

Control Number: 51353



Item Number: 1

Addendum StartPage: 0

PUC DOCKET NO. **1513** 513 SEP 21 PM 1: 31

BEFORE THE

APPLICATION OF KICKAPOO FRESH WATER SUPPLY DISTRICT AND G&W WATER SUPPLY CORPORATION FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS IN WALLER COUNTY, TEXAS

PUBLIC UTILITY COMMISSION

**OF TEXAS** 

JOINT APPLICATION OF KICKAPOO FRESH WATER SUPPLY DISTRICT AND G&W WATER SUPPLY CORPORATION FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE OF CONVENIENCE AND NECESSITY IN WALLER COUNTY, TEXAS

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COME NOW the Kickapoo Fresh Water Supply District (the "District), a water control and improvement district and retail public utility, and G&W Water Supply Corporation ("G&W WSC"), a non-profit water supply corporation (collectively "Applicants"), and file this application for sale, transfer, or merger of facilities and certificate rights in Waller County (the "Application," Attachment A). In support of the Application, the Applicants show the following:

#### I. PURPOSE OF THE FILING

The District and G&W WSC have entered into the Contract for Purchase (Exhibit A, Attachment B), to which New Waverly Sound Investments, LLC (the "Developer") and the wholesale water supplier, Spring Preserve Water Company, LLC ("Spring Preserve"), are also parties. Under the Contract for Purchase, the District has agreed to sell and convey the existing retail water utility system serving the Kickapoo Preserve Subdivision in Waller County, Texas, and the associated water Certificate of Convenience and Necessity ("CCN") rights to G&W WSC, subject to Commission approval of this Application.

The service areas of Water CCN No. 13204 (the "District CCN") and Water CCN. No. 12391, (the "G&W CCN") currently overlap, and are dually certificated over the service area, which is coterminous with the District CCN boundaries. The G&W CCN service area extends beyond the boundaries of the District CCN service area in all directions, thereby encompassing the District CCN. It is the intent of the Applicants to consolidate both CCNs under the G&W

CCN, such that the District CCN is extinguished, leaving only the G&W CCN in place over the existing dually certificated service area.

Spring Preserve was created to provide wholesale water service to the District, and has historically provided such water service to the District. The District was Spring Preserve's sole customer. Recently, Spring Preserve conveyed its interest in its Wholesale Water Plant to G&W WSC, and assigned its interest in the Wholesale Water Supply Agreement with the District to G&W WSC (Assignment attached as **Exhibit A, Attachment P**). Therefore, G&W WSC currently provides wholesale water service to the District. The ultimate purpose of the Contract for Purchase is to consolidate ownership of the Wholesale Water Plant, the Retail Water Facilities, and the District CCN under G&W WSC. Upon Commission approval of the Application, G&W WSC will be the sole owner of the Retail Facilities and District CCN that serve Kickapoo Preserve Subdivision and surrounding area, as well as the Wholesale Water Plant, which G&W WSC already owns.

Applicants seek authorization to proceed with the sale pursuant to the sale, transfer, or merger application ("STM Application") attached hereto.

#### II. JURISDICTION

Pursuant to TWC § 13.301 and the Texas Administrative Code (TAC) Title 16, § 24.239, the Public Utility Commission of Texas ("Commission") shall investigate the sale, transfer, or merger of a water supply corporation and approve the sale, transfer, or merger if it is in the public interest.

# III. REQUEST TO SUBMIT CERTAIN MAPPING INSTRUMENTS IN LIEU OF A DETAILED MAP

In lieu of a detailed map required by the PUC Form, Application for Sale, Transfer, or Merger of a Retail Public Utility (the "STM Application Form"), Applicants seek to submit the Texas Commission on Environmental Quality ("TCEQ")-issued CCN map, identifying the existing G&W CCN and District CCN dually certificated service area (see Exhibit A, Attachment I), and a metes and bounds survey of the dually certificated service area (see Exhibit A, Attachment Q). Applicants have also provided a general location map, which was attached to the original application for dual certification submitted to TCEQ, but shows the identical footprint of the existing dually certificated service area (see Exhibit A, Attachment Q).

The STM Application Form instructs applicants requesting to *transfer an entire CCN*, without CCN boundary adjustments, to provide a general location map and a detailed map. These requirements are consistent with the mapping requirements for applications to *obtain or amend a CCN* as prescribed by Title 16, § 24.257(a), but are less stringent, as the STM Application Form instructions are predicated on there being no need for CCN boundary adjustments.

Applicants simply seek to extinguish the existing District CCN boundaries so that the G&W CCN service area is the only remaining CCN over the area identified in the attached maps and metes and bounds survey. This process will not require boundary adjustments of either the G&W CCN or the District CCN. Therefore, Applicants anticipate that a "detailed map," identifying the area in reference to verifiable man-made and natural landmarks, will not be necessary.

However, if the PUC Staff or Commission require additional mapping instruments, Applicants are pleased to produce those as necessary, and respectfully request an opportunity to cure any Application mapping defects, as may be determined by PUC Staff.

#### III. REQUEST FOR INSTRUCTION ON ISSUING NOTICE

TWC § 13.301(a) and TAC Title 16, § 24.239(b) provides that the notice of an application for the sale, transfer, or merger of a retail public utility shall be on the form required by the Commission to customers and other affected parties, but that notice may be waived by the Commission for good cause.

Unless waived, notice must be given on or before the 120th day before the effective date of a sale, acquisition, or transfer of a retail water system owned by an entity required by law to possess a certificate of public convenience and necessity. The STM Application Form requires applicants to wait until the applicants' proposed notices or maps have been reviewed by Commission Staff, and Commission has notified the applicants in writing to issue the Commission Staff-approved notice. Applicants therefore, request further instruction on issuing notice.

#### IV. AUTHORIZED REPRESENTATIVES

The Applicants authorized representatives for service of all pleadings and other documents in this docket and legal representative are:

#### **Kickapoo Fresh Water Supply District:**

Michael A. Gershon Lloyd, Gosselink, Rochelle & Townsend, P.C. 816 Congress Avenue, Suite 1900 Austin, Texas 78701 Telephone: (512) 322-5872

Facsimile: (512) 472-0532 mgershon@lglawfirm.com

#### **G&W** Water Supply Corporation:

Mary K. Sahs Mary K. Sahs, P.C. P.O. Box 40970 Austin, TX 78704 Telephone: (512) 585-1705 marysahs@sahslaw.com

All pleadings, motions and other documents in this proceeding should be served on Applicants' authorized representatives.

#### V. APPLICATION - AUTHORIZATION FOR SALE OF SYSTEM

G&W WSC, as the *transferee* water supply corporation, must file an application with the Commission prior to acquiring a water system. Attached hereto as Attachment A is G&W WSC and the District's (*transferor*) Application for Sale, Transfer, or Merger of a Retail Public Utility.

Pursuant to 16 TAC § 24.239, Applicants hereby provide the following information in support of their petition:

- 1. A completed PUC Form, Application for Sale, Transfer, or Merger of a Retail Public Utility—Exhibit A, and Attachments A-Q.
- 2. A copy of the executed Contract for Purchase Exhibit A, Attachment B.
- 3. A List of Customers with Deposits Exhibit A, Attachment C.
- 4. G&W WSC Articles of Incorporation Exhibit A, Attachment D.
- 5. G&W WSC Bylaws Exhibit A, Attachment E.
- 6. G&W WSC Board of Directors Information Exhibit A, Attachment F.
- 7. G&W WSC 2019 Financial Audit Exhibit A, Attachment G.
- 8. TCEQ Order Granting Applicants Dual CCNs and Maps Exhibit A, Attachment I.

- 9. G&W WSC Tariff Exhibit A, Attachment J.
- 10. Kickapoo FWSD Rate Order Exhibit A, Attachment K.
- 11. TCEQ and G&W WSC Enforcement Correspondence Exhibit A, Attachment M.
- 12. District TCEQ Compliance Correspondence Exhibit A, Attachment O.
- 13. Wholesale Water Supply Agreement and Assignment to G&W WSC Exhibit A, Attachment P.
- 14. Maps of the requested areas submitted to satisfy Question 29 of PUC Form Application for Sale, Transfer, or Merger, of Retail Public Utility Exhibit A, Attachments Q.

#### VI. CONCLUSION AND PRAYER

Applicants respectfully request that Commission approve the sale of the Kickapoo Preserve Water System from the District to G&W WSC. If the Commission determines that the Application is insufficient for acceptance, Applicants respectfully request that they be notified promptly and provided an opportunity to cure any deficiencies identified.

Respectfully submitted,

/s/ Michael A. Gershon

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ATTORNEY FOR G&W WATER SUPPLY CORPORATION

#### **CERTIFICATE OF SERVICE**

I hereby certify that I have complied with 16 TAC § 22.74, recognizing that there are no other parties of record in this docket, as of this the <u>21</u> day of September, 2020.

/s/ Michael A. Gershon
Michael A. Gershon

#### LIST OF EXHIBITS/ATTACHMENT

#### **EXHIBITS**

**Exhibit A** Application for Sale, Transfer, or Merger of a

Retail Public Utility

**ATTACHMENTS** 

**Attachment "A" – Question 1** Transaction Description and Impact on CCNs

Involved

Attachment "B" – Question 1 Contract for Purchase of Kickapoo

Subdivision Water System and Exhibits

Attachment "C"—Question 5 List of Customers with Deposits

Attachment "D" – Question 7 G&W WSC Articles of Incorporation

Attachment "E" – Question 7 G&W WSC Bylaws

Attachment "F" – Question 9 G&W WSC Board of Directors Information

Attachment "G" – Question 10 G&W WSC 2019 Financial Audit

Attachment "H" – Question 13 Information Concerning the Nature of the

Transaction

Attachment "I" - Question 13, 20 & 29 TCEQ Order Granting Applicants Dual CCNs

and Maps

Attachment "J" – Question 15 G&W WSC Tariff

Attachment "K" – Question 15 Kickapoo FWSD Rate Order

Attachment "L" – Question 17 G&W WSC's Experience and Qualifications

Attachment "M" – Question 18 TCEQ and G&W WSC Enforcement

Correspondence

Attachment "N" – Question 20 How the Proposed Transaction Serves the

**Public Interest** 

Attachment "O" – Question 22 Kickapoo FWSD TCEQ Compliance

Correspondence

Attachment "P" – Question 26 & 13 Wholesale Water Supply Agreement and Assignment to G&W WSC

Attachment "Q" – Question 29 General Location Map and Metes and Bounds Survey

### EXHIBIT A

Application for Sale, Transfer, or Merger of a Retail Public Utility



# Application for Sale, Transfer, or Merger of a Retail Public Utility

Pursuant to Texas Water Code § 13.301 and 16 Texas Administrative Code § 24.239

#### Sale, Transfer, or Merger (STM) Application Instructions

- I. **COMPLETE**: In order for the Commission to find the application sufficient for filing, the Applicant should:
  - Provide an answer to every question and submit any required attachment applicable to the STM request (i.e., agreements or contracts).
  - ii. Use attachments or additional pages to answer questions as necessary. If you use attachments or additional pages, reference their inclusion in the form.
  - iii. Provide all mapping information as detailed in Part G: Mapping & Affidavits.
- II. FILE: Seven (7) copies of the completed application with numbered attachments. One copy should be filed with no permanent binding, staples, tabs, or separators; and 7 copies of the portable electronic storage medium containing the digital mapping data.
  - i. <u>SEND TO</u>: Public Utility Commission of Texas, Attention: Filing Clerk, 1701 N. Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 (NOTE: Electronic documents may be sent in advance of the paper copy, however they will not be processed and added to the Commission's on-line Interchange until the paper copy is received and file-stamped in Central Records).
- III. The application will be assigned a docket number, and an administrative law judge (ALJ) will issue an order requiring Commission Staff to file a recommendation on whether the application is sufficient. The ALJ will issue an order after Staff's recommendation has been filed:
  - i. <u>DEFICIENT (Administratively Incomplete)</u>: Applicants will be ordered to provide information to cure the deficiencies by a certain date, usually 30 days from ALJ's order. *Application is not accepted for filing*.
  - ii. <u>SUFFICIENT (Administratively Complete):</u> Applicants will be ordered by the ALJ to give appropriate notice of the application using the notice prepared by Commission Staff. *Application is accepted for filing*.
- IV. Once the Applicants issue notice, a copy of the actual notice sent and an affidavit attesting to notice should be filed in the docket assigned to the application. Recipients of notice may request a hearing on the merits.

**HEARING ON THE MERITS:** An affected party may request a hearing within 30 days of notice. In this event, the application may be referred to the State Office of Administrative Hearings (SOAH) to complete this request.

- V. **TRANSACTION TO PROCEED**: at any time following the provision of notice, or prior to 120 days from the last date that proper notice was given, Commission Staff will file a recommendation for the transaction to proceed as proposed or recommend that the STM be referred to SOAH for further investigation. The Applicants will be required to file an <u>update in the docket to the ALJ every 30 days</u> following the approval of the transaction. The <u>transaction must be completed within six (6) months from the ALJ's order</u> (Note: The Applicants may request an extension to the 6 month provision for good cause).
- VI. FILE: Seven (7) copies of completed transaction documents and documentation addressing the transfer or disposition of any outstanding deposits. After receiving all required documents from the Applicants, the application will be granted a procedural schedule for final processing. The Applicants are requested to consent in writing to the proposed maps and certificates, or tariff if applicable.
- VII. FINAL ORDER: The ALJ will issue a final order issuing or amending the applicable CCNs.

#### FAQ:

#### Who can use this form?

Any retail public utility that provides water or wastewater service in Texas.

#### Who is required to use this form?

A retail public utility that is an investor owned utility (IOU) or a water supply corporation (WSC) prior to any STM of a water or sewer system, or utility, or prior to the transfer of a portion of a certificated service area.

