

TOWN OF BUFFALO GAP, TEXAS

SCHEDULE OF PRIOR YEAR AUDIT FINDINGS
YEAR ENDED SEPTEMBER 30, 2017

2016-001

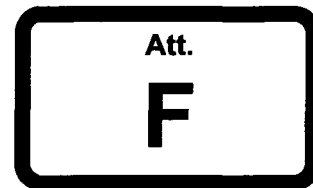
Criteria: Governmental entities are required to approve and amend the budget before expending funds.

Effect: The Town's expenditures exceeded their budget in the General Fund.

Cause: The Town did not budget for the fire department expenditures or for debt service.

Recommendation: It is recommended that the Town monitor and amend their budget during the year as needed.

Corrective Action: The Town will monitor these areas and budget appropriately.



ATTACHMENT F

Projected Financial Information

4. A recent budget and capital improvements plan that includes information needed for analysis of the operations test (16 Tex. Admin. Code § 24.11(e)(3)) for the system being transferred and any operations combined with the system.

Not applicable.

While investment in plant and connection additions may occur after the transaction just as before, the proposed transaction that is the subject of this application will have no impact on whether such investment or connections occur. Responsibility for these investments will simply shift to the Town of Buffalo Gap, Texas. However, please see Attachment F - United States Department of Agriculture Financing Information, which shows that part of the loan and grant funds expected to be received from a pending application filed with USDA are planned for use in purchasing Gap Water System from Aqua.



United States Department of Agriculture

MAY 14 2018

The Honorable David Perry
Town of Buffalo Gap
P. O. Box 506
Buffalo Gap, TX 79508

Dear Mayor Perry:

Congratulations on being selected to receive a \$2,885,000 Water and Waste Disposal Loan for the Town of Buffalo Gap.

We have enclosed a copy of Form RD 1940-1, "Request for Obligation of Funds." This form indicates that on April 3, 2018, USDA Rural Development approved a loan of \$2,885,000 for the Town of Buffalo Gap.

USDA Rural Development works to support the sustainable development of rural communities and to improve the quality of life in rural areas.

Sincerely,

A handwritten signature in black ink, appearing to read "Edd Hargett".

EDD HARGETT
State Director

Enclosure

Rural Development • Texas State Office
101 South Main Street, Suite 102, Temple, Texas 76501
Voice 254 742-9789 • Fax 844 767 7087

USDA is an equal opportunity provider, employer, and lender.

REQUEST FOR OBLIGATION OF FUNDS

INSTRUCTIONS-TYPE IN CAPITALIZED ELITE TYPE IN SPACES MARKED () Complete Items 1 through 29 and applicable items 30 through 34. See FMI.			
1. CASE NUMBER ST CO BORROWER ID 51-021-*****2625		LOAN NUMBER 01	FISCAL YEAR 2018
2. BORROWER NAME Town of Buffalo Gap		3. NUMBER NAME FIELDS (1, 2, or 3 from Item 2)	
		4. STATE NAME Texas	
		5. COUNTY NAME Taylor	
GENERAL BORROWER/LOAN INFORMATION			
6. RACE/ETHNIC CLASSIFICATION 1 - WHITE 2 - BLACK 3 - ASIAN 4 - HISPANIC 5 - API	7. TYPE OF APPLICANT 1 - INDIVIDUAL 2 - PARTNERSHIP 3 - CORPORATION 4 - PUBLIC BODY 5 - ASSOC. OF FARMERS 6 - DRCL OF FARMERS 7 - NONPROFIT-SECULAR 8 - NONPROFIT-FAITH BASED 9 - INDIAN TRIBE 10 - PUBLIC COLLEGE/UNIVERSITY 11 - OTHER		8. COLLATERAL CODE 1 - REAL ESTATE SECURED 2 - REAL ESTATE AND CHATTEL 3 - NOTE ONLY OR CHATTEL ONLY 4 - MACHINERY ONLY 5 - LIVESTOCK ONLY 6 - CROPS ONLY 7 - SECURED BY BONDS 8 - RLF ACCT
9. EMPLOYEE RELATIONSHIP CODE 1 - EMPLOYEE 2 - MEMBER OF FAMILY 3 - CLOSE RELATIVE 4 - ASSOC.	10. SEX CODE 1 - MALE 2 - FEMALE 3 - FAMILY UNIT 4 - ORGAN MALE OWNED 5 - ORGAN FEMALE OWNED 6 - PUBLIC BODY	11. MARITAL STATUS 1 - MARRIED 2 - SEPARATED 3 - UNMARRIED (INCLUDES WIDOWED/DIVORCED)	12. VETERAN CODE 1 - YES 2 - NO
13. CREDIT REPORT 1 - YES 2 - NO	14. DIRECT PAYMENT 2 (See FMI)	15. TYPE OF PAYMENT 1 - MONTHLY 2 - ANNUALLY 3 - SEMI-ANNUALLY 4 - QUARTERLY	16. FEE INSPECTION 1 - YES 2 - NO
17. COMMUNITY SIZE 1 - 10,000 OR LESS (FOR SFH AND HFG ONLY) 2 - OVER 10,000	18. USE OF FUNDS CODE (See FMI)		
COMPLETE FOR OBLIGATION OF FUNDS			
19. TYPE OF ASSISTANCE 061 (See FMI)	20. PURPOSE CODE 2	21. SOURCE OF FUNDS	22. TYPE OF ACTION 1 - OBLIGATION ONLY 2 - OBLIGATION/CHECK REQUEST 3 - CORRECTION OF OBLIGATION
23. TYPE OF SUBMISSION 1 - INITIAL 2 - SUBSEQUENT	24. AMOUNT OF LOAN 2,885,000.00		25. AMOUNT OF GRANT
26. AMOUNT OF IMMEDIATE ADVANCE	27. DATE OF APPROVAL MO DAY YR MAY 03 2018	28. INTEREST RATE 3.125 %	29. REPAYMENT TERMS 40
COMPLETE FOR COMMUNITY PROGRAM AND CERTAIN MULTIPLE-FAMILY HOUSING LOANS			
30. PROFIT TYPE 1 - FULL PROFIT 2 - LIMITED PROFIT 3 - NONPROFIT			
COMPLETE FOR EM LOANS ONLY		COMPLETE FOR CREDIT SALE-ASSUMPTION	
31. DISASTER DESIGNATION NUMBER (See FMI)	32. TYPE OF SALE 1 - CREDIT SALE ONLY 2 - ASSUMPTION ONLY 3 - CREDIT SALE WITH SUBSEQUENT LOAN 4 - ASSUMPTION WITH SUBSEQUENT LOAN		
FINANCE OFFICE USE ONLY		COMPLETE FOR FP LOANS ONLY	
33. OBLIGATION DATE MO DA YR MAY 03 2018	34. BEGINNING FARMER/RANCHER (See FMI)		

If the decision contained above in this form results in denial, reduction or cancellation of USDA assistance you may appeal this decision and have a hearing or you may request a review in lieu of a hearing. Please use the form we have included for this purpose.

Position 2

ORIGINAL - Borrower's Case Folder COPY 1 - Finance Office COPY 2 - Applicant/Lender COPY 3 - State Office

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0570-0062. The time required to complete this information collection is estimated to average 15 minutes per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

CERTIFICATION APPROVAL

For All Farmers Programs

EM, OL, FO, and SW Loans

This loan is approved subject to the availability of funds. If this loan does not close for any reason within 90 days from the date of approval on this document, the approval official will request updated eligibility information. The undersigned loan applicant agrees that the approval official will have 14 working days to review any updated information prior to submitting this document for obligation of funds. If there have been significant changes that may affect eligibility, a decision as to eligibility and feasibility will be made within 30 days from the time the applicant provides the necessary information.

If this is a loan approval for which a lien and/or title search is necessary, the undersigned applicant agrees that the 15-working-day loan closing requirement may be exceeded for the purposes of the applicant's legal representative completing title work and completing loan closing.

35. COMMENTS AND REQUIREMENTS OF CERTIFYING OFFICIAL

Meet all conditions set forth in the Letter of Conditions issued May 3, 2018.

36. I HEREBY CERTIFY that I am unable to obtain sufficient credit elsewhere to finance my actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near my community for loans for similar purposes and periods of time. I agree to use the sum specified herein, subject to and in accordance with regulations applicable to the type of assistance indicated above, and request payment of such sum. I agree to report to USDA any material adverse changes, financial or otherwise, that occur prior to loan closing. I certify that no part of the sum specified herein has been received. I have reviewed the loan approval requirements and comments associated with this loan request and agree to comply with these provisions.

(For FP loans at eligible terms only) If this loan is approved, I elect the interest rate to be charged on my loan to be the lower of the interest rate in effect at the time of loan approval or loan closing. If I check "NO", the interest rate charged on my loan will be the rate specified in Item 28 of this form. YES NO

WARNING: Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, schema, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under this title or imprisoned not more than five years, or both."

Date May 3, 20 18

David Perry
David Perry, Mayor
(Signature of Applicant)

Date _____, 20 _____

(Signature of Co-Applicant)

37. I HEREBY CERTIFY that all of the committee and administrative determinations and certifications required by regulations prerequisite to providing assistance of the type indicated above have been made and that evidence thereof is in the docket, and that all requirements of pertinent regulations have been complied with. I hereby approve the above-described assistance in the amount set forth above, and by this document, subject to the availability of funds, the Government agrees to advance such amount to the applicant for the purpose of and subject to the availability prescribed by regulations applicable to this type of assistance.

Edd Hargett *(Signature of Approving Official)*

Typed or Printed Name: Edd Hargett

Date Approved: MAY 03 2018

Title: State Director

38. TO THE APPLICANT: As of this date MAY 03 2018, this is notice that your application for financial assistance from the USDA has been approved, as indicated above, subject to the availability of funds and other conditions required by the USDA. If you have any questions contact the appropriate USDA Servicing Office.

LETTER OF INTENT TO MEET CONDITIONS

Date 05/03/2018

TO: United States Department of Agriculture

Rural Development

(Name of USDA Agency)

4400 Buffalo Gap Road, Suite 4150
Abilene, TX 79606

(USDA Agency Office Address)

We have reviewed and understand the conditions set forth in your letter dated 05/03/2018. It is our intent to meet all of them not later than 5/3/2019

Town of Buffalo Gap

(Name of Association)

BY David L Perry

David Perry, Mayor

(Title)

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a persons is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0015 and 0570-0062. The time required to complete this information collection is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data, needed, and completing and reviewing the collection of information.



United States Department of Agriculture

May 3, 2018

The Honorable David Perry
Town of Buffalo Gap
P.O. Box 506
Buffalo Gap, TX 79508

SUBJECT: Recipient Name: Town of Buffalo Gap (Town)
Project Name: Water Supply Line
CFDA NUMBER – 10.760
Loan: \$2,885,000
Contribution: \$15,000

Dear Mayor Perry:

This letter establishes conditions which must be understood and agreed to by you before further consideration may be given to your application. The loan and grant will be administered on behalf of the Rural Utilities Service (RUS) by the State and Area staff of USDA Rural Development, both of which are referred to throughout this letter as the Agency. Any changes in project cost, source of funds, scope of project, or any other significant changes in the project or applicant must be reported to and concurred with by the Agency by written amendment to this letter. If significant changes are made without obtaining such concurrence, the Agency may discontinue processing of the application.

All conditions set forth under Section III – Requirements Prior to Advertising for Bids must be met within 12 months of the date of this letter. If you have not met these conditions, the Agency reserves the right to discontinue the processing of your application.

If you agree to meet the conditions set forth in this letter and desire further consideration be given to your application, please complete and return the following forms within 7 days:

Form RD 1942-46, "Letter of Intent to Meet Conditions"
Form RD 1940-1, "Request for Obligation of Funds"

Rural Development • Abilene Area Office
4400 Buffalo Gap Road, Suite 4150, Abilene, TX 79606
Voice (325) 201-9840 • Fax (844) 496-7052

USDA is an equal opportunity provider, employer and lender

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

Town of Buffalo Gap

The loan will be considered approved on the date Form RD 1940-1, "Request for Obligation of Funds," is signed by the approving official. Thus, this letter in itself does not constitute loan and grant approval, nor does it ensure that funds are or will be available for the project. When funds are available, the Form 1940-1 will be provided to you for your signature. After you sign and return the form to the Agency, the request will be processed, and the loan and grant funds will be approved and obligated.

Extra copies of this letter are being provided for use by your engineer, attorney, bond counsel and accountant. All parties may access information and regulations referenced in this letter at our website located at www.rd.usda.gov.

The conditions are as follows:

SECTION I - PROJECT DETAIL

1. **Project Description** - Funds will be used to construct system improvements including water line, storage tank, valves, and Scada system. Funds will also be used to purchase the Aqua Water System.

Facilities will be designed and constructed in accordance with sound engineering practices and must meet the requirements of Federal, State, and local agencies. The proposed facility design must be based on the Preliminary Engineering Report (PER) as concurred with by the Agency.

2. **Project Funding** – The Agency is offering the following funding for your project:

Agency Loan -	\$2,885,000
<u>Contribution -</u>	<u>\$15,000</u>
 TOTAL PROJECT COST -	 \$2,900,000

This funding is offered based on the amounts stated above. Prior to loan closing, any increase in non-Agency funding will be applied first as reduction to Agency loan funds.

Any changes in funding sources following obligation of Agency funds must be reported to the processing official. Project feasibility and funding will be reassessed if there is a significant change in project costs after bids are received. If actual project costs exceed the project cost estimates, an additional contribution by the Owner may be necessary. Prior to advertisement for construction bids, you must provide evidence of applicant contributions and approval of other funding sources. This evidence should include a copy of the commitment letter. Agency funds will not be used to pre-finance funds committed to the project from other sources.

Town of Buffalo Gap

3. **Project Budget** – Funding from all sources has been budgeted for the estimated expenditures as follows:

<u>Project Costs:</u>	<u>Total Budgeted:</u>
Construction	\$ 1,634,675
Contingency	247,858
Engineering Fees	418,382
Includes:	
Basic Engineering Services	158,346
Preliminary Engineering Report	15,000
Environmental Report	38,420
Resident Project Representation	115,577
Topographical Surveying	57,360
Archeological Study	13,439
Geotechnical Study	1,042
Materials Testing	2,083
Construction Staking	17,115
Legal Services Surveying	38,718
Legal Services Independent	10,000
Legal Services Shared	11,200
Bond Counsel/Closing Cost	60,000
Land Acquisition/Easements	81,667
<u>Agua Water System Purchase</u>	<u>397,500</u>
TOTAL	\$2,900,000

Obligated loan funds not needed to complete the proposed project will be de-obligated prior to start of construction. Any reduction will be applied to grant funds first. An amended letter of conditions will be issued for any changes to the total project budget.

SECTION II – LOAN TERMS

4. **Repayment** – The interest rate will be the lower of the rate in effect at the time of loan approval or the time of loan closing, unless you request otherwise. Should the interest rate be reduced, the payment will be recalculated to the lower amount.

Your loan will be scheduled for repayment over a period of 40 years. Interest-only payments will be due the first year, and will be made utilizing applicant funds. Payments for the remaining 39 years will be equal amortized annual principal installments and interest payments will be made semi-annually. For planning purposes use a 3.125% interest rate and an annual amortization factor of 44.72, which provides for an annual payment of \$129,018

5. **Security** – The loan will be secured by a Texas Combination Tax and Revenue Certificate of Obligation bond with first lien position in the amount of \$2,885,000. The bond will be fully registered as to both principal and interest in the name of the United States of America, Acting through the United States Department of Agriculture.

