) days of the execution of this Agreement.
4. Cooperation in Transfer or Certifications of CCNs. The Parties agree to proceed with and cooperate in any PUC processes or proceedings necessary to effectuate the

issuance of the CCNs covering Jackson Ridge to Mustang. Aubrey, CADG, and Pulte agree to not object to any application or amendment filed by Mustang with the PUC to obtain exclusive water and sewer certification for Jackson Ridge. Aubrey, CADG, and Pulte will fully cooperate with Mustang and the PUC in taking whatever actions are required under PUC rules or the Travis County District Court to confirm Mustang's water and wastewater CCNs for Jackson Ridge.

5. Reimbursement of Monies to CADG and Pulte by Mustang for Jackson Ridge. Within thirty (30) days after the execution of this Agreement, Mustang shall pay to CADG a total of \$322,780.95 and to Pulte a total of \$219,708.05 for reimbursement of costs expended by CADG and Pulte in connection with the acquisition by Mustang of the CCNs covering Jackson Ridge.
6. Lot Fee for Jackson Ridge. Mustang shall pay to Aubrey a total of Five Hundred and No/100 Dollars (\$500.00) per lot in Jackson Ridge for each lot which is now and which is later connected to the Water and Wastewater Infrastructure served by water and wastewater upon builder payment of connection fees to Mustang for each respective lot in Jackson Ridge.
7. Franchise Fee. Mustang agrees to charge Aubrey's franchise fee of eight percent (8%) on behalf of Aubrey for water and wastewater customers located in Jackson Ridge that are located within Aubrey's corporate limits and transfer the collected franchise fees to Aubrey on a quarterly basis.
8. Payment of Development Costs. Mustang agrees to pay Aubrey for specific costs related to the permanent improvements made for development of Jackson Ridge in an amount to be determined and agreed upon by the Parties. Specifically, but in no

way limiting the foregoing, Mustang agrees to reimburse Aubrey for (i) Aubrey's costs, including but not limited to engineering soft costs, relating to the offsite sewer line providing service to Jackson Ridge, currently estimated to be \$2,794,820, according to the payment schedule attached hereto as "Exhibit D"; and (ii) all payments previously made by Aubrey to Upper Trinity Regional Water District ("Upper Trinity") to reserve capacity for service to Jackson Ridge, currently estimated to be \$1,182,500, all of which shall be payable from Mustang to Aubrey within thirty (30) days of the execution of this Agreement.

9. "Assignment of Upper Trinity Agreements. Upon the occurrence and as consideration for the payments in Section 8, Aubrey agrees to transfer and assign to Mustang all of its right, title, and interest to any and all agreements it has with Upper Trinity that pertain to the provision of wastewater treatment and water service to Jackson Ridge ("Upper Trinity Agreements"). Mustang agrees to assume all the rights and obligations of Aubrey in and to all such Upper Trinity Agreements as of the date of issuance of the Jackson Ridge CCNs to Mustang and to release Aubrey from any and all liability or payments arising from or related to the Upper Trinity Agreements after the date of transfer. Mustang agrees to indemnify Aubrey from and against any claims of losses or liability relating to the Upper Trinity Agreements arising after the date of issuance of the Jackson Ridge CCNs to Mustang. In all events, Mustang agrees that wastewater treatment and water service to Jackson Ridge will be served by Mustang through one or more separate agreements between Mustang and Upper Trinity.
10. Interim Pump and Haul Responsibilities. Mustang agrees to perform or pay to be

performed all necessary “pump and haul” services at Jackson Ridge for a period of four (4) months from June 8, 2017. At the termination of Mustang’s pump and haul service period, CADG and/or Pulte shall be allowed to “pump and haul” until the off-site sewer is completed at CADG and/or Pulte’s expense

11. Ownership of Facilities:

Road Rights of Way. Aubrey and Mustang agree that ownership of the public roadway and storm water improvements within Jackson Ridge is and will continue to be held by Aubrey.

Ownership of the Utility Rights of Way and Easements. Aubrey shall grant Mustang the easements and rights of way necessary for the operation and maintenance of the Water and Wastewater Infrastructure for Jackson Ridge and service to Jackson Ridge pursuant to this Agreement. Aubrey and Mustang agree to amend the development plats or provide other conveyance documentation evidencing the easements in favor of Mustang within thirty (30) days of the execution of this Agreement.

Ownership of the Water and Wastewater Infrastructure. Ownership of the Water and Wastewater Infrastructure serving Jackson Ridge shall be transferred by Aubrey to Mustang upon payment under Section 8 of this Agreement or, if construction of such infrastructure is not completed by such time, upon completion of construction of such infrastructure by Aubrey, CADG, and/or Pulte. For Water and Wastewater Infrastructure which will be constructed after the execution of this Agreement and subsequently conveyed to Mustang, Mustang shall have the right to inspect all plans and facilities and both Mustang and Aubrey must approve all

contract awards and change orders for Water and Wastewater Infrastructure. The Parties agree that the Water and Wastewater Infrastructure will continue to benefit Jackson Ridge and will be utilized to provide water and wastewater service to Jackson Ridge. As consideration for the financing and transfer of the Water and Wastewater Infrastructure to serve Jackson Ridge, Mustang agrees not to charge a capital recovery fee (excluding other fees charged under Mustang's Rate Order including but not limited to connection fees, meter set fees, and tap fees) within Jackson Ridge and to charge water and wastewater service rates to Jackson Ridge that are the same as similarly situated developments in Mustang's other service areas. Upon inspection, approval and acceptance of the Water and Wastewater Infrastructure serving Jackson Ridge, Mustang shall maintain and operate such Water and Wastewater Infrastructure in good condition and working order in compliance with all applicable laws and ordinances and all applicable regulations, rules, policies, standards and orders of any governmental entity with jurisdiction over same. Should Mustang cease providing service to Jackson Ridge, any Water and Wastewater Infrastructure improvements constructed by the Jackson Ridge Public Improvement District and subsequently conveyed to Mustang shall immediately and automatically revert back to Aubrey.

Venable Ranch and Aubrey Creek Estates

12. Service Area Agreement and Decertification Prohibition. Mustang agrees that the right to provide retail water and retail wastewater service to Aubrey Creek Estates and Venable Ranch shall be transferred or certified to Aubrey under CCNs pursuant to applicable PUC requirements. In addition, Mustang intends for Aubrey to be the

sole retail water and retail wastewater provider in Aubrey Creek Estates and Venable Ranch and expressly acknowledges that all current or future water customers or properties located within Aubrey Creek Estates or Venable Ranch will be exclusively the retail water and retail wastewater customers of Aubrey. The Parties agree that, to the extent allowed by PUC rules, Aubrey may file a Notice of Intent to Serve Aubrey Creek Estates and Venable Ranch, and may also, at its option, initiate retail water and retail wastewater services to Aubrey Creek Estates and Venable Ranch prior to the filing for or receiving certification from the PUC. Subject to Aubrey's compliance with the terms and conditions of this Agreement, Mustang, CADG and Pulte agree to not oppose or object to: 1.) any Notice of Intent to Serve filed by Aubrey; 2.) Aubrey's initiation of any water service undertaken prior to any certification or issuance of CCNs for Aubrey Creek Estates and Venable Ranch; or 3.) any application or request for Certification filed by Aubrey with the PUC to obtain exclusive retail water and retail wastewater certification or the issuance of CCNs for Aubrey Creek Estates and Venable Ranch.

13. Cooperation in Transfer or Certifications of CCNs. The Parties agree to proceed with and cooperate in any PUC processes or proceedings necessary to effectuate the issuance of the CCNs covering Aubrey Creek Estates and Venable Ranch to Aubrey. Mustang, CADG, and Pulte agree to not object to any application or amendment filed by Mustang with the PUC to obtain exclusive water and sewer certification for Aubrey Creek Estates and Venable Ranch. Mustang, CADG, and Pulte will fully cooperate with Aubrey and the PUC in taking whatever actions are required under PUC rules to confirm Aubrey's water and wastewater CCNs for

Aubrey Creek Estates and Venable Ranch. The Parties acknowledge that Pulte does not own any portion of Aubrey Creek Estates or Venable Ranch and any cooperation required of Pulte under this Section 13 shall be at no cost to Pulte.

Miscellaneous

14. Non-Disparagement. The Parties agree that professional and personal reputations are important and should not be impaired or disparaged. Aubrey and Mustang acknowledge and confess the importance of each other's corporate reputations, and the reputations of their respective officers, directors, agents, employees, staff, administration, legal counsel, and/or elected officials. For purposes of this section "Disparagement" shall mean any negative or defamatory statement or comment, whether written or oral, private or public, about the other or the other's respective officers, directors, agents, employees, staff, administration, legal counsel, and/or elected officials in connection with the matters addressed in this Agreement. Therefore, after the date of execution of this Agreement, Aubrey and Mustang expressly agree to not disparage or defame the professional or personal reputation of one another or any of their respective officers, directors, agents, employees, staff, administration, legal counsel, and/or elected officials in connection with any matter addressed in this Agreement. Further, Aubrey and Mustang agree to take no action, or issue no statement or publication or other announcement, in any form of media, public or social, which would reasonably be expected to lead to unwanted or unfavorable or negative publicity to the other or cast the other in a negative light in connection with any matter addressed in this Agreement. The Parties agree that the following shall be an appropriate response and provided to any questions by a third

party about the Litigation or the settlement herein: *"The issues between Aubrey and Mustang have been amicably resolved to the mutual satisfaction of both parties."*

15. Other Documents. The Parties covenant and agree to execute and deliver such other and further instruments and documents as are, or may become, necessary or convenient to effectuate and carry out the intent of this Agreement.
16. Notices. Any notices or communications required to be given by one Party to another under this Agreement ("Notice") shall be given in writing addressed to the Party to be notified at the address set out below and shall be deemed given when:
a.) personally delivered to the Party representative set out below; b.) when received if transmitted by facsimile or by certified mail return receipt requested, postage paid; or c.) delivered by FedEx, UPS or other nationally recognized delivery service. For purpose of giving Notice, the addresses of the Parties are set out below.

To the City of Aubrey:

City of Aubrey
Attn: Mayor
107 South Main Street
Aubrey, Texas 76227
Fax: _____

To Mustang Special Utility District:

Mustang Special Utility District
Attn: General Manager
Aubrey, Texas 76227
Fax: 940-440-9686

To CADG Comanche, 248 LLC:

Attn: Mehrdad Moayed
1800 Valley View Lane, Suite 360
Farmers Branch, Texas 75234

With a copy to: Miklos Law, PLLC

Attn: Prabha Cinclair
1800 Valley View Lane, Suite 360
Farmers Branch, Texas 75234

To Pulte Homes of Texas, L.P.:

Attn: Bryan Swindell
4800 Regent Blvd., Suite 100
Irving, Texas 75063

With a copy to: Pulte Homes of Texas, L.P.

Attn: Scott V. Williams, Area General Counsel
2727 N. Harwood St., 3rd Floor
Dallas, Texas 75201

And a copy to: Bellinger & Suberg, L.L.P.

Attn: Walter A. Suberg
10,000 North Central Expressway, Ste. 900
Dallas, Texas 75231

17. Warranties and Representations.

The Parties also understand, warrant and agree:

- a. Nature of Terms. The terms hereof are contractual and not mere recitals.
- b. Remedies. In the event of material default by any Party(ies) of any of its obligations enumerated in this Agreement, the other Party(ies) shall have the right to pursue all remedies available at law or equity, including, but not limited to, injunctive relief or specific performance or mandamus requiring performance of all obligations set forth herein. Notwithstanding anything contained in this Agreement to the contrary, any default by a Party under this Agreement with respect to any rights and obligations relating to Aubrey Creek Estates or Venable Ranch shall not

reduce or impair in any manner the rights and obligations of the Parties under this Agreement with respect to Jackson Ridge.

c. Integration. This Agreement contains the sole and entire agreement between the Parties and supersedes all prior agreements, arrangements, or understandings between the Parties. No oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exist, and this Agreement cannot be changed or terminated orally.

d. Construction. Each Party acknowledges that each Party and its counsel have had the opportunity to independently review and revise this Agreement and that the normal rules of construction that any vagueness or ambiguity are to be resolved against the drafting party shall not be employed in any interpretation of this Agreement or the Exhibits hereto.

e. Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Texas, as applied to contracts performable in the state of Texas irrespective or without regard to any choice of law or principles to the contrary. The Parties hereby submit to the jurisdiction of the State District Court located in Denton County, Texas and any action being necessary to enforce or construe any of the terms or provisions of this Agreement must be filed solely in the State District Court located in Denton, Denton County, Texas, and no other.

f. Severability. If any term, provision or condition of this Agreement is held by a court of competent jurisdiction to be unconstitutional, invalid, void or unenforceable, the remaining provisions shall not be impaired or invalidated, but

shall remain in full force and effect, and the Parties agree to negotiate in good faith to otherwise accomplish the intent of the invalid provisions.