#### **Terms**

<u>Transferor</u>: Seller <u>Transferee</u>: Purchaser

**CCN**: Certificate of Convenience and Necessity

<u>STM</u>: Sale, Transfer, or Merger <u>IOU</u>: Investor Owned Utility

Transferor: (selling entity) CCN No.s:    3204	Application Summary								
CCN No.s:   13204	Transferor: Kickapoo Fresh Water Supply District of Waller County								
Transferee: G&W Water Supply Corporation ("G&W WSC")    CCN No.s:   12391	(selling entity)		0 1 10011 1	rate: Cupp	ij Bloulet et vi	and odding			
Transferee: G&W Water Supply Corporation ("G&W WSC")    CCN No.s:   12391	CCN No.s:	13204	and the Secretar						
Transferee: G&W Water Supply Corporation ("G&W WSC")    CCN No.s:   12391	×	Sale	Transfer	Merger	Consolidation	Lease/Rental			
CCN No.s:   12391   Water   Sewer   All CCN   Portion CCN   Facilities transfer			- iter Sunnly	Corporation	("G&W WSC")				
Water Sewer All CCN Portion CCN Facilities transfer  County(ies): Waller County, Texas  Table of Contents  Sale, Transfer, or Merger (STM) Application Instructions 1 Part A: General Information 3 Part B: Transferor Information 3 Part C: Transferee Information 4 Part D: Proposed Transaction Details 6 Part E: CCN Obtain or Amend Criteria Considerations 8 Part F: TCEQ Public Water System or Sewer (Wastewater) Information 9 Part G: Mapping & Affidavits 10 Part H: Notice Information 12 Appendix A: Historical Financial Information (Balance Sheet and Income Schedule) 15 Appendix B: Projected Information 18  Please mark the items included in this filing  Contract, Lease, Purchase, or Sale Agreement Part A: Question 1 Tariff including Rate Schedule Part B: Question 4 List of Customer Deposits Part B: Question 5 Partnership Agreement Part C: Question 7 Part C: Question 7	(acquiring entity)		iter Ouppry	Corporation	( Cav voc)				
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Table of Contents  Sale, Transfer, or Merger (STM) Application Instructions	County(ies):	Waller Co	ounty. Texa	s					
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Part B: Transferor Information									
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Part F: TCEQ Public Water System or Sewer (Wastewater) Information	Part D: Propose	ed Transaction	n Details				6		
Part G: Mapping & Affidavits	Part E: CCN Ob	tain or Amend	d Criteria Consi	derations			8		
Part G: Mapping & Affidavits									
Part H: Notice Information		-							
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	Part A: General Information								
1.	Describe the proposed transaction, including the effect on all CCNs involved, and provide details on the existing or expected land use in the area affected by the proposed transaction. Attach all supporting documentation, such as a contract, a lease, or proposed purchase agreements:								
	See Attachments A (Transaction Description) and B (Contract for Purchase and Exhibits).								
2.	The proposed transaction will require (check all applicable):								
	For <b>Transferee</b> (Purchaser) CCN: For <b>Transferor</b> (Seller) CCN:								
	Obtaining a NEW CCN for Purchaser								
	Transfer all CCN into Purchaser's CCN (Merger)  Transfer of a Portion of Seller's CCN to Purchaser								
	Transfer Portion of CCN into Purchaser's CCN Transfer all CCN to Purchaser and retain Seller CCN Only Transfer of Facilities, No CCN or Customers Only Transfer of Customers, No CCN or Facilities								
	Uncertificated area added to Purchaser's CCN  Only Transfer CCN Area, No Customers or Facilities								
	Part B: Transferor Information								
Questions 3 through 5 apply only to the transferor (current service provider or seller)									
3.									
3.	(individual, corporation, or other legal entity)								
	Individual Corporation WSC Water Control and Improvement District								
	B. Mailing Address: 3200 Southwest FWY, Suite 2600, Houston, Texas 77027								
	Phone: (713) 860-6400 Email: https://doi.org/10.1001/phone.								
	C. Contact Person. Please provide information about the person to be contacted regarding this application. Indicate if								
	this person is the owner, operator, engineer, attorney, accountant, or other title.								
	Name: Harry Thompson Title: Attorney								
	Mailing Address: 3200 Southwest FWY, Suite 2600, Houston, Texas 77027								
	Phone: (713) 860-6486 Email: hthompson@abhr.com								
	Thone. 1. ve/ eee e ee	_							
4.	If the utility to be transferred is an Investor Owned Utility (IOU), for the most recent rate change, attach a copy of the current tariff and complete A through B:								
	A. Effective date for most recent rates:								
	<b>B.</b> Was notice of this increase provided to the Public Utility Commission of Texas (Commission) or a predecessor regulatory authority?								
	No Yes Application or Docket Number:								
	If the transferor is a Water Supply or Sewer Service Corporation, provide a copy of the current tariff.								

5.	For th	e customers that w	vill be transferred fo	ollowing the ap	proval of the prop	osed transaction,	check all that apply:				
	Th	nere are <u>no</u> custom	ers that will be tran	sferred							
	<b>X</b> #	of customers with	out deposits held by	the transferor		16					
	<b>X</b> #	of customers with	deposits held by the	e transferor*		34	SEE ATTACHMENT "C"				
	*Attach a list of all customers affected by the proposed transaction that have deposits held, and include a customer indicator (name or account number), date of each deposit, amount of each deposit, and any unpaid interest on each deposit.										
	11774		Pa	art C: Transfe	ree Information						
		Questions 6 th	rough 10 apply on	ly to the trans	<i>sferee</i> (purchaser	or proposed serv	vice provider)				
6.	A.	Name: G&V	V Water Supply								
			Individual (ii	Corporation Corporation	on, or other legal entity) on SC	Other:					
	<b>B</b> . 1	Mailing Address:	P.O. Box 12	19, Waller,	Texas 77484						
	Phone	(936) 372-98	358	E	mail:						
			ovide information a r, operator, enginee	-			lication. Indicate if this				
	Name	Julie Swinney				Title: Cus	stomer Service Representative				
	Address	27395 Field	ls Store Rd., V	Waller, TX	77484						
	Phone	: <u>(</u> 936) 372-98	58	E	mail: jswinney	@gwwsc.net					
			someone other than kas Commission on				gulatory Assessment Fees				
		No X Yes	N/A								
	<b>E.</b> I	f the transferee is a	an IOU, is the trans	feree current o	n the Annual Repo	ort filings with the	Commission?				
		No Yes	N/A								
7.	The le	gal status of the tra	ansferee is:								
	Indivi	dual or sole propri	etorship								
	Partnership or limited partnership (attach Partnership agreement)										
	Corpo			9	0.0						
5			corded with the Tex	•	,	.: 1 1424( ) W	4. 0. 1				
	Sewer	Service Corporation arter number (as re	ned, member control on, incorporated un ecorded with the Tex	der TWC Chap xas Secretary o	oter 67] of State): 10604	19001					
Г	Munic	ipally-owned utili	Incorporation and	Dy-Laws Estat	msneu (anach) S	EE ATTACHMENT	S "D" AND "E"				
Г	_		CID, FWSD, etc.)								
L		M (MIOD, BOD, W	CID, I'WSD, Elc.)								

County	County									
Affected County (a county to which Subchapter B, Chapter 232, Local Government Code, applies)										
Other (	Other (please explain):									
8. If the tra	If the transferee operates under any d/b/a, provide the name below:									
Name:	N/A									
member	ansferee's legal status is anything other than an individual, provide the following information regarding the officers, is, or partners of the legal entity applying for the transfer:									
Name:	See Attachment "F."									
Position:	Ownership % (if applicable): 0.00%									
Address:										
Phone:	Email:									
Name:										
Position:	Ownership % (if applicable): 0.00%									
Address:										
Phone:	Email:									
Name:										
Position:										
Address:	Day 11.									
Phone:	Email:									
Name:										
	Ownership % (if applicable): 0.00%									
Address:										
Phone:	Email:									
10 Finan										

#### 10. Financial Information SEE ATTACHMENT "G"

The transferee Applicant must provide accounting information typically included within a balance sheet, income statement, and statement of cash flows. If the Applicant is an existing retail public utility, this must include historical financial information and projected financial information. However, projected financial information is only required if the Applicant proposes new service connections and new investment in plant, or if requested by Staff. If the Applicant is a new market entrant and does not have its own historical balance sheet, income statement, and statement of cash flows information, then the Applicant should establish a five-year projection taking the historical information of the transferor Applicant into consideration when establishing the projections.

Historical Financial Information may be shown by providing any combination of the following that includes necessary information found in a balance sheet, income statement, and statement of cash flows:

- 1. Completed Appendix A;
- 2. Documentation that includes all of the information required in Appendix A in a concise format; or
- 3. Audited financial statements issued within 18 months of the application filing date. This may be provided electronically by providing a uniform resource locator (URL) or a link to a website portal.

#### **Projected Financial Information** may be shown by providing any of the following:

- 1. Completed Appendix B;
- 2. Documentation that includes all of the information required in Appendix B in a concise format;
- 3. A detailed budget or capital improvement plan, which indicates sources and uses of funds required, including improvements to the system being transferred; or
- 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. This may be provided electronically by providing a uniform resource locator (URL) or a link to a website portal.

		Part D: Proposed Transaction Details
11.	A.	Proposed Purchase Price: \$ 10.00
	If the	e transferee Applicant is an investor owned utility (IOU) provide answers to B through D.
	В.	Transferee has a copy of an inventory list of assets to be transferred (attach):
		□ No □ Yes ☑ N/A
		Total Original Cost of Plant in Service: \$
		Accumulated Depreciation: \$
		Net Book Value: _\$
	C.	<u>Customer contributions in aid of construction (CIAC):</u> Have the customers been billed for any surcharges approved by the Commission or TCEQ to fund any assets currently used and useful in providing utility service? Identify which assets were funded, or are being funded, by surcharges on the list of assets.
		No Yes
		Total Customer CIAC: \$ Accumulated Amortization: \$
	D.	<u>Developer CIAC:</u> Did the transferor receive any developer contributions to pay for the assets proposed to be transferred in this application? If so, identify which assets were funded by developer contributions on the list of assets and provide any applicable developer agreements.
		No Yes
		Total developer CIAC: \$ Accumulated Amortization: \$
12.		Are any improvements or construction required to meet the minimum requirements of the TCEQ or Commission and to ensure continuous and adequate service to the requested area to be transferred plus any area currently certificated to the transferee Applicant? Attach supporting documentation and any necessary TCEQ approvals, if applicable.  X No Yes

	N/A						
13.	Provide any other information concerning the nature	e of the transaction you believe should be given consideration:					
	See Attachments "H."						
14.	acquisition. Debits (positive numbers) should equal	elow) as shown in the books of the Transferee (purchaser) after the credits (negative numbers) so that all line items added together equal are suggested only, and not intended to pose descriptive limitations:					
	Utility Plant in Service:	\$ 10.00					
	Accumulated Depreciation of Plant:						
	Cash:	\$ 0.00					
		\$ 10.00					
	Mortgage Payable:	\$ 0.00					
	(Proposed) Acquisition Adjustment*:	\$ 0.00  * Acquisition Adjustments will be subject to review under 16 TAC § 24.41(d) and (e)					
	Other (NARUC account name & No.):	* Acquisition Adjustments will be subject to review under 16 TAC § 24.41(d) and (e)					
	Other (NARUC account name & No.):						
15.	charged to the customers through this STM app change application.)	If the acquiring entity is an IOU, the IOU may not change the rates plication. Rates can only be changed through the approval of a rate					
	G&W WSC's tariff will apply to the Kickapoo Preserve System's customers after closing. Both G&W WSC's tariff and Kickapoo Fresh Water Supply District's rate order have been attached for convenient reference. In effect, the transferred customers will see slightly increased rates upon transfer (G&W WSC Tariff attached as Attachment "J"; compare with Kickapoo FWSD Rate Order attached as Attachment "K").						
	municipal regulatory authority, an application to	transferee intends to file with the Commission, or an applicable or change rates for some or all of its customers as a result of the					
	transaction within the next twelve months. If so,	, provide details below:					

	Part E: CCN Obtain or Amend Criteria Considerations
16.	Describe, in detail, the anticipated impact or changes in the quality of retail public utility service in the requested area as a result of the proposed transaction:
	The parties anticipate the transfer of the Kickapoo Preserve System to be seamless, with no impact on the quality of retail public utility service to the Kickapoo Preserve Subdivision customers. The infrastructure, which currently meets all State regulatory requirements, will be the same. The individual staff members operating the system will change to G&W WSC Staff, but will be equally qualified as the Kickapoo FWSD Staff that precedes them.
17.	Describe the transferee's experience and qualifications in providing continuous and adequate service. This should include, but is not limited to: other CCN numbers, water and wastewater systems details, and any corresponding compliance history for all operations.
	See Attachment "L."
18.	Has the transferee been under an enforcement action by the Commission, TCEQ, Texas Department of Health (TDH), the Office of the Attorney General (OAG), or the Environmental Protection Agency (EPA) in the past five (5) years for non-compliance with rules, orders, or state statutes? Attach copies of any correspondence with the applicable regulatory agency(ies)
	No Yes SEE ATTACHMENT "M"
	INO TES
19.	Explain how the environmental integrity or the land will be impacted or disrupted as a result of the proposed transaction:
	The environmental integrity of the land on which the Kickapoo Preserve Subdivision is located will not be impacted or disrupted as a result of this transaction.
20.	How will the proposed transaction serve the public interest?
	See Attachments "N" and "I."
21.	List all neighboring water or sewer utilities, cities, districts (including ground water conservation districts), counties, or other political subdivisions (including river authorities) providing the same service within two (2) miles from the outer boundary of the requested area affected by the proposed transaction:
	Arch Utility is the only other water utility located within two (2) miles from the outer boundary of the affected area.

	Part F: TCEQ I	Public W	Vater System or Se	wer (	Waste	water) Information		
(	Complete Part F for <u>EACH</u> Public Attach a separate sheet with thi							
22.	A. For Public Water System	(PWS):						
	T	CEQ PW	/S Identification Nur	nber:	23700	96	(7 digit ID)	
			Name of I	PWS:	Kickar	ooo Preserve Subd	ivision	
s	EE ATTACHMENT "O" Date of 1	last TCE	Q compliance inspec	ction:	Februa	arv 4, 2020	(attach TCEQ letter)	
					Kickapoo Preserve Subdivision			
	<b>B.</b> For Sewer service:		Subdivisions se	rva.	Thomas			
	TCEQ Water Quality	(WO) D	Nigaharga Darmit Nur	nhari	WO		(8 digit ID)	
	TCEQ Water Quality		_				(o digital)	
		Nam	ne of Wastewater Fac					
			Name of Perm	nitee:	N/A			
	Date of 1	last TCE	Q compliance inspec	ction:			(attach TCEQ letter)	
			Subdivisions se	rved:	N/A			
	Date of application to tr	ansfer pe	ermit <u>submitted</u> to TO	CEQ:				
23.	List the number of <u>existing</u> conne	ections, l	by meter/connection	type,	to be aff	fected by the proposed	l transaction:	
	Water		Lan		Sewer			
	Non-metered 37 5/8" or 3/4"	1	2" 3"			Residential Commercial		
	12 1"		4"			Industrial		
	1 1/2"		Other			Other		
	Total Water Conne	ections:	0 11101	50	To	otal Sewer Connection	ns:	
24.	<ul> <li>A. Are any improvements required to meet TCEQ or Commission standards?</li> <li>No Yes</li> <li>Provide details on each required major capital improvement necessary to correct deficiencies to meet the TCEQ or Commission standards (attach any engineering reports or TCEQ approval letters):</li> </ul>							
	Description of the Cap	oital Imp	provement:	Est	timated	<b>Completion Date:</b>	<b>Estimated Cost:</b>	
		200						
		The second						
	C. Is there a moratoriu	ım on ne	ew connections?					
25.	Does the system being transferred	-	-					
	No Y						(name of municipality)	
		I	f yes, indicate the nu Water:			mers within the munic	cipal boundary.	