Town of Buffalo Gap

The bond and any ordinance or resolution relating thereto must not contain any provision in conflict with the Agency Loan Resolution, applicable regulations, or its authorizing law. In particular, there must be no defeasance or refinancing clause in conflict with the graduation requirements of 7 U.S.C. 1983.

In the event a paying agent agreement is entered into, USDA Rural Development is not a party to this agreement; therefore, the requirements defined in the bond ordinance take precedence over the paying agent agreement. You will be responsible for payment of interest that accrues due to bond redemption notification issues, whether improper notification lies with the borrower or paying agent.

You must communicate directly with USDA Rural Development when you redeem bonds. You should contact the Local USDA Rural Development Office prior to delivery of funds to the paying agent, or deliver funds directly to USDA Rural Development.

The Bond Ordinance must contain the following:

- a. A Clause to the effect that, in the event any Bond is mutilated, destroyed, lost or stolen, any security or indemnity as may be required by the Issuer and Registrar from the registered owner applying for the replacement Bond shall not be required from the United States of America as long as it is holder of the Bonds.
- b. The attached "Required Provisions" revised 02/07/2017 and "Minimum Requirements for Bond Counsel Opinions" revised 02/07/2017, as prepared by the Office of General Counsel, must be included without change.

The Principal repayment schedule should be in the amount best adapted to making principal retirement and interest payments which closely approximate equal installments of combined interest and principal.

Additional security requirements are contained in RUS Bulletin 1780-27, "Loan Resolution (Public Bodies)". A draft of all security instruments, including draft bond resolution, must be reviewed and concurred in by the Agency prior to advertising for bids. The bond resolution and Loan Resolution must be duly adopted and executed prior to loan closing.

6. Electronic Payments – Payments will be made on the day your payment is due through an electronic preauthorized debit system. You will be required to complete Form RD 3550-28, "Authorization Agreement for Preauthorized Payments," for all new and existing indebtedness to the Agency prior to loan closing. It will allow for your payment to be electronically debited from your account on the day your payment is due.

7. Construction Completion Timeframe - All projects must be completed, and all funds disbursed within five years of obligation. If funds are not disbursed within five years of obligation, you must submit to the Agency a written request for extension of time with adequate justification of circumstances beyond your control. Requests for waivers beyond the initial extension will be submitted to the Assistant Administrator for concurrence decision.

8. Disbursement of Agency Funds - Agency funds will be disbursed into the borrower's depository account through an electronic transfer system. SF 3881, "ACH Vendor/Miscellaneous Payment Enrollment Form," must be completed and submitted to the Agency prior to advertising for bids.

Any applicant contribution will be the first funds expended, followed by other funding sources. Interim financing of Agency loan funds will be expended after all other funding sources unless a written agreement is reached with all other funding sources on how funds are to be disbursed prior to construction or loan closing, whichever occurs first. Interim financing funds or Agency loan funds must be used prior to the use of Agency grant funds. The Grant Agreement must not be closed, and funds must not be disbursed prior to loan funds except as specified in RUS Instruction 1780.45(d). In the unlikely event the Agency mistakenly disburses funds, the funds will be remitted back to the Agency electronically.

9. Reserves – Reserves must be properly budgeted to maintain the financial viability and sustainability of any operation. Reserves are important to fund unanticipated emergency maintenance and repairs, and assist with debt service should the need arise. The following reserves are required to be established as a condition of this loan:

- a. **Debt Service Reserve** – As a part of this Agency loan proposal, you must establish a debt service reserve fund equal to at least one annual loan installment that accumulates at the rate of 10% of one annual payment per year for ten years or until the balance is equal to one annual loan payment. Ten percent of the proposed loan installment would equal \$1,076 per month; this amount should be deposited monthly until a total of \$129,018 has accumulated. Prior written concurrence from the Agency must be obtained before funds may be withdrawn from this account during the life of the loan. When funds are withdrawn during the life of the loan, deposits will continue as designated above until the fully-funded amount is reached.
- b. **Short-Lived Asset Reserve** – In addition to the debt service reserve fund, you must establish a short-lived asset reserve fund. Based on the preliminary engineering report, you must deposit at least \$15,333 into the short-lived asset reserve fund annually for the life of the loan to pay for repairs and/or replacement of major system assets. It is your responsibility to assess your facility's short-lived asset needs on a regular basis and adjust the amount deposited to meet those needs.

Current assets can also be used to establish and maintain reserves for expected expenses, including but not limited to operation and maintenance, deferred interest during the construction period, and an asset management program.

SECTION III – REQUIREMENTS PRIOR TO ADVERTISING FOR BIDS

10. Environmental Requirements – At the conclusion of the proposal's environmental review process, specific action(s) were determined necessary to avoid or minimize adverse environmental impacts. As outlined in the Environmental Report dated March 2017, the following action is required for successful completion of the project and must be adhered to during project design and construction:

Town of Buffalo Gap

To comply with the Migratory Bird Treaty Act; 1) vegetation disturbances must either avoid the general nesting period of March 1st through August 31st, or 2) that area proposed for disturbance must be inspected for nesting birds immediately prior to construction activities, in order to avoid the inadvertent destruction of nests, eggs, etc. Any nest discovered which may be disturbed or destroyed should be reported to the U.S. Fish and Wildlife Service, for Further guidance

To avoid harm to the Texas Horned Lizard (THL), the consultant engineer and applicant will be responsible for implementing the following measures: 1) All construction personnel will be instructed avoid killing, injuring or any type harmful disturbance to the THL during construction; 2) Pipeline trenches which remain open overnight, and/or for more than two daylight hours will be inspected for the presence of the THL prior to backfilling;3) Texas Horned Lizards discovered in an open trench will be carefully removed and relocated safely away from the construction area; 4) Any THL relocation(s) by construction crews will be reported to the Consulting Engineer and USDA Rural Development State Environmental Coordinator at (254) 742-9789.

A storm water pollution prevention plan (SWPPP) will be developed by the contractor prior to the start of construction. This plan will detail the necessary steps to prevent or contain storm water runoff from the project site.

If cultural materials are encountered during construction, work shall immediately cease in the area of discovery. Work may continue in the project area where no cultural materials are present. The contractor shall immediately notify the consultant architect/engineer, the Texas Historical Commission (512) 463-6100, and the USDA Rural Development State Environmental Coordinator (254) 742-9789.

The project as proposed has been evaluated to be consistent with the National Environmental Policy Act. Other Federal, State, tribal, and local laws, regulations and or permits may apply or be required. If the project or any project element deviates from or is modified from the originally-approved project, additional environmental review may be required.

11. Engineering Services – You have been required to complete an Agreement for Engineering Services, which should consist of the Engineers Joint Contract Documents Committee (EJCDC) documents as indicated in RUS Bulletin 1780-26, "Guidance for the Use of EJCDC Documents on Water and Waste Projects with RUS Financial Assistance," or other approved form of agreement. The Agency will provide concurrence prior to advertising for bids, and must approve any modifications to this agreement.

Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A – Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) applies a new American Iron and Steel requirement.

1. No Federal funds made available for this fiscal year for the rural water, waste water, waste disposal, and solid waste management programs authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1926 et. Seq.) shall be used for a project for the construction, alteration, maintenance, or repair of a public water or wastewater system unless all of the iron and steel products used in the project are produced in the United States.

Town of Buffalo Gap

2. The term "iron and steel products" means the following products made primarily of iron and steel; lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.
3. The requirement shall not apply in any case or category of cases in which the Secretary of Agriculture (in this section referred to as the "Secretary") or the designee of the Secretary finds that –
 - a. Applying the requirement would be inconsistent with the public interest;
 - b. Iron and steel products are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
 - c. Inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

12. Contract Documents, Final Plans, and Specifications

- a. The contract documents must consist of the EJCDC construction contract documents as indicated in RUS Bulletin 1780-26 or other Agency-approved forms of agreement.
- b. The contract documents, final plans, and specifications must comply with RUS Instruction 1780, Subpart C – Planning, Designing, Bidding, Contracting, Constructing and Inspections, and must be submitted to the Agency for concurrence prior to advertising for bids along with an updated cost estimate. The Agency may require another updated cost estimate if a significant amount of time elapses between the original submission and advertising for bids.
- c. The use of any procurement method other than competitive sealed bids must be requested in writing and approved by the Agency.

13. Legal Services –You will be required to execute a legal services agreement with your attorney and an engagement letter for bond counsel for any legal work needed in connection with this project. The agreement should stipulate an hourly rate for the work, with a "not to exceed" amount for the services, including reimbursable expenses. RUS Bulletin-TX 1780-7, "Legal Services Agreement," or similar format may be used. The Agency will provide concurrence prior to advertising for bids. Any changes to the fees or services spelled out in the original agreement must be reflected in an amendment to the agreement and have prior Agency concurrence.

14. Property Rights - Prior to advertising for bids, you and your legal counsel must furnish satisfactory evidence that you have or can obtain adequate continuous and valid control over the lands and rights-of-way needed for the project. Acquisitions of necessary land and rights must be accomplished in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act. Such control over the lands and rights will be evidenced by the following:

Town of Buffalo Gap

- a. **Right-of-Way Map** – Your engineer will provide a map clearly showing the location of all lands and rights-of-way needed for the project. The map must designate public and private lands and rights and the appropriate legal ownership thereof.
- b. **Form RD-TX 442-8, RD-TX 442-9 or RD 442-20, “Right-of-Way Easement”** – Any one of these forms may be used to obtain any necessary easements for the proposed project.
- c. **Form RD 442-21, “Right-of-Way Certificate”** – You will provide a certification on this form that all right-of-way requirements have been obtained for the proposed project.
- d. **Form RD 442-22, “Opinion of Counsel Relative to Rights-of-Way”** – Your attorney will provide a certification and legal opinion on this form addressing rights-of-way, easements, and title.

The approving official may waive title defects or restrictions, such as utility easements, that do not adversely affect the suitability, successful operation, security value, or transferability of the facility. Any such waivers must be provided by the approving official in writing prior to closing or the start of construction, whichever occurs first.

You are responsible for the acquisition of all property rights necessary for the project and for determining that prices paid are reasonable and fair. The Agency may require an appraisal by an independent appraiser or Agency employee in order to validate the price to be paid.

15. System Policies, Procedures, Contracts, and Agreements – The facility must be operated on a sound business plan. You must adopt policies, procedures, and/or ordinances outlining the conditions of service and use of the proposed system. Mandatory connection policies should be used where enforceable. The policies, procedures, and/or ordinances must contain an effective collection policy for accounts not paid in full within a specified number of days after the date of billing. They should include appropriate late fees, specified timeframes for disconnection of service, and reconnection fees. A draft of these policies, procedures, and/or ordinances must be submitted for Agency review and concurrence, along with the documents below, before closing instructions may be issued unless otherwise stated.

- a. **Conflict of Interest Policy** – Prior to obligation of funds, you must certify in writing that your organization has in place an up-to-date written policy on conflict of interest. The policy will include, at a minimum: (1) a requirement for those with a conflict or potential conflict to disclose the conflict/potential conflict; (2) a clause that prohibits interested members of the applicant’s governing body from voting on any matter in which there is a conflict, and (3) a description of the specific process by which the governing body will manage identified or potential conflicts.

You must also submit a disclosure of planned or potential transactions related to the use of Federal funds that may constitute or present the appearance of personal or organizational conflict of interest. Disclosure must be in the form of a written letter signed and dated by the applicant’s official. A negative disclosure in the same format is required if no conflicts are anticipated.

Town of Buffalo Gap

Sample conflict of interest policies may be found at the National Council of Nonprofits website, <https://www.councilofnonprofits.org/tools-resources/conflict-of-interest>, or in Internal Revenue Service Form 1023, Appendix A, "Sample Conflict of Interest Policy," at <http://www.irs.gov/pub/irs-pdf/1023.pdf>. Though these examples reference non-profit corporations, the requirement applies to all types of Agency borrowers.

Assistance in developing a conflict of interest policy is available through Agency-contracted technical assistance providers if desired.

- b. **Water User Agreement** – Projects not involving mandatory connection require users to execute a Water Users Agreement. The draft agreement must receive RD concurrence prior to advertising for bids. RUS-TX Bulletin 1780-9, "Water Users Agreement," or similar format may be used.
- c. **Contracts for Other Services/Lease Agreement** – Drafts of any contracts or other forms of agreements for other services, including audit, management, operation, and maintenance, or lease agreements covering real property essential to the successful operation of the facility, must be submitted to the Agency for review and concurrence prior to advertising for bids.
- d. **Interlocal Cooperation Agreement** – Between the Town of Buffalo Gap, Texas, ("Buffalo Gap"), the Tuscola-Taylor County WCID No. 1 ("Tuscola WCID"), and the City of Lawn, Texas ("Lawn").

Fully executed copies of any policies, procedures, ordinances, contracts, or agreements must be submitted prior to loan closing, with the exception of the conflict of interest policy, which must be in place prior to obligation of funds.

16. Closing Instructions – The Agency will prepare closing instructions as soon as the requirements of the previous paragraphs are complete, as well as a draft of the security instrument(s). Closing instructions must be obtained prior to advertising for bids.

17. Interim Financing – For all loans exceeding \$500,000, where loan funds can be borrowed at reasonable interest rates on an interim basis from commercial sources for the construction period, such interim financing will be used to preclude the necessity for multiple advances of Agency loan funds. You must provide the Agency with a copy of the interim loan financing agreement for review prior to advertising for bids. The Agency approving official may make an exception when interim financing is cost prohibitive or unavailable. Grant funds from the Agency will be disbursed by multiple advances through electronic transfer of funds after interim financing or Agency loan funds are expended, in accordance with RUS Instruction 1780.45.

18. Construction Account – You must establish a construction account for all funds related to the project. Construction funds will be deposited with an acceptable financial institution or depository that meets the requirements of 31 CFR Part 202. A separate account will not be required for Federal funds and other funds; however, the recipient must be able to separately identify, report, and account for all Federal funds, including the receipt, obligation and expenditure of funds. Financial institutions or depositories accepting deposits of public funds and providing other financial agency services to the Federal Government are required to pledge adequate, acceptable securities as collateral, in accordance with 31 CFR Part 202. All funds in the account will be secured by a collateral pledge equaling at least 100% of the highest amount of funds expected to be deposited in the construction account at any one time. Your financial institution can provide additional guidance on collateral pledge requirements.

Agency funds will be disbursed into the borrower's depository account through an electronic transfer system. SF 3881, "ACH Vendor/Miscellaneous Payment Enrollment Form," must be completed and submitted to the Agency prior to advertising for bids.

19. System Users – This letter of conditions is based upon your indication at application that there will be at least 526 residential users, and 17 non-residential users on the existing system when construction is completed.

Before the Agency can agree to the project being advertised for construction bids, you must certify that the number of users indicated at application are currently using the system or signed up to use the system once it is operational.

If the actual number of existing and/or proposed users that have signed up for service is less than the number indicated at the time of application, you must provide the Agency with a written plan on how you will obtain the necessary revenue to adequately cash flow the expected operation, maintenance, debt service, and reserve requirements of the proposed project (e.g., increase user rates, sign up an adequate number of other users, reduce project scope, etc.). Similar action is required if there is cause to modify the anticipated flows or volumes presented following approval.

If you are relying on mandatory connection requirements, you must provide evidence of the authorizing ordinance or statute along with your user certification.

20. Other Funding – Prior to advertising for bids, you must provide evidence of applicant contributions and approval of other funding sources. This evidence should include a copy of the commitment letter from each source.

