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PUC DOCKET NO. 48565

APPLICATION OF AQUA TEXAS, INC. AND TOWN OF BUFFALO GAP FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS IN TAYLOR COUNTY (GAP WATER SYSTEM)

PUBLIC UTILITY COMMISSION OF TEXAS

FILED
FILING CLERK

SUPPLEMENT TO APPLICATION FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS IN TAYLOR COUNTY (GAP WATER SYSTEM)

COME NOW, Aqua Texas, Inc. ("Aqua") and the Town of Buffalo Gap ("Town") (collectively, the "Applicants") and file this Supplement to the Applicants' Application for Sale, Transfer, or Merger of Facilities and Certificate Rights in Taylor County (Gap Water System).

On August 2, 2018, the Applicants filed an application for Sale, Transfer or Merger of Facilities and Certificate Rights in Taylor County (the "Application") related to the Town's purchase of the Gap Water System and associated CCN owned by Aqua. Applicants closed on the transaction on September 30, 2020. Subsequently, it was discovered that a Developer Extension Agreement was still outstanding and had not been assigned by Aqua to Town with the Asset Purchase Agreement. The Applicants have entered into an agreement regarding said assignment and would like to supplement the Application with additional documentation.

As a supplement to the Application, the Applicants hereby file with the Commission the following:

1. Agreement and Assignment Regarding Dale Morrison Developer Extension Agreement, dated January 12, 2021, attached as Attachment "A".

Respectfully submitted,

By: /s/ Eileen M. Hayman
Eileen M. Hayman
State Bar No. 24076684
MESSER FORT & McDONALD PLLC
500 Chestnut St., Suite 1601
Abilene, Texas 79602
Tel: (325) 701-7960 / Fax: (325) 701-7961
cilecn@txmunicipallaw.com

ATTORNEY FOR TOWN OF BUFFALO GAP

Geoffrey P. Kirshbaum
State Bar No. 24029665
TERRILL & WALDROP
810 West 10th Street
Austin, Texas 78701
Tel: (512) 474-9100 / Fax: (512) 474-9888
gkirshbaum@terrillwaldrop.com

ATTORNEY FOR AQUA TEXAS, INC.

CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record on January 12, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Eileen M. Hayman
Eileen M. Hayman

Attachment "A"

AGREEMENT AND ASSIGNMENT REGARDING DALE MORRISON DEVELOPER EXTENSION AGREEMENT

THIS AGREEMENT AND ASSIGNMENT REGARDING DALE MORRISON DEVELOPER EXTENSION AGREEMENT dated as of the 12th day of January, 2021, is entered into by and between Aqua Texas, Inc. ("Aqua") and the Town of Buffalo Gap, Texas ("Town") and collectively, the "Parties".

RECITALS

A. Aqua and Town entered into an Asset Purchase Agreement on June 28, 2018 for the sale of The Gap Water System (the "System"), PWS ID # 2210023, located within Taylor County, Texas, and related assets, properties, and rights, from Aqua to Town.

B. Aqua and Developer entered into a Developer Extension Agreement dated July 13, 2014 and attached hereto as **Exhibit A** ("Extension Agreement").

C. Aqua and Town have since closed on the sale of the System to the Town.

D. The Parties recently learned that six out of eight connections to System facilities installed pursuant to the Extension Agreement remain unactivated.

E. In addition to contributing 600 feet of water line facilities that are now part of the System, Developer paid Aqua \$8,256.00 (\$1,032.00 per living unit equivalent ("LUE")) in developer contributions in aid of construction to reserve capacity in the System for 8 LUEs, but only paid Aqua two tap fees covering meter installations for two activated connections.

F. Aqua would like to assign its obligations under the Extension Agreement to Town and Town agrees to accept such obligations subject to the terms of this Agreement.

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:

The Parties agree that Aqua shall pay the Town \$8,256.00 within fifteen (15) days after Aqua executes this Agreement.

The Parties agree that Aqua hereby assigns its obligations, duties, rights, titles, and interests under the Extension Agreement to Town.

The Parties agree that Town hereby receives and shall be solely responsible for all obligations, duties, rights, titles, and interests of Aqua under the Extension Agreement.

The Parties agree Aqua shall convey such easements as were provided to it under the Extension Agreement to Town within thirty days of the date on which this Agreement is executed by both parties.

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: Robert Laughman
Digitally signed by Robert Laughman
DN: CN = Robert Laughman, email =
rlaughterman@aquatexas.com C = AD O = Aqua
Texas OU = Aqua Texas
Date: 2021.01.12 08:02:05 -0800

Its: President

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

Town of Buffalo Gap:

By: David E. Perry
David Perry, Mayor

ATTEST:

By: Cindy Husbands
Cindy Husbands, Town Secretary

Exhibit "A"

AQUA TEXAS, INC.

DEVELOPER'S WATERLINE EXTENSION AGREEMENT

DALE MORRISON

**This Agreement incorporates and is made up of the documents referenced herein,
including:**

DEVELOPER'S EXTENSION AGREEMENT

EXHIBITS

1. Requirements for As-Built Information
2. Specifications for Developer Extension Pipeline
3. Form for Certification of Final Project Cost
4. Description of Property

ATTACHMENTS

- A. Information for Non-Standard Water Utility Service
- B. Description and Plan of Extension Project
- C. Preliminary Cost Estimate for Extension Project
- D. Commitment and Release of Contractor
- E. Assignment of Contractor's Warranty by Developer
- F. Easements
- G. Permits and Regulatory Approvals
- H. Performance Bond or Irrevocable Letter of Credit.
- I. Insurance

DEVELOPER'S EXTENSION AGREEMENT

THIS Developer's Extension Agreement is made as of 7-13, 2014 by and between **AQUA TEXAS, INC.**, a Texas corporation, with an office at 1106 Clayton Lane, Suite. 400W, Austin, Texas 78723 (hereinafter referred to as "Aqua Texas") and **DALE MORRISON**, an individual with a mailing address of 209 County Road 127, Tuscola, Texas 79562 (the "Developer").