26.	6. A. Does the system being transferred purchase water or sewer treatment capacity from another source?								
	No No	Yes: If y	If yes, attach a copy of purchase agreement or contract. SEE ATTACHMENT "P"						
	Capacity is purchased from:  G&W Water Supply Corporation								
		Wat	ter:	~705,333 GPM (	(gallons per month)				
		Sew	er:	N/A					
	B. Is the PWS rec	uired to purch	ase wat	er to meet capac	city requirements or	drinking water star	ndards?		
		_			,,				
	∐ No ≥	Yes							
					ent purchased, per th	-	ntract? What is		
	the percent of	overall demand	d suppli	ed by purchased	l water or sewer trea	tment (if any)?			
				in Gallons	Percent of	the state of the s			
		Water:	705,	333.00	100.0				
		Sewer:			0.009	6			
	<b>D.</b> Will the purch	ase agreement	or cont	ract be transferr	ed to the Transferee?	?			
	No X	Yes:							
<del></del>									
27.	Does the PWS or sewer treat	ment plant hav	e adequ	ate capacity to	meet the current and	projected demands	s in the requested		
	area?								
	No No	Yes:							
28.	List the name, class, and TCl sewer utility service:	EQ license num	nber of	the operator tha	t will be responsible	for the operations	of the water or		
	Name (as it appears of	on license) C	lass	License No.		Water or S	ewer		
	Airrion Jackson		С		WG0012733	Water	•		
	James Engledow		С		WG0008853	Water	Control of the Contro		
	William Grimes Kirk Jordan		C D		WG0008864 WO0045312	Water Water			
	Mik Jordan		<i>D</i>	L	VVO0043312	vvatei			
		Pa	rt G: N	lapping & Affi	davits				
	ALL applications requ	ire mapping i	nforma	ition to be filed	in conjunction wit	h the STM applica	ation.		
					tion is required for				
29.	A. For applications reque	sting to transfe	er an en	tire CCN, witho	ut a CCN boundary	adjustment, provid	e the following		
	mapping information	with each of the	e seven	(7) copies of th	e application:				
		,			ng the requested area ce should be adhered		nearest county		
SEE AND	ATTACHMENTS "Q" i. "I"			equests to transf be provided for	er certificated service each.	ce areas for both w	ater and sewer,		
	ii.	A hand dra acceptable n			diagram of the requ	uested area is not	considered an		

- iii. To maintain the integrity of the scale and quality of the map, copies must be exact duplicates of the original map. Therefore, copies of maps cannot be reduced or enlarged from the original map, or in black and white if the original map is in color.
- 2. A detailed (large scale) map identifying the requested area in reference to verifiable man-made and natural landmarks such as roads, rivers, and railroads. The Applicant should adhere to the following guidance:
  - i. The map must be clearly labeled and the outer boundary of the requested area should be marked in reference to the verifiable man-made or natural landmarks. These verifiable man-made or natural landmarks must be labeled and marked on the map as well.
  - ii. If the application requests an amendment for both water and sewer certificated service area, separate maps need to be provided for each.
  - iii. To maintain the integrity of the scale and quality of the map, copies must be exact duplicates of the original map. Therefore, copies of maps cannot be reduced or enlarged from the original map, or in black and white if the original map is in color.
  - iv. The outer boundary of the requested area should not be covered by any labels, roads, city limits or extraterritorial jurisdiction (ETJ) boundaries.
- **B.** For applications that are requesting to include area not currently within a CCN, or for applications that require a CCN amendment (any change in a CCN boundary), such as the transfer of only a portion of a certificated service area, provide the following mapping information with each of the seven (7) copies of the application:
  - 1. A general location (small scale) map identifying the requested area with enough detail to locate the requested area in reference to the nearest county boundary, city, or town. Please refer to the mapping guidance in part A 1 (above).
  - 2. A detailed (large scale) map identifying the requested area with enough detail to accurately locate the requested area in reference to verifiable man-made or natural landmarks such as roads, rivers, or railroads. Please refer to the mapping guidance in part A 2 (above).
  - 3. One of the following identifying the requested area:
    - i. A metes and bounds survey sealed or embossed by either a licensed state land surveyor or a registered professional land surveyor. Please refer to the mapping guidance in part A 2 (above);
    - ii. A recorded plat. If the plat does not provide sufficient detail, Staff may request additional mapping information. Please refer to the mapping guidance in part A 2 (above); or
    - iii. Digital mapping data in a shapefile (SHP) format georeferenced in either NAD 83 Texas State Plane Coordinate System (US Feet) or in NAD 83 Texas Statewide Mapping System (Meters). The digital mapping data shall include a single, continuous polygon record. The following guidance should be adhered to:
      - a. The digital mapping data must correspond to the same requested area as shown on the general location and detailed maps. The requested area must be clearly labeled as either the water or sewer requested area.
      - **b.** A shapefile should include six files (.dbf, .shp, .shx, .sbx, .sbn, and the projection (.prj) file).
      - c. The digital mapping data shall be filed on a data disk (CD or USB drive), clearly labeled, and filed with Central Records. Seven (7) copies of the digital mapping data is also required.

	Part H: Notice Information							
	The following information will be used to generate the proposed notice for the application. <b>DO NOT provide notice</b> of the application until it is found sufficient and the Applicants are ordered to provide notice.							
30.	Complete the following using verifiable man-made or natural landmarks such as roads, rivers, or railroads to describe the requested area (to be stated in the notice documents). Measurements should be approximated from toutermost boundary of the requested area:							
	The total acreage of the requested area is approximately: 495.00							
	Number of customer connections in the requested area: 50							
	Affected subdivision: Kickapoo Preserve Subdivision							
	The closest city or town: Waller, Texas							
	Approximate mileage to closest city or town center: 5							
	Direction to closest city or town: Southwest							
	The requested area is generally bounded on the North by: Hegar Road							
	on the East by: Kickapoo Road							
	on the South by: Castle Road							
	on the West by: Field Stone Road							
31.	A copy of the proposed map will be available at: G&W WSC, 27907 Joseph Road, Hockley, TX 77447							
32.	What effect will the proposed transaction have on an average bill to be charged to the affected customers? Take into consideration the average consumption of the requested area, as well as any other factors that would increase or decrease a customer's monthly bill.							
	All of the customers will be charged the same rates they were charged before the transaction.							
	All of the customers will be charged different rates than they were charged before the transaction.							
	kigher monthly bill lower monthly bill							
	Some customers will be charged different rates than they were charged before							
	(i.e. inside city limit customers)  higher monthly bill lower monthly bill							

### Oath for Transferor (Transferring Entity)

STATE OF TEXAS
COUNTY OF HAVVIS
I, Sukhjinder Dhother being duly sworn, file this application for sale, transfer,
merger, consolidation, acquisition, lease, or rental, as  President, Board of Directors
I attest that, in such capacity, I am qualified and authorized to file and verify such application, am personally familiar with the documents filed with this application, and have complied with all the requirements contained in the application; and, that all such statements made and matters set forth therein with respect to Applicant are true and correct. Statements about other parties are made on information and belief. I further state that the application is made in good faith and that this application does not duplicate any filing presently before the Commission.
I further state that I have been provided with a copy of the 16 TAC § 24.239 Commission rules. I am also authorized to agree and do agree to be bound by and comply with any outstanding enforcement orders of the Texas Commission on Environmental Quality, the Public Utility Commission of Texas or the Attorney General which have been issued to the system or facilities being acquired and recognize that I will be subject to administrative penalties or other enforcement actions if I do not comply.
AFFIANT (Utility's Authorized Representative)
If the Affiant to this form is any person other than the sole owner, partner, officer of the Applicant, or its attorney, a properly verified Power of Attorney must be enclosed.
SUBSCRIBED AND SWORN BEFORE ME, a Notary Public in and for the State of Texas this day the Thomas of August, 2020.
SEAL
JULIE ANNE-MARIE BRADFORD My Notary ID # 129868801 Expires June 26, 2022  Section 10 10 10 10 10 10 10 10 10 10 10 10 10
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
PRINT OR TYPE NAME OF NOTARY
My commission expires: 4/2(0/7.077

	Oath for Transferee	(Acquiring Enuty)
STATE OF	TEXAS	
COUNTY OF	WAller	
I, Orio merger, consolidat	ion, acquisition, lease, or rental, as	being duly sworn, file this application for sale, transfer,
the documents file that all such staten other parties are n	h capacity, I am qualified and authorized to f d with this application, and have complied valuents made and matters set forth therein with	nember of partnership, title as officer of corporation, or authorized representative) file and verify such application, am personally familiar with with all the requirements contained in the application; and, respect to Applicant are true and correct. Statements about ate that the application is made in good faith and that this ommission.
to agree and do agon Environmental the system or face	gree to be bound by and comply with any of Quality, the Public Utility Commission of	6 TAC § 24.239 Commission rules. I am also authorized outstanding enforcement orders of the Texas Commission Texas or the Attorney General which have been issued to I will be subject to administrative penalties or other
	David	AFFIANT (Utility's Authorized Representative)
	s form is any person other than the sole owner Attorney must be enclosed.	r, partner, officer of the Applicant, or its attorney, a properly
SUBSCRIBED A	ND SWORN BEFORE ME, a Notary Publi this day the	ic in and for the State of Texas  10 of September, 2020
	SEAL	
	LAURA ELIZABETH YATES Notary ID #128298288 My Commission Expires June 14, 2022	NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
		Lawa Elizabeth Vates PRINT OR TYPE NAME OF NOTARY
	My commission expires:	June 14, 2022

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Attachment "C"—Question 5	List of Customers with Deposits
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Kickapoo FWSD TCEQ Compliance
Correspondence

Attachment "P" – Question 26 & 13

Wholesale Water Supply Agreement
and Assignment to G&W WSC

Attachment "Q" – Question 29

General Location Map and Metes and
Bounds Survey

# Attachment "A" – Question 1

# **Transaction Description and Impact on CCNs Involved**

#### **Question 1:**

Describe the proposed transaction, including the effect on all CCNs involved, and provide details on the existing or expected land use in the area affected by the proposed transaction. Attach all supporting documentation, such as a contract, a lease, proposed purchase agreements:

Kickapoo Freshwater Supply District of Waller County, Texas (the "District") intends to convey to G&W Water Supply Corporation ("G&W") its Retail Water Facilities and CCN No. 13204.

The certificates of convenience (CCN) effected by the underlying transaction include CCN No. 13204 (the "District CCN") and CCN No. 12391 (the "G&W CCN").

The District owns, operates, and maintains the Kickapoo Preserve Subdivision Water System (identified as Water System No. TX 2370096, the "Retail Water Facilities"), which provides retail water service to the Kickapoo Preserve Subdivision. In accordance with the Contract for Purchase (attached hereto as Attachment B), the District has agreed to convey its Retail Water Facilities and the District CCN to G&W.

The District CCN and G&W CCN currently overlap, and are dually certificated over the service area, which is coterminous with the boundaries of the District CCN. However, the G&W CCN extends beyond the boundaries of the District CCN. It is the intent of the parties to consolidate both CCNs under the G&W CCN, such that the District CCN is extinguished, leaving only the G&W CCN over the dually certificated area.

The existing land use, over which the District CCN and G&W CCN are currently dually certificated, is residential, and is expected to remain residential.

# $Attachment \ "B"-Question \ 1$

### Contract for Purchase of Kickapoo Subdivision Water System

#### **CONTRACT FOR PURCHASE**

THIS CONTRACT FOR PURCHASE (the "Agreement") is entered into between Kickapoo Freshwater Supply District (the "District"), a water conservation and reclamation district organized and empowered under Article XVI, Section 59 of the Texas Constitution and governed by Chapter 51 of the Texas Water Code; G&W Water Supply Corporation ("G&W"), a Texas non-profit water supply corporation; New Waverly Sounds Investments, LLC ("New Waverly"), a Texas limited liability company; and Spring Preserve Water Company, LLC ("Spring Preserve"), a Texas limited liability company. Throughout this Agreement the District, G&W, Spring Preserve, and New Waverly may be referred to jointly as the Parties, and shall each be considered individually a Party depending upon the context.

#### I. RECITALS

WHEREAS, the Parties have each executed existing agreements and/or assignments of such agreements pertaining to the wholesale and retail water services currently serving the Kickapoo Preserve Subdivision in Waller County, Texas, which is located within Certificate of Necessity and Convenience No 13204 ("District CCN");

WHEREAS, the Parties find it mutually beneficial to consolidate the ownership and operations of the Wholesale Water Plant and the Retail Water System, the wholesale and retail services, the District's customers, and the District CCN together with the Certificate of Convenience and Necessity No. 12391 ("G&W CCN") (collectively the "CCNs"), so that all such systems, services, customers and CCNs are transferred, released, and/or merged under G&W pursuant to this Agreement; and

#### **CCN** Agreement and Assignment

WHEREAS, pursuant to an agreement executed October 23, 2007, New Waverly and G&W agreed to (i) New Waverly's participation in creating and funding of the District and the Retail Water Facilities (as defined below), (ii) the dual certification of the portion of G&W CCN that encompasses the area currently known as the District CCN; and (iii) the transfer and release of the District's facilities, customers, and the District CCN upon the District's debt owed to New Waverly being paid in full according to the Financing Agreement referenced herein (the foregoing agreement being the "CCN Agreement");

WHEREAS, pursuant to the CCN Agreement, New Waverly and G&W anticipated assigning New Waverly's rights and obligations under the CCN Agreement to the District, and accordingly, New Waverly executed such an assignment to the District on February 25, 2010; and

#### **Financing Agreement**

WHEREAS, pursuant to the CCN Agreement, the District and New Waverly entered into a Development Financing Agreement dated August 26, 2008 (the "Financing Agreement") by which the District agreed to make all reasonable efforts to obtain approval for the sale of bonds and to sell the bonds for the purpose of repaying New Waverly for its costs of design and

construction for the public water, sewer, drainage, and road facilities to serve the District; and

WHEREAS, New Waverly advanced approximately \$3,511,422 to fund the District, with the expectation of District reimbursement, with developer interest, pursuant to the obligations contained in the Financing Agreement;

WHEREAS, pursuant to the Financing Agreement, New Waverly advanced the funds necessary for the design, construction, and maintenance of the necessary retail water facilities, and all related appurtenances, to serve the District pursuant to a construction contract between the District and Terbo Construction, L.P. dated November 12, 2008, which facilities are located within or near the boundaries of the District, and together with any distribution lines, collection lines, water mains, water meters, valves, pipes, fittings, fire hydrants, flushing valves, connections, meter boxes, water services, easements, rights-of-way, licenses, operating rights and all other property therein whether real, personal or mixed, owned by the District in connection with the District's retail water facilities (the "Retail Water Facilities") identified by TCEQ Water System No. TX2370096, as more particularly shown in Exhibit A-1, and located within or near the land shown on the plat that is recorded under 1001751 in the Official Public Records of Waller County, Texas;

WHEREAS, pursuant to the Financing Agreement, the District is obligated, subject to sufficient authorized bonds, to make all reasonable efforts to obtain approval for the sale of bonds and to sell bonds for the purpose of repaying New Waverly at the earliest possible date;

WHEREAS, due to unforeseen circumstances, it is not economically feasible for the District to sell bonds to repay New Waverly the funds obligated under the Financing Agreement;

WHEREAS, New Waverly agrees to extinguish any and all rights and obligations owed to or from the District pursuant to the Financing Agreement, and the District and New Waverly agree to terminate, in whole, the Financing Agreement subject to the Retail Water Facilities being conveyed to G&W and to the ultimate dissolution of the District;

#### **Wholesale Water Contract**

WHEREAS, Spring Preserve agrees to convey the wholesale water treatment facility, including all associated land, improvements, fixtures, appurtenances, groundwater rights, and other property (all the forgoing being called the "Wholesale Water Plant"), identified by TCEQ Water System No. TX2370095, which provides the sole source of wholesale water to the District pursuant to an agreement between Spring Preserve and the District executed on February 1, 2011 (the "Wholesale Water Contract"), to G&W;

WHEREAS, Spring Preserve and the District find it mutually beneficial, and agree to Spring Preserve's assignment of its interests, rights, and obligations under the Wholesale Water Contract to G&W, such that G&W is the sole wholesale water provider for the District (the "Assignment," attached as <u>Exhibit D-2</u> and incorporated herein by reference);

WHEREAS, the District consents to such Assignment, whether the Assignment is effective prior to, contemporaneously with, or following the Effective Date of this Agreement;

#### **STM Application**

WHEREAS, the District currently owns and operates the Retail Water Facilities, which provides the sole source of retail water to Kickapoo Preserve Subdivision;

WHEREAS, the Parties find it mutually beneficial to consolidate the ownership and operations of the Wholesale Water Plant and the Retail Water Facilities, the wholesale and retail services, the District's customers, and the District CCN together with the G&W CCN, so that all such systems, services, and CCNs are transferred and merged under G&W pursuant to the aforesaid rights, interests, obligations, agreements and assignments;

WHEREAS, pursuant to Chapter 13, Section 13.251 the Texas Water Code, the sale, transfer, merger, consolidation, acquisition, lease or rental of a CCN must be approved by the Public Utility Commission of Texas (the "PUC") only after a determination that the entity receiving the CCN is capable of rendering adequate and continuous service to every consumer within the certified area;

WHEREAS, G&W and the District agree to jointly file an application with the PUC and give public notice of sale, transfer, merger, and consolidation of the District's Retail Water Facilities and the District CCN, such that the Retail Water Facilities will be owned and operated by G&W, and G&W will be the sole certificate holder of the previously dual certificated area (the foregoing being the "STM Application"); and

WHEREAS, the District's conveyance of the Retail Water Facilities to G&W, and the conveyance the District CCN are both contingent on the PUC's approval of the STM Application, and the termination of the Financing Agreement and the CCN Agreement are contingent on the conveyance of the Retail Water Facilities to G&W, provided however that Spring Preserve's conveyance of the Wholesale Water Plant to G&W and the Parties' assignment of the Wholesale Water Contract to G&W are not subject to PUC approval or contingent on any of the aforesaid conveyances or approvals.