g. No Waiver. Should one Party fail to insist upon strict or complete performance of a material term of this Agreement, such failure shall not be deemed to prevent the Party from subsequently demanding strict compliance of that term, or be deemed a waiver of any other term(s) contained in the Agreement. No provision herein may be waived except by a writing signed by the Party with the authority to waive such provision.

h. Reliance on Counsel. The Parties sign this Agreement after consultation with and upon advice of their own legal counsel, and no other.

i. No Assignments. The Parties expressly warrant that no claims, demands, controversies, actions, causes of action, contracts, liabilities, damages, injuries, losses, or other rights which are mentioned in or released by this Agreement have been assigned, conveyed, or in any manner whatsoever, transferred to any other person or entity. No Party may assign its obligations under this Agreement without prior written consent of the other Parties, which shall not be unreasonably withheld.

j. Authority. The Signatories below warrant and represent that each has the requisite authority, both individually and in all their representative capacities, to execute this Agreement for and on behalf of their respective entities in all respects. Further, each Signatory warrants and represents that the settlement herein has been approved by a duly constituted quorum of the requisite governing body of Aubrey or Mustang, at a meeting duly and properly noticed as required by law.

k. Successors and Assigns. This Agreement shall be binding on and shall inure to the benefit of the successors and assigns of the Parties.

l. Compliance with Laws. The Parties are of the understanding and agree that this Agreement complies with all federal and state statutes and constitutions, local law and common law which may govern the validity of this Agreement at the time of execution.

m. Revisions and Changes. This Agreement may not be changed, revised, or otherwise amended except by a writing signed by all the Parties hereto.

n. Evidentiary Value. It is the intent of the Parties that this Agreement have no precedential or evidentiary value in any administrative or judicial proceeding whatsoever, save and except (i) in a PUC proceeding to issue water or wastewater CCNs to Mustang as contemplated herein, and (ii) in an action to enforce the terms of this Agreement.

o. Admissions. Nothing in this Agreement shall be deemed to be an admission, concession, acknowledgment, interpretation or construction of alleged liability by any of the Parties to this Agreement.

p. Originals and Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

q. Effective Date. The Effective Date of this Agreement is the latest of the dates of execution by the Signatories hereto.

17. Events of Default and Remedies.

The Parties also understand, warrant and agree:

a. No Party shall be in default under this Agreement until notice of the alleged

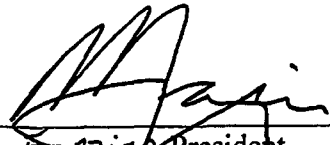
failure of such Party to perform has been given in writing (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such Party has been given a reasonable time to cure the alleged failure (such reasonable time to be determined based on the nature of the alleged failure, but in no event more than thirty (30) days (or any longer time period to the extent expressly stated in this Agreement as relates to a specific failure to perform) after written notice of the alleged failure has been given except as relates to a type of default for which a different time period is expressly set forth in this Agreement). Notwithstanding the foregoing, no Party shall be in default under this Agreement if, within the applicable cure period, the Party to whom the notice was given begins performance and thereafter diligently and continuously pursues performance until the alleged failure has been cured. Notwithstanding the foregoing, however, a Party shall be in default of its obligation to make any payment required under this Agreement if such payment is not made within five (5) business days after it is due.

b. As compensation for the party's default, an aggrieved Party is limited to seeking specific performance of the other party's obligations under this Agreement. However, the Parties agree that the Developer will not be required to specifically perform under this Agreement in the event that the Developer satisfies all of its obligations under this Agreement and the City does not issue PID Bonds within one (1) year of the date of this Agreement.

WHEREFORE, the Parties hereto have executed this Agreement on the dates shown above the signature of the Party.

EXECUTED on this the 27 day of MAR, 2017.

MUSTANG SPECIAL UTILITY DISTRICT



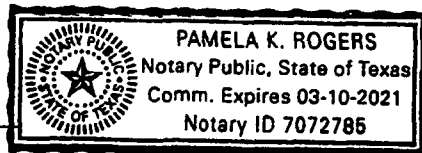
MIKE FRAZIER, President

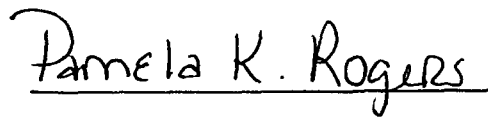
THE STATE OF TEXAS §

COUNTY OF DENTON §

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, on this day personally appeared MIKE FRAZIER, President of Mustang Special Utility District, a political subdivision of the State of Texas, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same on behalf of such District.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 4 day of April, 2017.





Pamela K. Rogers

Notary Public in and for the State of Texas

(NOTARY SEAL)

CITY OF AUBREY

By: _____
Name: Janet Meyers
Title: Mayor

ATTEST:

By: _____
Jenny Huckabee, City Secretary

APPROVED AS TO FORM

Name: David M. Berman
Title: Attorney for the City

STATE OF TEXAS §

COUNTY OF DENTON §

Before me the undersigned notary public appeared Janet Meyers, Mayor of the City of Aubrey, a political subdivision of the State of Texas, on behalf of the City of Aubrey for the consideration therein expressed.

Notary Public-State of Texas

(SEAL)

Notary Public for the State of Texas

COMANCHE 248, LLC

CADG Comanche 248, LLC,
a Texas limited liability company

By: CADG Holdings, LLC,
a Texas limited liability company,
Its Sole Member

By: MMM Ventures, LLC,
a Texas limited liability company,
Its Manager

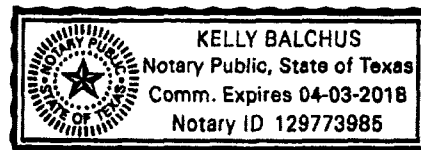
By: 2M Ventures, LLC,
a Delaware limited liability company,
Its Manager

By: *Mehrdad Moayed*
Name: Mehrdad Moayed
Its: Manager

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 21st day of March, 2017, by Mehrdad Moayed, Manager of 2M Ventures, LLC, as Manager of MMM Ventures, LLC, as Manager of CADG Holdings, LLC, as Sole Member of CADG Comanche 248, LLC, a Texas limited liability company on behalf of said company.

Kelly Balchus
Notary Public, State of Texas



PULTE HOMES OF TEXAS, L.P.

PULTE HOMES OF TEXAS, L.P.,
a Texas limited partnership

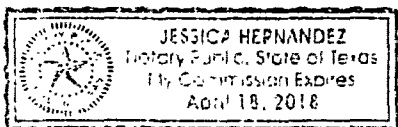
By: Pulte Nevada I LLC,
a Delaware limited liability company,
its General Partner

By: Bryan Swindell
Name: BRYAN SWINDELL
Title: DIVISION PRESIDENT

THE STATE OF Texas §

COUNTY OF Dallas §

The foregoing instrument was acknowledged before me this 31st day of MARCH, 2017, by BRYAN SWINDELL, DIVISION PRESIDENT of Pulte Nevada I LLC, a Delaware limited liability company, the general partner of PULTE HOMES OF TEXAS, L.P., a Texas limited partnership, on behalf of said limited liability company and limited partnership.



(SEAL)

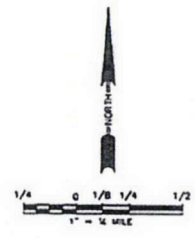
Jessica Hernandez
Notary Public of the State of TEXAS


EXHIBIT "A"

DESCRIPTION OF AUBREY CREEK ESTATES

EXHIBIT "B"

DESCRIPTION OF JACKSON RIDGE



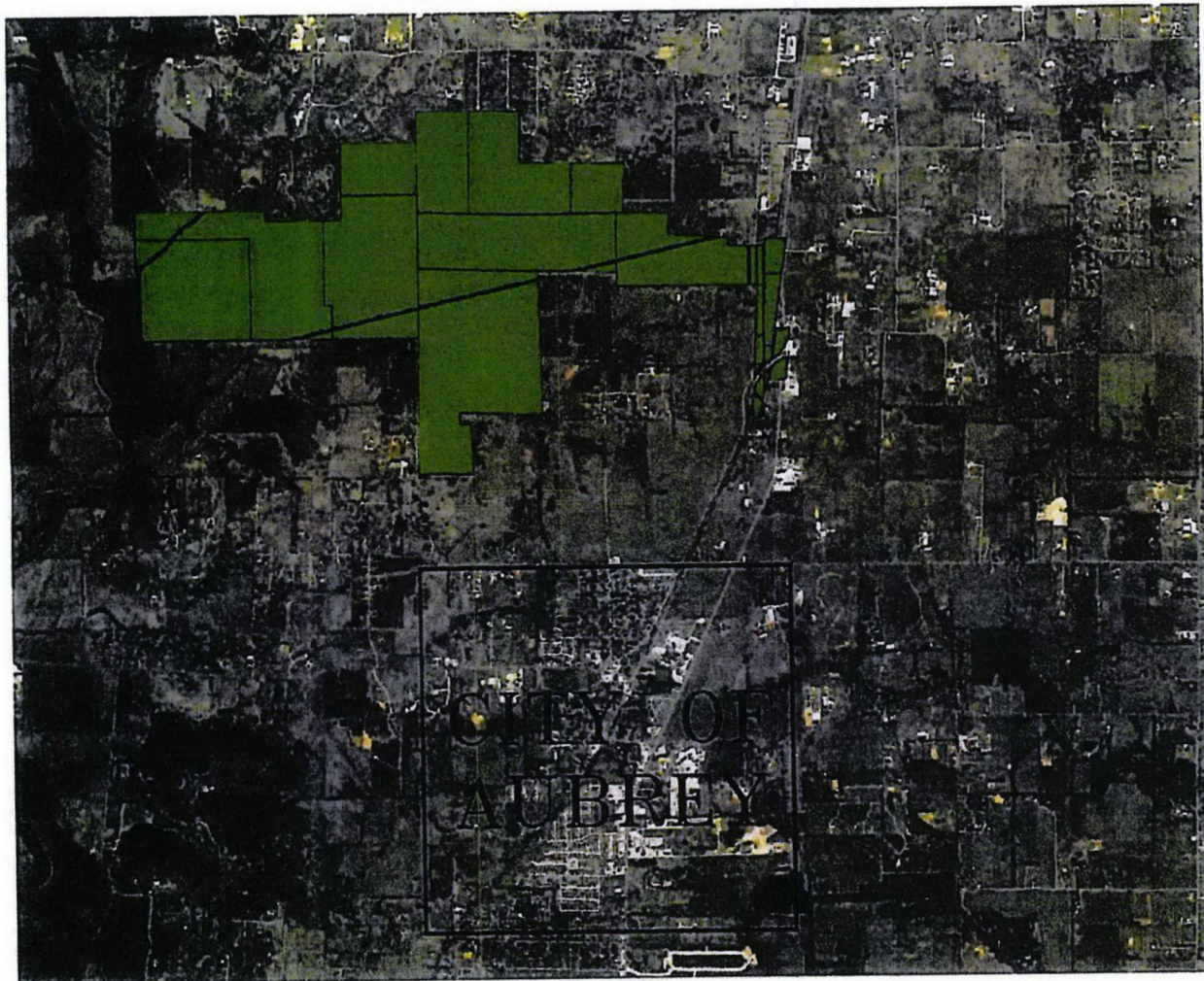
 Jackson Winn Ridge



43215 00
1/14/2017
F:\ENR\30350\COM\IN\GIS\Map & City of Aubrey\03100 Inv Regis.dwg

EXHIBIT "C"

DESCRIPTION OF VENABLE RANCH




 Venable Ranch



EXHIBIT "D"