BACKGROUND

The Developer is the owner and developer of certain real estate described as a 12.527 acre tract of land Taylor County, Texas more particularly described in Exhibit "4" attached hereto and made a part hereof for all purposes, which site is planned for 8 single family residential lots (the "Project").

The Developer wishes to obtain water service from AQUA TEXAS, and AQUA TEXAS wishes to provide water service for the Project, as described in the Information for Commercial Non-Standard Retail Water Utility Service Form included as Attachment A.

The Developer wishes to take sole responsibility to furnish and install, at Developer's expense, and to contribute to AQUA TEXAS, a water main extension ("Extension") and related improvements for the Project.

The Developer represents that Joe Moore will be the Contractor for the Extension Project under this Agreement (the "Contractor") and the parties acknowledge that the Contractor has certain binding obligations under this Agreement that inure to the benefit of AQUA TEXAS, as well as the Developer; the Developer is required to have the Contractor execute this Agreement for the purpose of having the Contractor acknowledge and agree to the terms and obligations imposed on the Contractor by this Agreement.

AQUA TEXAS represents that, with specific improvements made by Developer, it has sufficient capacity in The Gap Water System to provide continuous and adequate retail water utility service according to the statutes of the State of Texas and the rules of the Texas Commission on Environmental Quality (TCEQ) to the Project.

The Developer has furnished a completed Attachment Package for Developer's Extension Agreement (the "Package"). The information contained in the Package, all Attachments referred to in the Package, the final, executed documents for which forms are set forth in the Attachments, and all Exhibits to the Agreement, are incorporated into this Agreement.

In consideration of the mutual covenants contained in this Agreement, and intending to be legally bound, the parties agree as follows:

A. DEVELOPER'S OBLIGATIONS REGARDING THE MAIN EXTENSION

1. Regulatory Requirements

Developer shall, upon execution of this Agreement, promptly initiate and perform without unreasonable delay the following:

- a. Developer will make application and obtain from each applicable Regulatory Agency all necessary permits and approvals for the Project and will take all necessary steps to assure compliance with Regulatory Requirements prior to initiating construction of any part of the Extension. To the extent any permits or approvals relating to the Extension, the Access, the Easements or which otherwise affect the provisions of Services ("Services-Related Authorizations") are issued in the name of the Developer, Developer hereby assigns all right, title and interest in and to such Services-Related Authorizations to AQUA TEXAS, and shall, upon request by AQUA TEXAS, execute any and all documents and pay any and all costs required by the applicable Regulatory Agency to complete such assignment. Except as otherwise specifically set forth herein, Developer shall bear all costs associated with making application for and obtaining all necessary permits and approvals for the Project. Upon Developer's receipt of any Services-Related Authorizations, Developer shall promptly provide AQUA TEXAS with a copy thereof.
 - b. Prior to construction, Developer shall deliver to AQUA TEXAS a copy of a Phase I Environmental Site Assessment for the Property, which shall have been conducted by a reputable environmental engineering firm reasonably acceptable to AQUA TEXAS in accordance with American Society Testing Methods (ASTM) standards (the "Environmental Report"). The Environmental Report shall set forth the current environmental status of the Property. To the extent the Environmental Report is dated more than six (6) months prior to the date delivered to AQUA TEXAS, Developer shall deliver to AQUA TEXAS a certificate confirming that no changes have occurred at or with respect to the Property which could adversely affect the environmental status of the Property as described in the Environmental Report. In addition, Developer shall obtain a letter or other written acknowledgement from the firm issuing the Environmental Report that shall permit AQUA TEXAS to rely thereon (the "Reliance Acknowledgement").
 - c. Developer will make application for approval of (i) those portions of the Line Extension Plan requiring approval by a Regulatory Agency with the applicable Regulatory Agency, if any, and (ii) the construction of the Extension and related System with the TCEQ and any other applicable Regulatory Agency, each as approved by the AQUA TEXAS Engineer in accordance with this section and prior to any construction having been undertaken. Developer shall not submit (i) and (ii) immediately above unless and until such time as the AQUA TEXAS Engineer has approved the Plan, which approval shall not be unreasonably withheld or delayed, except for matters relating to System design and specifications, which approval may be withheld in the AQUA TEXAS Engineer's sole discretion.
 - d. Developer shall provide any further reasonable and prompt assistance to AQUA TEXAS in obtaining any required permits by providing relevant information to AQUA TEXAS promptly upon request.
2. **Construction.** Developer agrees and undertakes as its sole responsibility to design, furnish and install, at Developer's sole expense and in accordance with the terms and conditions of this Agreement, a two (2) inch water main extension and all related improvements for the Project, including, but not limited to, the water main, gate valves, valve boxes, and any restoration work, as further described in Attachment B to this Agreement (the "Extension Project"). Prior to the initiation of any construction of the line extension, Developer shall provide AQUA TEXAS with Plans, Specifications and a

schedule for development of the Project, together with a copy of the recorded plat of the Property, the Environmental Report, the Reliance Acknowledgement, all Services-Related Authorizations, and a copy of the approval letter to construct the distribution system by the TCEQ or other Regulatory Agency, if required. The approval by the AQUA TEXAS Engineer shall not be unreasonably withheld or delayed. The Plan shall provide for appropriate System development during construction of the Project to provide adequate Services to Customers and shall include the design and specifications of the Extension.