21. Proposed Operating Budget – You must establish and/or maintain a rate schedule that provides adequate income to meet the minimum requirements for operation and maintenance (O&M), debt service, and reserves. Prior to advertising for bids, you must submit a proposed annual operating budget to the Agency which supports the operation, maintenance, debt service, and reserves, as well as your proposed rate schedule. The operating budget should be based on a typical year cash flow after completion of the construction phase and should be signed by the appropriate official of your organization. Form RD 442-7, "Operating Budget," or similar format may be utilized for this purpose. It is expected that O&M will change over each successive year and user rates will need to be adjusted on a regular basis.

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Technical assistance is available at no cost to help you evaluate and complete a rate analysis on your system. This assistance is available free to your organization. If you are interested, please contact our office for information.

22. Permits –The owner or responsible party will be required to obtain all applicable permits for the project, prior to advertising for bids. The consulting engineer must submit written evidence that all applicable permits required prior to construction have been obtained with submission to the Agency of the final plans, specifications, and bid documents.

23. Vulnerability Assessment/Emergency Response Plan (VA/ERP) – The Agency requires all financed water and wastewater systems to have a VA/ERP in place. Borrowers with existing systems must provide a certification that a VA/ERP has been completed prior to advertising for bids. The VA/ERP documents themselves are not submitted to the Agency. The VA/ERP must address potential impacts from natural disasters and other emergency events. In particular, it should include plans to address impacts of flash flooding in areas where severe drought or wildfires occur. The documents should be reviewed and updated every three years at a minimum.

24. Bid Authorization - Once all the conditions outlined in Section III of this letter have been met, the Agency will authorize you to advertise the project for construction bids. Such advertisement must be in accordance with applicable State statutes.

SECTION IV - REQUIREMENTS PRIOR TO START OF CONSTRUCTION

25. Bid Tabulation – Immediately after bid opening, you must provide the Agency with the bid tabulation and your engineer's evaluation of bids and recommendations for contract awards. If the Agency agrees that the construction bids received are acceptable, adequate funds are available to cover the total project costs, and all the requirements of Section III of this letter have been satisfied, the Agency will authorize you to issue the Notice of Award.

- a. **Cost Overruns**. If bids are higher than expected, or if unexpected construction problems are encountered, you must utilize all options to reduce cost overruns. Negotiations, redesign, use of bidding alternatives, rebidding or other means will be considered prior to commitment of subsequent funding by the Agency. Any requests for subsequent funding to cover cost overruns will be contingent on the availability of funds. Cost overruns exceeding 20% of the development cost at time of loan approval or where the scope of the original purpose has changed will compete for funds with all other applications on hand as of that date.
- b. **Excess Funds**. If bids are lower than anticipated at time of obligation, excess funds must be de-obligated prior to start of construction except in the cases addressed in this paragraph. In cases where the original PER for the project included items that were not bid, or were bid as an alternate, the State Office official may modify the project to fully utilize obligated funds for those items. Amendments to the PER, ER, and letter of conditions may be needed for any work not included in the original project scope. In all cases, prior to start of construction, excess funds will be de-obligated, with grant funds being de-obligated first. Excess funds do not include contingency funds as described in this letter.

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26. Contract Review – Your attorney will certify that the executed contract documents, including performance and payment, if required, are adequate and that the persons executing these documents have been properly authorized to do so in accordance with RUS Instruction 1780.61(b).

Once your attorney has certified that they are acceptable, the contract documents will be submitted to the Agency for its concurrence. The Notice to Proceed cannot be issued until the Agency has concurred with the construction contracts.

27. Final Rights-of-Way – If any of the rights-of-way forms listed previously in this letter contain exceptions that do not adversely affect the suitability, successful operation, security value, or transferability of the facility, the approving official must provide a written waiver prior to the issuance of the Notice to Proceed. For projects involving the acquisition of land, you must provide evidence that you have clear title to the land prior to the issuance of the Notice to Proceed.

28. Insurance and Bonding Requirements - Prior to the start of construction or loan closing, whichever occurs first, you must acquire and submit to the Agency proof of the types of insurance and bond coverage for the borrower shown below. The use of deductibles may be allowed, providing you have the financial resources to cover potential claims requiring payment of the deductible. The Agency strongly recommends that you have your engineer, attorney, and insurance provider(s) review proposed types and amounts of coverage, including any exclusions and deductible provisions. It is your responsibility and not that of the Agency to assure that adequate insurance and fidelity or employee dishonesty bond coverage is maintained.

- a. **General Liability Insurance** – Include vehicular coverage.
- b. **Workers' Compensation** – In accordance with appropriate State laws.
- c. **Fidelity or Employee Dishonesty Bonds** – Include coverage for all persons who have access to funds, including persons working under a contract or management agreement. Coverage may be provided either for all individual positions or persons, or through blanket coverage providing protection for all appropriate workers. During construction, each position should be bonded in an amount equal to the maximum amount of funds to be under the control of that position at any one time. The coverage may be increased during construction based on the anticipated monthly advances. After construction and throughout the life of the loan, the amount of coverage must be for at least the total annual debt service of all outstanding Agency loans. The Agency will be identified in the fidelity bond for receipt of notices. Form RD 440-24, "Position Fidelity Schedule Bond," or similar format may be used.
- d. **National Flood Insurance** - If the project involves acquisition or construction in designated special flood or mudslide prone areas, you must purchase a flood insurance policy at the time of loan closing.

- e. **Real Property Insurance** – Fire and extended coverage will normally be maintained on all structures except reservoirs, pipelines and other structures if such structures are not normally insured, and subsurface lift stations except for the value of electrical and pumping equipment. The Agency will be listed as mortgagee on the policy when the Agency has a lien on the property. Prior to the acceptance of the facility from the contractor(s), you must obtain real property insurance (fire and extended coverage) on all facilities identified above.

Insurance types described above are required to be continued throughout the life of the loan. See Section VII.

29. Initial Compliance Review – The Agency will conduct an initial compliance review of the borrower prior to loan closing or start of construction, whichever occurs first, in accordance with 7 CFR 1901, Subpart E.

SECTION V – REQUIREMENTS PRIOR TO LOAN CLOSING

30. Multiple Advances - Multiple advances of Agency funds will be used. Loan closing will occur prior to when the funds are needed, and all of the items detailed in the sections above, as well as the items listed in this section, must be completed prior to closing.

31. Interim Financing – If interim financing is being used, loan closing will occur near the end of construction when interim funds are about to be completely disbursed. Documents detailed above from Sections II and III regarding security, electronic payments (Form 3550-28), and system policies, procedures, contracts, and agreements must be adopted and/or executed and submitted to the Agency prior to loan closing. In addition, the following items are required prior to closing:

32. Vulnerability Assessment/Emergency Response Plan (VA/ERP) – The Agency requires all financed water and wastewater systems to have a VA/ERP in place. New water or wastewater systems must provide a certification that an ERP is complete prior to the start of operation, and a certification that a VA is complete must be submitted within one year of the start of operation. Borrowers with existing systems must provide a certification that a VA and ERP are completed prior to authorization to advertise for bids. The VA/ERP documents are not submitted to the Agency. Technical assistance is available in preparing these documents at no cost to you. The VA/ERP must address potential impacts from natural disasters and other emergency events. In particular, it should include plans to address impacts of flash flooding in areas where severe drought or wildfires occur. The documents should be reviewed and updated every three years at a minimum.

33. Other Requirements – All requirements contained in the Agency's closing instructions, as well as any requirements of your bond counsel and/or attorney, must be met prior to loan closing.

- a. **System for Award Management**. You will be required to maintain a Dun and Bradstreet Data Universal Numbering System (DUNS) number and maintain an active registration in the System for Award Management (SAM) database. Renewal can be done on-line at: <http://sam.gov>. This registration must be renewed and revalidated every twelve (12) months for as long as there are Agency funds to be expended. See Appendix A.

To ensure the information is current, accurate and complete, and to prevent the SAM account expiration, the review and updates must be performed within 365 days of the activation date, commonly referred to as the expiration date. The registration process may take up to 10 business days. (See 2 CFR Part 25 and the "Help" section at <http://sam.gov>).

- b. **Litigation**. You are required to notify the Agency within 30 days of receiving notification of being involved in any type of litigation prior to loan closing or start of construction, whichever occurs first. Additional documentation regarding the situation and litigation may be requested by the Agency.
- c. **Certified Operator**. Evidence must be provided that your system has or will have, as defined by applicable State or Federal requirements, a certified operator available prior to the system becoming operational, or that a suitable supervisory agreement with a certified operator is in effect.

SECTION VI – REQUIREMENTS DURING CONSTRUCTION AND POST CONSTRUCTION

34. Resident Inspector(s) – Full-time inspection is required unless you request an exception. Such requests must be made in writing and the Agency must concur with the request. Inspection services are to be provided by the consulting engineer unless other arrangements are requested in writing and concurred with by the Agency. A resume of qualifications of any resident inspector(s) will be submitted to the owner and Agency for review and concurrence prior to the pre-construction conference. The resident inspector(s) must attend the pre-construction conference.

35. Preconstruction Conference – A preconstruction conference will be held prior to the issuance of the Notice to Proceed. The consulting engineer will review the planned development with the Agency, owner, resident inspector, attorney, contractor, other funders, and other interested parties, and will provide minutes of this meeting to the owner and Agency.

36. Inspections - The Agency requires a pre-construction conference, pre-final and final inspections, and a warranty inspection. Your engineer will schedule a warranty inspection with the contractor and the Agency before the end of the one-year warranty period to address and/or resolve any warranty issues. The Agency will conduct an inspection with you of your records management system at the same time, and will continue to inspect the facility and your records system every three years for the life of the loan. See Section VII of this letter.

37. Change Orders – Prior Agency concurrence is required for all Change Orders.

38. Payments – Prior Agency concurrence is required for all Invoices and Partial Payment Estimates before Agency funds will be released. Requests for payment related to a contract or service agreement will be signed by the owner, project engineer, and contractor or service provider prior to Agency concurrence. Invoices not related to a construction contract or service agreement will include the owner's written concurrence.

39. Use of Remaining Funds – Applicant contribution and connection or tap fees will be the first funds expended in the project, followed by non-Agency sources of funds. Remaining funds may be considered in direct proportion to the amounts obtained from each source and handled as follows:

- a. Remaining funds may be used for eligible loan and grant purposes, provided the use will not result in major changes to the original scope of work and the purpose of the loan and grant remains the same.
- b. Grant funds not expended for authorized purposes will be cancelled (de-obligated) within 60 days of final completion of project. Prior to actual cancellation, you and your attorney and engineer will be notified of the Agency's intent to cancel the remaining funds and given appropriate appeal rights.
- c. Multiple advances. Loan funds that are not will be applied as an extra payment on the Agency indebtedness unless other disposition is required by the bond ordinance, resolution, or State statute.

40. Technical, Managerial and Financial Capacity - It is required that members of the, City Council, trustees, commissioners and other governing members possess the necessary technical, managerial, and financial capacity skills to consistently comply with pertinent Federal and State laws and requirements. In accordance with the Texas Government Code, Chapter 551, Subchapter A, Section 551.005 and Chapter 552, Subchapter A, Section 552.012 all members should receive training within one year of appointment or election to the governing board, and a refresher training for all governing members on a routine basis is also recommended. The content and amount of training should be tailored to the needs of the particular individual and the utility system. Technical assistance providers are available to provide this training for your organization, often at no cost. Contact the Agency for information.

41. Reporting Requirements Related to Expenditure of Funds

- a. **Financial Audit**– An annual audit under the Single Audit Act is required if you expend \$750,000 or more in Federal financial assistance per fiscal year. The total Federal funds expended from all sources shall be used to determine Federal financial assistance expended. Expenditures of interim financing are considered Federal expenditures.

All audits are to be performed in accordance with 2 CFR Part 200, as adopted by USDA through 2 CFR Part 400. Further guidance on preparing an acceptable audit can be obtained from the Agency. The audit must be prepared by an independent licensed Certified Public Accountant, or a State or Federal auditor if allowed by State law, and must be submitted within 9 months of your fiscal year end.

If an audit is required, you must enter into a written agreement with the auditor and submit a copy to the Agency prior to the advertisement of bids. The audit agreement may include terms and conditions that the borrower and auditor deem appropriate; however, the agreement should include the type of audit to be completed, the time frame in which the audit will be completed, and how irregularities will be reported.

- b. **Reporting Subawards and Executive Compensation** – You as a recipient of Federal funds and your first-tier contractors are required by 2 CFR Part 170 to report disbursements to sub-recipients in accordance with Appendix B of this letter and www.fsrs.gov. Your Agency processing office can provide more information.

SECTION VII – SERVICING REQUIREMENTS DURING THE TERM OF THE LOAN

- 42. Prepayment and Extra Payments** - Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of borrower, with no penalty.

Security instruments, including bonding documents, must contain the following language regarding extra payments, unless prohibited by State statute:

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of borrower. Refunds, extra payments and loan proceeds obtained from outside sources for the purpose of paying down the Agency debt, shall, after payment of interest, be applied to the installments last to become due under this note and shall not affect the obligation of borrower to pay the remaining installments as scheduled in your security instruments.

- 43. Graduation** - By accepting this loan, you are also agreeing to refinance (graduate) the unpaid loan balance in whole, or in part, upon request of the Government. If at any time the Agency determines you are able to obtain a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms, you will be requested to refinance. Your ability to refinance will be assessed every other year for those loans that are five years old or older.

- 44. Security/Operational Inspections** – The Agency will inspect the facility and conduct a review of your operations and records management system and conflict of interest policy every three years for the life of the loan. You must participate in these inspections and provide the required information.

- 45. Annual Financial Reporting/Audit Requirements** – You are required to submit an annual financial report at the end of each fiscal year. The annual report will be certified by the appropriate organization official, and will consist of financial information and a rate schedule. Financial statements must be prepared on the accrual basis of accounting in accordance with generally accepted accounting principles (GAAP), and must include at a minimum a balance sheet and income and expense statement. The annual report will include separate reporting for each water and waste disposal facility, and itemize cash accounts by type (debt service, short-lived assets, etc.) under each facility. All records, books and supporting material are to be retained for three years after the issuance of the annual report. Technical assistance is available at no cost with preparing financial reports.

The type of financial information that must be submitted is specified below:

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- a. **Audits** – An annual audit under the Single Audit Act is required if you expend \$750,000 or more in Federal financial assistance per fiscal year. The total Federal funds expended from all sources shall be used to determine Federal financial assistance expended. Expenditures of interim financing are considered Federal expenditures.

All audits are to be performed in accordance with 2 CFR Part 200, as adopted by USDA through 2 CFR Part 400. Further guidance on preparing an acceptable audit can be obtained from the Agency. It is not intended that audits required by this part be separate and apart from audits performed in accordance with State and local laws. To the extent feasible, the audit work should be done in conjunction with those audits. The audit must be prepared by an independent licensed Certified Public Accountant, or a State or Federal auditor if allowed by State law, and must be submitted within 9 months of your fiscal year end.

If an audit is required, you must enter into a written agreement with the auditor and submit a copy to the Agency prior to the advertisement of bids. The audit agreement may include terms and conditions that the borrower and auditor deem appropriate; however, the agreement should include the type of audit or financial statements to be completed, the time frame in which the audit or financial statements will be completed, what type of reports will be generated from the services provided, and how irregularities will be reported.