PAYMENT SCHEDULE

**Breakdown of Bond Debt Service Payments
City Major Improvements Portion**

Year	Sereis 2015 MI Bonds		Sereis 2015 Phase 1 Bonds		Estimated TIRZ Admin Expenses	Total Combined Obligations	Prorated Debt Service Amounts for \$2,794,820		
	City Major Improvements						Principal ^(1&2)	Interest ^(1&2)	Total
	Principal ¹	Interest ¹	Principal ²	Interest ²					
1	\$0	\$581,114	\$0	\$231,735	\$0	\$812,850	\$0	\$172,316	\$172,316
2	\$0	\$795,442	\$0	\$317,204	\$15,000	\$1,127,646	\$0	\$235,870	\$235,870
3	\$0	\$795,442	\$48,653	\$317,204	\$15,000	\$1,176,299	\$10,314	\$235,870	\$246,184
4	\$159,565	\$795,442	\$51,694	\$313,434	\$15,000	\$1,335,134	\$44,785	\$235,071	\$279,856
5	\$172,862	\$781,480	\$56,255	\$309,427	\$15,000	\$1,335,024	\$48,571	\$231,262	\$279,832
6	\$186,159	\$766,354	\$60,817	\$305,068	\$15,000	\$1,333,398	\$52,356	\$227,131	\$279,487
7	\$203,888	\$750,066	\$63,857	\$300,354	\$15,000	\$1,333,166	\$56,760	\$222,679	\$279,438
8	\$217,185	\$732,225	\$69,939	\$295,405	\$15,000	\$1,329,755	\$60,868	\$217,848	\$278,715
9	\$234,915	\$713,222	\$74,500	\$289,985	\$15,000	\$1,327,622	\$65,593	\$212,670	\$278,263
10	\$257,077	\$692,666	\$79,062	\$284,211	\$15,000	\$1,328,016	\$71,258	\$207,089	\$278,347
11	\$274,806	\$670,172	\$85,143	\$278,084	\$15,000	\$1,323,206	\$76,306	\$201,021	\$277,327
12	\$301,400	\$646,127	\$91,225	\$271,485	\$15,000	\$1,325,237	\$83,233	\$194,525	\$277,757
13	\$323,562	\$619,754	\$98,827	\$264,415	\$15,000	\$1,321,559	\$89,542	\$187,435	\$276,978
14	\$350,156	\$591,443	\$104,909	\$256,756	\$15,000	\$1,318,264	\$96,469	\$179,810	\$276,279
15	\$381,183	\$560,804	\$112,511	\$248,626	\$15,000	\$1,318,123	\$104,658	\$171,591	\$276,249
16	\$412,209	\$527,450	\$121,633	\$239,906	\$15,000	\$1,316,199	\$113,169	\$162,672	\$275,841
17	\$443,236	\$491,382	\$129,235	\$230,480	\$15,000	\$1,309,333	\$121,358	\$153,028	\$274,386
18	\$483,127	\$452,599	\$138,358	\$220,464	\$15,000	\$1,309,548	\$131,749	\$142,683	\$274,431
19	\$523,018	\$410,325	\$149,001	\$209,741	\$15,000	\$1,307,085	\$142,461	\$131,448	\$273,909
20	\$562,909	\$364,561	\$159,644	\$198,194	\$15,000	\$1,300,308	\$153,174	\$119,299	\$272,473
21	\$611,665	\$315,307	\$171,807	\$185,821	\$15,000	\$1,299,600	\$166,088	\$106,234	\$272,323
22	\$660,421	\$261,786	\$183,970	\$172,506	\$15,000	\$1,293,684	\$179,003	\$92,066	\$271,068
23	\$718,042	\$203,999	\$197,654	\$158,249	\$15,000	\$1,292,944	\$194,119	\$76,793	\$270,912
24	\$775,662	\$141,171	\$211,338	\$142,930	\$15,000	\$1,286,101	\$209,234	\$60,227	\$269,461
25	\$837,715	\$73,300	\$226,542	\$126,552	\$15,000	\$1,279,109	\$225,612	\$42,367	\$267,979
26	\$0	\$0	\$243,266	\$108,995	\$15,000	\$367,261	\$51,570	\$23,106	\$74,676
27	\$0	\$0	\$261,511	\$90,142	\$15,000	\$366,653	\$55,438	\$19,109	\$74,547
28	\$0	\$0	\$279,756	\$69,874	\$15,000	\$364,631	\$59,306	\$14,813	\$74,118
29	\$0	\$0	\$299,522	\$48,193	\$15,000	\$362,715	\$63,496	\$10,217	\$73,712
30	\$0	\$0	\$322,328	\$24,980	\$15,000	\$362,308	\$68,330	\$5,296	\$73,626
31	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total	\$9,090,763	\$13,733,633	\$4,092,958	\$6,510,424	\$435,000	\$33,862,778	\$2,794,820	\$4,291,542	\$7,086,362

1 - The principal and interest shares of the City Major Improvements are calculated as 88.59% based on the prorated estimated costs and Par amounts shown in Section IV, Table IV-A.

The principal and interest amounts are based on the underwriter's final cashflows dated as of 11-16-15. The interest amounts include the 0.5% additional interest amount for prepayment and delinquency reserves.

1 - The principal and interest shares of the City Major Improvements are calculated as 30.41% based on the prorated estimated costs and Par amounts shown in Section IV, Table IV-C.

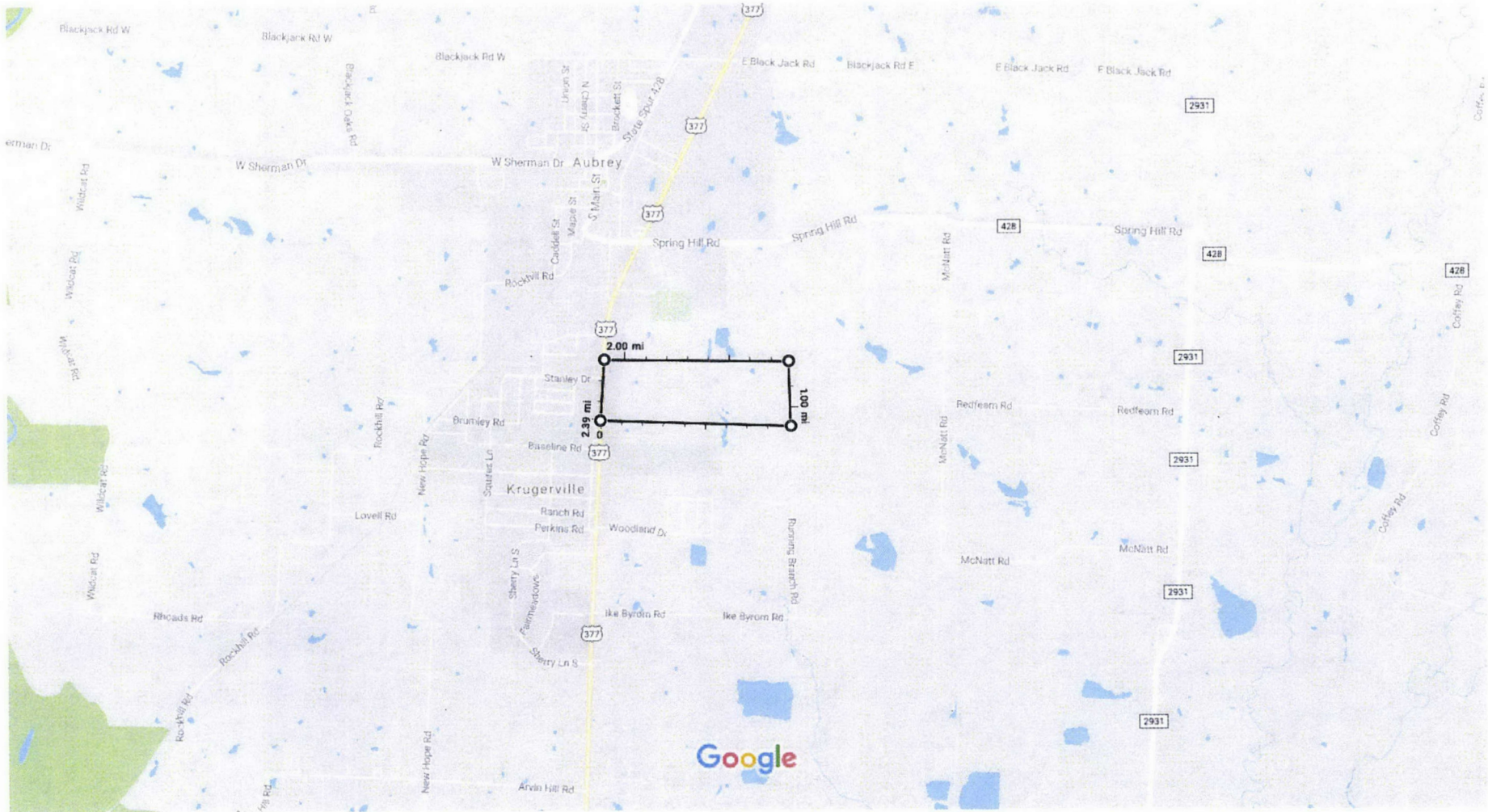
The principal and interest amounts are based on the underwriter's final bond cashflows dated as of 11-16-15. The interest amounts include 0.5% for prepayment and delinquency reserves.

Attachment 4

Question 3.A. - Location Map of Proposed Service Area.

See attached Location Map showing the location of the requested water and sewer CCN service area in relation to commonly known political boundaries and streets. The proposed service area as shown is the same for both water and sewer CCNs of the City of Aubrey and Mustang S.U.D. to be amended.

Google Maps 172-Acre Aubrey Creek Estates – Location Map



Attachment 5

Question 3.B. - Map of Proposed Service Area

Map Attachment 5.A. is a small scale map showing just the boundaries of the requested 172-acre water and sewer CCN areas (the same tract of land for both water and sewer CCNs).

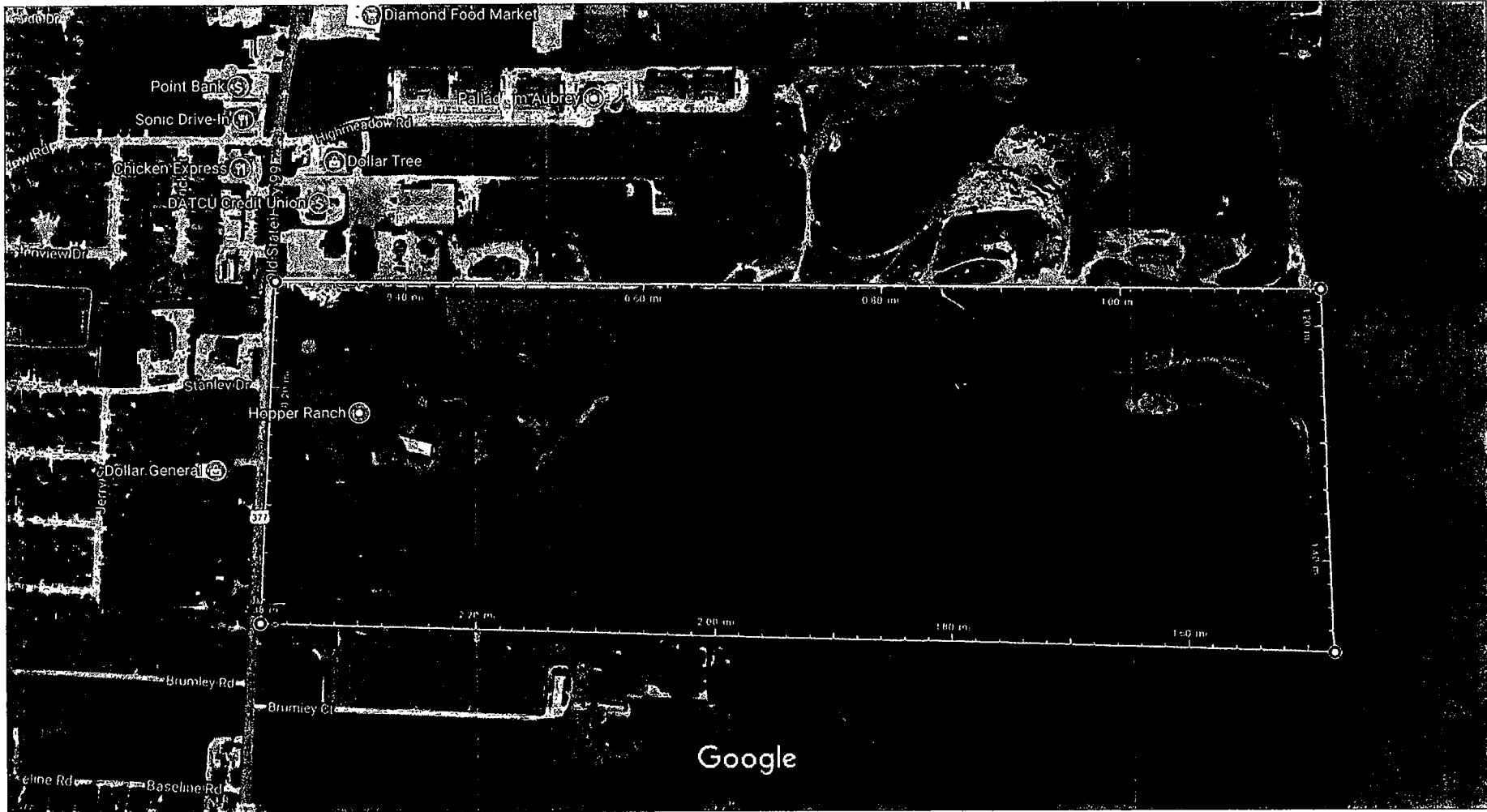
Map Attachment 5.B. shows the northern approx. 25% portion of the subject tract that is currently dually certificated to both the City of Aubrey and Mustang S.U.D. This application is requesting the transfer of the southern approx. 75% portion of the subject tract to the City of Aubrey's water CCN No. 11234 and sewer CCN No. 20491 from Mustang S.U.D.'s water CCN No. 11856 and sewer CCN No. 20930, and the release of the northern 25% portion of the subject tract from Mustang S.U.D.'s water CCN No. 11856 and sewer CCN No. 20930.

Attachment 5.C. is projectible digital map files in .DWG format on diskette.