The Developer is responsible for supplying all necessary materials and performing the installation. Developer shall also be solely responsible for design, engineering, financing, construction, installation, and inspection of all facilities for the transmission and distribution of water from the Point of Delivery of the AQUA TEXAS facilities to the Project. Developer shall ensure that there are no privately owned water lines, mains, or appurtenances installed, maintained, or utilized by third persons in the public rights-of-way within the Project, if any.

3. **Commencement of Construction.** A pre-construction meeting between the Developer, its engineer and representatives of AQUA TEXAS Engineering and Operations Staff is required before construction of the project may be commenced. After that meeting, execution of this Agreement by all parties, and approval by AQUA TEXAS of the final plans for the Project, Developer may give notice of intention to commence construction.

4. **Contractor.**

- (a) **Qualifications.** AQUA TEXAS acknowledges that the Developer plans to have the work on the Extension Project performed by the Contractor. The Developer will cause the Contractor to perform the work on the Extension Project in accordance with this Agreement. Developer must notify AQUA TEXAS of any change of Contractor, and any new Contractor must comply with all terms and obligations of this Agreement which apply to the Contractor, including without limitation this Section 3 and the insurance and indemnification provisions. No subcontracting by the Contractor is permitted without prior approval of Developer.

- (b) **Responsibility.** Developer will be liable on a joint and severable basis to AQUA TEXAS for failure to perform the Extension Project in compliance with this Agreement. The Developer will cause a copy of this Agreement to be attached to the contract between the Developer and the Contractor. The Developer will provide AQUA TEXAS with a copy of the construction contract between the Developer and the Contractor. The Contractor is obligated directly to AQUA TEXAS by signing and delivering to AQUA TEXAS the Commitment and Release in the form of Attachment D, which includes, without limitation, Contractor's agreements to indemnify AQUA TEXAS, to maintain certain insurance coverage and, in performing work on the Extension Project, to be responsible for worksite safety and comply with all requirements contained in this Agreement and applicable laws and regulations.

5. **Conduct of Construction.**

- (a) **Progress.** Developer agrees to proceed diligently to completion of construction of the Extension Project.
- (b) **As-Built Information.** Developer will provide accurate and complete as-built information in accordance with Exhibit 1 ("As-Built Information") concurrently with progress of construction, will make the As-Built Information available to the AQUA TEXAS representative upon request of AQUA TEXAS, and will supply complete As-Built Information to AQUA TEXAS prior to or upon Contribution of the final portion of the Extension Project. Within 30 days following completion and final acceptance of the Extension Project, the Developer shall provide to Aqua Texas three (3) copies of as-built drawings for the completed facilities at no cost to Aqua Texas.
- (c) **Worksite Responsibility.** The Developer and the Contractor are responsible for the worksite, including the means and methods of construction, and safety precautions, procedures and programs. The Developer and the Contractor will have an OSHA-competent person on-site at all times. AQUA TEXAS shall have no duty to the employees or contractors of the Developer or Contractor for any safety aspects of the work. Under no circumstances shall AQUA TEXAS be deemed to be responsible for the methods of construction or the safety precautions and procedures at the worksite, whether or not an AQUA TEXAS representative is on site. Developer and Contractor are responsible for reviewing and executing all plans and changes in plans, construction methods and procedures, and changes in construction methods and procedures, whether or not required or reviewed by AQUA TEXAS, so that work is conducted in a safe manner for the protection of anyone on or near the Extension Project.
- (d) **Compliance with Applicable Laws, Regulations and Specifications.** The Developer will install and complete the Extension Project in a workmanlike manner, in accordance with this Agreement, all applicable laws, regulations and ordinances, including without limitation environmental laws and regulations, and the AQUA TEXAS specifications in effect for materials and for construction of pipelines and services lines as set forth in Exhibit 2, as they may be modified and amended from time to time (all of the foregoing requirements are collectively referred to as the "Specifications"). Pursuant to applicable law, before starting work, Developer will independently investigate and verify in the field the existence and location of underground utilities, whether or not indicated on the plans.
- (e) **Chlorinating and Connection into Distribution Facility.** Except with the prior authorization of AQUA TEXAS expressly in writing, the Developer is prohibited from chlorinating the Extension Project or making the connection of the Extension Project into the distribution facility of AQUA TEXAS. These procedures will be performed by AQUA TEXAS or under its direction.
- (f) **Maintenance and Repair.** Developer is responsible for all maintenance and repair of the installed Extension Project prior to Contribution, whether or not AQUA TEXAS has commenced water service.

6. Representations and Warranties.

(a) **Warranty of Extension Project by Developer.** The Developer hereby warrants that the water main and all other components of the Extension Project, including without limitation integrity of trenches and integrity of paving and other restoration work, will not leak and will be free from defects in materials and workmanship for a period of one (1) year from the date of Contribution of the final portion of the Extension Project, and that the final As-Built Information, when delivered to AQUA TEXAS, will be accurate and complete. The Developer will promptly proceed at its own cost and expense to make good all portions of the work or materials determined by AQUA TEXAS to fail to conform with the Specifications or which are damaged or destroyed by removal of the non-conforming work or materials, and will replace or repair those portions to be in accordance with the Specifications, and will revise the As-Built Information to be accurate and complete. If Developer fails to remedy or correct non-conforming work or materials or to revise the As-Built Information to be accurate and complete, AQUA TEXAS may bring the work or materials or As-Built Information into conformation at the expense of Developer (for which AQUA TEXAS may draw down on the Performance Bond or Letter of Credit and/or pursue any other available remedy).