- b. **Financial Statements** – If you expend less than \$750,000 in Federal financial assistance per fiscal year, you may submit financial statements in lieu of an audit which include at a minimum a balance sheet and an income and expense statement. You may use Form RD 442-2, "Statement of Budget, Income and Equity," and 442-3, "Balance Sheet," or similar format to provide the financial information. The financial statements must be signed by the appropriate borrower official and submitted within 60 days of your fiscal year end.
- c. **Quarterly Reports** – Quarterly Income and Expense Statements will be required until the processing office waives this requirement. You may use Form RD 442-2 or similar format to provide this information, and the reports are to be signed by the appropriate borrower official and submitted within 30 days of each quarter's end. The Agency will notify you in writing when the quarterly reports are no longer required.

46. Annual Budget and Projected Cash Flow - Thirty days prior to the beginning of each fiscal year, you will be required to submit an annual budget and projected cash flow to this office. With the submission of the annual budget, you will be required to provide a current rate schedule, and a current listing of the Board or Council members and their terms. The budget must be signed by the appropriate borrower official. Form RD 442-2 or similar format may be used.

Technical assistance is available at no cost to help you evaluate and complete a rate analysis on your system, as well as completing the annual budget. If you are interested, please contact our office for information.

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47. Vulnerability Assessment/Emergency Response Plan (VA/ERP) – You will be required to submit a certification to the servicing office every three years that the VA/ERP is current and covers all sites related to the facility. The documents themselves are not submitted to the Agency. The VA/ERP must address potential impacts from natural disasters and other emergency events. In particular, it should include plans to address impacts of flash flooding in areas where severe drought or wildfires occur. The documents should be reviewed and updated every three years at a minimum.

48. Insurance. You will be required to maintain insurance on the facility and employees as previously described in this letter for the life of the loan.

49. Statutory and National Policy Requirements – As a recipient of Federal funding, you are required to comply with U.S. statutory and public policy requirements, including but not limited to:

- a. **Section 504 of the Rehabilitation Act of 1973** – Under Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Agency financial assistance.
- b. **Civil Rights Act of 1964** – All borrowers are subject to, and facilities must be operated in accordance with, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and 7 CFR 1901, Subpart E, particularly as it relates to conducting and reporting of compliance reviews. Instruments of conveyance for loans and grants subject to the Act must contain the covenant required by Paragraph 1901.202(e) of this Title.
- c. **The Americans with Disabilities Act (ADA) of 1990** – This Act (42 U.S.C. 12101 et seq.) prohibits discrimination on the basis of disability in employment, State and local government services, public transportation, public accommodations, facilities, and telecommunications.
- d. **Age Discrimination Act of 1975** – This Act (42 U.S.C. 6101 et seq.) provides that no person in the United States shall on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

- e. **Limited English Proficiency (LEP) under Executive Order 13166** - LEP statutes and authorities prohibit exclusion from participation in, denial of benefits of, and discrimination under Federally-assisted and/or conducted programs on the ground of race, color, or national origin. Title VI of the Civil Rights Act of 1964 covers program access for LEP persons. LEP persons are individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English. These individuals may be entitled to language assistance, free of charge. You must take reasonable steps to ensure that LEP persons receive the language assistance necessary to have meaningful access to USDA programs, services, and information your organization provides. These protections are pursuant to Executive Order 13166 entitled, "Improving Access to Services by Persons with Limited English Proficiency" and further affirmed in the USDA Departmental Regulation 4330-005, "Prohibition Against National Origin Discrimination Affecting Persons with Limited English Proficiency in Programs and Activities Conducted by USDA."

Agency financial programs must be extended without regard to race, color, religion, sex, national origin, marital status, age, or physical or mental handicap. You must display posters (provided by the Agency) informing users of these requirements, and the Agency will monitor your compliance with these requirements during regular compliance reviews.

50. Compliance Reviews and Data Collection – The Agency will conduct regular compliance reviews of the borrower and its operation in accordance with 7 CFR Part 1901, Subpart E, and 36 CFR 1191, Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines. Compliance reviews will typically be conducted in conjunction with the security inspections described in this letter. If beneficiaries (users) are required to complete an application or screening for the use of the facility or service that you provide, you must request and collect data by race (American Indian or Alaska Native, Asian, Black or African American, White); ethnicity (Hispanic or Latino, Not Hispanic or Latino); and by sex. The Agency will utilize this data as part of the required compliance review.

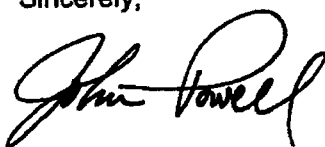
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SECTION VIII – REMEDIES FOR NON-COMPLIANCE

Non-compliance with the conditions in this letter or requirements of your security documents will be addressed under the provisions of 7 CFR 1782 and other applicable regulations, statutes, and policies.

We look forward to working with you to complete this project. If you have any questions, please contact Todd A. Powell, Community Programs Specialist at (325) 201-9843.

Sincerely,

A handwritten signature in black ink that reads "John Powell". The signature is written in a cursive style with a large, looping initial "J".

JOHN M. POWELL
Area Director

Attachments

Cc: Allen Phillips – Project Engineer, Jacob & Martin, LLC
City Attorney
City Bond Counsel
Community Programs – Texas State Office.

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ACRONYMS:

**ABA - Architectural Barriers Act
ACH – Automated Clearing House
AD – Agriculture Department
ADA – Age Discrimination Act
CFDA – Catalog of Federal Domestic Assistance
CFR – Code of Federal Regulations
CPAP – Commercial Programs Application Processing
DUNS – Dun and Bradstreet Data Universal Numbering System
EJCDC – Engineers Joint Contract Documents Committee
ERP – Emergency Response Plan
GAAP – Generally Accepted Accounting Principles
LEP – Limited English Proficiency
OC – Owner Construction
OPS – Owner-Performed Services
O&M – Operation and Maintenance
PER – Preliminary Engineering Report
RD – Rural Development
RUS – Rural Utilities Service
SAM – System for Award Management
SF – Standard Form
UCC – Uniform Commercial Code
USC – United States Code
USDA – United States Department of Agriculture
VA – Vulnerability Assessment**

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FORMS and BULLETINS:

- Form AD-3031 "Assurance Regarding Felony Convictions or Tax Delinquent Status for Corporate Applicants" – Item 29
- Internal Revenue Service Form 1023, Appendix A, "Sample Conflict of Interest Policy" - Item 15
- Form RD 440-22, "Promissory Note" – Item 5
- Form RD 440-24, "Position Fidelity Schedule Bond" – Item 28
- Form RD 442-2, "Statement of Budget, Income and Equity" – Items 44 and 45
- Form RD 442-3, "Balance Sheet" – Item 44
- Form RD 442-7, "Operating Budget" – Item 21
- Form RD 442-20, "Right-of-Way Easement" – Item 14
- Form RD 442-21, "Right-of-Way Certificate" – Item 14
- Form RD 442-22, "Opinion of Counsel Relative to Rights-of-Way" – Item 14
- Form RD 1927-9, "Preliminary Title Opinion" – Item 14
- Form RD 1927-10, "Final Title Opinion" – Item 27
- Form RD 1940-1, "Request for Obligation of Funds" – Pages 1 and 2
- Form RD 1942-8, "Resolution of Members or Stockholders" – Item 5
- Form RD 1942-46, "Letter of Intent to Meet Conditions" – Page 1
- Form RD 3550-28, "Authorization Agreement for Preauthorized Payments" – Items 6 and 30
- Form UCC-1, "Financing Statement" – Item 5
- Form UCC-1Ad, "UCC Financing Statement Addendum" – Item 5
- SF 3881, "ACH Vendor/Miscellaneous Payment Enrollment Form" – Items 8 and 18
- RUS Bulletin 1780-7, "Legal Services Agreement" – Item 13
- RUS Bulletin 1780-9, "Water Users Agreement" - Items 15 and 19
- RUS Bulletin 1780-12, "Water and Waste System Grant Agreement" – Page 1 and Item 5
- RUS Bulletin 1780-26, "Guidance for the Use of EJCDC Documents on Water and Waste Projects with RUS Financial Assistance" – Items 11 and 12
- RUS Bulletin 1780-27, "Loan Resolution (Public Bodies)" – Item 5
- RUS Bulletin 1780-28, "Loan Resolution Security Agreement" – Item 5

~~(The following two appendices are included as required by 2 CFR Parts 25 and 170 and apply to all direct and guaranteed loans and grants)~~

**Appendix A
2 CFR Part 25**

SYSTEM FOR AWARD MANAGEMENT AND UNIVERSAL IDENTIFIER REQUIREMENTS

A. Requirement for System for Award Management

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the SAM until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another appendix.

B. Requirement for unique entity identifier

If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this appendix) may receive a subaward from you unless the entity has provided its unique entity identifier to you.
2. May not make a subaward to an entity unless the entity has provided its unique entity identifier to you.

C. Definitions

For purposes of this appendix:

1. System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at <http://www.sam.gov>).
2. Unique entity identifier means the identifier required for SAM registration to uniquely identify business entities.
3. Entity, as it is used in this appendix, means all of the following, as defined at 2 CFR part 25, subpart C:
 - a. A Governmental organization, which is a State, local government, or Indian Tribe;
 - b. A foreign public entity;
 - c. A domestic or foreign nonprofit organization;
 - d. A domestic or foreign for-profit organization; and
 - e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

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4. Subaward:

- a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.**
- b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.330).**
- c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.**

5. Subrecipient means an entity that:

- a. Receives a subaward from you under this award; and**
- b. Is accountable to you for the use of the Federal funds provided by the subaward.**

[75 FR 55673, Sept. 14, 2010, as amended at 79 FR 75879, Dec. 19, 2014; 80 FR 54407, Sept. 10, 2015]

**Appendix B
2 CFR Part 170**

Reporting Subawards and Executive Compensation

a. Reporting of first-tier subawards.

1. **Applicability.** Unless you are exempt as provided in paragraph d. of this appendix, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this appendix).
2. **Where and when to report.**
 - i. You must report each obligating action described in paragraph a.1. of this appendix to <http://www.fsrc.gov>.
 - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
3. **What to report.** You must report the information about each obligating action listed in the submission instructions posted at <http://www.fsrc.gov>.

b. Reporting Total Compensation of Recipient Executives.

1. **Applicability and what to report.** You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—
 - i. the total Federal funding authorized to date under this award is \$25,000 or more;
 - ii. in the preceding fiscal year, you received—
 - (A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the

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compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this appendix:

- i. As part of your registration profile at <https://www.sam.gov>.
- ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this appendix, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

- i. In the subrecipient's preceding fiscal year, the subrecipient received—
 - (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
- ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this appendix:

- i. To the recipient.
- ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

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- i. **Subawards, and**
- ii. **The total compensation of the five most highly compensated executives of any subrecipient.**

e. Definitions. For purposes of this appendix:

1. Entity means all of the following, as defined in 2 CFR part 25:

- i. **A Governmental organization, which is a State, local government, or Indian tribe;**
- ii. **A foreign public entity;**
- iii. **A domestic or foreign nonprofit organization;**
- iv. **A domestic or foreign for-profit organization;**
- v. **A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.**

2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

- i. **This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.**
- ii. **The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. __.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").**
- iii. **A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.**

4. Subrecipient means an entity that:

- i. **Receives a subaward from you (the recipient) under this award; and**
- ii. **Is accountable to you for the use of the Federal funds provided by the subaward.**

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

- i. **Salary and bonus.**

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- ii. **Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.**
- iii. **Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.**
- iv. **Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.**
- v. **Above-market earnings on deferred compensation which is not tax-qualified.**
- vi. **Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.**

[75 FR 55669, Sept. 14, 2010, as amended at 79 FR 75879, Dec. 19, 2014]

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT, dated as of the 28th day of June, 2018, is entered into by and between Aqua Texas, Inc. ("Aqua"), and the Town of Buffalo Gap, Texas ("Town").

RECITALS

A. Aqua owns, maintains and operates a public water system known as The Gap Water System (the "System"), PWS ID # 2210023, located within Taylor County, Texas.

B. Aqua utilizes the System to provide retail water utility service to approximately 265 connections that are located both inside and outside of the Town boundaries. A map showing the approximate boundaries of the service area encompassing the connections is attached hereto as Exhibit 1 (the "Service Area").

C. Town is a Texas general law municipality that provides water service to its residents.

D. Aqua desires to sell, and Town desires to purchase, certain assets, properties and rights of Aqua owned and used in connection with the System and as further described below, all upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the recitals and the covenants, representations, warranties and agreements herein contained, and intending to be legally bound hereby, the parties hereto agree as follows:

1. **SALE AND PURCHASE OF AQUA'S WATER SYSTEM ASSETS**

Subject to the terms and conditions hereinafter set forth, Town shall purchase from Aqua, and Aqua shall sell, assign, transfer, grant, convey and deliver to Town at Closing (hereinafter defined), all of the System's assets, properties and rights of Aqua (whether tangible or intangible, real, personal or mixed) which are held, used or useful exclusively for production, treatment and distribution of water within or adjacent to the Service Area (the "Assets").

The Assets are being sold free and clear of all mortgages, liens, pledges, security interest, charges, taxes, claims, restrictions and encumbrances of any nature whatsoever.

1.1 **Assets Further Defined**

The Assets shall, without limitation to the definition stated above, be all of the assets, properties and rights of Aqua that are held and used exclusively for the water supply and distribution system located inside and outside of the Town boundaries as set forth on Schedule 1.1, and the following:

- (a) all the land, buildings, pipes, pipelines, wells, pumping stations, storage tanks, standpipes, fire hydrants, flush valves, plants, structures, improvements, fixtures, rights-of-way, rights, uses, licenses and easements owned by Aqua, or in which Aqua has an interest, and all hereditaments, tenements and appurtenances belonging or appertaining thereto, utilized exclusively for the operation of the System;

- (b) all machinery, equipment, tools, furniture, furnishings, leasehold improvements, goods, and other tangible personal property utilized exclusively for the operation of the System;
- (c) all rights of Aqua under any transferable written or oral contract, easement, license, agreement, lease, plan, instrument, registration, permit, certificate, CCN, or other authorization or approval of any nature, or other document, commitment, arrangement, undertaking, practice or authorization, relating exclusively to the System;
- (d) all rights and choses in action of Aqua arising out of occurrences before or after the Closing relating exclusively to the System; and
- (e) files, records, plans, contracts, customer and supplier lists and property records related exclusively to the System.

1.2 Excluded Assets

Notwithstanding the foregoing, the Assets shall not include any of the following:

- (a) any and all customer water service lines that run from outside the meter box to each individual residence, commercial or industrial structure served by the Assets;
- (b) all piping and fixtures internal to each individual customer's structure;
- (c) Aqua's cash on hand and accounts receivables for customer billings for any services provided by Aqua prior to the date of Closing, including customer deposits;
- (d) any assets listed in Schedule 1.2(d) which is attached hereto and incorporated herein by reference;
- (e) equipment and tools owned or leased by Aqua that are not used exclusively for the operation or service of the System Assets;
- (f) all Aqua vehicles; and
- (g) all other Aqua assets not utilized exclusively for the operation or service of the System, unless otherwise specifically listed in Schedule 1.1.