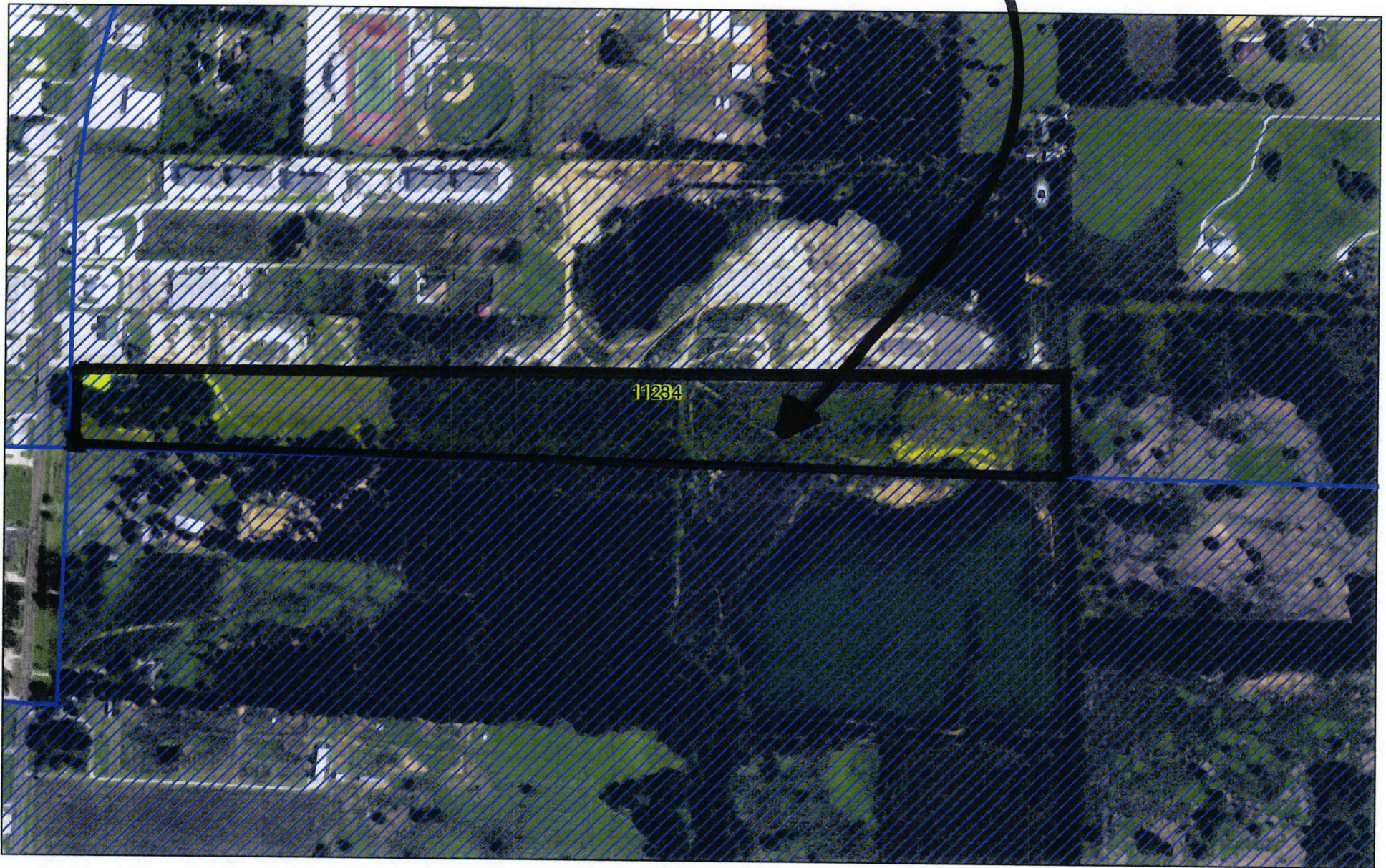
Google Maps

Proposed Service Area


5.A.

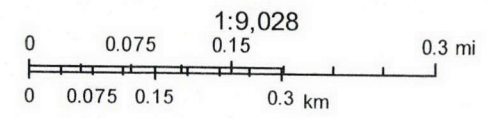


Aubrey - Mustang SUD Dual CCN Area 5.B.



September 4, 2017

 Water CCN Service Areas
TxDOT Counties



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Attachment 5.C.

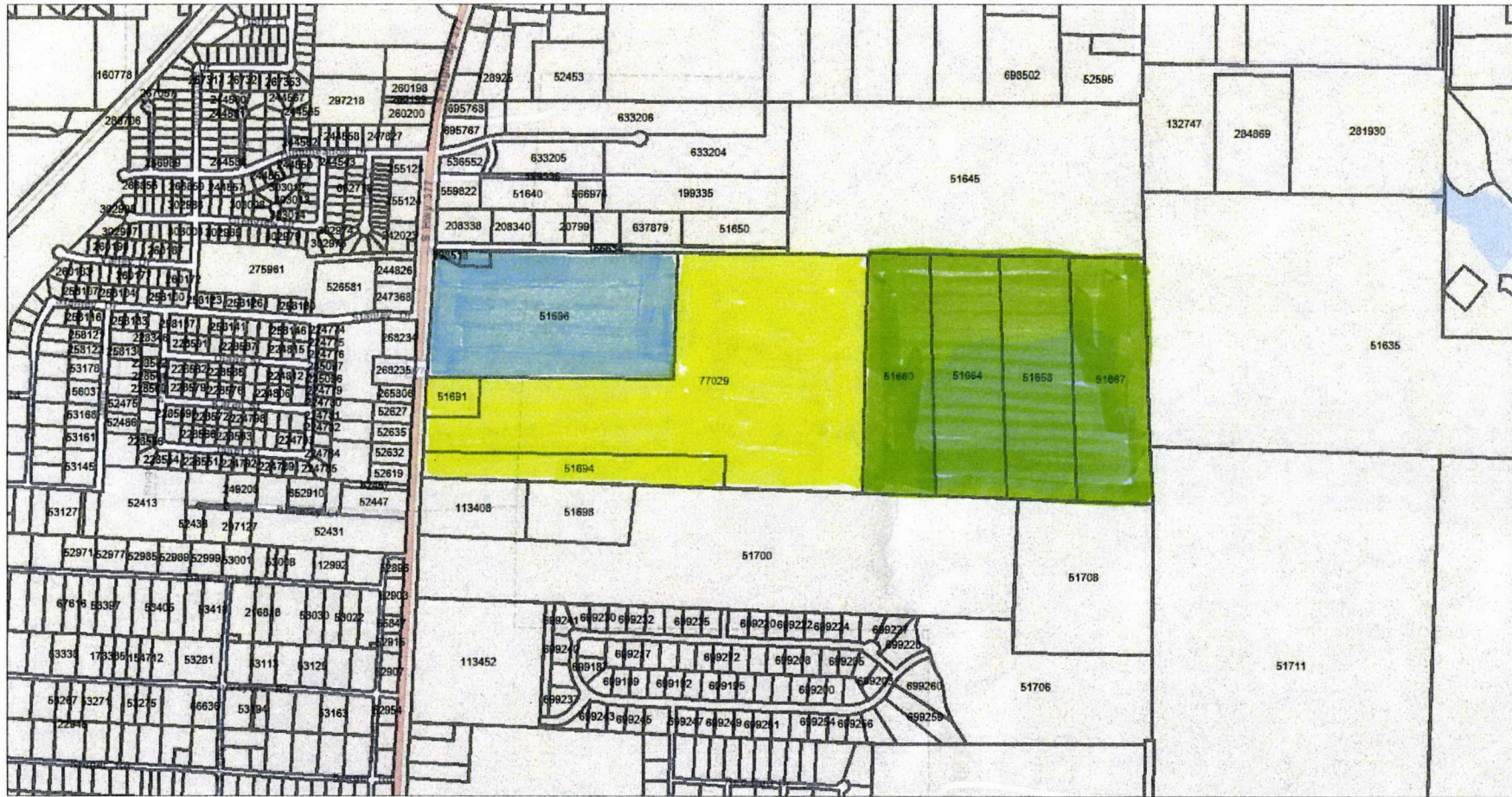
.DWG File on Diskette

Attachment 6

Question 3.C. - Description of Proposed Service Area

The proposed service area is the approximate 172-acre rectangular tract of land located approx. one mile south of the center of the City of Aubrey. The subject tract has approx. 1,500 feet of frontage on the east side of State Highway 377 which tract extends approx. 0.9 miles to the east of State Highway 377 as shown on the Location Map (Attachment 4) and the small scale map (Attachment 5.A.). The 172-acre tract is currently characterized by ranch land in the northwest portion (the Hopper Ranch owned by Jack Hopper) and rural land owned by Aubrey Realty and Development LC, with a landscaping business (G&S Landscaping) and pond located on the eastern portion used as a hunting and fishing lease. The area on the east frontage of State Highway 377 is directly across from new commercial development (Dollar General Store) on the west frontage of State Highway 377. The attached Denton Central Appraisal District (CAD) Webmap shows the three ownership parcels comprising the 172-acre tract and the current landowners (Hopper Ranch; Aubrey Realty & development LLC; G&S Landscaping).

Aubrey Creek Estates Tract Ownership

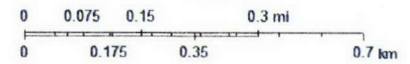


September 4, 2017

□ Parcels

- Hopper Ranch
- Aubrey Realty & Development LLC
- G & S Landscaping

1:9,028



Sources: Esri, HERE, DeLorme, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), MapmyIndia, NSCC, © OpenStreetMap contributors, and the GIS User Community

Attachment 7


Question 3.D. - Map Showing Water and Sewer Facilities

See attached map showing water and sewer improvements for the 172-acre Aubrey Creek Estates tract.



Aubrey Creek Estates
Water and Sewer
Improvements

N



1 inch = 500 feet

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Air
AeroGRID, IGN, and the GIS User Community

Attachment 8

Question 5.A.iv. - TCEQ Inspection Results and Responses

See attached TCEQ PWS inspection letter of 04/14/2017 finding no violations.

See attached TCEQ wastewater plant inspection letter of 11/22/2016 finding certain violations.

See attached TCEQ letter of 12/20/2016 resolving the wastewater plant violations noted in the 11/22/2016 inspection letter.

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Jon Niemann, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

November 22, 2016

Signature Confirmation # 9134 9690 0935 0018 6362 04

Mr. Kenneth Faulkner, Director of Public Works
City of Aubrey
107 South Main Street
Aubrey, Texas 76227

Re: Notice of Violation for Comprehensive Compliance Investigation at:
City of Aubrey Wastewater, Aubrey, (Denton County), Texas
Regulated Entity No.: 102336666, TCEQ ID No.: WQ0013647-001, EPA ID No.:
TX0056588

Dear Mr. Faulkner:

On September 21, 2016, Ms. Audrey Aringo of the Texas Commission on Environmental Quality (TCEQ) Dallas/Fort Worth (DFW) Region Office conducted an investigation of the above-referenced regulated entity to evaluate compliance with applicable requirements for wastewater treatment. Enclosed is a summary which lists the investigation findings. In addition, certain outstanding alleged violations were identified for which compliance documentation is required. Please submit to this office by **December 16, 2016** a written description of corrective action taken and the required documentation demonstrating that compliance has been achieved for each of the outstanding alleged violations.

In the listing of the alleged violations, we have cited applicable requirements, including TCEQ rules. Please note that both the rules themselves and the agency brochure entitled Obtaining TCEQ Rules (GI 032) are located on our agency website at <http://www.tceq.texas.gov> for your reference. If you would like a hard copy of this brochure mailed to you, you may call and request one from either the DFW Region Office at (817) 588-5800 or the Central Office Publications Ordering Team at 512-239-0028.

The TCEQ appreciates your assistance in this matter. Please note that the Legislature has granted TCEQ enforcement powers which we may exercise to ensure compliance with environmental regulatory requirements. Self-reported violations may be subject to enforcement, including penalties, upon review by the Enforcement Division. We anticipate that you will resolve the alleged violations as required in order to protect the State's environment. If you have additional information that we are unaware of, you have the opportunity to contest the violations documented in this notice. Should

Mr. Kenneth Faulkner
Page 2
November 22, 2016

you choose to do so, you must notify the DFW Region Office within 10 days from the date of this letter.

At that time, Mr. Jeff Tate, Water Section Manager, will schedule a violation review meeting to be conducted within 21 days from the date of this letter. However, please be advised that if you decide to participate in the violation review process, the TCEQ may still require you to adhere to the compliance schedule included in the attached Summary of Investigation Findings until an official decision is made regarding the status of any or all of the contested violations.

If you or members of your staff have any questions, please feel free to contact Ms. Aringo in the DFW Region Office at (817) 588-5874.