(b) **Adequate Financing.** Developer represents and warrants that it has adequate financing for completion of the Development.

(c) **Authorization.** Developer represents that it is duly organized and validly existing in the jurisdiction in which it is organized and that the execution, delivery and performance of this Agreement has been duly authorized by Developer.

7. **Employees.** The Developer and/or the Contractor will be the legal employer(s) of any and all employees and the sole contractually-obligated parties with any independent contractors working on the Extension Project. AQUA TEXAS will not be the employer or joint employer of any such employees, and neither AQUA TEXAS nor its representative will have any right to control or supervise the manner and means by which the work is performed. The Developer is responsible for any and all obligations arising by virtue of the employment or independent contract relationship, and compliance with all laws, ordinances, and regulations governing employment and independent contract relationships including, without limitation, obligations arising under the National Labor Relations Act, the Fair Labor Standards Act, the Older Workers Benefit Protection Act, Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Employee Retirement Income Security Act, the Occupational Safety and Health Act, and any similar state or local laws, ordinances, or regulations, as well as all obligations to withhold income or wage taxes, to pay unemployment compensation taxes, to provide workers compensation insurance, and to pay any unemployment compensation, workers' compensation benefits, or other compensation or benefits to such employees or contractors.

8. **Indemnification and Insurance.**

(a) **Indemnity.** The Developer acknowledges and agrees that it has undertaken sole responsibility for the Extension Project pursuant to this Agreement. The Developer shall release, indemnify, protect, defend, and save harmless AQUA TEXAS, and all of its

affiliates, directors, officers, employees and agents (hereinafter sometimes referred to as "indemnified parties"), from and against any and all claims, demands, actions, liabilities, losses, damages, penalties, costs and expenses (including reasonable attorneys fees and costs of investigation) that may be asserted against or incurred by any of such indemnified parties resulting from, arising out of or related to the Extension Project, and, with respect to the period prior to Contribution of the final portion of the Extension Project, the premises covered by grant(s) of Easement, whether or not caused in whole or in part by the active or passive, sole, concurring, contributory negligence or inherent nature of the operations of a party indemnified hereunder, including, without limitation, claims or liabilities arising out of or related to any and all damage or injury to any person (including loss of life), including any injury or injuries or loss of life to the employees of the Developer or Contractor or any other worker, or any property of any persons, corporations or other associations (including the parties hereto and their directors, officers, employees and agents). **The Developer acknowledges that the Extension Project is installed for potable water only and that the Extension Project does not provide fire protection. The Developer agrees that if water delivered hereunder is used by any person or entity for fire protection purposes, such use shall be at that person's or entity's sole risk.**

- (b) **Interpretation.** It is the intent of this provision to absolve, protect and defend AQUA TEXAS and its parents, directors, officers, employees and agents from any and all claims, demands, actions, liability, losses, damages, penalties and expenses (including reasonable attorneys' fees and cost of investigation) arising out of or related to the Extension Project. This indemnity shall be liberally construed in favor of indemnification to the benefit of AQUA TEXAS.
- (c) **Notice of Potential Claims.** In furtherance of this indemnification, the parties hereto must promptly report, in writing, to all other parties hereto all accidents whatsoever arising out of, or in connection with, the performance of the work, whether on or adjacent to the work site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. In addition, if death, serious personal injury or serious property damage occurs, Developer will immediately report by telephone or messenger, or both, to AQUA TEXAS.
- (d) **Approval of Counsel; Costs and Expenses.** An indemnified party shall have the right to approve counsel appointed on its behalf pursuant to this indemnification, and shall be entitled to receive costs and expenses from Developer pursuant to this indemnification beginning upon receipt by indemnified party of formal notice of any claim. An indemnified party shall be entitled to costs and expenses from Developer regardless of the nature of the claim or claims asserted or the dismissal, resolution, settlement or discharge of any claim.
- (e) **Environmental and Other Claims.** Indemnification pursuant to this Section shall include, without limitation, indemnification for action of any kind whatsoever, whether direct or indirect, by the United States Environmental Protection Agency ("EPA") or Texas Commission on Environmental Quality ("TCEQ") related to or involving any work by Developer under this Agreement.
- (f) **Severability.** The individual provisions of this indemnification are deemed to be

severable, and the invalidity or unenforceability of any portion of this indemnification shall not affect or impair such portion to the extent it has been deemed valid and enforceable, nor the remaining provisions of this indemnification, which shall continue in full force and effect.

- (g) **Insurance.** The Developer and the Contractor are obligated to provide and maintain the types and levels of insurance set forth in Attachment K to this Agreement.