**NOW, THEREFORE**, for and in consideration of the mutual promises, covenants and consideration set forth herein, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree as follows:

#### II. AGREEMENT

- 1. **Recitals.** The recitals above are true and correct and incorporated for all purposes as a part of this Agreement.
- 2. Purpose. The ultimate purpose of this Agreement is to effectuate the transfer of the District's Retail Water Facilities, customers, and the District CCN to G&W pursuant to Chapter 13, Section 13.251 the Texas Water Code, Title 16, Chapter 24, Section 24.239 of the Texas Administrative Code, and the CCN Agreement, recognizing, however, that several actions must be taken by the Parties to consolidate the Wholesale Water Plant, the

Retail Water Facilities, water service, District customers, and CCNs under G&W. Such actions include the following, but not necessarily in order of occurrence:

- i. Parties execute this Agreement;
- ii. G&W and the District jointly file the STM Application with the PUC, and give sufficient 120-day notice;
- iii. The PUC issues an order, or orders, approving the conveyance of the Retail Water Facilities to G&W, and decertifying the District CCN;
- iv. Within 45 days of a PUC order either approving the District's conveyance of the Retail Water Facilities to G&W, or the decertification of the District CCN, whichever occurs later, the District and G&W close on the Retail Water Facilities conveyance; and
- v. District dissolves, at which point the CCN Agreement, Financing Agreement, and Wholesale Water Contract automatically terminate consistent with this Agreement.
- 3. CCN Agreement and Assignment. Subject to the occurrences of events detailed under this subsection of the Agreement, the District and G&W mutually agree to terminate the CCN Agreement, under which New Waverly assigned its rights and obligations to the District. The CCN Agreement and Assignment are attached hereto as <a href="Exhibit B-1">Exhibit B-1</a> and <a href="Exhibit B-2">Exhibit B-2</a> respectively, each are incorporated herein by reference.

In order to effectuate the transfer of the District's Retail Water Facilities, customers, and the District CCN to G&W, the District and G&W agree that the CCN Agreement remains effective until such time that the District dissolves according to this Agreement. Upon District dissolution, the CCN Agreement will be fulfilled, and the District and G&W agree that the CCN Agreement will automatically terminate upon District dissolution.

Pursuant to the termination of the CCN Agreement, and in consideration of the District's dissolution and promise to release, cancel, and waive all of its rights, obligations, and claims under the terms of the CCN Agreement, G&W agrees to cancel and release the District of any debts, obligations, and claims arising under the terms of the CCN Agreement against the District.

Pursuant to the termination of the CCN Agreement, and in consideration of G&W's promise to release, cancel, and waive all of its rights, obligations, and claims under the terms of the CCN Agreement, the District agrees to cancel and release G&W of any debts, obligations, and claims arising under the terms of the CCN Agreement against G&W.

Termination of the CCN Agreement is subject to the following events occurring on or before the Closing Date defined under Article III, Section 10 of this Agreement, provided however that the District may dissolve as soon as practicable after the Closing Date, but in no event later than the Outside Closing Date:

- i. the PUC issues an order, or orders, approving the conveyance of the Retail Water Facilities to G&W, and transferring District CCN to G&W;
- ii. within 45 days of a PUC order either approving the District's conveyance of the Retail Water Facilities to G&W, or the transfer of the District CCN, whichever occurs later, the District and G&W close on the Retail Water Facilities conveyance; and
- iii. the District takes all necessary steps to dissolve after conveying the Retail Water Facilities to G&W as described under Article III, Section 12 of this Agreement.

Termination of the CCN Agreement is automatically effective upon the dissolution of the District.

4. **Financing Agreement.** Subject to the occurrences of events detailed under this subsection of the Agreement New Waverly and the District mutually agree to terminate the Financing Agreement, attached hereto as **Exhibit C**, and incorporated herein by reference.

Pursuant to the termination of the Financing Agreement, and in consideration of the District's promise to dissolve and to release, cancel, and waive all of its rights, obligations, and claims under the terms of the Financing Agreement, New Waverly agrees to (1) cancel any and all debt owed to it by the District having accrued under the Financing Agreement, (2) release the District of any and all obligations under the terms of the Financing Agreement, and (3) waive any and all of its rights, interests, and claims under the Financing Agreement.

Pursuant to the termination of the Financing Agreement, and in consideration of New Waverly's release, cancelation, and waiver of all rights, obligations and claims therein, as well as New Waverly's forgiveness of debt, the District agrees to cancel and release New Waverly of any and all obligations under the terms of the Financing Agreement. The District agrees to waive any and all of its rights, interests, and claims under the Financing Agreement. Furthermore, the District agrees to dissolve as soon as practicable after the Closing Date of this Agreement, but in no event later than the Outside Closing Date.

Termination of the Financing Agreement is subject to the following events occurring on or before the Closing Date, provided however that the District may dissolve as soon as practicable after the Closing Date, but in no event later than the Outside Closing Date:

- i. the PUC issues an order, or orders, approving the conveyance of the Retail Water Facilities to G&W, and transferring District CCN to G&W;
- ii. within 45 days of a PUC order either approving the District's conveyance of the Retail Water Facilities to G&W, or the transfer of the District CCN, whichever occurs later, the District and G&W close on the Retail Water Facilities conveyance; and

iii. the District takes all necessary steps to dissolve after conveying the Retail Water Facilities to G&W as described under Article III, Section 12 of this Agreement.

Termination of the Financing Agreement is automatically effective upon the dissolution of the District.

5. Wholesale Water Contract. Spring Preserve and the District agree to assign the Wholesale Water Contract, executed on February 1, 2011, by and between Spring Preserve and the District, to G&W, such that the Wholesale Water Contract remains effective between G&W and the District until the District's dissolution.

The Assignment and eventual termination of the Wholesale Water Contract is governed by this Agreement in accordance with the Wholesale Water Contract, attached as <u>Exhibit D-1</u> and incorporated here by reference, as well as the "Assignment of Wholesale Water Purchase Contract," attached as <u>Exhibit D-2</u> and incorporated here by reference.

Spring Preserve, the District, and G&W agree that the Wholesale Water Contract will continue in effect under the original terms and conditions, except that the Wholesale Water Contract will expire and terminate upon the dissolution of the District, which is contingent on the successful acquisition by G&W of the District's Retail Water System, and is subject to the PUC's approval of the District's transfer of the Retail Water Facilities and the District CCN to G&W.

The Assignment of the Wholesale Water Contract, but not the termination of the Wholesale Water Contract, is contingent on Spring Preserve's conveyance of the Wholesale Water Plant to G&W. Spring Preserve agrees to execute a Special Warranty Deed in substantially the same form as **Exhibit D-3**, attached hereto, and transfer its interest in the Wholesale Water Plant, and execute the Assignment to G&W. The Assignment may be effective prior to, contemporaneously, or following the Effective Date of this Agreement.

Termination, but not the Assignment, of the Wholesale Water Contract is subject to the following events occurring on or before the Closing Date, provided however that the District may dissolve as soon as practicable after the Closing Date, but in no event later than the Outside Closing Date:

- i. the PUC issues an order, or orders, approving the conveyance of the Retail Water Facilities to G&W, and transferring District CCN to G&W;
- ii. within 45 days of a PUC order either approving the District's conveyance of the Retail Water Facilities to G&W, or the transfer of the District CCN, whichever occurs later, the District and G&W close on the Retail Water Facilities conveyance; and
- iii. the District takes all necessary steps to dissolve after conveying the Retail Water Facilities to G&W as described under Article III, Section 12 of this Agreement.

Termination of the Wholesale Water Contract is automatically effective upon the dissolution of the District.

# III. AGREEMENT CONVEYING RETAIL WATER FACILITIES AND DISTRICT CCN

- 1. Retail Water Facilities. Subject to the terms and conditions of this Agreement, and to the PUC's approval, the District agrees to convey to G&W the Retail Water Facilities, together with the District's right, title, and interest in all appurtenances thereto, including any distribution lines, collection lines, water mains, water meters, valves, pipes, fittings, fire hydrants, flushing valves, connections, meter boxes, water services, easements, rights-of-way, licenses, operating rights and all other property therein whether real, personal or mixed, owned by the District in connection with the District's Retail Water Facilities, identified by TCEQ Water System No. TX2370096 as more particularly shown in Exhibit A-1, and located within or near the land shown on the plat that is recorded under 1001751 in the Official Public Records of Waller County, Texas.
- 2. **District CCN.** Subject to the terms and conditions of this Agreement, and to the PUC's approval, the District agrees to transfer to G&W (i) the District CCN, which encompasses an area of land amounting to approximately 495 acres, and encompassing the Kickapoo Preserve Subdivision of Waller County, Texas; and (ii) retail service to the aforesaid District CCN, including the Kickapoo Preserve Subdivision's approximately 49 connections serving approximately 147 existing customers.
- 3. Consideration. The consideration for the conveyances of the Retail Water Facilities and the District CCN shall be the cash purchase price ("Purchase Price") of TEN AND NO/100 DOLLARS (\$10.00), New Waverly's agreement to cancel any debt owed to it by the District, and of the mutual promises, covenants and other good and valuable consideration set forth herein, the sufficiency and adequacy of which are hereby acknowledge.
- 4. Conditions to Closing. This Agreement is subject to the approval of the PUC. In the event that the transfer of the Retail Water Facilities and/or the District CCN is rejected by the PUC, or is not approved by the PUC on or before the Outside Closing Date (defined by Article II, Section 12 of this Agreement), then, notwithstanding any provisions herein to the contrary, this Article III of this Agreement shall terminate, and neither party shall have further rights or duties hereunder other than those rights or duties that expressly survive termination of this Agreement. The District and G&W shall cooperate to facilitate the transfer of both the Retail Water Facilities and the District CCN. Each Party shall be primarily responsible for applications (or portions thereof) that relate to such party or its capacity to perform, and shall similarly be primarily responsible for responding to protests or PUC inquiry relating to such party or its capacity to perform.
- 5. Closing. The conveyance of the Retail Water Facilities and District CCN shall be closed ("Closing") at a location to be agreed upon by the District and G&W, on or before a date

that is forty five (45) days following PUC approval of the later of the (i) the conveyance of the Retails Water Facilities or (ii) the conveyance of the District CCN (the "Closing Date"), but in no event later than May 15, 2021 (the "Outside Closing Date").

- 6. Closing Documents. The following shall be delivered at Closing:
  - i. Bill of Sale. The District and G&W shall execute and acknowledge a Bill of Sale conveying the Retail Water Facilities personal property, equipment and fixtures substantially in the form of **Exhibit A-2** attached hereto (the "Bill of Sale").
  - **ii. PUC Documents.** G&W shall provide documents demonstrating PUC approval of G&W's authority to provide retail water utility service to Kickapoo Preserve Subdivision, as described herein.
  - iii. Other Documents. The District shall provide its most current customer list for the Retail Water Facilities and all plans and specifications in its possession for the System. G&W and the District shall execute and record (where appropriate) all documents necessary to effectuate the transfer of the District CCN to G&W.
  - iv. Customer Deposits. The District shall transfer to G&W all deposits held by the District, if any, of customers of the Retail Water Facilities.
  - v. Customer Account Balances. The District shall provide a spreadsheet showing the current account balances (debits and credits) to as close to the Closing Date as is reasonably possible.
- 7. **District Dissolution.** Upon the occurrences of those events described herein, and as more particularly listed in this subsection, the District agrees to dissolve as soon as practicable after the Closing Date, but in no event later than the Outside Closing Date. Any permits, CCNs, contracts, agreements, or other documentation necessary for the provision of water service to any customers or applicants within the CCN will be transferred or terminated, as appropriate, upon the District's dissolution pursuant to Chapter 51, Subchapter P, of the Texas Water Code. Upon dissolution of the District, the CCN Agreement, Financing Agreement, and Wholesale Water Contract automatically terminate consistent with this Agreement.

### IV. ADDITIONAL PROVISIONS

8. **Notices.** Any notice to be given hereunder shall be given by placing the notice or designation in the United States mail, certified or registered, properly stamped and addressed to the address shown below or such other address as the respective party may direct in writing to the other, or by personal delivery to such address by a party, by email, or by a delivery service which documents delivery, and such notice or designation shall be deemed to be received upon such placing in the mails, emailing or such delivery:

DISTRICT: Kickapoo Fresh Water Supply District

c/o Allen Boone Humphries Robinson LLP

Attn: Harry Thompson

3200 Southwest Freeway, Ste. 2600

Houston, Texas 77027

G&W: G&W Water Supply Corporation

Attn: David Derrick P.O. Box 1219 Waller, TX 77484

SPRING PRESERVE: Spring Preserve Water Company, LLC

c/o Lloyd Gosselink Rochelle & Townsend, P.C.

Attn: Michael A. Gershon 816 Congress Avenue, Ste. 1900

Austin, Texas 78701

NEW WAVERLY: New Waverly Sound Investments, LLC

c/o Lloyd Gosselink Rochelle & Townsend, P.C.