Sincerely,



Jeff Tate, Water Section Manager
Dallas/Fort Worth Region Office
Texas Commission on Environmental Quality
JT/aa

Enclosures: Summary of Investigation Findings #1370969
Investigation Sample Results and COC # (W004995 and W004996)

Summary of Investigation Findings

AUBREY WASTEWATER TREATMENT PLANT	Investigation # 1370969
107 S MAIN ST	Investigation Date: 09/21/2016
AUBREY, DENTON COUNTY, TX 76227	
Additional ID(s): TX0056588	
WQ0013647001	

OUTSTANDING ALLEGED VIOLATION(S) ASSOCIATED TO A NOTICE OF VIOLATION

Track No: 622543 Compliance Due Date: 12/22/2016

30 TAC Chapter 217.33(a)
30 TAC Chapter 305.125(1)

PERMIT Monitoring and Reporting Requirements
Monitoring and Reporting Requirements, No.5

Alleged Violation:

Investigation: 1370969

Comment Date: 11/10/2016

Failure to ensure flow measurement accuracy. Specifically, the flow measurement accuracy check performed during the investigation revealed an unacceptable percent error of 37. The percent error must be maintained at plus or minus 10 percent.

Recommended Corrective Action: The flow meter shall be accurately calibrated by a trained person at plant start-up and as often thereafter as necessary to ensure accuracy, but not less often than annually. Submit documentation indicating that the flow meter has been accurately calibrated.

ALLEGED VIOLATION(S) NOTED AND RESOLVED ASSOCIATED TO A NOTICE OF VIOLATION

Track No: 622556

30 TAC Chapter 305.125(1)

PERMIT Effluent Limitations and Monitoring
Effluent Limitations and Monitoring Requirements, No. 1

Alleged Violation:

Investigation: 1370969

Comment Date: 11/18/2016

Failure to maintain compliance with the permitted effluent limits. Specifically, during the record review period of March 2012 to September 2016, the daily average flow limit of 0.4 MGD was exceeded two times.

Recommended Corrective Action: Compliance with the permit limits must be maintained. Submit documentation outlining the steps taken to obtain and maintain compliance with the permit limit for daily average flow.

Resolution: The two daily average flow limit exceedances during the record review period of March 2012 to September 2016 occurred during periods of excessive rain. The regulated entity submitted a permit amendment renewal application on March 8, 2016 that includes a new final phase for a permitted average annual flow of 0.55MGD.

AREA OF CONCERN

Track No: 622524

30 TAC Chapter 305.125(5)

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Jon Niermann, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

December 20, 2016

Mr. Kenneth Faulkner, Director of Public Works
City of Aubrey
107 South Main Street
Aubrey, Texas 76227

Re: Final Letter for:
City of Aubrey Wastewater, Aubrey, (Denton County), Texas
WQ0013647-001, RN 102336666, TX0056588

Dear Mr. Faulkner:

This letter is to inform you that the Texas Commission on Environmental Quality (TCEQ) Dallas-Fort Worth Regional Office has received adequate compliance documentation on December 6, 2016 to resolve the alleged violation documented during the investigation of the above-referenced regulated entity conducted on September 21, 2016. Based on the information submitted, no further action is required concerning this investigation.

The Texas Commission on Environmental Quality appreciates your assistance in this matter and your compliance efforts to ensure protection of the State's environment. If you or members of your staff have any questions, please feel free to contact Audrey Aringo at the Dallas-Fort Worth Regional Office at 817-588-5874.

Sincerely,


Jeff Tate
Water Section Manager
Dallas-Fort Worth Regional Office

JT/aa

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Jon Niermann, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 14, 2017

The Honorable Janet Meyers
Mayor of Aubrey
107 South Main Street
Aubrey, Texas 76227-5519

Re: Public Water Supply Comprehensive Compliance Investigation (CCI) at:
City of Aubrey, 107 South Main Street, Aubrey, Denton County, Texas
RN 101386480, PWS ID No. 0610001, Investigation No. 1402335

Dear Mayor Meyers:

On March 21, 2017, Ms. Daniela Hill of the Texas Commission on Environmental Quality (TCEQ) Dallas/Fort Worth (D/FW) Regional Office conducted an investigation of the above-referenced facility to evaluate compliance with applicable requirements for public water supply systems. No violations are being alleged as a result of the investigation, however, please see the enclosed Areas of Concern.

The TCEQ appreciates your assistance in this matter and your compliance efforts to ensure protection of the State's environment. If you or members of your staff have any questions regarding these matters, please feel free to contact Ms. Hill in the D/FW Regional Office at (817) 588-5810.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles Marshall".

Charles Marshall
Team Leader, Public Water Supply Program
D/FW Regional Office

CM/dh

Enclosure: Summary of Investigation Findings

Summary of Investigation Findings

CITY OF AUBREY PWS

Investigation #

, DENTON COUNTY,

1402335
Investigation Date: 03/21/2017

Additional ID(s): 0610001

AREA OF CONCERN

Track No: 636006

30 TAC Chapter 290.43(c)(1)

Alleged Violation:

Investigation: 1402335

Comment Date: 03/24/2017

Failure to provide a proper screen on the roof vent of the 100,000-gallon ground storage tank.

During the comprehensive compliance investigation on March 21, 2017, it was noted that the vent screen on the roof of the 100,000-gallon ground storage tank located at the Hill Water Plant at 618 Hill Street had a tear in one area.

30 TAC 290.43(c)(1) states that roof vents shall be gooseneck or roof ventilator and be designed by the engineer based on the maximum outflow from the tank. Vents shall be installed in strict accordance with current AWWA standards and shall be equipped with approved screens to prevent entry of animals, birds, insects and heavy air contaminants. Screens shall be fabricated of corrosion-resistant material and shall be 16-mesh or finer. Screens shall be securely clamped in place with stainless or galvanized bands or wires and shall be designed to withstand winds of not less than tank design criteria (unless specified otherwise by the engineer).

Recommended Corrective Action: Replace or repair the vent screen on the roof of the 100,000-gallon ground storage tank and provide photographs upon completion of the secure placement of the vent screen. Submit a letter with a description of the actions taken to the TCEQ D/FW Region Office to document that the alleged violation has been corrected.

Resolution: On March 23, 2017, compliance documentation was received from the water system at the TCEQ D/FW Region Office. Included in the documentation was a photograph showing the vent screen on the roof of the 100,000-gallon ground storage tank had been repaired and securely placed. Based on this documentation, it appears that the water system has adequately corrected the alleged violation.

Track No: 636008

30 TAC Chapter 290.42(e)(4)(C)

Alleged Violation:

Investigation: 1402335

Comment Date: 03/24/2017

Failure to provide adequate ventilation for enclosures in which gas chlorine is stored and fed.

During the comprehensive compliance investigation on March 21, 2017, it was noted that no high level screened vent was provided in the building where gas chlorine was stored and fed at the Hill Water Plant located at 618 Hill Street. A floor level screened vent was provided in the building where gas chlorine was stored and fed.

30 TAC 290.42(e)(4)(C) states adequate ventilation, which includes both high level and floor level screened vents, shall be provided for all enclosures in which gas chlorine is being stored or fed. Enclosures containing more than one operating 150-pound cylinder of chlorine shall also provide forced air ventilation which includes: screened and louvered floor level and high level vents; a fan which is located at and draws air in through the top vent and discharges to the outside atmosphere through the floor level vent; and a fan switch located outside the

enclosure. Alternately, systems may install negative pressure ventilation as long as the facilities also have gas containment and treatment as prescribed by the current International Fire Code (IFC).

Recommended Corrective Action: Provide a high level screened vent in the building where gas chlorine is stored and fed. Submit a letter describing the actions taken and photographs of the installed high level screened vent in the building where gas chlorine is stored and fed to the TCEQ D/FW Region Office to document that the alleged violation has been corrected.

Resolution: On March 23, 2017, compliance documentation was received from the water system at the TCEQ D/FW Region Office. Included in the documentation was a photograph of the high-level screened vent installed in the building where gas chlorine was stored and fed. Based on this documentation, it appears that the water system has adequately corrected the alleged violation.

Attachment 9

Question 5.B. - PWS Operators for City of Aubrey

See attached list of City of Aubrey wastewater plant and groundwater PWS operators.

William A Niles	WW 0053641	Class C Wastewater Operator
	WG 0014055	Class C Ground Water Operator
Gilbert J Hernandez	WW 0028854	Class C Wastewater Operator
	WG 0004981	Class C Ground Water Operator
Ryan R Seitz	WW 0045081	Class C Wastewater Operator
	WG 0012428	Class C Ground Water Operator
Santos Hernandez	WW 0053146	Class C Wastewater Operator
	WG 0014397	Class C Ground Water Operator
John T Hall	WW 0057934	Class B Wastewater Operator
	WG 0008417	Class C Ground Water Operator
Kenneth Faulkner	WW 0031982	Class B Wastewater Operator
	WG 0012427	Class B Ground Water Operator
Troyce L Row	WW 0057917	Class C Wastewater Operator

Attachment 10

Question 5.G. - Effect of Granting CCN Amendment

The effect of granting the requested CCN amendment is as follows:

On the applicant: The City of Aubrey will be able to provide retail water and sewer service in the 70 acres that are currently being annexed into the city, and in the remaining 102 acres that will be annexed consistent with the City's municipal development plans. Adding the 172-acre Aubrey Creek Estates tract to the City's existing water and sewer system will allow the City to spread water and sewer utility system costs over a larger customer base thus resulting in lower utility costs per capita. Since the subject tract is directly adjacent to the City's existing water and sewer lines and facilities, the City will be able to serve the subject tract more cost effectively than if Mustang S.U.D. served the tract.

On any retail public utility already serving the proximate area: Mustang S.U.D. will be relieved of the obligation to extend its facilities to the 172-acre Aubrey Creek Estates tract, thereby avoiding the additional demands that would be created by that obligation to serve the development within the tract, and thus allowing Mustang S.U.D. to better serve its current customers and remaining CCN area. The requested transfer of water and sewer CCN area from Mustang S.U.D. to the City of Aubrey is with the full agreement of both entities and thus reflects the desires of both parties to allocate service area between them in ways that make the most economic sense for both parties.

On any landowner in the requested area: The landowners and developers of the 172-acre Aubrey Creek Estates tract will be able to have their planned developments served by the City of Aubrey within whose corporate boundaries the land will exist following the completion of the pending voluntary annexation for 70 acres and future annexation of the remaining 102 acres. This will also avoid the greater costs associated with obtaining utility service extensions from Mustang S.U.D. Obtaining retail water and sewer utility service from the City of Aubrey will also enable the landowners and developers to more efficiently integrate other city services.

Attachment 11

Question 5.H.iv. - U.T.R.W.D. Water Supply Contract

See the attached March 18, 1999 U.T.R.W.D. Regional Treated Water Supply Service Contract with City of Aubrey for sale of 100,000 gals. of emergency (backup) water supply.

**UPPER TRINITY REGIONAL WATER DISTRICT
REGIONAL TREATED WATER SUPPLY SERVICE
CONTRACT FOR ADDITIONAL PARTICIPATING MEMBER
WITH
CITY OF AUBREY**

THE STATE OF TEXAS §
 §
COUNTY OF DENTON §

THIS REGIONAL TREATED WATER SUPPLY CONTRACT (the "Contract") made and entered into as of the 18th day of March 1999 (the "Contract Date"), by and between UPPER TRINITY REGIONAL WATER DISTRICT, (the "District"), a conservation and reclamation district created pursuant to Article XVI, Section 59 of the Constitution of the State of Texas, and CITY OF AUBREY ("Aubrey"), a municipality of the State of Texas, which party may be referred to herein as "Additional Participating Member" or "Member").