9. Easements.

- (a) **Grant of Easement.** Prior to beginning work on the Extension Project, the Developer has provided AQUA TEXAS with easement rights, by means of an Easement for all areas (excepting existing public rights-of-way where proper occupancy rights have been obtained for the Extension Project) in which the water main extension or any other part of the Extension Project, including the interconnect, will be installed. Developer has also supplied AQUA TEXAS with copies of the underlying owners' deeds, if any. Developer shall be responsible for obtaining any easements or rights-of-way necessary for the construction of the Extension Project.
- (b) **Easement Corrections.** The Developer is responsible for all expenses incurred by AQUA TEXAS in the event that the Extension Project or other utilities are installed in violation of the terms of the Easements. In the event that any part of the Extension Project is installed by the Developer outside of the easement areas granted to AQUA TEXAS, the Developer agrees to relocate them within the easement areas and reimburse AQUA TEXAS for all costs attributable to the improper location of the Extension Project or, with the approval of AQUA TEXAS, to obtain an additional easement or relocate or widen the easement area so as to locate the Extension Project within the easement areas granted to AQUA TEXAS.
- (c) **Further Assurances.** During the term of this Agreement, and after Contribution or termination of this Agreement, without further consideration, Developer will provide, obtain, do, execute, acknowledge and deliver, all and every further act, conveyance, transfer, assignment, power of attorney and assurance as AQUA TEXAS reasonably may require to more effectively convey, transfer to or vest in, and put AQUA TEXAS in possession of, the required easements for all areas in which any part of the Extension Project is installed.

10. Cost Certification.

- (a) **Final Cost Certification.** Upon completion of the Extension Project, the Developer will certify to AQUA TEXAS the actual cost of the construction. Developer will complete a certification form, satisfactory to AQUA TEXAS using the format included in Exhibit 3 to this Agreement, which will provide the actual cost of the Extension Project. In addition, Developer will supply the actual invoices or copies thereof to support the cost certification. Developer will represent that the stated cost is complete and accurate and indemnify AQUA TEXAS against any claim that the cost is not complete and accurate. AQUA TEXAS reserves the right to review and make the final determination

of cost.

- (b) **Books, Records and Auditing.** The Developer will keep adequate books and records with respect to the costs of the Extension Project and AQUA TEXAS shall have the right at reasonable times to review and audit those books and records for a period of five years after Contribution.
- (c) **Determination of Final Costs by Audit.** If Developer has not provided a final cost certification to AQUA TEXAS within thirty (30) days following Contribution of the final portion of the Extension Project, AQUA TEXAS will have the right to make such final cost certification based on an audit of the books and records of Developer conducted by AQUA TEXAS or on its behalf, at the expense of Developer (for which AQUA TEXAS may draw upon the Performance Bond or Letter of Credit and/or pursue any other available remedy).

11. Contribution.

- (a) **Time of Contribution.** Upon completion of the Extension Project as described in Attachment B and provided that Developer is not in breach of any provision of this Agreement, AQUA TEXAS will notify the Developer in writing of AQUA'S willingness to accept contribution of the Extension Project ("Contribution"). In order to effect Contribution, AQUA TEXAS may waive the condition that Developer is not in breach of the Agreement; however, waiver of the condition will not constitute a waiver of Developer's contract breach. In its sole discretion, from time to time AQUA TEXAS may effect Contribution of a completed portion or portions of the Extension Project prior to completion of the entire Extension Project, by giving written notice to Developer. AQUA TEXAS will receive Contribution for no additional consideration, such that the facilities become the property of AQUA TEXAS (from which AQUA TEXAS may serve customers).
- (b) **Title.** Developer hereby grants, sells, conveys, assigns, transfers, sets over to, and vests in AQUA TEXAS, its successors and assigns, effective with the date of Contribution, all of Developer's right, title and interest, legal and equitable, in and to the Extension Project, free from all liens, security interests, encumbrances, restrictions and claims, to have and to hold the Extension Project, including its appurtenances, to AQUA TEXAS, its successors and assigns, forever, to its and their own use and benefit. The Developer agrees to make the proper reservations of title in its conveyances to others and to obtain the joinder of all parties necessary to give good and marketable title, so that the Extension Project is properly conveyed to AQUA TEXAS at the time of Contribution, and all necessary and appropriate easements and rights-of-way are conveyed to AQUA TEXAS. Upon AQUA TEXAS' request during the term of this Agreement, Developer will supply to AQUA TEXAS such additional assurances as AQUA TEXAS may request that the contractual arrangements necessary to convey good and marketable title have been made by Developer.
- (c) **Matters in Connection with Contribution.** The following must be completed prior to Contribution of the final portion of the Extension Project, or, with the permission of AQUA TEXAS, within one month after Contribution of the final

portion of the Extension Project:

- (i) Completion of the Extension Project in accordance with the Specifications;
- (ii) The Extension Project passing all chlorination and other testing procedures performed by AQUA TEXAS in accordance with its regular pre-service procedures;
- (iii) Provision of accurate As-Built Information to AQUA TEXAS;
- (iv) Final cost certification;
- (v) Developer's certification, and provision of evidence satisfactory to AQUA TEXAS, that it has paid or discharged any mechanic's liens or other encumbrances which may have been filed against the Extension Project;
- (vi) Developer's certification, and provision of evidence satisfactory to AQUA TEXAS, that Developer has paid or discharged the Contractor;
- (vii) Payment to AQUA TEXAS of any outstanding fees or other amounts owing AQUA TEXAS pursuant to this Agreement; and
- (viii) Such grant, revision, correction or confirmation of Easements, in addition to Easements granted prior to construction, which AQUA TEXAS may require to convey all necessary and appropriate easements and rights-of-way.