Attn: Michael A. Gershon 816 Congress Avenue, Ste. 1900

Austin, Texas 78701

- 9. **Effective Date.** Upon executing this Agreement as evidenced by the signatures of each Party's representative, the date of the signature occurring latest is the Effective Date of this Agreement.
- 10. Obligation to Cure. In the event any Party to this Agreement should fail to materially perform its obligations herein, Parties shall have an obligation to cure such default and breach. Except when due to another Party's default or failure to satisfy its obligations herein, the non-defaulting Party may, as its sole and exclusive remedy, terminate that portion of the Agreement under which the default accrued, in which event, the Severability clause of this Agreement applies.
- 11. Severability. If any term of this Agreement is to any extent illegal, otherwise invalid, or incapable of being enforced, such term shall be excluded to the extent of such invalidity or unenforceability. All other terms hereof shall remain in full force and effect, provided however, that (i) the termination of the Financing Agreement, the CCN Agreement, and the Wholesale Water Contract, (ii) the conveyance of the Retail Water Facilities and District CCN, and (iii) the District's dissolution, are each independently contingent on the PUC's approval of the conveyance of the Retail Water Facilities and the District's CCN to G&W.

In the event the PUC rejects the conveyance of the Retail Water Facilities and the District's CCN to G&W, Parties agree to work together to cure any defects in the STM Application, supporting agreements, or other defects to the extent possible. Regardless of such defects,

the Assignment of the Wholesale Water Contract and the conveyance of the Wholesale Water Plant shall be unaffected by such defects. In such event, the Parties agree to honor the unterminated CCN Agreement, Finance Agree, and Wholesale Water Contract until such time that the Parties agree in a separate contract to terminate such agreements.

- 12. Entire Agreement. This Agreement contains all agreements between the parties regarding the System, and no agreement not contained herein shall be recognized by the parties, provided however that (i) Spring Preserve may executed the conveyance of the Wholesale Water Plant to G&W prior to, contemporaneously, or following the Effective Date of this Agreement; (ii) Spring Preserve, the District, and G&W may execute the Assignment prior to, contemporaneously, or following the Effective Date of this Agreement, and (iii) such conveyance and Assignment shall be recognized by the Parties as valid and enforceable whether effective prior to, contemporaneously, or following the Effective Date of this Agreement.
- 13. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective legal representatives, successors and permitted assigns.
- 14. Assignability. Parties shall have no right to assign this Agreement or any of its rights hereunder to any person or entity without the prior written consent of the other Parties, which consent may be given or withheld in the respective Parties' individual, sole and absolute discretion.
- 15. Time of the Essence. Time is of the essence of this Agreement.
- 16. **Legal Holidays.** Notwithstanding anything herein to the contrary, if the final date of any period, any date of performance or any deadline date which is set forth in this Agreement falls on a Saturday, Sunday, federal legal holiday or day in which Seller is closed for business, then such date shall be extended to the next following date which is not a Saturday, Sunday, federal legal holiday or day in which Seller is closed for business.
- 17. Counterparts. This Agreement may be executed in one (1) or more counterparts, each of which when taken together shall constitute but one and the same Agreement. Pdf or electronically transmitted signatures shall constitute originals signatures.

(SIGNATURE PAGES FOLLOW)

AGREED TO AND EXECUTED to be effective as of the date last signed ("Effective Date").

# KICKAPOO FRESHWATER SUPPLY DISTRICT

a water conservation and improvement district

President, Board of Directors

Date: 4-29-2020

ATTEST:

Ast Secretary Board of Directors

(SEAL)



G & W WATER SUPPLY CORPORATION a Texas non-profit water supply corporation

Jake Marcisz, Board President

Date: 4/24/2020

Date: 4-24-20

NEW WAVERLY SOUND INVESTMENTS, LLC

a Texas limited liability company

by:

Rajan Shamdasani, its Managing Member

**CONTRACT FOR PURCHASE** Page 13 of 14

SPRING PRESERVE WATER COMPANY, LLC,

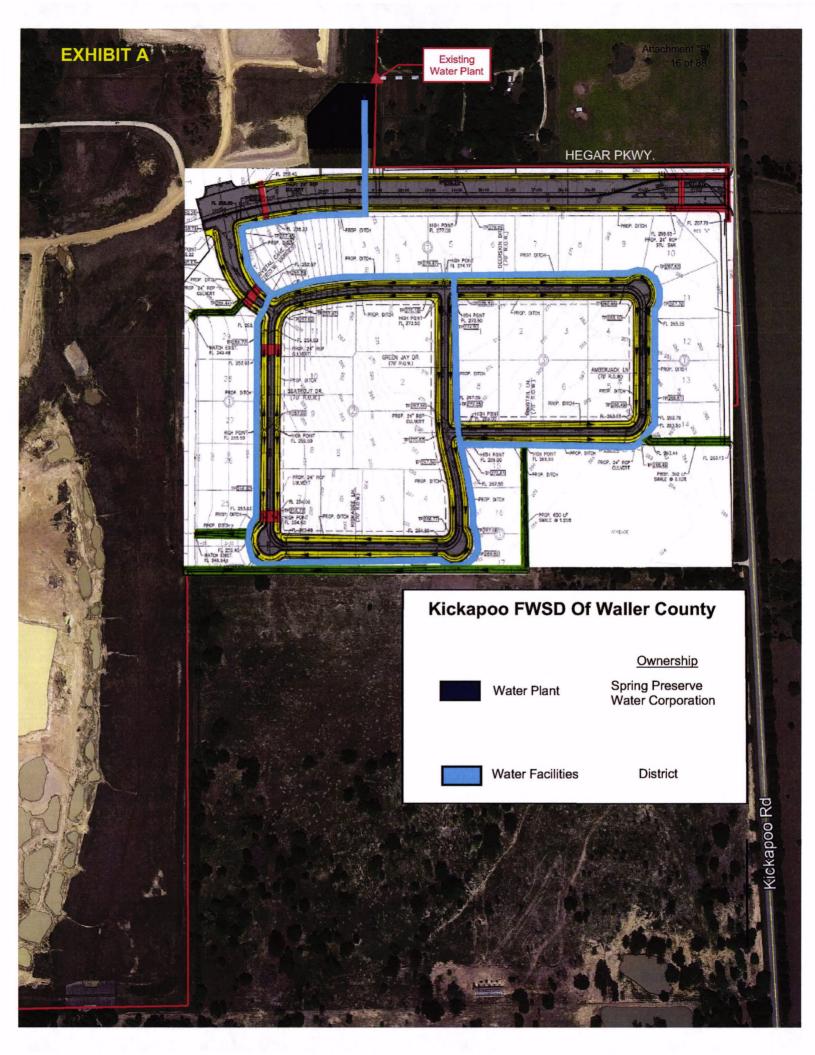
a Texas limited liability company

Rajan Shamdasani, its Managing Member

Date: 4.24-20

**CONTRACT FOR PURCHASE**Page 14 of 14

# EXHIBIT A-1 RETAIL WATER FACILITIES



### EXHIBIT A-2 BILL OF SALE

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

### **BILL OF SALE AND ASSIGNMENT**

STATE OF TEXAS §

COUNTY OF WALLER §

Kickapoo Freshwater Supply District, a water conservation and improvement district organized and empowered under Article XVI, Section 59 of the Texas Constitution and governed by Chapter 51 of the Texas Water Code ("Grantor"), for and in consideration of the sum of ten and no/100 dollars (\$10.00) cash and other good and valuable consideration paid to Grantor by G & W Water Supply Corporation, a Texas non-profit water supply corporation ("Grantee"), the receipt and sufficiency of which is hereby acknowledged, hereby grants, sells, assigns, and conveys unto Grantee, those assets associated with Grantor's water facilities (the "Water Facilities"), such assets described as follows:

- 1. Real or Personal Property: Those certain water facilities, and all related appurtenances, to serve Kickapoo Preserve, Section One (except any detention ponds, any storm sewer facilities, any drainage channels, and any non-potable water facilities) constructed to date on behalf of the District pursuant to the construction contract between the District and Terbo Construction, L.P. dated November 12, 2008, which facilities are located within or near the boundaries of the District, and together with any distribution lines, collection lines, water mains, water meters, valves, pipes, fittings, fire hydrants, flushing valves, connections, meter boxes, water services, easements, rights-of-way, licenses, operating rights and all other property therein whether real, personal or mixed, owned by the District in connection with the facilities being conveyed hereby, as more particularly shown on Exhibit A-1. Some or all of the Water Facilities are located within or near the land shown on the plat that is recorded under 1001751 in the Official Public Records of Waller County, Texas.
- 2. <u>Property Agreements</u>: all of Grantor's right, title, and interests, to the extent Grantor's interests are assignable, in and to any pipeline easements, water line easements, sanitary control easements, public utility easements, and all ingress/egress easements to utility facilities,

to the extent such easements exist, and are associated with the Water Facilities.

3. <u>Intangibles and Other Miscellaneous Rights</u>: all of Grantor's right, title, and interest in and to all (i) plans, models, drawings, specifications, surveys, engineering reports, and other technical descriptions or materials that are in the possession of Grantor or its representatives (the "Plans"); (ii) licenses, permits, franchises, and similar rights issued by any federal, state, or local authority and associated with the Water Facilities (the "Permits"); and (iii) all other rights associated with the Water Facilities (the "Intangibles").

IN WITNESS WHEREOF, the undersigned parties have executed this assignment in multiple original counterparts on the date indicated by each party's signature, and acknowledging that their governing bodies authorized execution of this assignment.

**AGREED TO AND EXECUTED** to be effective as of the date last signed ("Effective Date").

### KICKAPOO FRESHWATER SUPPLY DISTRICT

a water conservation and improvement district

	Ву:	
ATTEST:	President, Board of Directors	;
Control Production		
Secretary, Board of Directors		
(SEAL)		
G & W WATER SUPPLY CORPORATION a Texas non-profit water supply corporation		
by:	Date:	
Jake Marcisz, Board President		

# EXHIBIT B-1 CCN AGREEMENT

### AGREEMENT BY AND BETWEEN **G&W WATER SUPPLY CORPORATION AND** NEW WAVERLY SOUND INVESTMENTS, L.L.C.

This Agreement ("Agreement") is entered into between G&W Water Supply Corporation ("G&W WSC") and New Waverly Sound Investments, L.L.C. ("New Waverly"). It is contemplated by G&W WSC and New Waverly that a district may be created as described below (a "District"), and that New Waverly may assign its right, title and interest in this Agreement to the District or an alternative retail public water supplier which would be expected to execute an assignment and join in this Agreement and be bound by certain provisions of this Agreement; provided, however, failure to assign this Agreement shall in no way serve as a basis for terminating this Agreement.

WHEREAS, New Waverly and/or its assigns owns and is developing an approximate 495-acre tract of land described at Exhibit "A" (the "Property"), and is acquiring additional land in the vicinity of the Property that will not exceed 200 (two hundred) acres ("Additional Property"), both properties which are located in Waller County and within G&W WSC's water service area described by Certificate of Convenience and Necessity No. 12391 ("CCN 12391"); and

WHEREAS, New Waverly will create a district or alternate supplier ("alternate supplier") for purposes of serving the Property and Additional Property with retail public water utility service, until that district's or alternate supplier's indebtedness to be incurred to construct, extend, repair, and/or upgrade Facilities (defined below) to provide water service to these properties can be retired; and

WHEREAS, G&W WSC agrees to dual certification of the Property and Additional Property to allow New Waverly and/or New Waverly's alternate supplier and/or the District to construct Facilities and serve as the sole retail public water supplier to the Property and Additional Property, until the conditions provided in this Agreement are met; and

WHEREAS, G&W WSC would not enter into this Agreement without the express commitment that G&W WSC will receive title to the Facilities, at its option, as soon as the conditions provided in this Agreement are met and that G&W WSC will, at the time those conditions are met, become the exclusive retail supplier of all potable water used on or within the Property and Additional Property; and

WHEREAS, New Waverly would not enter into this Agreement without the express commitment from G&W WSC that it will consent and agree to dual certification of the Property and Additional Property by New Waverly's alternate supplier or the District referenced in this Agreement, and that the District or New Waverly's alternate supplier will be the sole retail water service provider for the Property and Additional Property until conditions provided in this Agreement are met, at which time the CCN overlying these properties shall be transferred back to G&W WSC, if G&W WSC desires for the CCN overlying these properties to be transferred; and



NOW THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, G&W WSC and New Waverly (cumulatively, the "parties" and, singularly, a "party," as specified by the context) agree as follows:

- 1. Recitals. The recitals above are true and correct and incorporated for all purposes as a part of this Agreement and as commitments of the parties to this Agreement.
- 2. Creation of District or Alternate Supplier. New Waverly may take appropriate action to file a petition with Waller County seeking formation of a water control and improvement district (a "WC&ID" or "District"). New Waverly has the right to assign this contract to the District or an alternate supplier, and G&W WSC consents to and accepts such an assignment. Upon assignment, New Waverly shall be fully released and discharged from any obligations under this Agreement, and New Waverly shall provide a copy of the executed assignment to G&W WSC within thirty business days of the effective date of the assignment. After such assignment, all provisions of this Agreement referring to New Waverly shall be construed to refer to the District or alternate supplier as the assignee of New Waverly's right, title and interest in this Agreement. In the event Waller County fails to authorize creation of a WC&ID or if New Waverly seeks to form a special district with authority beyond retail public water supply, New Waverly may pursue formation of a WC&ID, fresh water supply district, or municipal utility district through the Texas Commission on Environmental Quality ("TCEO") or the Texas legislature.
- 3. Facilities. New Waverly, its alternate supplier, and/or the District will construct all facilities and infrastructure required to extend retail public water service to the customers within the Property and Additional Property, including but not limited to water lines, treatment and storage facilities, water well(s), pressure tanks and pumps, and all related infrastructure (the "Facilities"). All Facilities to be constructed will be designed by a qualified engineer, and the design will be subject to the approval of all governmental entities with jurisdiction, and consequently, City of Houston standards. New Waverly agrees to transfer title to the Facilities, as well as fee simple title to well sites to the District and, in exchange, the District must agree to reimburse New Waverly for all costs authorized by law. Alternatively, New Waverly may finance the construction and establish a utility to hold the CCN and operate the system (the "alternate supplier") until the debt incurred to construct the Facilities has been relinquished. The District or alternate supplier will own, operate and maintain the Facilities at a standard substantially similar to other districts in the greater Houston area.
- 4. **Dual Certification of CCN.** Subject to the required approvals of the TCEQ and USDA Rural Development ("USDA RD"), if any, G&W WSC will agree to dual certification of that portion of its CCN 12391 covering the Property and Additional Property. Unless the District or the alternative supplier is refusing service, placed into receivership, or otherwise dissolved and failing to provide service, G&W WSC will not serve the Property and Additional Property to be dually certificated. New Waverly will provide a legal description for the Additional Property upon acquisition of the Additional

Property. There are no active G&W WSC water connections on the Property or within the immediate vicinity and none are expected prior to TCEQ's and USDA RD's respective approvals of this Agreement, if such approvals are required. New Waverly, its alternate supplier, or the District shall prepare and prosecute any and all necessary TCEQ applications to secure TCEQ's approval of dual certification of the Property and Additional Property by G&W WSC and the District or New Waverly's alternate supplier. This dual certification may be requested by any procedure available under Chapter 13 of the Texas Water Code and Chapter 291 of TCEQ's rules. G&W WSC's authorized signature on this Agreement shall evidence its consent to any applications for dual certification and G&W WSC agrees to be a coapplicant in any such application(s), if necessary to comply with TCEQ rules. If, for any reason beyond G&W WSC's and New Waverly's respective intentions and control, the Property or Additional Property cannot be dually certificated, G&W WSC agrees to decertification of its CCN overlying the Property and Additional Property.