WITNESSETH:

WHEREAS, Aubrey is a municipality, a duly incorporated political subdivision of the State of Texas operating under the constitution and laws of the State of Texas; and,

WHEREAS, Aubrey is a Contract Member of the District and is entitled to water service from the District on terms equitable with the terms under which Participating Members of the District receive service when a project is feasible; and

WHEREAS, Aubrey is a governmental entity in Denton County that provides retail utility service to customers within its service area; and

WHEREAS, one of the purposes for which the District was created was to provide treated water to cities and water distribution utilities of the Denton County area; and

WHEREAS, the District has a contract with City of Dallas dated February 12, 1992, under which the District has the right to purchase untreated surface water out of Ray Roberts Lake or Lewisville Lake to serve cities and utilities within the District's service area, including Aubrey; and

WHEREAS, the District is developing a Regional Treated Water System for Participating Members and other Customers, including raw water transmission lines, water treatment plant, pump stations, treated water transmission lines, storage tanks and metering facilities, Phase 1 of which is operational and is serving Participating Members and Participating Utilities; and

WHEREAS, it is not yet feasible to provide water service directly to Aubrey from the Regional Treated Water System; and

WHEREAS, the District has entered into a contract with Mustang Water Supply Corporation dated November 19, 1998, to extend a pipeline from the Regional Treated Water System to provide water service to Mustang Water and other Customers who may have boundaries adjacent to or near the service area of Mustang Water; and

WHEREAS, District has entered into prior contracts with Participating Members and with Participating Utilities for participation in the Regional Treated Water System (herein "System"), under which contracts the District is authorized to enter into contracts with additional parties such as this Contract for participation in the System; and

WHEREAS, Mustang Water has agreed in its contract with the District, subject to available capacity, to transport water for the District to such nearby Customers requesting water, and has agreed to transport water for the District to Aubrey under this Contract; and

WHEREAS, the District will manage and operate, or contract with others for the management and operation of such facilities; and

WHEREAS, District is proceeding with construction of a pipeline and related facilities as an extension of Phase I of the System in general accordance with the September 1998 engineering report entitled "Regional Treated Water System: Northeast Extension," prepared by Alan Plummer Associates, Inc., herein referred to as the "Project;" and

WHEREAS, construction of the proposed "Northeast Extension" is subject to approval of the U. S. Corps of Engineers for a crossing of Lewisville Lake, and

WHEREAS, Aubrey desires to become an "Additional Participating Member" as defined in this Contract; and

WHEREAS, the District and Aubrey are authorized to enter into this Contract pursuant to the District's enabling statute, H.B. 3112 (1989 regular session of the Texas Legislature) (the "Act") and Vernon's Ann. Tex. Civ. St. Article 4413 (32c) (the "Interlocal Cooperation Act"), and other applicable laws; and

WHEREAS, the District agrees that Aubrey shall continue to own and operate its own water pumping, storage and distribution facilities; and

WHEREAS, Aubrey acknowledges that the District may enter into similar contracts as this Contract with Additional Participating Members, additional Participating Utilities, and other Customers in the future; and

WHEREAS, the parties hereto acknowledge that a portion of the cost of the District's Regional Treated Water System has been funded by State of Texas through the "State Participation Program," administered by the Texas Water Development Board and that District is obligated to repurchase said portion in future years from State of Texas; and

WHEREAS, District has established an "Equity Fee" to be paid by Customers who contract for capacity in the Regional Treated Water System to help repurchase State Participation, and Aubrey is willing to pay the applicable "Equity Fee" as a condition of this Contract; and

WHEREAS, it is expected by the parties hereto that the District will issue an installment of Bonds to provide money to construct the Project, with said Bonds to be payable from and secured by Annual Payments made under this Contract and all other similar contracts for participation in the System.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the District agrees to provide treated water supply services under this Contract, and use its best efforts to issue its Bonds and to acquire, construct and complete the Project and other facilities upon and, subject to the terms and conditions hereinafter set forth, to-wit:

ARTICLE I
Definitions

Section 1.01. **Adoption of Preamble.** All of the matters stated in the preamble of this Contract are true and correct and are hereby incorporated into the body of this Contract as though fully set forth in their entirety herein.

Section 1.02. **Definitions.** The following terms and expressions as used in this Contract, unless the context clearly shows otherwise, shall have the following meanings:

1. "Act" means H.B. 3112, Chapter 1053, Acts of the 71st Legislature, Regular Session, 1989 (effective June 16, 1989) as amended in the 1995 Regular Session of the Legislature by Senate Bill 1657, which amendment became effective August 28, 1995.

2. "Additional Participating Member" means Aubrey and any party other than the existing Participating Members with which the District makes a contract similar to this Contract for supplying treated water from the System, provided that after execution of this Contract, Aubrey shall become one of the Participating Members for all purposes of this Contract.

3. "Administrative Payment" means the amount of money to be paid to the District by each of the Participating Members, Participating Utilities, Additional Participating Members, Contract Members and Contract Utilities during each Annual Payment Period as their proportionate share of Administration and Planning Expenses of the District.

4. "Adjusted Annual Payment" means the Annual Payment as adjusted by the Board during or after such Annual Payment Period, as provided by this Contract.

5. "Administrative and Planning Expenses" means the general overhead cost and expenses of managing the District, but not including expenses related to capital projects financed by the District; such expenses shall include the administration of the District's general office, the activities and meetings of the Board and the planning activities of the District, to the extent such programs and activities shall be for the general welfare of the District; activities and programs for the benefit of specific parties and for specific capital projects shall, unless otherwise authorized, be the responsibility of the benefiting parties.

6. **"Annual Payment"** means the amount of money to be paid to the District by Member during each Annual Payment Period as its proportionate share of the Annual Requirement.

7. **"Annual Payment Period"** means the District's fiscal year, which currently begins on October 1 of each calendar year and ends on September 30 of the following calendar year, but which may be any twelve consecutive month period fixed by the District; and the first Annual Payment Period under this Contract is estimated to be the period of October 1, 1998, through September 30, 1999. Any service provided during FY 1997-98 for a partial year will be on a pro rated basis.

8. **"Annual Requirement"** means the total amount of money required for District to pay all Operation and Maintenance Expenses of the System, and to pay the Capital (Bond Service) Component of the Annual Requirement as described hereinafter including debt service on its Bonds, and any sums required to pay or restore any amounts required to be deposited in any special or reserve funds required to be established and/or maintained by the provisions of the Bond Resolutions.

9. **"Board"** means the governing body of the District.

10. **"Boardmembers"** means a member or members of the Board.

11. **"Bond Resolution"** means any resolution of the District, which authorizes any Bonds.

12. **"Bonds"** means all bonds issued by the District to construct the System, whether in one or more series or issues, and the interest thereon, and hereafter issued to acquire, construct and complete the Project, and all bonds issued subsequently to improve, extend, operate or maintain the System, and any bonds issued to refund any bonds or to refund any such refunding bonds.

13. **"Contract Member"** means an entity that provides retail utility service or has taken and is taking definitive steps to provide retail utility service to customers within its boundaries, that contracts with the District to preserve the option to become a Participating Member prior to June 16, 1999, and that agrees to pay an annual pro rata share of the Administrative and Planning Expenses of the District.

14. **"County"** means Denton County, Texas.

15. **"Customer"** means any wholesale user of the water services provided by the District which user provides retail utility service within its boundaries.

16. **"Customer Advisory Council"** or **"Council"** means the committee to be created to consult with and advise the District with respect to the System as provided in this Contract.

17. **"Demand"** means the maximum rate of flow expressed in MGD mutually established by Member and District that is or may be taken by Member within a Water Year.

18. **"District"** means the Upper Trinity Regional Water District, a conservation and reclamation district pursuant to Article XVI, Section 59 of the Constitution of the State of Texas created in accordance with the Act.

19. **"MGD"** is an abbreviation for "million gallons of water per day".

20. **"North Service Area"** means generally the northern portion of the County and more specifically any related service area designated by the District to be provided treated water service by the District from a water treatment plant other than the existing plant near Lewisville Lake in City of Lewisville, which service area may be separate from other service areas of the District for purposes of determining the Annual Requirement and for delivery of services and which may be modified from time to time by the District.

21. **"Operation and Maintenance Expenses"** means all costs and expenses of operation and maintenance of the System, including (for greater certainty but without limiting the generality of the foregoing) repairs and replacements, operating personnel, the cost of utilities, the amounts required to pay the U.S. Army Corps of Engineers or any other federal, state, or local agency for water storage rights or other interests in water in any reservoir, or for the purchase of water, or for the use or operation of any property or facilities; the costs of supervision, engineering, accounting, auditing, legal services, insurance premiums, supplies, services, administration of the System, Administrative and Planning Expenses, and equipment necessary for proper operation and maintenance of the System; and, payments made by District in satisfaction of judgments resulting from claims not covered by District's insurance arising in connection with the acquisition, construction, operation, and maintenance of the System. The term also includes the charges of the bank or banks acting as paying agents and/or registrars for any Bonds. The term does not include depreciation expense.

22. **"Participating Member"** (or **"Member"**) means a governmental entity that provides retail utility service to customers within its boundaries, that contracts with the District for the acquisition, construction, improvement, enlargement, and payment for the water projects to be financed from time to time by the District and specifically includes Aubrey.

23. **"Participating Utility"** (or **"Utility"**) means a non-governmental entity, such as a water supply corporation that provides retail utility service to customers within its boundaries, that contracts with the District for the acquisition, construction, improvement, enlargement, and payment for the water projects to be financed from time to time by the District.

24. **"Point(s) of Delivery"** means the point designated in this Contract where treated water will be delivered to Aubrey from the System.

25. **"Project"** means the **"Project"** as defined in the Preamble of this Contract.

26. **"South Service Area"** means generally the southern portions of the County and more specifically any related service area designated by the District to be provided treated water service by the District, from the existing water treatment plant near Lewisville Lake in City of Lewisville, or from other sources, which service area may be separate from other water service areas of the District, for purposes of determining the Annual Requirement and for delivery of service, and which may be modified from time to time by the District.

27. **"State"** means the State of Texas.

28. **"System"** means the Project, Phase 1 of the Regional Treated Water System, together with all future improvements, enlargements, extensions and additions to any of the foregoing which are deemed necessary and feasible by the District to provide treated water service to Participating Members and other Customers and all future new facilities and/or water rights, which are acquired or constructed with the proceeds from the sale of any Bonds or revenues from the System, and any water supply or treatment facilities which are deliberately and specifically, at the option of the District, made a part of the System by resolution of the Board, and all repairs to or replacements of the System. Said term does not include any District facilities, which provide wastewater treatment or disposal services, or solid waste disposal services, of any kind. Said term does not include any facilities acquired or constructed by the District with the proceeds from the issuance of

"Special Facilities Bonds," which are hereby defined as being revenue obligations of the District which are not secured by or payable from payments made under this Contract or similar contracts, and which are payable solely from sources other than revenues of the System.

29. "Water Year" means the period of June 1 of each calendar year through May 31 of the next following calendar year.

ARTICLE II

Board of Directors

Section 2.01. Board Representation. The governing body of each Contract Member, each Participating Member and the County are entitled to appoint a qualified person to serve on the Board. Aubrey is specifically included in this provision.

Section 2.02. Board Votes. Boardmembers appointed by the governing body of Participating Members shall be entitled to vote on all matters coming before the Board. Boardmembers appointed by the governing body of Contract Members shall be entitled to vote on all matters before the Board except those matters that require a weighted vote. The Board shall establish rules for the implementation of a system of weighted votes in accordance with the Act for matters concerning authorization of and financial commitments for capital projects.

Section 2.03. Terms. Boardmembers shall serve staggered, four (4) year terms in accordance with procedures established by the Board. Boardmembers may serve consecutive terms. A Boardmember may be removed at any time by the governing body of the entity that appointed that Boardmember.

Section 2.04. Board Compensation. The District will not compensate Boardmembers for serving on the Board, but may reimburse Boardmembers for actual, reasonable expenses necessarily incurred on behalf of the District or in the discharge of official duties.

Section 2.05. Board Qualifications. A Boardmember must be a qualified voter who resides in the District and may not be an elected official of any governmental entity that has the authority to appoint a member of the Board.

ARTICLE III
Construction and Issuance of Bonds

Section 3.01. **Consulting Engineers.** The District and the Member agree that the District will choose the Consulting Engineers for the System and may change Consulting Engineers at the option of the District.

Section 3.02. **Construction of Projects and System.** The District agrees to use its best efforts to issue its Bonds, payable from and secured by Annual Payments made under this Contract and similar contracts, to acquire and construct the Project and other System facilities when and as needed, as determined by the District, to supply treated water to all Participating Members and other Customers. It is anticipated that such acquisition and construction of the System will be in phases and that each phase will be financed by the District through the issuance of one or more series or issues of its Bonds; and the District agrees to use its best efforts to issue its Bonds for such purpose. Bonds also may, at the discretion of the District, be issued to refund any Bonds, and be issued to extend, enlarge, repair, renovate equip, operate, maintain and otherwise improve the System and any System facilities. District agrees that such improvements will be made in accordance with generally accepted engineering practices. It is anticipated that such improvements will be financed by the District through the issuance of one or more series or issues of its Bonds payable from and secured by Annual Payments made under this Contract and other similar contracts.

Section 3.03. **Bond Proceeds.** The proceeds from the sale and delivery of such Bonds may be used to fund, to the extent deemed advisable by the District, a debt service reserve fund, a contingency fund, and interest on the Bonds during construction; and such proceeds also will be used for the payment of the District's expenses and costs in connection with the Project and System (including all engineering and design costs' and expenses, and the cost of the land and interests therein related to the System) and the Bonds, including, without limitation, all financing, legal, printing, and other expenses and costs related to the issuance of such Bonds and the System.

Section 3.04. **Bond Resolution.** Each Bond Resolution of the District shall specify the exact principal amount of the Bonds to be issued thereunder, which shall mature within the maximum period, and shall bear interest at not to exceed the maximum rates then permitted by law, and each Bond Resolution shall create and provide for the maintenance

of a revenue fund, an interest and sinking fund, a debt service reserve fund, and any other funds deemed advisable, all in the manner and amounts as provided in such Bond Resolution. Each Member agrees that if and when such Bonds are actually issued and delivered to the purchaser thereof, either for the purpose of initially acquiring and constructing the System, or subsequently for improving and/or extending the System, the Bond Resolution authorizing the Bonds shall for all purposes be deemed to be in compliance with this Contract in all respects, and the Bonds issued thereunder will constitute Bonds as defined in this Contract for all purposes.