(d) **Further Assurances.** Developer for itself, its successors and assigns, agrees that, at any time, and from time to time after Contribution, at the request of AQUA TEXAS, its successors and assigns, and without further consideration, the Developer will provide, obtain, do, execute, acknowledge and deliver, all and every such further act, conveyance, transfer, assignment, power of attorney and assurance as AQUA TEXAS, its successors and assigns reasonably may require to more effectively convey, transfer to or vest in, and put AQUA TEXAS, its successors and assigns, in possession of, any of the Extension Project. Developer irrevocably constitutes and appoints AQUA TEXAS, its successors and assigns, as the Developer's true and lawful attorney with full power to institute and prosecute in the Developer's name or in the name of AQUA TEXAS, its successors and assigns, as the legal attorney of and for the Builder, duly authorized, for the benefit of AQUA TEXAS, its successors and assigns, any and all proceedings at law, in equity or otherwise, which AQUA TEXAS, its successors and assigns, may deem proper for the collection and enforcement of any claim or right of any kind granted, sold, conveyed, transferred or assigned to AQUA TEXAS, or intended so to be by Contribution pursuant to this Agreement.

(e) Obligations Regarding Water Service

1. **Payment of Contribution in Aid of Construction Fees.** Developer has previously paid to AQUA TEXAS Contribution in Aid of Construction (CIAC) Fees for water in the

amount of \$1,032.00 per Living Unit Equivalent (LUE) to secure 8 LUEs of capacity for the Development. Said CIAC fees in the total amount of \$8,256.00 were paid by Developer when an executed copy of the Service Availability Letter dated April 28, 2014 was delivered to AQUA TEXAS.

2. **Reservation of Capacity.** Upon execution of this Agreement, AQUA TEXAS shall allocate and reserve 8 LUEs of capacity for the Development.

12. Water Service upon Application. Upon proper application being made to AQUA TEXAS and the complete performance by Developer under this Agreement, AQUA TEXAS will furnish water service to each customer in the Development with a Metered Connection, under AQUA TEXAS' tariff, rules, regulations and rates then in effect and subject to any changes, which may thereafter become effective. All charges for water service shall be payable to and collected by AQUA TEXAS.

B. RIGHTS AND REMEDIES

1. **Event of Default.** The occurrence of any of the following events shall constitute an Event of Default under this Agreement:

(a) The Developer abandons work on the Extension Project, and does not provide AQUA TEXAS with assurances and evidence satisfactory to AQUA TEXAS, within ten (10) days after written notice to Developer from AQUA TEXAS, of Developer's intention and ability to promptly recommence and complete work.

(b) The Developer fails to comply with any other provision of this Agreement and such failure continues for ten (10) days after written notice to Developer from AQUA TEXAS provided that if within such ten (10) day period, Developer commences to correct such failure and diligently proceeds with such correction, the ten (10) day period shall be extended for such additional time as may be reasonably necessary for Developer to complete such correction.

(c) A case or proceeding by or against the Developer or otherwise affecting the Development is commenced under any federal or state bankruptcy, reorganization, insolvency, liquidation or similar law.

(d) Developer notifies AQUA TEXAS it intends to terminate the Agreement.

2. **Rights and Remedies of AQUA TEXAS upon Default by Developer.** Upon an Event of Default as defined in Section B(1), AQUA TEXAS may, in addition to and not in lieu of any other rights and remedies it may have as set forth in this Agreement or at law or in equity, exercise the following remedies separately and/or cumulatively:

(a) **Draw Upon the Performance Bond or Letter of Credit and Other Security.** AQUA TEXAS shall have the right to draw upon the Performance Bond or Letter of

Credit and any other security furnished by Developer pursuant to this Agreement.

- (b) **Require Additional Security.** AQUA TEXAS shall have the right to require Developer to advance funds and/or provide additional security satisfactory to AQUA TEXAS, as may be permitted under regulations of the Texas Commission on Environmental Quality ("TCEQ"), applicable law and/or AQUA TEXAS' tariff on file with the TCEQ.
 - (c) **Terminate Agreement.** AQUA TEXAS may terminate this Agreement upon notice to Developer.
 - (d) **Complete Extension Project.** AQUA TEXAS shall have the right (but not the obligation) to complete the Extension Project, in its entirety or to any intermediate point, by independent contractors or by its own workers or such other persons, or in such other manner, or in any combination of the foregoing as AQUA TEXAS may determine in its sole discretion. If AQUA TEXAS elects to proceed with the work on the Extension Project, AQUA TEXAS shall have the right to take possession of all existing materials and supplies of the Developer relating to the Extension Project for the purpose of including them in the improvement, and the Developer hereby assigns to AQUA TEXAS all its right, title, easements and interest in and to such materials, subject to the contingency of AQUA TEXAS' election to proceed with work under this Section. If AQUA TEXAS elects to continue or complete the Project upon the Developer's default, AQUA TEXAS may condition its continuation or completion of the Project (whether in its entirety or to any intermediate point) on the receipt of an advance of funds and/or security satisfactory to AQUA TEXAS from Developer or third parties, as may be permitted under regulations of the TCEQ, applicable law and/or AQUA TEXAS' tariff on file with the TCEQ.
3. **Rights of AQUA TEXAS.** Among other rights and remedies that AQUA TEXAS may have under this Agreement, and notwithstanding any other provisions of this Agreement, AQUA TEXAS shall have the following rights which it may exercise in addition to and not in lieu of any other rights and remedies it may have as set forth in this Agreement or at law or in equity:
- (a) **Right to Make Further Main Extension.** AQUA TEXAS shall have the right to extend the water main installed under this Agreement, connect thereto and renew or enlarge the same.
 - (b) **Right to Specific Performance of Offer of Contribution and Grant(s) of Easement.** The parties acknowledge and agree that money damages would be insufficient to compensate AQUA TEXAS for breach of the Developer's covenants to contribute the Extension Project to AQUA TEXAS, to the extent the Extension Project is actually installed, and to provide Easements to AQUA TEXAS, as provided in this Agreement, and that, therefore, AQUA TEXAS is entitled to specific performance of Developer's Contribution for completed portions of the Extension Project and to the Easements pursuant to Section A(8) and (10), and Attachment F.