. . .

- 5. USDA RD Approval. Within calendar 45 days after the execution of this Agreement, G&W WSC will apply for, and will thereafter diligently seek, permission of its lenders and the USDA RD, if required by USDA RD, to dually certificate the Property from its CCN, or release its CCN overlying the Property if necessary under the terms of Paragraph 4 above. Likewise, G&W WSC will apply for, and will thereafter diligently seek, permission of its lenders and the USDA RD, if required by USDA RD, to dually certificate the Additional Property from its CCN within calendar 45 days of receipt of the legal description of the Additional Property, or release its CCN overlying the Additional Property if necessary under the terms of Paragraph 4 above. The authorized signatures of the parties to this Agreement shall attest to the intent and current efforts of an alternative retail water supplier to construct and operate Facilities to provide retail public water service to the Property and Additional Property.
- 6. Cooperation. Each party shall provide the other with all information, documents, consents, and signatures as may be reasonably necessary for each application, request, or other regulatory form referred to or contemplated in this Agreement. Each party agrees to execute and deliver such further legal documents or instruments and to perform such further acts as are reasonably necessary to effectuate the purposes and intent of this Agreement. Each party shall request that the respective government agency provide their approval notice to all parties. Each party will bear the cost of its own attorneys, consultants, and engineers incurred in fulfilling the terms of this Agreement.
- 7. Commencement of Water Service. Water service from New Waverly's alternate supplier or the District to the customers located within the Property and/or Additional Property will commence after the appropriate regulatory approvals have been received for the respective property to which service will be provided; provided, however, prior to that time, G&W WSC consents to New Waverly's alternate supplier or the District providing water to the Property and/or Additional Property.
- 8. Transfer/Release of Facilities and CCN Upon Debt Pay-Off. It is understood and agreed that the District will issue bonds for purposes of (A) reimbursing New Waverly for the costs of Facilities and well site(s), as authorized by law and, (B) at the costs of Facilities and well site(s), as authorized by law and, (B) at the costs of Facilities and well site(s), as authorized by law and, (B) at the costs of Facilities and well site(s), as authorized by law and, (B) at the costs of Facilities and well site(s), as authorized by law and, (B) at the costs of Facilities and well site(s), as authorized by law and, (B) at the costs of Facilities and well site(s), as authorized by law and, (B) at the costs of Facilities and well site(s), as authorized by law and, (B) at the costs of Facilities and well site(s), as authorized by law and, (B) at the costs of Facilities and well site(s), as authorized by law and, (B) at the costs of Facilities and well site(s), as authorized by law and, (B) at the costs of Facilities and well site(s).

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the District Board's discretion, funding the District's extension, repair, and/or upgrade of the Facilities. It is also understood and agreed that the District may make multiple bond issuances for any of these purposes. Alternatively, New Waverly may finance the costs of Facilities and well site(s). At such time as either New Waverly, its alternate supplier, or the District fully pays off its indebtedness incurred to either pay directly for the cost of Facilities and well site(s) or to reimburse New Waverly, it is agreed that the appropriate party—either New Waverly, its alternate supplier, or the District—will transfer title to all Facilities and well site(s) to G&W WSC, and that the related CCN will be released or transferred back to G&W WSC, as applicable. G&W WSC has the sole option whether to accept or reject title to all Facilities and well site(s) and to the transfer of the CCN back to G&W WSC by relinquishment of dual certification by the District or New Waverly's alternate supplier; provided, however, that G&W WSC must either accept or reject all Facilities, well site(s) and the CCN. Upon release or transfer of the CCN back to G&W WSC by relinquishment of dual certification by the District or New Waverly's alternate supplier, as applicable and at G&W WSC's option as agreed in this paragraph, G&W WSC will continue to provide retail public water service to the customers located on the Property and Additional Property in a manner substantially similar to other districts in the greater Houston area. G&W WSC shall not burden the customers located on the Property and Additional Property with rates that incorporate expenses unrelated to the provision of retail public water service to the Property and Additional Property. G&W WSC commits to structuring rates for customers located within the Property and Additional Property that incorporate only those expenses which are directly related to providing service to the Property and Additional Property.

9. Notices. Any notice required to be given under this Agreement must be in writing and provided by hand delivery or U.S. mail, postage paid, certified, and addressed to the party to be notified with return receipt requested. The addresses of the parties will, until changed as provided below, be as follows:

G&W WSC: G&W Water Supply Corporation

Attn.: General Manager 27907 Joseph Road Hockley, Texas 77447

**NEW WAVERLY:** New Waverly Sound Investments, L.L.C.

c/o Henry Muller P.O. Box 1847

Tomball, Texas 77377

If this Agreement is assigned, the assignee's contact information shall be set forth in the assignment and provided by New Waverly to G&W WSC within thirty business days of the effective date of the assignment. The parties may change their respective addresses by giving at least thirty business days written notice of the new address to the other party.

10. Interpretation and Governing Law. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties. Nothing in this 7.

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Agreement will be construed to confer any right, privilege or benefit on any person or entity not a party hereto or otherwise to create any vested right or third party beneficiary relationship. Each party is represented by legal counsel and has engaged or has had the opportunity to engage its legal counsel as necessary in the formulation, drafting, and approval of this Agreement and, therefore, in the event of any ambiguity, the provisions of this Agreement will not be construed for or against any party. This Agreement will be construed under Texas state law and all obligations of the parties are performable in Waller County, Texas. Venue for any suit arising under this Agreement will be in Waller County. This Agreement may only be amended with the written approval of New Waverly and G&W WSC.

- Process for Defaults and Remedies. If one party believes that the other 11. party is in material default of any other provision of this Agreement, the nondefaulting party will give written notice to the other party, specifying the default and extending the defaulting party 30 calendar days to cure the default or, if the curative action cannot reasonably be completed within 30 calendar days, 30 calendar days to commence the curative action and thereafter to diligently pursue the curative action to completion. If the default is not cured within the 30 calendar day period, or if curative action is not commenced or diligently pursued in the case of curative action that cannot reasonably be completed in 30 calendar days, the nondefaulting party may pursue all remedies, at law or in equity, that it deems appropriate to redress such default. Recognizing that discontinuance of water service presents a potential threat to the health, safety, and welfare and property of customers, the parties will therefore have recourse to all rights and remedies in law and equity available to enforce the terms of this Agreement including, without limitation, the rights specific performance and mandamus actions to enforce the terms of this Agreement.
- 12. Term of Agreement. This Agreement is effective as of the Effective Date defined below, and shall continue for a period of 40 years thereafter and for so long thereafter as this Agreement constitutes substitute collateral or is otherwise pledged as security for G&W WSC's debt referred to in this Agreement, unless earlier terminated in accordance with the provisions hereof or extended by agreement of the New Waverly and G&W WSC.

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement in four original counterparts on the date indicated by each party's signature, but effective this day of October, 2007 (the "Effective Date"), and acknowledging that their governing bodies authorized execution of this Agreement.

G&W WATER SUPPLY CORPORATION, a Texas non-profit water supply corporation

William F. Robinson, President

Date: 10/23/07

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NEW WAVERLY SOUND INVESTMENTS, L.L.C.,

a Texas limited liability company

Rajan Shamdasani

Its Managing Member

PAGE 6 OF 7

# **ASSIGNMENT**

New Waverly hereby assigns the attached Ag Water Supply Corporation ("G&W WSC") and New ("New Waverly")(the "Agreement") to the undersign	Waverly Sound Investments, L.L.C.
( New waverry )(the Agreement ) to the undersign	, and
A STATE OF THE STA	hereby
accepts this Agreement and agrees, as the assig obligations under the Agreement, to all of the terms	mee of New Waverly's rights and
IN WITNESS WHEREOF, the undersigned property to in four original counterparts on the date indice effective this day of acknowledging that their governing bodies authorize	ated by each party's signature, but
NEW WAVERLY SOUND INVESTMENTS, L.L a Texas limited liability company	<b>C.,</b>
By: Date: Rajan Shamdasani Its Managing Member	<u> </u>
DISTRICT OR ALTERNATE SUPPLIER:	
Name of Entity:	
By:Signature	Date:
Print name and Title	
Address	

495.3 ACRE 21,574,710 SQUARE FEET HENRY TROTT SURVEY ABSTRACT 267 WALLER COUNTY, TEXAS

FIELD NOTE DESCRIPTION of a 495.3 acre (21,574,710 square feet) tract of land located in the Henry Trott Survey, Abstract Number 267 and the Shubal Marsh Survey, Abstract 217, Waller County, Texas, said 495.29 acre tract of land being all of a called 226.0 acre tract conveyed by deed to New Waverly Sound Investments, L.L.C., recorded under Volume (Vol.) 1008, Page (Pg.) 253 of the Waller County Deed Records and all of a called 269.3 acre tract described in deed to New Waverly Sound Investments, L.L.C. under Vol. 1008, Pg. 260 of the Waller County Deed Records (W.C.D.R.), said 495.3 acre tract being more particularly described by metes and bounds as follows: (The bearings described herein are oriented to the Texas State Plane Coordinate System, South Central Zone, NAD 1983, based on the Cornerstone Co-op CORS ARP, COR ID CMS1, N.G.S. PID DE8140, theta angle = +01°44°10.5")

BEGINNING at a 1-inch iron pipe found marking the most southerly southeast corner of said 269.3 acre tract in the northerly line of a called 99.787 acre tract described in deed to Versia Mae Halcrow recorded under Vol. 304, Pg. 738, W.C.D.R. and the most southerly east corner of the herein described tract;

THENCE, South 88°48'19" West, along the fenced northerly line of said 99.787 acre tract, a distance of 1,159.85 feet, to a 1/2-inch iron rod found marking a common corner of said 99.787 acre tract and the aforesaid called 226.0 acre tract;

THENCE, South 01°17'59" East, along the fenced westerly line of said 99.787 acre tract, a distance of 1,565.62 feet, to a fence post found marking the southeasterly corner of the herein described tract;

THENCE, South 87°50'39" West, along the fenced southerly line of the aforesaid called 223.6107 acre tract, a distance of 4,127.74 feet (called 4,133:33 feet), to a fence post found marking the southwesterly corner of the herein described tract, being the southeast corner of a called 150 acre tract described in deed to KSA industries, Inc. recorded under Vol. 606, Pg. 493, W.C.D.R.;

THENCE, North 02°17'16" West, along the fenced easterly line of said called 150 acre tract, a distance of 1,573.03 feet (called 1,572.22 feet), to a fence post found in the southerly line of a called 72 acre tract described in deed to KSA Industries, Inc. recorded under Vol. 606, Pg. 493, W.C.D.R.;

THENCE, North 87°11'52" East, along the fenced southerly line of said 72 acre tract, a distance of 259.50 feet (called 258.89 feet), to a fence post found marking a corner of the herein described tract;

THENCE, North 02°34'51" West, along the fenced easterly line of said 72 acre tract, a distance of 1,131.76 feet (called 1,133.33 feet), to a fence post found marking the northwesterly corner of the herein described tract;

THENCE, North 87°43'44" East, along a fenced line, passing at 32.06 feet a 1/2-inch iron rod found marking the southwesterly corner of a called 68.977 acre tract described in deed to Grainger Diagnostic Clinic, recorded under Vol. 332, Pg. 123, W.C.D.R., continuing along the southerly line of said 68.977 acre tract a total for a total distance of 1,083.00 feet (called 1,100.00 feet), to a fence post found marking an interior corner of the herein described tract and in the westerly line of aforesaid called 269.3 acre tract;

THENCE, North 01°26'26" West, along the easterly line of said 68.977 acre tract, a distance of 2,891.31 feet (called 2,891.76 feet), to a 5/8-inch iron rod found in the southerly line of a called 158.609 acre tract described in the deed to Grainger Diagnostic Clinic, P.A. Defined Benefit Pension Plan, recorded under Vol. 332, Pg. 126, W.C.D.R. marking an exterior corner of the herein described tract;

THENCE, North 88°57'46" East, along the southerly line of said called 158.609 acre tract, a distance of 677.90 feet (called 677.93 feet), to a 3-inch iron pipe found marking an angle point in the northerly line of the herein described tract;

THENCE, South 58°05'56" East, along the southerly line of said 158.609 acre tract, a distance of 1,227.33 feet (called 1,228.07 feet), to a 5/8-inch iron rod found marking an angle point in the northerly line of herein described tract;

THENCE, North 86°30'07" East, along the southerly line of said 158.609 acre tract, passing at a distance of 780.53 feet the southwesterly corner of a called 30.000 acre tract described in the deed to Grainger Interests Ltd. recorded under Vol. 893, Pg. 275, W.C.D.R., continuing for a total distance of 1,741.70 feet (called 1,742.14 feet) to a 5/8-inch iron found in the westerly line of a called 31.949 acre tract described in the deed to Richard B. Welch and wife, J. Joan Welch, recorded under Vol. 528, Pg. 595, W.C.D.R. and marking a corner of the herein described tract;

THENCE, South 02°47'33" East, along the westerly line of said 31.949 acre tract, a distance of 585.54 feet (called 585.51 feet), to a 5/8-inch iron rod with an orange plastic cap stamped "West Belt Surveying Inc" set marking the northwesterly corner of a called 20.000 acre "Tract 1" described in the deed to Racedown Partners, Ltd. recorded under Vol. 549, Pg. 256, W.C.D.R., and an angle in the easterly line of the herein described tract;

THENCE, South 01°55'13" East, along the westerly line of said "Tract I", a distance of 663.51 feet (called 663.81 feet), to a 1/2-inch iron found marking the northwesterly corner of a called 20.000 acre "Tract II" described in said deed to Racedown Partners Ltd. and marking a corner of the herein described tract;

THENCE, South 02°05'42" East, along the westerly line of said "Tract II", a distance of 670.68 feet, to a 1/2-inch iron rod found marking the southwesterly corner of said "Tract II" and marking an interior corner of the herein described tract;

THENCE, North 87°44'32" East, along the southerly line of said "Tract II", a distance of 492.62 feet, to a capped 5/8-inch iron rod stamped "Kalkomey Surveying" found marking the northwesterly corner of a called 0.3813 acre tract described in the deed to Racedown Partners recorded under Vol. 783, Pg. 824, of the minutes of the Commissioner's Court of Waller County and marking a corner of the herein described tract;

THENCE, South 02°40'34" East, along the westerly line of said 0.3813 acre tract, a distance of 18.24 feet, to a capped 5/8-inch iron rod stamped "Kalkomey Surveying" found marking the southwesterly corner of said 0.3813 acre tract and a corner of the herein described tract:

THENCE, North 88°27'56" East, along the southerly line of said 0.3813 acre tract, a distance of 787.85 feet, to a capped 5/8-inch iron rod stamped "Kalkomey Surveying" found in the westerly R.O.W. line of the aforesaid Kickapoo Road and marking a corner of the herein described tract:

THENCE, South 00°10'19" West, along the westerly R.O.W. line of said Kickapoo Road, a distance of 23.84 feet, to a 5/8-inch iron rod with an orange plastic cap stamped "West Belt Surveying Inc" set marking a point of curvature of Kickapoo Road and the of the herein described tract;

THENCE, in a southerly direction, along a curve to the left, being the westerly R.O.W. line of said Kickapoo Road, having a radius of 5,767.37 feet, a central angle of 01°23'24" (chord bears, South 03°28'04" East, 139.91 feet) and an arc distance of 139.91 feet, to a 5/8-inch iron rod with an orange plastic cap stamped "West Belt Surveying Inc" set marking a point of tangency of the herein described tract;

THENCE, South 02°42'57" East, along said westerly R.O.W. line, a distance of 711.03 feet, to the northeast corner of a called 10,000 acre tract described in the deed to Ann Staake Rivers Family Limited Partnership, recorded under Vol. 711, Pg.163, W.C.D.R.