ARTICLE IV **Operating Requirements**

Section 4.01. Water Sales. District agrees to deliver potable water to Member in accordance with the specifications and restrictions of this Article. District agrees to provide potable water to meet volume and demand requirements of Member as provided herein.

Section 4.02. Water Supply Limitations. Delivery of potable water to meet the requirements of Customers, including Participating Members, is subject to and limited by available System supply and System deliverability, as determined by the District. Such delivery shall not be unreasonably withheld. The District will use its best efforts to furnish and remain in position to furnish treated water sufficient for all reasonable treated water requirements of each Customer, but its obligation shall be limited to the amount of treated water available from the System; and provided that the maximum rate of delivery shall be consistent with the capacities and abilities of System facilities, and shall not exceed the amounts fixed on an equitable and uniform basis by the Board.

Section 4.03. Quantity. The District agrees to deliver treated water under this Contract to Aubrey at its Point(s) of Delivery as described in Section 4.13 hereof, and Aubrey agrees to take at its Point(s) of Delivery or to pay for certain minimum amounts of water to assure adequate funds to the District to fulfill its obligations under this Contract.

Section 4.04. Minimum Amounts. For the purpose of calculating the minimum amount of each Annual Requirement for which Aubrey is unconditionally liable, without offset or counterclaim, Aubrey, during each Annual Payment Period, shall be deemed to have taken and used the minimum Demand for System treated water (regardless of

whether or not such amount is or was actually taken or used) specified for Aubrey in Exhibit B.

Section 4.05. **Demand.** For the initial Water Year, Aubrey will be obligated to take or pay for the Demand specified in Exhibit B. After one year of operating experience, the District may adjust the Demand for any Water Year for Member by mutual agreement; however, District in making such adjustment shall always assure that the sum of all Demands for all Customers will be adequate to support the costs and expenses of the District. The District and Member hereby agree that it is the intention of all parties to adopt a procedure for determination of Demand on an annual basis that takes into account actual usage for the most recent five (5) Water Years and projected needs for the next Water Year. However, the parties agree to adhere to minimum Demands specified herein until the District has sufficient data to justify a transition to a Demand calculation based on actual and projected usage. It is the intention of the District to adopt the revised method of calculating Demand as soon as prudent to promote fairness and equity among all Customers and to avoid any Member paying unnecessarily for water or Demand not needed in the near future.

Section 4.06. **Demand Meters.** A Demand meter (rate-of-flow controller) may be installed by District during initial construction as part of the cost of the Project. If not installed initially, Aubrey and District agree that after an initial five (5) year period, the District may require the installation of a rate-of-flow controller at the cost and expense of the Member to regulate and measure Demand for all Members using or requiring a Demand of 1.0 MGD or greater. Further, the District may require, at its discretion, any other Additional Participating Member or future Customer to install a rate-of-flow controller as part of the initial installation.

Section 4.07. **Changes in Demand.** Customer shall give reasonable notice to District of anticipated changes in Demand requirements. Such notice shall be given at least six (6) months in advance if the requested change, when considered with other pending or contemporaneous requests, does not require construction of additional facilities. The Executive Director of the District may waive the six (6) month notice requirement for good cause shown. If construction of additional facilities is required, such advance notice as will be necessary to allow for financing, design and construction of the needed facilities shall be given by Member.

Section 4.08. **Payment for Demand.** If Demand is measured by a rate-of-flow controller or other device, Member agrees to pay the total annual Demand charge for any increase in the agreed upon maximum Demand during a Water Year; and for each Water Year to pay annual Demand charges based on (a) the current Water Year Demand, (b) the highest Demand established during the five (5) Water Years preceding or (c) the minimum Demand specified in this Contract, whichever is greater. Until modified by mutual agreement, Member agrees to pay such Demand charge as may be required by this Contract or subsequent agreements, whether or not a Demand Meter or rate-of-flow controller is installed.

Section 4.09. **Other Water Supplies.** Members are not obligated to secure all of their water supply requirements from the District, either initially or in the future. Nonetheless, the parties to this Contract desire to promote, achieve and maintain efficient System operation and to promote conservation of limited ground water resources. To that end, Member agrees to minimize the installation of new wells to withdraw additional underground water resources and to stabilize pumping from existing wells. Further, if Member develops plans to seek future surface water supplies from an entity other than the District, Member agrees to give the District sixty (60) days written notice of such intention and to give the District an opportunity to address the needs or concerns so noticed. The acquisition of, or use of, water from other sources shall never obviate or reduce the obligations, duties and responsibilities of Member to make payments specified in this Contract and to secure the payment of Bonds issued pursuant to this Contract.

Section 4.10. **Resale.** Member hereby agrees not to sell water purchased from District to any person or entity outside Member's corporate boundaries or prescribed service area (as may be adjusted from time to time) unless Member has received prior written approval from the District. Approval to make retail sales to individual customers outside such boundaries may be granted by the Executive Director of the District. Approval to make wholesale sales for resale shall require the specific approval of the Board. In granting such authorization, District may establish the terms and conditions of the conveyance of such water including, but not restricted to, the setting of monetary rates for sale of such water. "Convey" means sell, trade, donate, exchange, transfer title, or contract therefor. This provision applies to all water whether initially conveyed to Member under this Contract, obtained from the water wells of Member or from other sources.

Section 4.11. Other Contracts.

(a) The District reserves the right to supply treated water from the System to Additional Participating Members under contracts similar to this Contract subject to appropriate minimum quantities as provided in Sections 4.04 and 5.05 hereof. Each contract with any Additional Participating Member shall comply with the requirements of this Contract, shall substantially restate the essential provisions of this Contract, and shall be structured to be similar hereto to the fullest extent applicable and practicable, with such additions or changes as are necessary to meet the actual circumstances, with the effect that each Additional Participating Member will in effect adopt the provisions of this Contract, as supplemented and necessarily changed by its contract.

(b) It is further recognized and agreed that the District may sell treated water from the System to Customers which are not Additional Participating Members, provided that all such sales of water from the System to such Customers shall not be unduly preferential or impair the capability of the District to fulfill its duties and obligations under this Contract. Such contracts to sell water may be on a parity with this Contract or may be subordinate to the prior rights of Member to water from the System.

(c) However, the District shall not obligate itself to sell or deliver raw or treated water from the System to an Additional Participating Member or future Customer if, in the judgment and discretion of the District, such obligation would jeopardize the District's ability to meet its obligation to treat, transport and deliver treated water from the System to Participating Members, including specifically Aubrey.

(d) The parties hereto recognize and acknowledge that it is the policy and practice of the District that any other person that desires to receive service from the System shall contract directly with the District to become a Customer of the District or an Additional Participating Member. Any proposal to the contrary would be considered an exception to that policy. Accordingly, Member may enter into subcontracts with a City, another utility or other entity to provide wholesale water service only if approved in writing in advance by the District. If approved, no such transaction shall relieve the Member of its obligations to the District under the terms of this Contract.

Section 4.12. Quality. The water to be delivered by the District and received by Member shall be potable, treated water from the System. Member has satisfied itself that such water will be suitable for its needs. The District is obligated to treat such water

according to standards of all State and Federal agencies having jurisdiction over water quality. The District and Member shall cooperate, each within its legal powers, in preventing, to the extent practicable, the pollution and contamination of the reservoirs and watersheds from which System water is obtained.

Section 4.13 Points of Delivery.

(a) District agrees to deliver water contracted for by Aubrey at Point(s) of Delivery as delineated in Exhibit A attached hereto. The initial delivery facilities delineated in Exhibit A hereof shall be constructed by District and included in the cost of the Project.

(b) Unless otherwise mutually agreed to, Member shall be responsible for the design contracting, construction and financing of facilities and acquisition of any rights-of-way for additional or future Points of Delivery for water from the System. Plans shall be submitted to District for written approval and all designs, materials and specifications shall conform to District requirements. Member agrees that District has the right to make periodic inspections during the construction phase of such future or additional delivery facilities. Final acceptance of completed delivery facilities is subject to the written approval of District. Member agrees that after final inspection and acceptance of delivery facilities, Member will convey title of those facilities and rights-of-way in conjunction therewith to District. Upon conveyance of title to delivery facilities by appropriate instrument(s), District shall be responsible for operation and maintenance thereof.

Section 4.14. Metering Equipment.

(a) The District will furnish, install, operate, and maintain at its expense the necessary equipment and devices of standard type required for measuring the quantity of treated water delivered under this Contract from the System to Member through its Point or Points of Delivery, except as otherwise provided in Section 4.13. Such meters and other equipment so installed shall remain the property of the District. The District shall inspect, calibrate, and adjust its meters at least annually as necessary to maintain accurate measurements of the quantity of treated water being delivered. Member shall have access to the metering equipment at all reasonable times for inspection and examination, but the reading, calibration, and adjustment thereof shall be done only by employees or agents of the District. If requested, Member may witness such reading, calibration and adjustment of meters. All readings of meters will be entered upon proper

books of record maintained by the District. Member may have access to said record books during normal business hours.

(b) Member may request, in writing, that the District calibrate any meter or meters in the presence of the Member. The District will make up to two (2) such calibrations in any fiscal year at no charge to Member. All requested calibrations in excess of two (2) will be made at the expense of the requesting Member, except when the accuracy of the meter is beyond the limits of commercial accuracy in which case the District shall bear such expense. If, for any reason, any meter is out of service or out of repair, or if, upon any test, the percentage of inaccuracy of any meter is found to be in excess of commercial accuracy [which unless otherwise agreed to shall be considered to be two (2%±) percent], registration thereof shall be corrected for a period of time extending back to the time when such inaccuracy began, if such time is ascertainable, and if not ascertainable, then for a period extending back one-half (½) of the time elapsed since the date of the last calibration, but in no event further back than a period of six (6) months.

(c) Member may, at its option and its own expense, install and operate a meter (check meter) to check any meter installed by the District, but the measurement for the purpose of this Contract shall be solely by the District's meters, except as in this Section specifically provided to the contrary. All such check meters shall be of standard make, shall be installed in a location approved by the District, and shall be subject at all reasonable times to inspection and examination by any employee or agent of the District, but the reading, calibration, and adjustment thereof shall be made only by the Member, except during any period when a check meter may be used under specific written consent by the District for measuring the amount of treated water delivered from System, in which case the reading, calibration, and adjustment thereof shall be made by the District with like effect as if such check meter or meters had been furnished or installed by the District.

(d) If either party at any time observes a variation between the delivery meter or meters and the check meter or meters, if any such check meter or meters shall be installed, such party will promptly notify the other party, and the parties hereto shall then cooperate to procure an immediate calibration test and joint observation of any adjustment and the same meter or meters shall then be adjusted to accuracy. Each party shall give the other party forty-eight (48) hours' notice of the time of all tests of meters so that the other party may conveniently have a representative present.

(e) If for any reason any meters are out of repair so that the amount of water delivered cannot be ascertained or computed from the reading thereof, the water delivered through the period such meters are out of service or out of repair shall be estimated and agreed upon by the parties hereto upon the basis of the best data available. For such purpose, the best data available shall be deemed to be the registration of any check meter or meters if the same have been installed and are accurately registering. Otherwise, the amount of water delivered during such period may be estimated: (i) by correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculation, or (ii) by estimating the quantity of delivery by deliveries during the preceding periods under similar conditions when the meter or meters were registering accurately.

Section 4.15. Unit of Measurement. The unit of measurement for treated water delivery from the System hereunder shall be 1,000 gallons, U.S. Standard Liquid Measure.

Section 4.16. Access.

(a) Member agrees to provide ingress and egress for District employees and agents to all its premises inside Member's boundaries to install, operate, inspect, test, and maintain facilities owned or maintained by District within corporate or jurisdictional limits of Member.

(b) District agrees to provide ingress and egress for Member employees and agents to all premises under control of the District to install, operate, inspect, test, and maintain facilities, and read meters owned or maintained by Member.

Section 4.17. Reporting Requirements.

(a) Approximately sixty days after the end of each Annual Payment Period, Member shall furnish in writing to the District the following information:

- (1) The number of active domestic water connections currently served;
- (2) The number of commercial and business water connections currently served;

- (3) The number of water connections currently served which purchase 1,000,000 gallons or more per year, with name and location of each;
- (4) The number of gallons of water pumped from sources other than the District during the most recent Annual Payment Period;
- (5) An estimate of the projected annual water requirements from the System by Member for each of the next five (5) years;
- (6) An estimate of Demand for the next Water Year.

The purpose of this provision is to permit the District to accumulate statistical data which will enable it to plan for adequate service, and to facilitate plans for betterment and future facilities expansion.

Section 4.18. Customer Advisory Council.

- (a) The governing body of each Customer annually may appoint one of the members of its governing body or one of its employees as a member of the Customer Advisory Council for the Regional Treated Water System, which Council is hereby created and established. The Council shall elect a Chairman, a Vice-Chairman, and a Secretary. The Council may establish bylaws governing the election of officers, meeting dates and other matters pertinent to its function. The Council shall consult with and advise the District and the Board with regard to the following matters pertaining to the District:
 - (i) The issuance of Bonds;
 - (ii) The operation and maintenance of the District and the System;
 - (iii) Contracts for services to Customers;
 - (iv) The District's Annual Budget, prior to its submission to the Board;
 - (v) All other pertinent matters relating to operation of the District and the System; and

(vi) Improvements and extensions of the System.