(c) **Refusal to Accept Contribution.** If the Extension Project is not constructed in accordance with the Specifications or if the Developer does not comply with any of the Developer's obligations set forth in this Agreement, AQUA TEXAS may refuse to accept Contribution of the Extension Project, in which event AQUA TEXAS may (a) refuse to provide water service through the Extension Project main extension and to any parcel or building lots that would otherwise request service from that main extension, or (b) treat Developer as the owner of the Extension Project resulting in (i) Developer bearing all continuing responsibility for maintenance and repairs, (ii) removal of any existing water meters, (iii) requirement that Developer install a single meter pit for the Extension Project to receive water service as a single customer (with Developer responsible for any sub-metering after the single-point meter), and (iv) preservation of AQUA TEXAS' rights to any unpaid amounts under this Agreement and other remedies for Developer's breach of the Agreement.

(d) **Right of Set-Off.** AQUA TEXAS may offset any of its claims against the Developer against amounts which AQUA TEXAS may owe the Developer, if any, or parties controlling, controlled by or under common control with the Developer (the Developer's Affiliates) either under this Agreement or other agreements between AQUA TEXAS and the Developer or Developer's Affiliates, whether or not related to the Development.

(e) **Emergency Repairs.** In the event of an emergency during or after the term of this Agreement prior to Contribution, AQUA TEXAS shall have the right to make repairs to the Extension Project and charge the cost to Developer.

(f) **Attorneys Fees.** The Developer agrees that if suit is brought by AQUA TEXAS against it to enforce this Agreement, including, but not limited to, AQUA TEXAS' right of indemnification, and AQUA TEXAS prevails in such suit, AQUA TEXAS shall be entitled to collect all reasonable costs and expenses of suit, including but not limited to reasonable attorneys fees.

4. **Rights and Remedies Cumulative; No Waiver.** No right or remedy conferred in this Agreement upon AQUA TEXAS or otherwise available to AQUA TEXAS is intended to be or shall be construed to be exclusive of any other right or remedy, but each and every such right and remedy shall be cumulative and shall be in addition to every other right and remedy given under this Agreement, under any of the documents or instruments to be furnished or delivered to AQUA TEXAS pursuant to this Agreement, and now or hereafter existing at law, in equity or by statute. No delay or omission by AQUA TEXAS to exercise any right or power under this Agreement shall impair such right or power or shall be construed to be a waiver or acquiescence in any Event of Default, default or breach of this Agreement, nor shall the giving, taking or enforcement of any other or additional security under this Agreement operate to waive any rights, powers or remedies of AQUA TEXAS, and any single or partial exercise of any right or power by AQUA TEXAS will not preclude other or further exercise thereof or the exercise of any other right, and no waiver will be valid unless in writing and signed by AQUA TEXAS, and then only to the extent specified.

C. GENERAL

1. **Term and Termination.** This Agreement shall be effective upon the full execution of this document and will continue in effect until the earlier of Contribution of the final portion of the Extension Project, termination of this Agreement, or the date which is five (5) years after the effective date of this Agreement, subject to the survival of certain provisions pursuant to Section C (5). Upon termination of this Agreement prior to Contribution of the final portion of the Extension Project, Developer will cease all work on the Extension Project and will cause Contractor to cease all work on the Extension Project.
2. **Governing Law.** This Agreement, all attachments hereto, and all documents and instruments to be furnished or delivered hereto, shall be governed by the laws of the State of Texas without giving effect to conflicts of laws principles.
3. **Assignment; Change in Ownership.** The Developer shall not assign its rights and obligations under this Agreement, or transfer control or ownership of the Extension Project or any part thereof, directly or indirectly, voluntarily or involuntarily, without the prior written approval of AQUA TEXAS, which shall not be unreasonably withheld.
4. **Taxes.** All federal, state and local taxes, excise taxes, permit fees, and similar fees and taxes in connection with this Agreement, including without limitation, any sales or use taxes and taxes on contributions in aid of construction, any and all income taxes imposed on AQUA TEXAS in connection with the Extension Project as a result of Contribution or otherwise, and any and all income taxes imposed on AQUA TEXAS as a result of Builder's obligation to pay taxes pursuant to this Section, in each case whether in effect on the date of the execution of this Agreement or subsequently imposed or assessed, are for the account of, and are to be paid by Builder.
5. **Survival of Provisions on Contribution or Termination.** All warranties, representations, agreements and covenants made by Developer in this Agreement, or in any document or instrument referred to in, or to be delivered or furnished pursuant to, this Agreement, will survive Contribution of the final portion of the Extension Project and any termination of this Agreement.
6. **Entire Agreement; Amendments.** This Agreement, together with all exhibits and attachments, and the final executed form of all documents for which the form is set forth in the attachments, constitute the entire agreement between AQUA TEXAS and Developer with respect to the Extension Project. Prior or contemporaneous discussions or agreements are not part of this Agreement, and are of no force or effect. This Agreement may be modified or amended only by a writing signed by the party against whom enforcement is sought.
7. **Severability.** The provisions of this Agreement and all other agreements and documents referred to herein are to be deemed severable, and the invalidity or unenforceability of any provision shall not affect or impair such provision to the extent it has been deemed valid and enforceable, nor the remaining provisions, which shall

continue in full force and effect.