1.3 Determination of Receivables and Billing Procedures

Town will be entitled to collect and retain all accounts receivable for customer billings for water service provided by Town after Closing on the sale of the System Assets and, as noted above, Aqua will be entitled to collect and retain all accounts receivable for customer billings for services that Aqua provided prior to such Closing, but will refund any System customer deposits to transferring customers prior to Closing. After the date of Closing, any payments received by Town or Aqua for the provision

of water service through the System Assets shall belong to Town or Aqua as indicated on such payment or the documentation relating thereto. If such payment or the documentation relating thereto does not indicate whether such payment is for the period prior to or after Closing, the parties shall jointly determine whether such payment belongs to Aqua or Town. If either party receives a payment which, by the terms of this Agreement, properly belongs to the other party, the party in receipt of such payment shall hold it in trust for the other party and shall turn such payment over to the proper party upon receipt thereof without any right of setoff.

1.4 Consideration

- (a) The total purchase price ("Purchase Price") for the Assets shall be **\$397,500.00** payable at Closing.
- (b) Town and Aqua acknowledge the Purchase Price was originally based upon payment by Town of the amount of \$1,500.00 per connection for 265 residential water connections to the System. Additional water connections have been added and the total connection number may fluctuate prior to Closing; however, regardless of the number of connections the Purchase Price will remain as set forth in Section 1.4(a), above.

1.5 Contractual Obligations

Town shall not assume any obligations of Aqua under any contract, agreement, commitment, lease, certificate, permit or other instrument, whether oral, written, express or implied, except with respect to those contracts and other instruments, if any, listed on Schedule 1.5 attached hereto, made part hereof and incorporated herein by reference.

1.6 Non-Assumption of Liabilities

With the exception of the assumption of contractual duties to be performed after the date of Closing under the surviving contracts, if any, listed on Schedule 1.5 attached hereto, together with the ongoing obligation to provide water service to the customers of Aqua served by the Water System (the "Assumed Obligations"), all liabilities and obligations of Aqua arising from the period prior to Closing shall remain the sole responsibility of Aqua, including any and all liabilities or obligations under any employee benefit plan, practice or arrangement or pension, retirement or savings plan. Except for the Assumed Obligations, Town shall not assume and shall not be liable for any such liabilities or obligations of Aqua of any nature whatsoever whether express or implied, fixed or contingent.

1.7 Encroachment of Service Area

The parties to this Agreement acknowledge that Steamboat Mountain Water Supply Corporation ("Steamboat") currently provides water service within Aqua's Service Area and that the Steamboat system is designed to provide service for up to twenty (20) metered connections within the Service Area. The parties also acknowledge that certain System connections historically served as part of the System may be located in an area adjacent to the Service Area now certificated to Steamboat. Town has expressly agreed to resolve issues related to CCN encroachments outside of this Agreement as may

be necessary and to be responsible for any costs associated with same.

2. CLOSING

Subject to the provisions of **Sections 4 and 5**, Closing hereunder (the "Closing") shall take place at a mutually agreed upon location and time on or before three days after the date meters are read for the month in which the Closing occurs and a date thirty-five (35) days after the receipt of final regulatory approvals, including without limitation those described in **Section 5.5** below. Aqua acknowledges that the Town has a funding commitment from the United States Department of Agriculture ("USDA") and has to meet certain conditions, involving factors outside of the Town's control, to obtain said funding to complete the purchase of the Assets at Closing; the Town acknowledges that it will make every effort to schedule the Closing within the time frame noted in the first sentence of this paragraph. However, the Town also acknowledges that the Closing will require the Parties to file a Sale, Transfer, or Merger ("STM") application with the Public Utility Commission of Texas ("PUC") and that PUC rules provide that PUC STM approvals expire 180 days following the date of the PUC order allowing the transaction to proceed. In the event that the Closing does not occur within the 180-day period authorized by the PUC in response to the Parties' STM application because the Town does not possess funding for the Closing, Aqua may either terminate this Agreement without penalty or agree to extend the time for the Closing if: (1) the Town assumes all costs and responsibility for the PUC STM process from the date of such agreement forward; and (2) the Town is able to either obtain an extension for the Closing period from the PUC or start the STM process over in time for the Closing to occur on or before December 31, 2019. The date of the Closing is referred to herein as the "Closing Date". The effective time of the legal transfer hereunder shall be 12:01 a.m. on the day following the Closing Date. Notwithstanding the foregoing, if the Closing has not occurred on or before December 31, 2019, either Party shall have the right to terminate this Agreement in accordance with the provisions of this Agreement, provided that such termination shall be without prejudice to the rights of either party which has performed its obligations under this Agreement, if Closing does not occur because of a material breach of this Agreement by the other party.

2.1 Items to be delivered at Closing

At the Closing and subject to the terms and conditions herein contained:

- (a) Aqua shall deliver to Town the Assets, including, without limitation, the following:
 - (i) instruments and documents of conveyance and transfer, all in forms reasonably satisfactory to Town and its counsel, as shall be necessary and effective to transfer and assign to, and vest in, Town good and marketable title to the Assets and all rights to operate the System as such is now being operated, including, but not limited to the following documents: a Deed for each parcel to be conveyed; a Bill of Sale and Assignments; an Assignment and Grant of Easement for any easement Town requires to utilize, maintain, repair and replace any facilities located outside of any parcels to be conveyed and/or publicly dedicated roadways; and an appropriate Sanitary Control Easement for each well within the well protection area Town requires.

- (ii) Assignment and copies of, or the originals as appropriate, of all the agreements, contracts, commitments, leases, plans, bids, quotations, proposals, instruments, certificates, permits and other instruments belonging to Aqua that are part of or related to the Assets;
- (iii) a complete and accurate list of the names and addresses of all customers of Aqua, both in paper form and in electronic form on a flash drive that can be downloaded to a computer, along with a billing history for each customer;
- (iv) a certificate, in form and substance satisfactory to Town, executed by each third party to any contract listed on Schedule 1.5 confirming that all representations and warranties of Aqua with respect to such contract are true and correct, and that there is no defense, counterclaim or asserted set off by such party under the contract, and that Aqua and such party are each in compliance with the requirements of the contract, and to the extent such party's consent is required to an assignment of the contract to Town, such consent;
- (v) keys to any and all buildings and gates;

and simultaneously with such delivery, all such steps shall be taken as may be required to put Town in actual possession and operating control of the Assets.

- (b) Aqua shall deliver to Town the agreements, opinions, certificates and other documents and instruments referred to in **Section 5** hereof.
- (c) Town and Aqua agree that final meter readings shall be conducted as specified in **Section 2**, above. These readings shall be utilized by Aqua for the purpose of issuing final bills, and shall constitute the opening readings for Town. Town shall use these readings to begin the billing cycle for its new customers following Closing, and shall not be responsible for the collection of any amounts due Aqua for bills issued by Aqua as a result of Aqua's final meter reading.

2.2 Costs and Taxes

Except as provided to the contrary herein, each party is responsible for any and all costs incurred by it in connection with the Closing including, but not limited to, attorneys' fees, document preparations and all costs allocated at the Closing in accordance with generally accepted practices in Taylor County, Texas. Any fees for recording real property conveyance documents shall be paid one half each by Aqua and Town.

2.3 Transfer of Utilities

Aqua and Town will cooperate to transfer utility service, including telephone, electric and gas service providing such service to any of the Assets as of the Closing Date. In the event service cannot be transferred in the name of Town as of the Closing Date, the bills shall be pro-rated as of the Closing

Date. Aqua and Town agree to make such payments to each other as may be necessary to adjust for any utility billing and/or utility service change that is not effective as of Closing.

2.4 Further Assurances

Aqua, from time to time after the Closing, at Town's request, and without compensation, will execute, acknowledge and deliver to Town such other instruments of sale, conveyance, assignment and transfer and will take such other actions and execute and deliver such other documents, certifications and further assurances as Town may reasonably require in order to vest in Town, and/or to place Town fully in possession of, all of the Assets. Each of the parties hereto, without compensation, will cooperate with the other and execute and deliver to the other such other instruments and documents and take such other actions as may be reasonably requested from time to time by any other party hereto as necessary to carry out, evidence and confirm the purposes of this Agreement.

3. CONDUCT OF PARTIES PENDING CLOSING

3.1 Aqua agrees that, with respect to the Assets, pending the Closing and except as otherwise agreed to in writing by Town:

- (a) The business of Aqua shall be conducted consistent with past practice.
- (b) Aqua shall continue to maintain and service the tangible Assets in good working order such that they will be in proper working order at Closing. The parties acknowledge one of the ground storage tanks currently located on System property has been out of service, is not necessary for providing service to customers, and that there is no obligation to deliver this tank in working order.
- (c) Aqua will comply with all laws, ordinances, rules, regulations and orders applicable to its operation of the Assets and the provision of retail water utility service.
- (d) Aqua will promptly advise Town in writing of all events between the date hereof and Closing which could render any representation or warranty under the Agreement, if restated and republished as of Closing, untrue or incorrect in any material respect.
- (e) Aqua will promptly advise Town in writing after Aqua receives knowledge of the threat or commencement of any dispute, claim, action, suit, proceeding, arbitration or investigation against or involving the Assets or the sale and transfer thereof to Town, or of the occurrence of any event (exclusive of general economic factors affecting business in general) of a nature that is or may be materially adverse to the business, operations, properties, assets, prospects or condition (financial or otherwise) of Aqua.
- (f) Aqua will give to Town, its officers, employees, accountants, counsel and other representatives free and full access to and the right to inspect, during normal business hours, all of the premises, properties, assets, records, contracts and other documents relating exclusively to the operation and maintenance of the System.

- (g) Aqua will cooperate with the Town as the Town requests to mutually cooperate in sending any customer notices that in Town's judgment are necessary or desirable in connection with the transactions contemplated herein.
- (h) Aqua, with the Town's support, will prepare a Sale, Transfer, or Merger ("STM") application for submission to the PUC on behalf of the parties and will assist with the transfer of other permits as necessary. Aqua will also undertake other necessary actions and complete necessary applications for the transfer of the System Assets and corresponding portion of Aqua's CCN No. 13201 covering the Service Area from Aqua to the Town under a newly assigned water CCN. Except as noted in **Section 2** and **Section 5.5** herein, each party will assume its respective costs during this process without reimbursement from the other party, but Aqua will take the lead on preparation and prosecution of the STM application. The Town acknowledges that prior to signing this Agreement Aqua has notified it of the requirements of Texas Water Code § 13.301 and provided the Town a copy of the PUC implementing rules found at 16 Texas Administrative Code § 24.109 which require an STM application for the transaction contemplated herein.

4. **CONDITIONS PRECEDENT TO AQUA'S OBLIGATIONS**

All obligations of Aqua under this Agreement are subject to the fulfillment or satisfaction, or waiver by Aqua, prior to or at the Closing, of each of the following conditions precedent:

4.1 **Closing Certificate; Performance by Town**

Town shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing; and Aqua shall have been furnished with a certificate or certificates of Town dated the Closing Date, signed by a duly authorized representative of Town, certifying, in such detail as Aqua may reasonably request, to the fulfillment of the foregoing conditions and that all representations and warranties made by Town in this Agreement are true and correct as of Closing, except such as have been rendered incorrect because of events which occurred after the date hereof, as disclosed in writing by Town to Aqua within a reasonable time after the event occurred.

4.2 **Litigation Affecting Closing**

On the Closing Date, no proceeding shall be pending or threatened before any court or governmental agency in which it is sought to restrain or prohibit or to obtain damages or other relief in connection with this Agreement or in the consummation of the transactions contemplated hereby, and no investigation that might eventuate in any such suit, action or proceeding shall be pending or threatened.

5. **CONDITIONS PRECEDENT TO TOWN'S OBLIGATIONS**

All obligations of Town under this Agreement are subject to the fulfillment or satisfaction, or waiver by Town, prior to or at the Closing, of each of the following conditions precedent:

5.1 Satisfaction with Operational and Real Estate Title Issues

Town shall be satisfied, within thirty (30) days following the execution of this Agreement, with the results of its due diligence inspections of the overall operational functionality of the Assets that Town may elect to perform, and at Closing that there has been no material deterioration therein between the expiration of such thirty (30) day period and Closing. Additionally, prior to Closing, Town shall be satisfied with its review of the real estate and the quality of title to be conveyed to Town from Aqua. All Assets whether tangible or intangible shall be sold "as is" to the Town on the date of Closing.

5.2 Closing Certificate; Performance by Aqua

Aqua shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing; and Town shall have been furnished with a certificate or certificates of Aqua dated the Closing Date, signed by the appropriate officials of Aqua, certifying, in such detail as Town may reasonably request, to the fulfillment of the foregoing conditions and that all representations and warranties are true and correct as of Closing, and the facts as contained in such disclosure(s) shall not result in a material adverse change in the condition of the Assets or business and operations of Aqua relating to the Systems.

5.3 Litigation Affecting Closing

On the Closing Date, no proceeding shall be pending or threatened before any court or governmental agency in which it is sought to restrain or prohibit or to obtain damages or other relief in connection with this Agreement or the consummation of the transactions contemplated hereby, and no investigation that might eventuate in any such suit, action or proceeding shall be pending or threatened.

5.4 Aqua Authorizations

Aqua shall have furnished Town with certified copies of all proceedings of Aqua, including a signed and certified copy of a Unanimous Consent of its Board of Directors, authorizing the transactions hereby contemplated.

5.5 Governmental Approvals

The Town acknowledges that Aqua has notified it of the requirements of Texas Water Code §13.301 and provided the Town a copy of the PUC implementing rules found at 16 Texas Administrative Code § 24.109 which require a Sale, Transfer, or Merger ("STM") application for the transaction contemplated herein. As a condition to Closing, Aqua shall have received all governmental authorizations required for the transfer of the System Assets under Aqua's Certificate of Convenience and Necessity ("CCN") including, but not limited to, adoption and approval of an Order satisfactory to Aqua, wherein the Public Utility Commission of the State of Texas ("PUC") approves and authorizes the amendment of Aqua's CCN to remove the Service Area served by the System Assets from Aqua's

Service Territory and authorizes Aqua to: a) transfer the System Assets as contemplated by the Agreement; and b) to transfer the obligation, right and authority to provide retail public water service to connections throughout the Service Area to Town. Such governmental authorizations, orders and approvals, include, but are not limited to, those of the PUC and the Texas Commission on Environmental Quality (“TCEQ”) necessary for Aqua to transfer all permits and service obligations to Town and/or to amend Town’s existing permits and certificates to properly own and adequately operate the System Assets, including the provision of water service within the Service Area, and such permits as issued shall not be subject to any further modification or appeal. Aqua shall be responsible, with the Town’s support, for: a) drafting and submitting the STM Application to the PUC and obtaining PUC approval for the transfer of the System Assets to the Town; and b) obtaining the PUC’s approval for inclusion of the portion of Aqua’s CCN No. 13201 covering the Service Area that corresponds to the System in a new water CCN issued to the Town and its removal from Aqua’s CCN No. 13201. Except as provided in **Section 2**, Aqua shall be responsible for all expenses incurred by Aqua for drafting the required documents and obtaining such approvals. The Town shall be responsible for any of its own expenses incurred in providing Aqua information required for the STM application.

5.6 Material Damage

The Assets shall not be, or be threatened to be, materially adversely affected by fire, explosion, earthquake, disaster, accident, cessation or interruption of utility or other services, flood, drought, contamination of water supply, embargo, riot, civil disturbance, uprising, activity of armed forces or act of God or public enemy, or any other event or occurrence.