The Council shall have access to and may inspect at reasonable times all physical elements of the System and all records and accounts of the District pertaining to the System.

(b) The term of membership on the Council shall be at the pleasure of each governing body represented, respectively, and each member shall serve until replaced by such governing body. All expenses of the Council in discharging its duties under this Section shall be considered as an Operation and Maintenance Expense of the District.

Section 4.19. Water Conservation, Drought Contingency Plan.

(a) Member agrees that water supplies or services may be limited or curtailed pursuant to Section 4.02. Also, Member agrees to coordinate with the District the implementation of any action to limit or curtail water supplies to minimize adverse impact on System operation, and on adequacy of service, and to promote public understanding of the need for and terms of such limitation or curtailment.

(b) It is the policy of the District to prepare, adopt and maintain a regional water conservation plan which incorporates loss reduction measures and demand management practices which insure that the available supply of the System is used in an economically efficient and environmentally sensitive manner. Similarly, it is the policy of the District to prepare, adopt and maintain a drought and emergency contingency plan for water supply to Customers. Member agrees to cooperate in the implementation of both plans and to adopt and enforce such or similar plans for use within its jurisdiction. The Member's water conservation plan is subject to approval by District.

(c) To the extent the District imposes restrictions of general applicability to Customers, including rules relating to the curtailment or rationing of water delivery and availability, District agrees to impose such restrictions equitably and in a non-discriminatory fashion. Such rationing shall, within the limits permitted by law, be done by the District on the basis of the relative actual total amount of water taken from the System by each Customer respectively during the most recent Water Year during which rationing among the Customers was not necessary.

Section 4.20. **Standards.** Member agrees to protect its storage and distribution system from cross connections under the specifications required by health standards of the State of Texas. Member agrees to provide air gaps for any ground storage and backflow preventers for any elevated storage receiving water from the System. Member agrees to provide internal storage sufficient to meet its emergency needs and to maintain a reasonable load factor for deliveries from the System.

ARTICLE V

Fiscal Provisions

Section 5.01. **Annual Requirements.** Subject to the terms and provisions of this Contract, the District will provide and pay for the cost of the acquisition, construction and improvement of the System and all System facilities, by issuing its Bonds in amounts which will be sufficient to accomplish such purposes. It is acknowledged and agreed that payments to be made under this Contract and similar contracts with other Customers and Additional Participating Members, if any, will be the primary source available to the District to provide the Annual Requirement. In compliance with the District's duty to fix, and from time to time to revise, the rates and charges for services of the System, the Annual Requirement may change from time to time. Each such Annual Requirement shall be allocated among the Members as hereinafter provided, and the Annual Requirement for each Annual Payment Period shall be provided for in each Annual Budget and shall at all times be not less than an amount sufficient to pay or provide for the payment of:

(a) An "Operation and Maintenance Component" equal to the amount paid or payable for all Operation and Maintenance Expenses of the System; and

(b) A "Capital Component" equal to:

(1) the principal of, redemption premium, if any, and interest on, its Bonds, as such principal, redemption premium, if any, and interest become due, less interest to be paid out of Bond proceeds or from other sources if permitted by any Bond Resolution, and all amounts required to redeem any Bonds prior to maturity when and as provided in any Bond Resolution, plus the fees, expenses and charges of each paying agent/registrar for paying the principal

of and interest on the Bonds, and for authenticating, registering and transferring Bonds on the registration books; and

(2) the proportionate amount of any special, contingency or reserve funds required to be accumulated and maintained by the provisions of any Bond Resolution; and

(3) an amount in addition thereto sufficient to restore any deficiency in any of such funds required to be accumulated and maintained by the provisions of any Bond Resolution; and

(c) A “**Special Reserve**” in an amount deemed appropriate and necessary by the Board to be required as a special reserve for Operation and Maintenance Expenses of the System or for capital improvements. Any such reserve shall be used as operating funds for Operation and Maintenance Expenses, for emergency expenses and a fluctuating reserve for additions to or shortfalls in the annual revenues of the System. The normal level of such reserve shall not exceed 25% of the annual Operation and Maintenance Expenses (estimated to be approximately three (3) months of expenses); however, the Board may authorize the reserves to be maintained at a higher level.

Section 5.02. Annual Budget. Each Annual Budget for the System shall always provide for amounts sufficient to pay the Annual Requirement. The Annual Budget for the System for all or any part of the Annual Payment Period during which the System is first placed into operation shall be prepared by the District based on estimates made by the District. On or before June 15 of each year after the System is first placed in operation, the District shall furnish to each Member a preliminary estimate of the Annual Payment required from each Member for the next following Annual Payment Period. Not less than forty days before the commencement of the Annual Payment Period after the System is first placed into operation, and not less than forty days before the commencement of each Annual Payment Period thereafter, the District shall cause to be prepared as herein provided its preliminary budget for the System for the next ensuing Annual Payment Period. A copy of such preliminary budget shall be filed with each Participating Member for review before action by the Board. Any Participating Member may submit comments about the preliminary budget directly to the Board. The Board may adopt the preliminary budget or make such amendments thereto, as the Board may deem proper. The budget thus approved by the Board shall be the Annual Budget for the next ensuing Annual Payment

Period. The Annual Budget (including the first Annual Budget) may be amended by the District at any time to transfer funds from one account or fund to another account or fund so long as such transfer will not increase the total budget. The amount for any account or fund, or the amount for any purpose, in the Annual Budget may be increased through formal action by the Board even though such action might cause the total amount of the Annual Budget to be exceeded; provided that such action shall be taken only in the event of an emergency or special circumstances which shall be clearly stated in a resolution at the time such action is taken by the Board.

Section 5.03. Payments by Participating Member.

(a) For the treated water services to be provided to Aubrey under this Contract, Aubrey agrees to pay, at the time and in the manner hereinafter provided, its proportionate share (Annual Payment) of the Annual Requirement. Aubrey shall pay its part of the Annual Requirement for each Annual Payment Period directly to the District, in monthly installments in accordance with the schedule of payments furnished by the District, as hereinafter provided.

(b) Aubrey shall pay its Annual Payment according to the minimum amounts respectively specified in Section 4.04 of this Contract and according to the actual volume of treated water taken. The District shall estimate a price per 1,000 gallons of Demand and volume for purposes of determining the monthly payment to be made by each Member. Member shall pay a Demand charge in approximately equal monthly installments and based on the minimum quantity specified in Exhibit B or upon a different quantity subsequently established by the District in accordance with Section 4.05. Such Demand charge shall be sufficient to cover the fixed cost portion of the Annual Requirement. Each Member shall pay a volume charge based on the actual volume of treated water delivered to each Member monthly. The volume charge shall be sufficient to cover the variable cost portion of the Annual Requirement and specifically the variable costs associated with treating, pumping, transporting and delivering the water. The District reserves the right to combine the volume and Demand charge into a unified charge for the convenience of the District and its Customers, especially for short-term sales or for sale of small quantities.

Section 5.04. Fiscal Policy. It is provided that in estimating costs for services, the District is specifically authorized, in its discretion, to include in such estimate of costs reasonable contributions to reserve funds or to assume that the Annual Payment Period may be a wet year which could cause revenues to be increased if the year is actually

normal or dry. This fiscal policy is expressly approved by the Member and is deemed by the parties hereto to be beneficial in the fiscal management of the System, and will assure the timely availability of funds even under unexpected circumstances. Upon receipt during any Annual Payment Period of an amount sufficient to meet the then current Annual Budget of the System for the remainder of the then current Annual Payment Period, the District shall deposit subsequent revenues received into appropriate reserve or contingency accounts, unless otherwise specifically hereinafter provided in the event of unexpected or additional Annual Budget requirements. If there is a shortfall in revenues, the District may withdraw from the reserves, adjust the Annual Requirement, revise the payment schedule or do any combination thereof.

Section 5.05. Minimum Payments. It is agreed that if, during any Annual Payment Period, the estimated and/or actual metered volume of treated water provided by the System to Aubrey is, for any reason whatsoever, less than any minimum amount prescribed by this Contract and the District, Aubrey shall pay its Annual Payment according to such minimum amount. However, if Aubrey's estimated and/or actual metered amount of water is equal to or in excess of such minimum amount, its Annual Payment shall be calculated on the basis of estimated and actual volumes and Demands. All contracts with Additional Participating Members shall provide for equitable minimum amounts, also. Such minimum quantities shall be fixed in amounts at least sufficient, as determined by the District, to assure an initial Annual Payment by such Additional Participating Member for not less than the amount of its estimated use of treated water during the first year of service under such contract.

Section 5.06. Redetermination of Annual Requirements. Notwithstanding the foregoing, the Annual Requirement, and each Member's share thereof (Annual Payment), may be redetermined, after consultation with each Member, at any time during any Annual Payment Period, to the extent deemed necessary or advisable by the District, if:

(i) The District commences furnishing services of the System to an Additional Participating Member or Customer;

(ii) Unusual, extraordinary, or unexpected expenditures for operation and maintenance expenses are required which are not provided for in the District's Annual Budget or reserves for the System;

(iii) Operation and maintenance expenses of the System are substantially less than estimated;

(iv) District issues Bonds which require an increase in the Capital Component of the Annual Payment; or

(v) The District receives either significantly more or significantly less revenue or other amounts than those anticipated.

If the Annual Requirement is redetermined, Member will be advised of the Adjusted Annual Payment.

Section 5.07. Other Revenues. During each Annual Payment Period, all revenue derived from sales of System water, other than sales of treated water to Participating Members, shall be credited to and be used for paying part of the Annual Requirement in the manner determined by the District, with the result that such credits shall reduce, to the extent of such credits, the amounts which otherwise would be payable by the Member. The District shall estimate all such credits which it expects to make during each Annual Payment Period in calculating each Annual Payment.

Section 5.08. Prompt Payment/Disputed Bills. Member hereby agrees that it will make payments required by this Contract to the District within 20 days of the date a bill for service is rendered. If Member at any time disputes the amount to be paid by it to the District, Member shall nevertheless promptly make such payment or payments; but, if it is subsequently determined by agreement or court decision that such disputed payments should have been less, or more, the District shall promptly revise and reallocate the charges in such manner that Member will recover its overpayment or the District will recover the amount due it. All amounts due and owing to the District by Member, or due and owing to Member by the District, shall, if not paid when due, bear interest at the rate of ten (10%) percent per annum from the date when due until paid.

Section 5.09. Delinquent Bills. The District shall, to the extent permitted by law, suspend the delivery of water from the System to any Member or Customer which remains delinquent in any payments due hereunder for a period of sixty (60) days, and shall not resume delivery of water while such Member or Customer is so delinquent. It is further provided and agreed that if Member should remain delinquent in any payments due hereunder for a period of one hundred twenty (120) days, and if such delinquency

continues during any period thereafter, Member's minimum amount specified by Contract, shall be deemed to have been zero gallons during all periods of such delinquency, for the purpose of calculating and redetermining the percentage of each Annual Requirement to be paid by the non-delinquent Members and Customers; and, the District shall redetermine such percentage in such event on a basis so that the non-delinquent Members and Customers, collectively, shall be required to pay all of the Annual Requirement. However, the District shall pursue all legal remedies against any such delinquent Member or Customer to enforce and protect the rights of the District, the other Members and Customers, and the holders of the Bonds. The delinquent Member shall not be relieved of the liability to the District for the payment of all amounts which would have been due hereunder had no default occurred or the percentage had not been redetermined as provided in this Section. It is understood that the foregoing provisions are for the benefit of the holders of the Bonds so as to insure that all of the Annual Requirement will be paid by the non-delinquent Members and Customers during each Annual Payment Period regardless of the delinquency of a particular Member or Customer. If any amount due and owing the District by Member is placed with an attorney for collection, Member shall pay to the District all attorneys fees, in addition to all other payments provided for herein, including interest.

Section 5.10. Updated Schedule of Payment. If, during any Annual Payment Period, Member's Annual Payment is redetermined in any manner as provided or required in the foregoing Sections, the District will promptly furnish Member with an updated schedule of monthly payments reflecting such redetermination.

Section 5.11. Service Areas. For purposes of determining the Annual Requirement and for delivery of services, the District shall maintain separate cost centers for each service area, including specifically the North Service Area and the South Service Area. Provided, however, that the District may combine the cost of two (2) or more such service areas if, in the Board's judgment, such action would result in more equitable distribution of costs of the System or in the rendition of service to Customers.

ARTICLE VI

Miscellaneous Provisions and Special Conditions

Section 6.01. Operation and Maintenance of System. The District will continuously operate and maintain the System in an efficient manner and in accordance with good business and engineering practices, and at reasonable cost and expense. The