THENCE. South 88°50'07" West, along the northerly line of said 10.000 acre tract, passing at a distance of 745.62 feet a 1-inch iron pipe found marking the northwesterly corner of said 10.000 acre tract in the easterly R.O.W. line of the abandoned portion of Old Kickapoo Road R.O.W. as described in Vol. 43, Pg. 366 of the minutes of the Commissioners' Court of Waller County, continuing for a total distance of 768.51 feet, to a capped 1/2-inch iron rod stamped "R.P.L.S. 4194" found in the center line of said abandoned R.O.W. and marking a corner of the herein described tract:

THENCE, South 02°52'20" East, along the center line of said abandoned R.O.W., a distance of 508.62 feet, to a 5/8-inch iron rod with an orange plastic cap stamped "West Belt Surveying Inc" set at the most southerly southeast corner of aforesaid called 269.3 acre tract, being the on northerly line of aforesaid called 226.0 acre tract and marking a corner of the herein described tract;

THENCE, South 88°47'46" West, across said abandoned R.O.W., a distance of 22.46 feet to the westerly R.O.W. line of the abandoned portion of said Old Kickapoo Road and marking a corner of the herein described tract:

THENCE, South 02°13'42" East, along the westerly R.O.W. line of said abandoned portion of said Old Kickapoo Road, a distance of 80.01 feet, to the POINT OF BEGINNING and containing a computed area of 495.3 acres (21,574,710 square feet) of land.

age 3 of 3

West Belt Surveying, Inc. 21020 Park Row. Katy, Texas 77449 (281) 599-8288

Richard Willett Date: 10/23/07

Texas Registration No. 4615

269.3 ACRE 11,731,976 SQUARE FEET HENRY TROTT SURVEY ABSTRACT 267 SHUBAL MARSH SURVEY ABSTRACT 217 WALLER COUNTY, TEXAS

FIELD NOTE DESCRIPTION of a 269.3 acre (11,731.976 square feet) tract of land located in the Henry Trott Survey, Abstract Number 267 and the Shubal Marsh Survey, Abstract Number 217 Waller County, Texas, said 269.3 acre tract of land described deeds to Leland C. Sutton and wife, Karen O. Sutton, recorded under Volume (Vol.) 545, Page (Pg.) 726 and Vol. 43, Pg. 366 of the Waller County Deed Records (W.C.D.R.), said 269.3 acre tract being more particularly described by metes and bounds as follows: (The bearings described herein are oriented to the Texas State Plane Coordinate System, South Central Zone, NAD 1983, based on the Cornerstone Co-op CORS ARP, COR ID CMS1, N.G.S. PID DE8140, theta angle =  $+01^{\circ}44'10.5"$ .)

BEGINNING at a 1/2-inch iron rod found marking the northeast corner of a called 10.000 acre tract described in the deed to the Ann Staacke Rivers Family Limited Partnership recorded under Vol. 711, Pg. 163 W.C.D.R. and being in the westerly Right-Of-Way (R.O.W.) line of Kickapoo Road (based on a width of 80 feet);

THENCE, South 88°50'07" West, along the northerly line of said 10.000 acre tract, passing at a distance of 745.62 feet a 1-inch iron pipe found marking the northwesterly corner of said 10.000 acre tract in the casterly R.O.W. line of the abandoned portion of Old Kickapoo Road R.O.W. as described in Vol. 43, Pg. 366 of the minutes of the Commissioners' Court of Waller County, continuing for a total distance of 768.51 feet, to a capped 1/2-inch iron rod stamped "R.P.L.S. 4194" found in the center line of said abandoned R.O.W. and marking a corner of the herein described tract;

THENCE, South 02°52'20" East, along the center line of said abandoned R.O.W., a distance of 508.62 feet, to a 5/8-inch iron rod with an orange plastic cap stamped "West Belt Surveying Inc" set marking a corner of the herein described tract;

THENCE, South 88°47'46" West, over and across said abandoned R.O.W., passing at 22.46 feet a 5/8inch iron rod with an orange plastic cap stamped "West Belt Surveying Inc" found marking the northeasterly corner of a called 2.3475 agre tract described in the deed to Karen K. Staacke recorded under Vol. 432, Pg. 227, W.C.D.R., continuing along the northerly line of said 2.3475 acre tract, for a total distance of 1,301.91 feet (called 1,299.98 feet), to a 1-inch iron pipe found marking a corner of the herein described tract;

THENCE, South 01°37'01" East, along westerly line of said 2.3475 acre tract, a distance of 79.80 feet (called 80.00 feet), to a 1-inch iron found marking the a corner of the herein described tract in the northerly line of a called 223.6107 acre tract described in the deed to Karen K. Staacke, recorded under to the line of a called 223.6107 acre tract described in the deed to Karen K. Staacke, recorded under to the line of a called 223.6107 acre tract described in the deed to Karen K. Staacke, recorded under to the line of a called 223.6107 acre tract described in the deed to Karen K. Staacke, recorded under to the line of a called 223.6107 acre tract described in the deed to Karen K. Staacke, recorded under to the line of a called 223.6107 acre tract described in the deed to Karen K. Staacke, recorded under to the line of a called 223.6107 acre tract described in the deed to Karen K. Staacke, recorded under to the line of a called 223.6107 acre tract described in the deed to Karen K. Staacke, recorded under to the line of a called 223.6107 acre tract described in the deed to Karen K. Staacke, recorded under to the line of the li Vol. 432, Pg. 229 W.C.D.R.:

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THENCE, South 87°34'03" West, along the northerly line of said 223.6107 acre tract, a distance of 918.88 feet (called 919.45 feet), to a 1/2-inch iron rod found marking a corner of the herein described tract;

THENCE, North 01°42'34" West, along the northerly line of said 223.6107 acre tract, a distance of 1,135.10 feet (called 1,127.78 feet), to a 1/2-inch iron rod found marking a corner in the line of the herein described tract;

THENCE, South 87°49'05" West, along the northerly line of said 223.6107 acre tract, a distance of 1,790.43 feet (called 1,963.89 feet) to a 1/2-inch iron rod found in the westerly line of and marking a corner of the herein described tract;

THENCE, North 01°07'08" West, along the northeline of said 223.6107 acre tract, a distance of 12.59 feet (called 15.00 feet) to a fence corner found marking the southeast corner of a called 68.977 acre tract described in the deed to Grainger Diagnostic Clinic, P.A. Defined Benefit Pension Plan recorded under Vol. 332, Pg. 123, W.C.D.R and marking a corner of the herein described tract;

THENCE, North 01°26'26" West, along the easterly line of said 68.977 acre tract, a distance of 2,891.31 feet (called 2,891.76 feet), to a 5/8-inch iron rod found in the southerly line of a called 158.609 acre tract described in the deed to Grainger Diagnostic Clinic, P.A. Defined Benefit Pension Plan, recorded under Vol. 332, Pg. 126, W.C.D.R. marking a corner of the herein described tract;

THENCE, North 88°57'46" East, along the southerly line of said 158.609 acre tract, a distance of 677.90 feet (called 677.93 feet), to a 3-inch iron pipe found marking an angle point in the northerly line of the herein described tract;

THENCE, South 58°05'56" Bast, along the southerly line of said 158.609 acre tract, a distance of 1,227.33 feet (called 1,228.07 feet), to a 5/8-inch iron rod found marking an angle point in the northerly line of herein described tract;

THENCE, North 86°30'07" East, along the southerly line of said 158.609 acre tract, passing at a distance of 780.53 feet the southwesterly corner of a called 30.000 acre tract described in the deed to Grainger Interests Ltd. recorded under Vol. 893, Pg. 275, W.C.D.R., continuing for a total distance of 1,741.70 feet (called 1,742.14 feet) to a 5/8-inch iron found in the westerly line of a called 31.949 acre tract described in the deed to Richard B. Welch and wife, J. Joan Welch recorded under Vol. 528, Pg. 595, W.C.D.R. and marking a corner of the herein described tract;

THENCE, South 02°47'33" East, along the westerly line of said 31.949 acre tract, a distance of 585.54 feet (called 585.51 feet), to a 5/8-inch iron rod with an orange plastic cap stamped "West Belt Surveying Inc" set marking the northwesterly corner of a called 20.000 acre "Tract 1" described in the deed to Racedown Partners, Ltd. recorded under Vol. 549, Pg. 256, W.C.D.R., and an angle in the easterly line of the herein described tract;

THENCE, South 01°55'13" East, along the westerly line of said "Tract I", a distance of 663.51 feet (called 663.81 feet), to a 1/2-inch iron found marking the northwesterly corner of a called 20.000 acre "Tract II" described in said deed to Racedown Partners Ltd. and marking the a corner of the herein described tract;

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THENCE, South 02°05'42" East, along the westerly line of said "Tract II", a distance of 670.68 feet, to a 1/2-inch iron rod found marking the southwesterly corner of said "Tract II" and marking an interior corner of the herein described tract;

THENCE, North 87°44'32" East, along the southerly line of said "Tract II", a distance of 492.62 feet, to a capped 5/8-inch iron rod stamped "Kalkomey Surveying" found marking the northwesterly corner of a called 0.3813 acre tract described in the deed to Racedown Partners recorded under Vol. 783, Pg. 824, of the minutes of the Commissioner's Court of Waller County and marking a corner of the herein described tract;

THENCE, South 02°40'34" East, along the westerly line of said 0.3813 acre tract, a distance of 18.24 feet, to a capped 5/8-inch iron rod stamped "Kalkomey Surveying" found marking the southwesterly corner of said 0.3813 acre tract and a corner of the herein described tract;

THENCE, North 88°27'56" East, along the southerly line of said 0.3813 acre tract, a distance of 787.85 feet, to a capped 5/8-inch iron rod stamped "Kalkomey Surveying" found in the westerly R.O.W. line of the aforesaid Kickapoo Road and marking a corner of the herein described tract;

THENCE, South 00°10'19" West, along the westerly R.O.W. line of said Kickapoo Road, a distance of 23.84 feet, to a 5/8-inch iron rod with an orange plastic cap stamped "West Belt Surveying Inc" set marking a point of curvature of Kickapoo Road and the of the herein described tract;

THENCE, in a southerly direction, along a curve to the left, being the westerly R.O.W. line of the aforesaid Kickapoo Road, having a radius of 5,767.37 feet, a central angle of 01°23'24" (chord bears, South 03°28'04" East, 139.91 feet) and an arc distance of 139.91 feet, to a 5/8-inch iron rod with an orange plastic cap stamped "West Belt Surveying Inc" set marking the point of tangency of the herein described tract;

THENCE, South 02°42'57" East, along said westerly R.O.W. line, a distance of 711.03 feet, to the POINT OF BEGINNING and containing a computed area of 269.3 acres of land as depicted on the Standard Land Survey dated: December 15, 2006, prepared by West Belt Surveying, Inc., Project No. \$6970001A.

West Belt Surveying, Inc. 21020 Park Row. Katy, Texas 77449 (281) 599-8288 Revised: 10/22/07

OF THE PARTY OF TH

Richard S. Willett Date: 12/15/06

Texas Registration No. 4615

226.0 ACRE 9,842,734 SQUARE FEET HENRY TROTT SURVEY ABSTRACT 267 WALLER COUNTY, TEXAS

., *:* .

FIELD NOTE DESCRIPTION of a 226.0 acre (9,842,734 square feet) tract of land located in the Henry Trott Survey, Abstract Number 267, Waller County, Texas and said 226.0 acre tract of land being all of a called 2.35 acre tract conveyed by deed to Karen K. Staacke, recorded under Volume (Vol.) 432,Page (Pg.) 227 and all of a called 223.6107 acre tract described under Vol. 432, Pg. 229 of the Waller County Deed Records (W.C.D.R.), said 226.0 acre tract being more particularly described by metes and bounds as follows: (The bearings described herein are oriented to the Texas State Plane Coordinate System, South Central Zone, NAD 1983, based on the Cornerstone Co-op CORS ARP, COR ID CMS1, N.G.S. PID DE8140, theta angle = +01°44'10.5")

BEGINNING at a 1-inch iron pipe found marking the southeasterly corner of said 2.35 acre tract in the northerly line of a called 99.787 acre tract described in deed to Versia Mae Halcrow recorded under Vol. 304, Pg. 738, W.C.D.R. and the most southerly east corner of the herein described tract;

THENCE, South 88°48'19" West, along the fenced northerly line of said 99.787 acre tract, a distance of 1,159.85 feet, to a 1/2-inch iron rod found marking a common corner of said 99.787 acre tract and the aforesaid called 223.6107 acre tract;

THENCE, South 01°17'59" East, along the fenced westerly line of said 99.787 acre tract, a distance of 1,565.62 feet, to a fence post found marking the southeasterly corner of the herein described tract;

THENCE, South 87°50'39" West, along the fenced southerly line of the aforesaid called 223.6107 acre tract, a distance of 4,127.74 feet (called 4,133.33 feet), to a fence post found marking the southwesterly corner of the herein described tract in the easterly line of a called 150 acre tract described in deed to KSA Industries, Inc. recorded under Vol. 606, Pg. 493, W.C.D.R.;

THENCE, North 02°17'16" West, along the fenced easterly line of said called 150 acre tract, a distance of 1,573.03 feet (called 1,572.22 feet), to a fence post found in the southerly line of a called 72 acre tract described in deed to KSA Industries, Inc. recorded under Vol. 606, Pg. 493, W.C.D.R.;

THENCE, North 87°11'52" East, along the fenced southerly line of said 72 acre tract, a distance of 259.50 feet (called 258.89 feet), to a fence post found marking a corner of the herein described tract;

THENCE, North 02°34'51" West, along the fenced easterly line of said 72 acre tract, a distance of 1,131.76 feet (called 1,133.33 feet), to a fence post found marking the northwesterly corner of the herein described tract;

THENCE, North 87°43'44" East, along a fenced line, passing at 32.06 feet a ½-inch iron rod found marking the southwesterly corner of a called 68.977 acre tract described in deed to Grainger Diagnostic Clinic, recorded under Vol. 332, Pg. 123, W.C.D.R., continuing along the southerly line of said 68.977 acre tract a total distance of 1,083.00 feet (called 1,100.00 feet), to a fence post found marking a corner page 1.000.00 feet).