6. REPRESENTATIONS AND WARRANTIES OF AQUA

6.1 Aqua hereby represents and warrants to Town as follows:

- (a) Organization. Aqua is duly organized, validly existing and in good standing under the laws of the State of Texas.
- (b) System Ownership. Aqua has, or will have at Closing, good and marketable title to the System Assets free and clear of all liens and encumbrances.
- (c) Current Operations. The execution, delivery and performance of this Agreement by Aqua does not constitute a breach of any contract to which Aqua is a party; any statute, judgment, order, decree, regulation or rule of any governmental body or agency that is applicable to Aqua or the System Assets; or any lease, mortgage, deed of trust, commitment, license, franchise, authorization or any other instrument to which Aqua is a party or by which any of the System Assets may be bound. Except as may be disclosed in the Schedules to this Agreement, there are no leases or other agreements limiting use of the System Assets.
- (d) No Approvals or Violations. With the exception of the approval of Aqua’s Board of Directors, this Agreement does not require any further approvals by any other party, does not violate any law, ordinance or regulation, does not conflict with any order or decree,

and does not conflict with or result in a breach of any contract, lease or permit to which Aqua is a party.

- (e) Party to Decree. Aqua is not party to, or subject to the provision of, any judgment, order, writ, injunction or decree of any court or of any governmental official, agency or instrumentality relating to the System or the System Assets.
- (f) List of Assets. Schedule 1.1 contains a true and complete list of the Assets.
- (g) Customer Records. The data contained in the customer records provided to Town is true and accurate to the best of Aqua's information and belief.
- (h) Withholding of tax is not required under Section 1445 of the Internal Revenue Code and, under penalties of perjury, Aqua hereby certifies that Aqua is not a nonresident alien or a foreign corporation, foreign partnership, foreign trust or a foreign estate as those terms are defined for purposes of federal income tax and that Aqua's taxpayer identification number is as set forth below. Aqua acknowledges that this certification can be disclosed to the Internal Revenue Service and that any false statement could be punishable by fines, imprisonment or both.

6.2 Except as set forth on Schedule 6.2, Aqua hereby represents and warrants to Town as follows:

- (a) Adequacy of Property Rights. All leases, licenses, rights of way, and easements related in any manner to the assets and properties comprising the System are in good standing, valid and effective in accordance with their respective terms, and with respect thereto, there is no existing default or event which could constitute a default. Aqua possesses all property rights necessary to operate the Assets.
- (b) Rights to Facilities. Aqua has good and valid rights to occupy and to obtain access to the areas where the distribution lines and other facilities of the Assets are located.
- (c) Threatened Litigation. To the best of Aqua's knowledge, there are no threatened claims, actions, investigations or legal or administrative proceedings regarding the Assets or Aqua's ability to transfer the Assets, nor does Aqua know of any basis for any such claim, action or proceeding.
- (d) Contract for Refunds. Aqua is not a party to any contract for future payment of refunds under any extension agreement, customer deposit agreement or similar agreement with respect to the Assets. Customer deposits held by Aqua shall be refunded to transferring customers prior to Closing.
- (e) Compliance with Law. Except as may be disclosed in Schedule 6.2, Aqua is not in any material violation of any law, ordinance or governmental rule or regulation to which it or its business, operations, assets or properties is subject and has not failed to obtain, or to adhere to the requirements of, any certificate, license, permit or other governmental

authorization necessary to the ownership of its assets and properties or to the conduct of its business.

6.3 Except as set forth in Schedule 6.3, Aqua hereby represents and warrants to and with Town as follows with respect to compliance with environmental laws:

- (a) Compliance with Law. To the best of Aqua's actual knowledge, Aqua has been and is in compliance with all Environmental Laws (as hereinafter defined).
- (b) Adequacy of Permits. To the best of Aqua's actual knowledge, after diligent inquiry and investigation, Aqua has obtained and continues to possess all permits, licenses, approvals or other authorizations which are required under the Environmental Laws, and has filed such timely and complete renewal applications as may be required prior to the Closing Date.
- (c) Environmental Conditions. To the best of Aqua's actual knowledge, following diligent inquiry and investigation, there are no past or present events, conditions, circumstances, activities, practices, incidents, actions or plans pertaining or relating to the Assets which may impede or prevent continued compliance with the Environmental Laws or which may give rise to any civil or criminal liability under the Environmental Laws.
- (d) Compliance with Decrees. Aqua has been and is in compliance with all orders, decrees, judgments and notices issued against Aqua under or in connection with the Environmental Laws.

As used in this Agreement, the following terms shall have the following meaning:

The term "Environmental Laws" shall include all federal, state and, local environmental laws and regulations, including, without limitation, the Clean Water Act ("CWA"), also known as the Federal Water Pollution Control Act ("FWPCA"), 33 U.S.C. § 1251 et seq., the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601 et seq., the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. §§ 136 et seq., the Safe Drinking Water Act ("SDWA"), 42 U.S.C. §§ 300 (f) et seq., the Surface Mining Control and Reclamation Act ("SMCRA"), 30 U.S.C. §§ 1201 et seq., the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., the Superfund Amendment and Reauthorization Act of 1986 ("SARA"), Public Law 99-499, 100 Stat., 1613, the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901, the Atomic Energy Act ("AEA"), Act of August 30, 1954, Ch. 1073, 68 Stat. 919 (codified as amended in scattered sections of 5 U.S.C. and 42 U.S.C.). Any reference to a legislative act or regulation shall be deemed to include all amendments thereto and all regulations, orders, decrees, judgments, opinions directives or notices issued thereunder.

The term "Environmental Condition" shall mean any condition or circumstance related to the Assets, whether created by Aqua or any other party, which (1) required or requires abatement or correction under an Environmental Law, or (2) has given or may give rise to any civil or criminal liability under an Environmental Law, or (3) has created or may create a public or private nuisance,

including the presence of asbestos, PCB's, hazardous substances, petroleum products, radioactive waste or radon, on, in or about the Assets.

6.4 No Misleading Statements

No representation or warranty by Aqua in this Agreement or in any document delivered or to be delivered pursuant hereto or in connection herewith, and no statement, document, agreement, information or certificate made or furnished or to be made or furnished to Town pursuant hereto or in connection with the negotiation, execution or performance of this Agreement, now and as of the Closing Date, contain any untrue statement of a material fact, or fail to state any fact necessary to make any statement herein or therein not misleading.

7. REPRESENTATIONS AND WARRANTIES OF TOWN

7.1 Town hereby represents and warrants to Aqua as follows:

- (a) Organization. Town is a municipal corporation duly organized and validly existing and in good standing under the laws of the State of Texas.
- (b) Due Authorization; Valid and Binding. Town has the full power and lawful authority to execute this Agreement and to consummate and perform the transactions contemplated hereby and has duly and validly authorized the execution of this Agreement by all necessary proceedings and in accordance with the law. This Agreement constitutes the valid and binding obligations of Town. Upon execution and delivery by Town of the instruments to be delivered by it at Closing (collectively the "Buyer's Closing Documents"), each of the Buyer's Closing Documents will constitute the legal, valid and binding obligation of Town, enforceable against Town in accordance with its terms and the execution of the Buyer's Closing Documents has been duly authorized by all necessary action.
- (c) Financial Wherewithal. Town has the financial wherewithal to complete the purchase of the Assets as contemplated hereunder and upon completion of Closing, to operate and manage the Assets at, or exceeding, the level of service provided by Aqua prior to Closing. The parties acknowledge that the Town has a funding commitment from USDA that will allow for the Town to have the funds to complete the purchase of the Assets at the Closing and allow for the operation and management of the Assets; however, this purchase is part of an overall plan and various conditions must be completed, many involving factors outside of the Town's control, before the Town receives said funding. Town bears full and sole responsibility for obtaining funding from the USDA or otherwise to use at the Closing to purchase the Assets from Aqua, and Town is solely responsible for fulfilling any conditions required for same. Town will also bear full responsibility for implementing Town ordinances, resolutions, or policies related to rates, customer deposits, or any other retail public water utility service charges after Closing.

8. INDEMNIFICATION

8.1 Indemnification by Aqua

- (a) All representations, warranties, covenants and obligations in this Agreement shall survive Closing for a period of one year.
- (b) Aqua will indemnify and hold harmless Town from and against any and all claims, suits, actions, arbitrations, proceedings, judgments, deficiencies, losses, damages, settlements, liabilities and other expenses, including reasonable attorneys' fees and other expense of counsel mutually chosen by Town and Aqua arising out of, based upon or resulting from:
 - (i) Any error, misrepresentation, inaccuracy or breach in any of the representations, warranties, agreements or covenants made by or on behalf of Aqua in this Agreement;
 - (ii) Any breach or default by Aqua in the performance of its covenants under this Agreement;
 - (iii) Any act or omission by Aqua occurring prior to Closing; any condition or circumstances existing in any of the System Assets prior to Closing; or any claims arising from Aqua's operation of the System Assets prior to Closing;
 - (iv) The presence, release, clean-up or exposure to a regulated substance or other material located on, within or under the System Assets prior to Closing; and
 - (v) Any debts, liabilities or obligations of Aqua, fixed, contingent or otherwise, that are not expressly assumed by Town pursuant to this Agreement.

8.2 Indemnification by Town

- (a) All representations, warranties, covenants and obligations in this Agreement shall survive Closing for a period of one year.
- (b) To the extent allowed by law, Town will indemnify and hold harmless Aqua from and against any and all claims, suits, actions, arbitrations, proceedings, judgments, deficiencies, losses, damages, settlements, liabilities and other expenses, including reasonable attorneys' fees and other expense of counsel mutually chosen by Town and Aqua arising out of, based upon or resulting from:
 - (i) Any error, misrepresentation, inaccuracy or breach in any of the representations, warranties, agreements or covenants made by or on behalf of Town in this Agreement;
 - (ii) Any breach or default by Town in the performance of its covenants under this

Agreement;

- (iii) Any act or omission by Town occurring prior to Closing, or any claims arising from Town's operation of the System Assets after Closing;
- (iv) The presence, release, clean-up or exposure to a regulated substance or other material located on, within or under the System Assets after Closing;
- (v) Any application by the Town to obtain USDA funding; and
- (vi) Any debts, liabilities or obligations of Aqua, fixed, contingent or otherwise, that are expressly assumed by Town pursuant to this Agreement, and any debts, liabilities, or obligations of the Town.

8.3 General

- (a) Each party shall provide the other party with reasonable notice of any claims arising under this **Section 8**. The indemnification rights of the parties under this **Section 8** are independent of and in addition to such rights and remedies as the parties may have at law or in equity or otherwise for any misrepresentation, breach of warranty, or failure to fulfill any agreement or covenant hereunder. In the event that an indemnification claim is reported to the indemnifying party's insurance carrier and the applicable policy(ies) require use of panel counsel, the parties agree that mutual selection of counsel pursuant to Section 8.1(b) and 8.2(b) shall be from the carrier's panel provided the carrier's policy provides coverage for such indemnification and the carrier has not disclaimed an obligation to cover the claim and any resulting loss.
- (b) This Agreement constitutes an agreement by Aqua to provide goods and services to Town and is subject to Chapter 271, Subchapter I of the Texas Local Government Code.

9. MISCELLANEOUS

9.1 Contents of Agreement; Parties in Interest; etc.

This Agreement sets forth the entire understanding of the parties hereto with respect to the transactions contemplated hereby. It shall not be amended or modified except by written instrument duly executed by each of the parties hereto. Any and all previous agreements and understandings between or among any or all of the parties regarding the subject matter hereof, whether written or oral, are superseded by this Agreement.

9.2 Binding Effect

All of the terms and provisions of this Agreement shall be binding upon, inure to the benefit of and be enforceable by the legal representatives, successors and assigns of Aqua or Town.

9.3 Waiver

Any term or provision of this Agreement may be waived at any time by the party or parties entitled to the benefit thereof by a written instrument executed by such party or parties.

9.4 Notices

Any notice, request, demand, waiver, consent, approval or other communication which is required or permitted hereunder shall be in writing and shall be deemed given only if delivered personally or sent by telegram or by registered or certified mail, postage prepaid, return receipt requested, as follows:

If to Town: Mayor
Town of Buffalo Gap, Texas
P.O. Box 506
Buffalo Gap, TX 79508

With a copy to:
Eileen M. Hayman, Town Attorney
500 Chestnut Street, Suite 1601
Abilene, TX 79602

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

With a copy to:
Christopher P. Luning, General Counsel
762 W. Lancaster Avenue
Bryn Mawr, PA 19010

or to such other address as the addressee may have specified in a written notice duly given to the sender as provided herein. Such notice, request, demand, waiver, consent, approval or other communication will be deemed to have been given as of the date so delivered, telegraphed or mailed.

9.5 Texas Law to Govern

This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the State of Texas, without giving effect to any conflicts of law provisions.

9.6 No Benefit to Others

The representations, warranties, covenants and agreements contained in this Agreement are for the sole benefit of the parties hereto, and their legal representatives, successors and assigns, and they

shall not be construed as conferring any rights on any other persons.

9.7 Headings, Gender, etc.

All section headings contained in this Agreement are for convenience of reference only, do not form a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

9.8 Exhibits and Schedules

All Exhibits, Attachments and Schedules referred to herein are intended to be and hereby are specifically made a part of this Agreement.

9.9 Severability

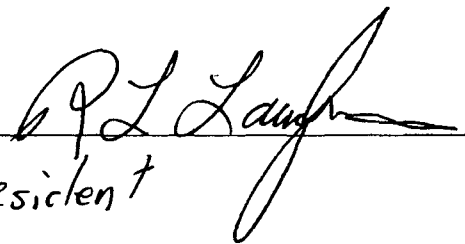
Any provision of this Agreement that is invalid or unenforceable in any jurisdiction or under any circumstance shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof, and any such invalidity or unenforceability in any jurisdiction or under any circumstance shall not invalidate or render unenforceable such provision in any other jurisdiction or under any other circumstance, unless, in either event, the involved or unenforceable provision causes this Agreement to fail of its essential purpose.

9.10 Counterparts

This Agreement may be executed in any number of counterparts and any signatory hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. This Agreement shall become binding when one or more counterparts taken together shall have been executed and delivered by all signatories. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

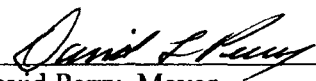
IN WITNESS WHEREOF, intending to be legally bound, the parties hereto have duly executed this Agreement on the date first written.