8. **Third Parties.** Nothing contained in this Agreement shall be deemed to confer upon the Contractor or any third party any right against AQUA TEXAS.
9. **Headings.** The headings of any section or subsection of this Agreement are for convenience only and shall not be used to interpret any provision of this Agreement.
10. **Binding Agreement; Successors and Assigns.** This Agreement is binding on and will inure to the benefit of the parties and their successors and permitted assigns.
11. **Notices.** Notices, demands and requests required or permitted to be given under this Agreement (collectively Notices) must be in writing and must be delivered personally or by nationally-recognized courier or sent by United States certified mail, return receipt requested, postage prepaid. Notices must be addressed to the party at its address set forth below. A notice is effective when actually received or rejected. The initial addresses of the parties may be changed by appropriate notice:

To DEVELOPER:

Dale Morrison
209 County Road 127
Tuscola, Texas 79562

To AQUA TEXAS:

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

[REMAINDER OF PAGE INTENTIONALLY BLANK]

[SIGNATURES FOLLOW ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written above:

Aqua Texas, Inc.,
A Texas corporation

GL
DOR

By:

Robert L. Laughman, President

DEVELOPER:

By:

Dale Morrison

JOINDER

The Contractor, Joe Knave Pipeline Construction executes this Agreement to acknowledge and agree to the terms and obligations imposed on the Contractor by this Agreement.

By:

[Authorized Signature]

Joe Knave

Attest:

[Authorized Signature]

Rita Hernandez

Exhibit 1

Requirements for As Built Information

The As-Built Information for the Extension Project will accurately represent actual construction of the water main and appurtenances, and contain the following legible information, documented in detail in a project construction log and noted on a copy of the drawings:

(1) Variations from the final Plan (which is incorporated by reference in Attachment B to this Agreement).

(2) Limits of any rock encountered in the excavation.

(3) Locations of vertical and horizontal bends, valves, tees and crosses relative to fixed points (e.g., edge of curb, existing manholes, telephone poles, etc.).

Exhibit 2

Specifications For Developer Extension Pipeline Construction

The Extension Project is to be designed to AQUA TEXAS, INC. specifications, which shall specifically include burying the waterline to a depth of 36" and covering with suitable fill.

Exhibit 3

Certification Form for Final Project Cost

***** ACTUAL COSTS MUST BE SUBMITTED WITHIN ONE MONTH OF PROJECT
COMPLETION AND CONTRIBUTION*****

CERTIFICATION OF COSTS

THE STATE OF TEXAS §

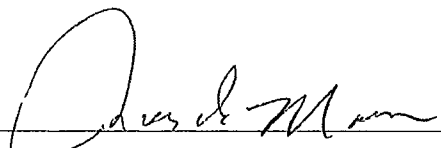
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COUNTY OF Taylor §

THIS CERTIFICATION OF COSTS, dated this 15 day of July, 2014, is for the final actual costs of completed water production and treatment facility, storage and distribution system ("Water System") assets located in Taylor County, Texas, designed to serve a total of 8 connections or Living Unit Equivalents ("LUEs") in the Mike Madison subdivision.

Attached in Exhibit "A" is a list of completed Water System assets and their invoiced costs.

I hereby certify to Aqua Texas, Inc. ("Aqua Texas") that the attached list represents a complete and accurate listing of the facilities installed and the actual final costs of installation of the Water System assets. Paid invoices for the assets are attached hereto as Exhibit "B".


Signature

Joe P. Mann
Printed Name

Proposal

Joe Moore Pipeline Construction, Inc
PO Box 5676
Abilene, Texas 79608
Office 325-668-6311
Fax 325-672-7763

Date: July 15, 2014

Name	Dale Morrison			Location	FM 89
Address	209 CR 127			City	Buffalo Gap, Tx
City	Tuscola	State	TX	79562	
Phone	668-5818	Fax			

We hereby propose to install: 600 ft. Water line extension

600' of 2" Class 200 PSI O Ring Pipe @ \$4.24'	\$ 2,544.00
1 – 2" Flushing valve	\$ 575.00
Extra labor for excavating under Atmos gas line	\$ 375.00
TOTAL	\$ 3,494.00

(Materials are 60% Labor is 40% of total)

All material is guaranteed to be as specified for one year, and the above work to be performed in accordance with the drawings and specifications submitted and in a professional manner.

All agreements are contingent upon weather, accidents or delays beyond our control. Owner of project to carry fire, tornado and necessary insurance on above work.

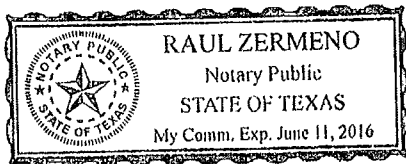
Note: This proposal may be withdrawn if not accepted within 30 days.

ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made within 30 days after completion.

Accepted by _____	Signature _____
Date _____	Signature _____

SWORN TO AND SUBSCRIBED before me by Raul Zermeno
on the 11 day of July, 2014.



RZ
Notary Public in and for the State of Texas

Raul Zermeno
Printed name of Notary

My commission expires: 6-11-16

Exhibit 4

Description of Property