Aqua Texas, Inc.:

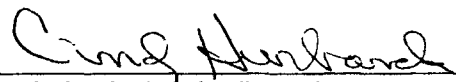
By: 
Its: *President*

Taxpayer Identification No.: 3-20-1440550-3

Town of Buffalo Gap:

By: 
David Perry, Mayor

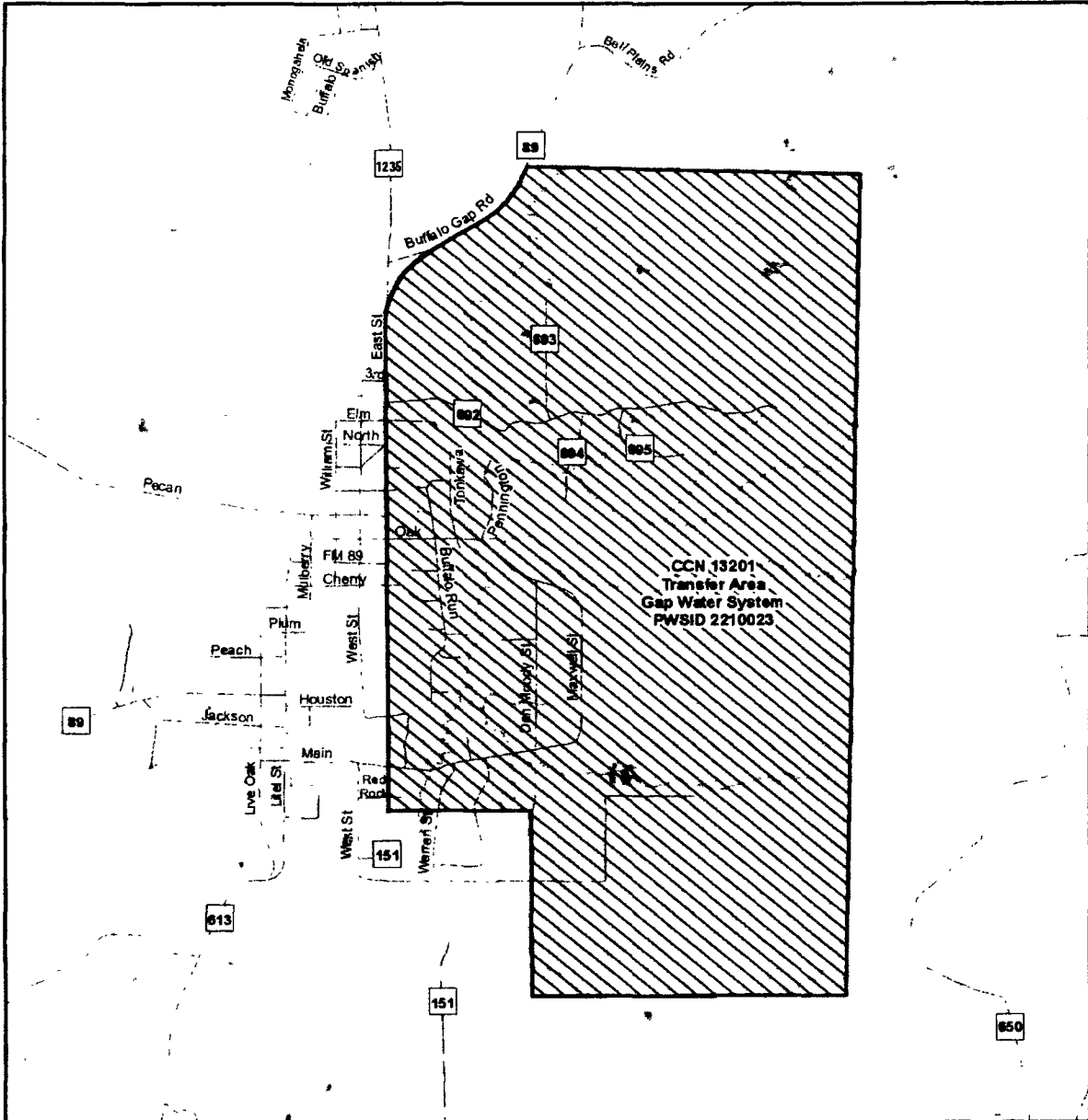
ATTEST:

By: 
Cindy Husbands, Town Secretary

LIST OF
EXHIBITS

EXHIBITS

Exhibit 1 Map of Service Area

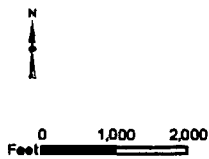


Large Scale Map

Sale, Transfer, or Merger Application for Sale/Transfer of Gap Water System (PWSID No. 2210023) and a Portion of Aqua Texas, Inc., CCN No. 13201, to Town of Buffalo Gap in Taylor County

Water CCN Transfer Area

 CCN 13201 - Aqua Texas, Inc. - approx 1782 acres



Map by: S. Burt
 Date: May 28, 2016
 Base: StratMap Transv2
 Project: Buffalo Gap/ Aqua Transfer_Large Scale

**LIST OF
SCHEDULES**

SCHEDULES

Schedule 1.1	List of Assets
Schedule 1.2(d)	Excluded Assets
Schedule 1.5	Obligations of Aqua Assumed by Town
Schedule 6.2	Exceptions to Aqua's Representations and Warranties
Schedule 6.3	Exceptions to Aqua's Environmental Representations and Warranties

Schedule 1.1

List of Assets

The assets comprising Aqua Texas, Inc.'s Gap Water System (PWS ID No. 2210023) referred to in Section 1.1 of the Agreement are further defined to include the following:

Gap Water System - Summarized Asset Listing		
Item #	Description	Quantity
1.	Treatment & Booster Pump Station	1
2.	83,000-gallon Ground Storage Tank	1
3.	Decommissioned 83,000-gallon Ground Storage Tank (not currently in use or working order)	1
4.	33,000-gallon Raw Water Tank	1
5.	7,000-gallon Backwash Storage Tank	1
6.	25 HP Booster pumps, motors & controls	3
7.	Filter Building including filters (filters were used previously, but not currently in use)	1
8.	Backwash Building including pumps	1
9.	Chlorine & Polyphosphate chemical feed building	1
10.	8,000-gallon Hydro Pneumatic Tank	1
11.	Groundwater wells	4
12.	Remote Booster Pump Station	1
13.	Water Distribution System - Mains 1-inch to 10-inch	Various
14.	Flush Valves, main valves & blow offs	36
15.	Meters & ERTs with meter boxes	269
16.	Plant Site Land including wells	1
17.	Well Sites Fencing & Gates	3
18.	Plant Site Fencing & Gates	1

Schedule 1.2(d)

Excluded Assets

The Assets shall not include any assets, properties, rights and interests of Aqua Texas, Inc. not identified in Schedule 1.1 including, without limitation, the following:

- (a) Any and all customer water service lines that run from outside the meter box to each individual residence, commercial or industrial structure served by the Assets;
- (b) All piping and fixtures internal to each individual customer's structure;
- (c) Aqua Texas, Inc.'s cash on hand and accounts receivables for customer billings for any services provided by Aqua Texas, Inc. prior to the date of Closing, including customer deposits;
- (d) Equipment and tools owned or leased by Aqua Texas, Inc. that are not used exclusively for the operation or service of the System Assets;
- (e) All Aqua Texas, Inc. vehicles;
- (f) All other Aqua Texas, Inc. assets not utilized exclusively for the operation or service of the Gap Water System (PWS ID No. 2210023), unless otherwise specifically listed in Schedule 1.1; and
- (g) All rights of Aqua Texas, Inc. under any written or oral contract, easement, license, agreement, lease, plan, instrument, registration, permit, certificate, CCN, or other authorization or approval of any nature, or other document, commitment, arrangement, undertaking, practice or authorization except as set forth on Schedule 1.1 or Schedule 1.5.

Schedule 1.5

Obligations of Aqua Texas, Inc. Assumed by Town of Buffalo Gap

The obligation to provide continuous and adequate retail public water utility service in accordance with all applicable law to customers within the transferred portion of Aqua Texas, Inc. CCN No. 13201 shown in Exhibit 1.

Schedule 6.2

Exceptions to Aqua's Representations and Warranties

Aqua Texas, Inc. ("Aqua") makes the following exceptions to its representations and warranties in Section 6.2 of the Agreement:

1. Gap Water System (PWS ID No. 2210023) has experienced public drinking water quality exceedances of TCEQ's secondary standard for total dissolved solids ("TDS") set forth in 30 Texas Administrative Code §290.105, but its wells are authorized for use by TCEQ.
2. Gap Water System (PWS ID No. 2210023) has experienced intermittent fluctuation of water levels in its groundwater wells, particularly in times of drought.
3. Certain Gap Water System (PWS ID No. 2210023) connections historically served as part of this system may be located within the certificated service area for Steamboat Mountain Water Supply Corporation ("Steamboat Mountain"), Certificate of Convenience and Necessity ("CCN") No. 11370. Aqua has received correspondence from Steamboat Mountain suggesting this is an encroachment on Steamboat Mountain's CCN service area, but simultaneously indicating Steamboat Mountain has no interest in serving the area due to existing capacity issues. Additionally, Aqua has received correspondence from Steamboat Mountain confirming that Steamboat Mountain is actively serving certain customer connections located within Aqua's CCN No. 13201 service area but that Steamboat will cease such service if and when Aqua, or its successors, wish to provide service to those connections. The Town of Buffalo Gap ("Town") has expressly agreed to resolve issues related to CCN encroachments outside of the Agreement as may be necessary and to be responsible for any costs associated with same.

On April 16, 2018, Aqua sent a letter to Steamboat Mountain instructing it to desist from any additional incursion into Aqua's CCN No. 13201 service area. Aqua's understanding is that Steamboat Mountain's public drinking water system used within Aqua's CCN No. 13201 service area is designed to provide retail public water utility service for up to twenty (20) metered connections located within Aqua's CCN No. 13201 service area. Aqua has not yet filed a cease and desist petition/application with the PUC related to Steamboat Mountain's incursion pursuant to Texas Water Code §13.252 or 16 Texas Administrative Code ("TAC") § 24.118. The Town should be aware that 16 TAC § 24.118(b) requires that such petitions be filed with the PUC "within 180 days from the date the petitioner becomes aware that another retail public utility is interfering or attempting to interfere with the operation of a line, plant or system or is providing retail water or sewer utility service within the service area of another retail public [utility], unless the petitioner can demonstrate good cause for its failure to file such action within the 180 days." Aqua first became aware of a potential Steamboat Mountain encroachment issue in a telephone conference with the Town on or about March 6, 2018. This fact was confirmed in correspondence received directly from Steamboat Mountain dated March 13, 2018, received by Aqua on March 22, 2018. Aqua is uncertain when the Town first learned of Steamboat Mountain's incursion into Aqua's certificated service area.

4. All Assets listed in Schedule 1.1, whether tangible or intangible, shall be sold “as is, where is” to the Town on the date of Closing.

Schedule 6.3

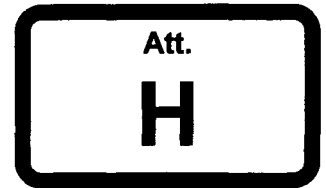
Exceptions to Aqua's Environmental Representations and Warranties

Aqua Texas, Inc. ("Aqua") makes the following exceptions to its environmental representations and warranties in Section 6.3 of the Agreement:

None.

PWS/2210003/CO/2014-05-21/FINAL
ORDER

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF BUFFALO GAP
RN101224798

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2013-2097-PWS-E

At its MAY 14 2014 agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Buffalo Gap (the "Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The Respondent owns and operates a public water supply at 709 Litel Street in Buffalo Gap, Taylor County, Texas (the "Facility") that has approximately 231 service connections and serves at least 25 people per day for at least 60 days per year.

2. During a record review conducted on October 28, 2013, TCEQ staff documented that the locational running annual average concentrations of total trihalomethanes ("TTHM") for Stage 2 Disinfection Byproducts ("DBP2") at Site 1 were 0.112 milligrams per liter ("mg/L") for the fourth quarter of 2012, 0.135 mg/L for the first quarter of 2013, and 0.147 mg/L for the second quarter of 2013.
3. The Respondent received notice of the violations on November 20, 2013.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 2, the Respondent failed to comply with the maximum contaminant level ("MCL") of 0.080 mg/L for TTHM, based on a locational running annual average, in violation of 30 TEX. ADMIN. CODE § 290.115(f)(1) and TEX. HEALTH & SAFETY CODE § 341.0315(c).
3. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of One Hundred Fifty Dollars (\$150) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049(b). One Hundred Fifty Dollars (\$150) of the administrative penalty is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order and shall be waived only upon full compliance with all the terms and conditions contained in this Agreed Order. If the Respondent fails to timely and satisfactorily comply with any requirement contained in this Agreed Order, the deferred amount of the administrative penalty shall become immediately due and payable without demand or notice, and the Executive Director may require the Respondent to pay all or part of the deferred administrative penalty.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed an administrative penalty in the amount of One Hundred Fifty Dollars (\$150) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order

completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Buffalo Gap, Docket No. 2013-2097-PWS-E" to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The Respondent shall undertake the following technical requirements:
 - a. Within 120 days after the effective date of this Agreed Order, complete a feasibility study, or update an existing feasibility study, and submit a written report or engineering study conducted by a Texas registered professional engineer regarding the results of the feasibility study to evaluate the necessary corrective actions designed to achieve compliance with the MCL for TTHM. The report shall include a tentative schedule describing additional studies, tests, or other methods that may be utilized for the completion of necessary corrective actions within 1,095 days after the effective date of this Agreed Order. If the Respondent purchases or sells water, a copy of the purchase water contract must be submitted with the feasibility study report or engineering study. The evaluation shall be sent to the addresses in listed in Ordering Provision No. 2.g.;
 - b. Within 135 days after the effective date of this Agreed Order, submit written certification as described in Ordering Provision No. 2.g. below to demonstrate compliance with Ordering Provision No. 2.a.;
 - c. Within 180 days after the effective date of this Agreed Order, submit an acceptable written plan, including a proposed schedule, to the Executive Director that provides for the completion of an alternate water source or treatment technology to the addresses listed in Ordering Provision No. 2.g.;
 - d. Within 180 days after the effective date of this Agreed Order, and on a semi-annual basis thereafter, submit progress reports to the addresses listed in Ordering Provision No. 2.g. below. These reports shall include information regarding actions taken to provide water which meets the MCL for TTHM;
 - e. Within 195 days after the effective date of this Agreed Order, submit written certification as described in Ordering Provision No. 2.g. below to demonstrate compliance with Ordering Provision No. 2.c.;

- f. Within 1,095 days after the effective date of this Agreed Order, return to compliance with the MCL for TTHM, in accordance with 30 TEX. ADMIN. CODE § 290.115; and
- g. Within 1,110 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.f. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Public Drinking Water Section Manager
Water Supply Division, MC 155
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

and to:

Technical Review and Oversight Team
Water Supply Division, MC 159
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
6. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
9. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Bryan W. Shaw
For the Commission

Pam Moncig
For the Executive Director

4/3/14
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of City of Buffalo Gap. I am authorized to agree to the attached Agreed Order on behalf of the City of Buffalo Gap, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, the City of Buffalo Gap waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

David L. Perry
Signature

2/6/2014
Date

DAVID L. PERRY
Name (Printed or typed)
Authorized Representative of
City of Buffalo Gap

MAYOR
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section III, Paragraph 1 of this Agreed Order.

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



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

May 21, 2014

CERTIFIED MAIL

The Honorable David L. Perry, Mayor
City of Buffalo Gap
P.O. Box 506
Buffalo Gap, Texas 79508-0506

RE: City of Buffalo Gap
TCEQ Docket No. 2013-2097-PWS-E; Registration No. 2210003
Agreed Order Assessing Administrative Penalties and Requiring Certain Action

Enclosed is a copy of an order issued by the Commission.

Questions regarding the order should be directed to the Enforcement Coordinator or the Staff Attorney. If there are questions pertaining to the mailing of the order, then please contact Leslie Gann of the Texas Commission on Environmental Quality's Office of the Chief Clerk (MC 105) at (512) 239-3319.

Sincerely,

A handwritten signature in cursive script that reads "Bridget C. Bohac".

Bridget C. Bohac
Chief Clerk

BCB/lg

Enclosure

cc: Michaele Garza, Enforcement Coordinator, TCEQ Enforcement Division

<u>Texas Commission on Environmental Quality</u>	<u>Office of Water</u>	<u>Public Drinking Water Section</u>
<u>County Map of TX</u>	<u>Water System Search</u>	<u>Office of Compliance and Enforcement</u>

<u>Water System Detail</u>			
<u>Water System Facilities</u>	<u>Violations</u>	<u>TCR Sample Results</u>	<u>TTHM HAA5 Summaries</u>
<u>Source Water Assessment Results</u>	<u>Enforcement Actions</u>		
<u>Sample Points</u>	<u>Assistance Actions</u>	<u>Recent Positive TCR Results</u>	<u>PBCU Summaries</u>
<u>Sample Schedules / FANLs / Plans</u>	<u>Compliance Schedules</u>	<u>Other Chemical Results</u>	<u>Chlorine Summaries</u>
<u>Site Visits</u> <u>Milestones</u>	<u>TOC/Alkalinity Results</u>	<u>Chemical Results: Sort by: Name Code</u>	<u>Turbidity Summaries</u>
<u>Operators</u> <u>All POC</u>	<u>LRAA (TTHM/HAA5)</u>	<u>Recent Non-TCR Sample Results</u>	<u>TCR Sample Summaries</u>
<u>Glossary</u>			

<u>Water System Detail Information</u>			
<u>Water System No.:</u>	TX2210003	<u>Federal Type:</u>	C
<u>Water System Name:</u>	CITY OF BUFFALO GAP	<u>Federal Source:</u>	SWP
<u>Principal County Served:</u>	TAYLOR	<u>System Status:</u>	A
<u>Principal City Served:</u>		<u>Activity Date:</u>	01-01-1913

<u>Group Violations</u>					
Fed Fiscal Year	Determ. Date	Violation Type	Violation Name	Analyte Group	Analyte Group Name

<u>Individual Violations</u>							
Violation No.	Compliance Period	Violation Type Code	Violation Name	Analyte Code	Analyte Name	Has the Violation been Addressed? (On the Path to Compliance)	Has the Violation been Resolved? (Returned to Compliance)
<u>2018-225</u>	12-30-2017-03-08-2018	66	LEAD CONSUMER NOTICE (LCR)	5000	LEAD & COPPER RULE	Yes - Informal	Yes
<u>2015-223</u>	12-30-2014-03-10-2015	66	LEAD CONSUMER NOTICE (LCR)	5000	LEAD & COPPER RULE	Yes - Informal	Yes

<u>2014-221</u>	07-01-2013-09-30-2013	02	MCL, LRAA	2950	TTHM	Yes - Formal and Informal	Yes
<u>2014-219</u>	04-01-2013-06-30-2013	02	MCL, LRAA	2950	TTHM	Yes - Formal and Informal	Yes
<u>2013-216</u>	01-01-2013-03-31-2013	02	MCL, LRAA	2950	TTHM	Yes - Formal and Informal	Yes
<u>2013-214</u>	10-01-2012-12-31-2012	02	MCL, LRAA	2950	TTHM	Yes - Formal and Informal	Yes
<u>2011-211</u>	10-01-2008-10-31-2008	75	PUBLIC NOTICE RULE LINKED TO VIOLATION	7500	PUBLIC NOTICE	Not yet on path to compliance	Yes
<u>2009-209</u>	10-01-2008-10-31-2008	25	MONITORING (TCR), REPEAT MAJOR	3100	COLIFORM (TCR)	Yes - Informal	Yes
<u>2005-105</u>	10-01-2004-12-31-2004	02	MCL, AVERAGE	2950	TTHM	Yes - Informal	Yes

Total Number of Records Fetched = 9

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 11, 2015

**CERTIFIED MAIL (7015 1730 0002 4151 9073)
RETURN RECEIPT REQUESTED**

Mr. Scot Foltz, Compliance Manager
Gap Water
1106 Clayton Lane Suite 400W
Austin, Texas 78723-1066

RECEIVED
DEC 14 2015
TX ADMIN-AUSTIN

Re: Notice of Violation for the Comprehensive Compliance Investigation at:
Gap Water, 100 Elm Street, Buffalo Gap (Taylor County), Texas
RN102683687, TCEQ PWS ID: 2210023

Dear Mr. Foltz:

On November 12, 2015, Mr. Jacob Wright of the Texas Commission on Environmental Quality (TCEQ) Abilene Region Office conducted an investigation of the above-referenced location to evaluate compliance with applicable requirements for public water supply. Enclosed is a summary which lists the investigation findings. During the investigation, one alleged violation was noted and resolved based on subsequent corrective action. No further action is required.

In the listing of the alleged violation, 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 Abilene Region Office at (325)698-9674 or the Central Office Publications Ordering Team at (512)239-0028.

If you or members of your staff have any questions, please feel free to contact Mr. Jacob Wright in the Abilene Region Office at (325)698-9674.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cliff Moore".

Cliff Moore
Water Section Work Leader
Abilene Region Office

CM/JW/sm

Enclosure: Summary of Investigation Findings

Summary of Investigation Findings

GAP WATER

100 ELM ST

BUFFALO GAP, TAYLOR COUNTY, TX 79508

Investigation #

1296288

Investigation Date: 11/12/2015

Additional ID(s): 2210023

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

Track No: 590200

30 TAC Chapter 290.46(s)(1)

Alleged Violation:

Investigation: 1296288

Comment Date: 12/09/2015

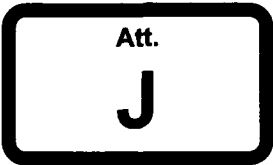
Failure to calibrate the well meters within the last three years.

Flow measuring devices and rate-of-flow controllers that are required by §290.42(d) of this title (relating to Water Treatment) shall be calibrated at least once every 12 months. Well meters required by §290.41(c)(3)(N) of this title (relating to Water Sources) shall be calibrated at least once every three years.

During the comprehensive compliance investigation conducted on November 12, 2015, it was noted that the wells had not been calibrated within the last three years.

Recommended Corrective Action: Submit a copy of the calibration logs documenting that the well meters have been calibrated in accordance with 30 TAC 290 to the Abilene Region Office by the due date.

Resolution: On November 30, 2015, documentation was received in the Abilene Region Office of the TCEQ, indicating Gap Water System has calibrated the system's well meters. In the documentation are copies of the well meter test forms. This documentation is adequate to resolve the violation.



**Sale, Transfer, or Merger Application for Sale/Transfer of Gap
Water System (PWSID 2210023) and a Portion of Aqua Texas, Inc.,
CCN No. 13202, to Town of Buffalo Gap in Taylor County**

Proposed Water CCN transfer area is located within:

County – Taylor

GCD – none

CCN – Aqua Texas, Inc.

Districts – Brazos River Authority

City Limits – Town of Buffalo Gap

ETJ – Town of Buffalo Gap

Entities within 2 Miles/ Notice List:

Steamboat Mountain WSC (CCN 11370)

PO Box 367

Tuscola, TX 79562

Brazos River Authority

PO Box 7555

Waco, TX 76714

Lower Colorado River Authority

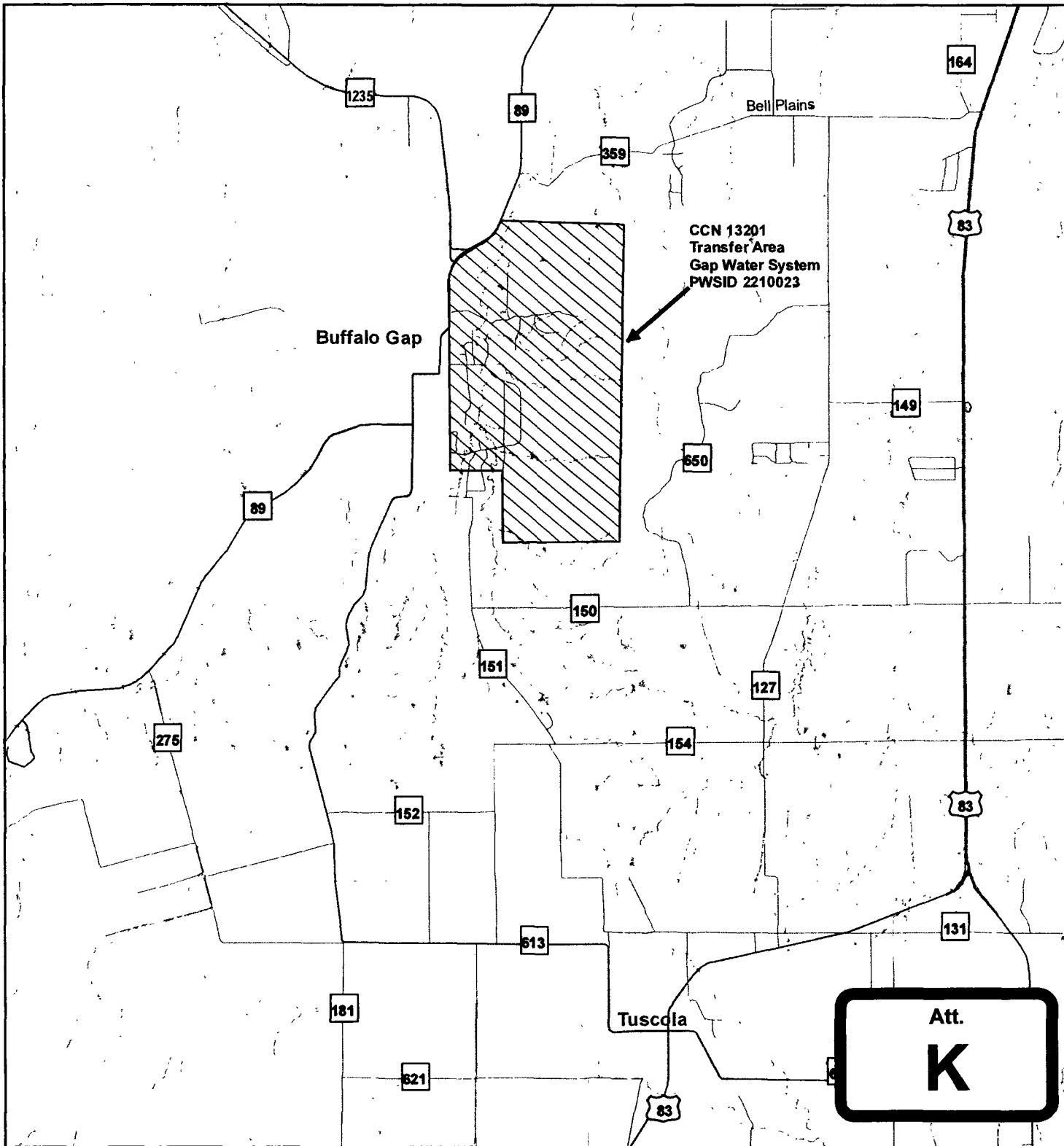
3700 Lake Austin Blvd

Austin, TX 78703

Taylor County

300 Oak Street, Suite 200

Abilene, TX 79602

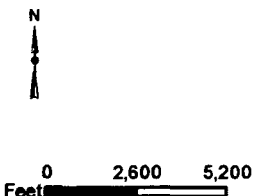


General Location

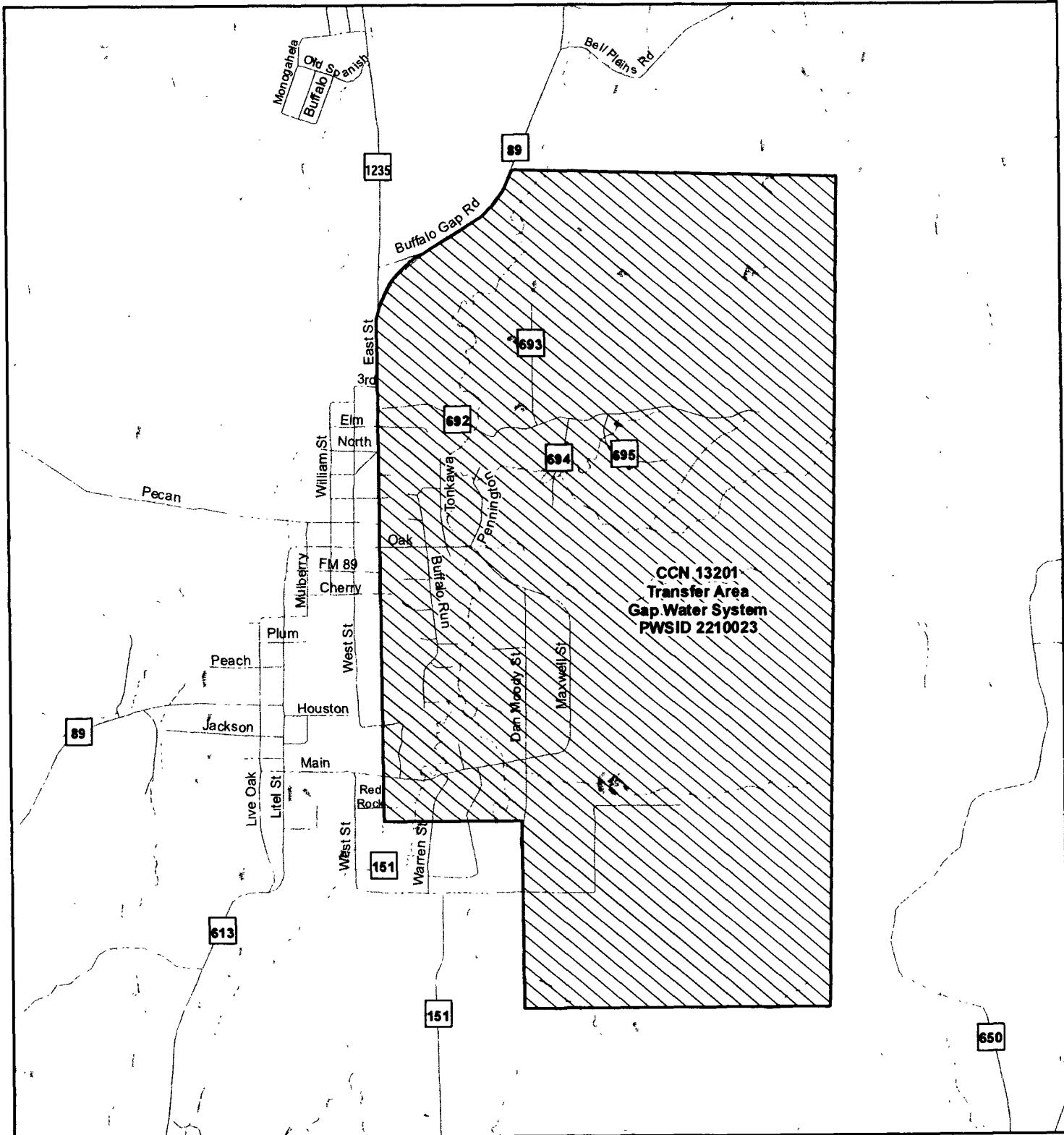
Sale, Transfer, or Merger Application for Sale/Transfer of Gap Water System (PWSID No. 2210023) and a Portion of Aqua Texas, Inc., CCN No. 13201, to Town of Buffalo Gap in Taylor County

Water CCN Transfer Area

 CCN 13201 - Aqua Texas, Inc. - approx 1782 acres



Map by: S. Burt
 Date: May 29, 2018
 Base: TxDOT Roadways, City, TxDOT
 Project: Buffalo Gap/ Aqua Transfer_General Location

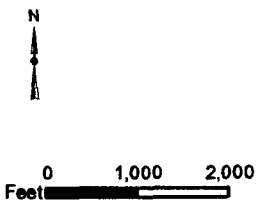


Large Scale Map

Sale, Transfer, or Merger Application for Sale/Transfer of Gap Water System (PWSID No. 2210023) and a Portion of Aqua Texas, Inc., CCN No. 13201, to Town of Buffalo Gap in Taylor County

Water CCN Transfer Area

 CCN 13201 - Aqua Texas, Inc. - approx 1782 acres



Map by: S. Burt
 Date: May 29, 2018
 Base: StratMap Transv2
 Project: Buffalo Gap/ Aqua Transfer_Large Scale