RAS

along the northerly line of the herein described tract and in the westerly line of a called 253.242 acre tract described in deed to Leland C. Sutton, Sr. and wife Karen O. Sutton, recorded under Vol. 545, Pg. 726, W.C.D.R.;

THENCE, South 01°07'08" East, along the fenced westerly line of said called 253.242 acre tract, a distance of 12.59 feet (called 15.00 feet) to a 1/2-inch iron rod found marking a corner of said 253.242 tract;

THENCE, North 87°49'05" East, along the fenced line of said called 253.242 acre tract, a distance of 1,790.43 feet (called 1,963.89 feet), to a 1/2-inch iron rod found marking a corner of the herein described tract;

THENCE, South 01°42'34" East, along the fenced line of said called 253.242 acre tract, a distance of 1,135.10 feet (called 1,127.78 feet), to a 1/2-inch iron rod found marking an interior corner of the herein described tract;

THENCE, North 87°34'03" East, along the fenced line of said called 253.242 acre tract a distance of 918.88 feet (called 921.22 feet), to a 1½-inch iron pipe found marking the southwesterly corner of the aforesaid called 2.35 acre tract;

THENCE, North 01°37'01" West, along the fenced line of said called 253.242 acre tract, a distance of 79.80 feet (called 80.00 feet), to a 1½-inch iron pipe found marking the northwesterly corner of said 2.35 acre tract and a corner of the herein described tract;

THENCE, North 88°47'46" East, along the fenced line of said called 253.242 acre tract, a distance of 1,279.45 feet (called 1,278.74 feet), to a 5/8-inch iron rod with an orange plastic cap stamped "West Belt Surveying Inc" set in the westerly line of Old Kickapoo Road (based on a width of 40 feet) marking the northeast corner of said 2.35 acre tract and the most northerly east corner of the herein described tract;

THENCE, South 02°13'42" East, along the westerly Right-of-Way line of said Old Kickapoo Road, a distance of 80.01 feet, to the POINT OF BEGINNING and containing a computed area of 226.0 acres (9,842,734square feet) of land as depicted on the Land Title Survey dated: November 30, 2006, prepared by West Belt Surveying, Inc., Project No. S6970001A.

West Belt Surveying, Inc. 21020 Park Row. Katy, Texas 77449 (281) 599-8288 Corrected 12/15/06

. .

Richard S. Willett

. Willett Date: 11/30/06

Texas Registration No. 4615



# EXHIBIT B-2 CCN AGREEMENT ASSIGNMENT

#### **ASSIGNMENT**

New Waverly hereby assigns the attached Agreement entered into between G&W Water Supply Corporation ("G&W WSC") and New Waverly Sound Investments, L.L.C. ("New Waverly")(the "Agreement") to the undersigned Kickapoo Fresh Water Supply District of Waller County, and Kickapoo Fresh Water Supply District of Waller County hereby accepts this Agreement and agrees, as the assignee of New Waverly's rights and obligations under the Agreement, to all of the terms and conditions of the Agreement.

IN WITNESS WHEREOF, the undersigned parties have executed this assignment in four original counterparts on the date indicated by each party's signature, but effective this 25th day of \_February\_\_\_\_\_\_, 20\_l\(\tilde{l}\) (the "Effective Date"), and acknowledging that their governing-bodies authorized execution of this assignment.

NEW WAVERLY SOUND INVESTMENTS, L.L.C.,
a Texas limited liability company

By: Date: 2 - 25 - 10

Rajan Shamdasani
Its Managing Member

KICKAPOO FRESH WATER SUPPLY DISTRICT OF WALLER COUNTY,
a Water Control and Improvement District operating pursuant to Article XVI,

By: Date: 2/27/0

Sukhjinder Dhother, M.D.
President, Board of Directors
Kickapoo Fresh Water Supply
District of Waller County

Address: <u>C/o Allen Boone Humphries</u> Robinson LLP 3200 Southwest Frwy, Ste. 2600 Houston, TX 77027

\* Within 30 (thirty) business days of the Effective Date of this assignment, New Waverly Sound Investments must forward the fully executed assignment to G&W Water Supply Corporation, Attn.: General Manager, 27907 Joseph Road, Hockley, Texas, 77447.

# EXHIBIT C FINANCING AGREEMENT

# DEVELOPMENT FINANCING AGREEMENT BETWEEN KICKAPOO FRESH WATER SUPPLY DISTRICT OF WALLER COUNTY AND NEW WAVERLY SOUND INVESTMENTS, LLC,

THIS AGREEMENT is entered into as of the 26<sup>th</sup> day of August, 2008, by and between KICKAPOO FRESH WATER SUPPLY DISTRICT OF WALLER COUNTY, a political subdivision of the State of Texas, organized pursuant to the provisions of Article XVI, Section 59 of the Texas Constitution and Chapters 49 and 54 of the Texas Water Code, as amended (hereinafter called the "District") and NEW WAVERLY SOUND INVESTMENTS, LLC, a Texas limited liability company (hereinafter called "New Waverly").

### **RECITALS**

WHEREAS, the District was created by order of the Commissioners Court of Waller County and was organized for the purpose of providing water and sewer facilities to serve the land within its boundaries;

WHEREAS, the District will be authorized, following voter approval, by an election to be held within the District on November 4, 2008, to issue bonds for the purpose of acquiring and constructing water, sewer, and drainage facilities, and roads to serve the land within its boundaries;

WHEREAS, New Waverly is a developer of the land within the District and proposes to develop its property within the District (the "Tract");

WHEREAS, the parties desire to enter into an agreement to provide the terms and conditions by which the Tract will be developed;

WHEREAS, the Board of Supervisors of the District has determined that it is in the best interest of the District to provide for the design and construction of the water, sewer, and drainage facilities, and roads to serve the Tract; and

WHEREAS, New Waverly is agreeable to advancing funds to or on behalf of the District for the purpose of financing the water, sewer, and drainage facilities, and roads to serve the Tract;

### **AGREEMENT**

Now, Therefore, for and in consideration of the mutual promises, covenants, obligations and benefits of this Agreement, the District and New Waverly contract and agree as follows:

### **ARTICLE I**

### **CONSTRUCTION OF THE PROJECT**

Section 1.01: The Project. The Project shall be and include the design and construction of the water, sewer, and drainage facilities, and roads to serve the Tract, whether designed and constructed in phases or at one time, including: the District's water distribution and supply and sanitary sewer collection and treatment facilities, storm drainage facilities, and roads necessary to serve the Tract; water and wastewater treatment plant capacity to serve the Tract; and all related engineering fees and expenses. New Waverly agrees to cooperate with the District's engineers and to keep the District's engineers fully advised of its development plans.

Section 1.02: Design of the Project. All facilities to be constructed as a part of the Project shall be designed by the District's engineers and approved by the District. The design of the Project shall be subject to the approval of all governmental entities with jurisdiction, including, without limitation, the City of Houston, Waller County, the Texas Commission on Environmental Quality (the "TCEQ"), and the Texas Department of Health.

### Section 1.03: Construction and Acquisition of Project.

- (a) The Project shall be constructed, and all easements, equipment, materials and supplies required in connection therewith shall be acquired, in the name of the District; provided, however, all construction contracts entered into by the District shall be guaranteed for payment by New Waverly by execution of a special provision to the construction contracts.
- (b) The Project shall be installed, the construction contracts therefor awarded, and payment and performance bonds obtained all in the manner provided by general law for fresh water supply districts and water control improvement districts and in full compliance with the rules and regulations of the TCEQ and any other local, State or federal agencies having jurisdiction.
- (c) The Board of Supervisors of the District shall review all bids received for the construction of the Project and shall authorize the award of the construction contracts to the most responsible bidder.
- (d) The District's engineers shall serve as project engineer for the District on the Project. The District's engineers shall advise and make recommendations to the Board of Supervisors upon the award of construction contracts on the Project, shall make monthly reports to the Board on the progress of construction, shall approve all pay estimates submitted, shall submit all change orders to the Board for approval, and

shall provide the appropriate level of inspection during the construction of the Project. No changes to the plans and specifications or change orders to any construction contracts shall be made without approval by both the District's engineers and the Board of Supervisors of the District, which approval shall not be unreasonably withheld.

- (e) The Project shall be constructed in public rights-of-way or utility easements, which easements shall be dedicated by New Waverly, if required, without reimbursement, unless otherwise allowed by the rules of the TCEQ.
- (f) The Project may be constructed in stages or by sections pursuant to development plans of New Waverly.

Section 1.04: Advances by New Waverly. New Waverly hereby agrees to promptly advance sufficient funds to the District, or to pay such funds on behalf of the District, as such funds become due for the Project, including without limitation, all costs of design, engineering, materials, labor, construction, inspection and easements arising in connection with the Project; all payments arising under any contracts entered into as a part of the Project; all costs incurred in connection with obtaining governmental approvals, certificates or permits required as a part of the Project; and all out-of-pocket expenses incurred in connection therewith.

Section 1.05: Subsequent Letter Agreements. If the Project is constructed in phases or as advances are made, the District shall present and New Waverly shall execute a letter agreement for each phase or advance authorized or approved by New Waverly substantially in the form attached as **Exhibit A**. The purpose of the letter agreement is to confirm that New Waverly will pre-finance all associated costs and will be reimbursed by the District in accordance with the terms and conditions of this Agreement.

### **ARTICLE II**

### REIMBURSEMENT FOR FUNDS ADVANCED

### Section 2.01: Reimbursement.

(a) Subject to sufficient authorized bonds, the District agrees to make all reasonable efforts to obtain approval for the sale of bonds and to sell the bonds for the purpose of repaying New Waverly at the earliest feasible date possible in accordance with this Article II. The District agrees to make partial reimbursement to New Waverly if the conditions set forth herein are satisfied; provided, however, the District shall not be required to sell bonds in an amount less than \$1,000,000 unless otherwise recommended by the District's financial advisor or unless such bonds are the final and full installment of reimbursement to New Waverly. The District shall not be obligated to submit an application to the TCEQ to sell bonds to reimburse New Waverly for the

Project and for other advances made pursuant to this Agreement in accordance until the following have occurred:

- (1) The economic feasibility rules of the TCEQ are satisfied;
- (2) The TCEQ approves the issuance and sale of the bonds;
- (3) The Attorney General of Texas approves the bonds;
- (4) The Comptroller of Public Accounts of the State of Texas registers the bonds;
- (5) The bonds can be marketed in the manner and at the time or times advised by the District's financial advisor; provided, however, that the District is not obligated to sell the bonds at a net effective interest rate exceeding two percent (2%) above the highest average interest rate reported by the <u>Daily Bond Buyer</u> in its weekly "20 Bond Index" during the one-month period next preceding the date notice of sale of the bonds is given; and
- (6) The District's financial advisor has determined that the assessed valuation of the Tract and all taxable improvements constructed and projected thereon would independently support the issuance of the bonds to reimburse New Waverly at a debt service tax rate such that the Debt Service Tax Rate of the District does not exceed \$1.50 per \$100 Assessed Value.
- (b) In order to determine whether the economic feasibility rules of the TCEQ are met, and whether the assessed value is sufficient per Section 2.01(a)(6), the District shall at least once each year request a certificate of estimated assessed valuation from the Waller County Appraisal District. The District shall pay for costs associated with preparation of the estimates needed in connection with determining the feasibility of proceeding with a bond application or the issuance of bonds.
- (c) The percentage of reimbursement to New Waverly by the District shall be determined by the rules of the TCEQ existing at the time of sale of the bonds and the District shall be obligated to request TCEQ approval for 100% reimbursement of costs and to pay such percentage of reimbursement if allowed under the TCEQ Rules, if applicable.
- (d) Upon consummation of the sale of the bonds and approval by the Board of Supervisors of the reimbursement audit performed in connection with each sale, the District agrees that it will pay New Waverly for all sums advanced to, or on behalf of, the District to the maximum extent permitted under the Rules of the TCEQ, if

applicable, including payment of "developer interest" on the funds so advanced to or paid on behalf of the District.

Section 2.02: New Waverly 's Obligations. New Waverly shall comply with all of the conditions of the Waller County Commissioner's Court Order granting the creation of the District and with all requirements of the TCEQ, as the same now exist or may hereafter exist. New Waverly further agrees that the reimbursement by the District will be in stages as portions of the Tract are developed and as the assessed valuation of the District increases. In connection with the reimbursement(s) to New Waverly, New Waverly must provide all information that may be required by the District, its financial advisor, engineers or attorney in connection with the preparation of the Preliminary Official Statement or other disclosure documents related to the sale of the bonds and must provide sufficient information to the District's auditor in order that the District's auditor may perform a reimbursement audit.

Section 2.03: Reimbursement by District. Upon consummation of the sale of the bonds and approval by the Board of Supervisors of the reimbursement audit, the District agrees that it will pay New Waverly for all sums advanced to, or on behalf of, the District to the maximum extent permitted under the Rules of the TCEQ, including payment of interest on the funds so advanced to or paid on behalf of the District.

<u>Section 2.04</u>: <u>Alternative Source of Funds</u>. In the event that the District determines that it has surplus funds available from prior bond issues or operating funds which may be used for such purposes, the District may utilize such funds to reimburse New Waverly rather than to issue bonds; provided, however, the District and New Waverly shall be required to substantially comply with the same terms and conditions as if bond funds were to be issued for such purpose.

### **ARTICLE III**

### REPRESENTATIONS

Section 3.01: Representations by New Waverly. New Waverly represents that:

- (a) This Agreement, the transactions contemplated herein, and the execution and delivery of this Agreement have been duly authorized by the articles of incorporation of New Waverly.
- (b) This Agreement and the representations and covenants contained herein, and the consummation of the transactions contemplated herein, will not violate or constitute a breach of any contract or other agreement to which New Waverly is a party.

(c) New Waverly will not claim any agricultural or open space use valuation, or any other type of exemption or valuation, for the Tract that would reduce the assessed value of the Tract below its market value for purposes of ad valorem taxation by the District. Notice of the waiver of this special valuation shall be executed and delivered to the District as required by TCEQ Rules. If any such use, exemption or valuation is claimed on the Tract, this Agreement shall automatically terminate.

<u>Section 3.02</u>: <u>Representations by District</u>. The District represents and covenants that it will use its best efforts to:

- (a) prepare the necessary materials and reports to be filed with the TCEQ for approval of a bond issue in an amount sufficient to, among other things, reimburse New Waverly in accordance with this Agreement at the time the water, sewage, and drainage facilities and paving within a specific portion of the Tract are certified as complete by the District's engineer, including a request for an exemption from the developer contribution requirements;
  - (b) market and sell its bonds in the manner set forth herein;
  - (c) obtain the Attorney General of Texas approval of the bonds; and
  - (d) reimburse New Waverly upon the terms set forth herein at the earliest practicable time.

The District further represents and warrants that it will not impose impact fees, capital recovery fees or similar charges to recover the project cost, but the District may impose its usual and customary tap, connection and user fees.

### ARTICLE IV

### **DEFAULT**

<u>Section 4.01</u>: <u>Default by New Waverly</u>. In the event of default by New Waverly, the District shall have the option to:

- (a) assume the outstanding contracts and prosecute construction of the facilities to conclusion. In the event the District exercises this option, the District shall pay to New Waverly the amount of the advances, less all amounts paid to contractors, and all out-of-pocket expenses incurred in prosecuting completion of the facilities; and
  - (b) seek or pursue all other remedies provided by law.

<u>Section 4.02</u>: <u>Default by Either Party</u>. In the event of default by either party hereto, either party may employ attorneys to pursue its legal rights; and the prevailing party shall be entitled to payment by the other party of all reasonable attorneys' fees incurred by the prevailing party.

### **ARTICLE V**

### **MISCELLANEOUS**

<u>Section 5.01</u>: <u>Severability</u>. The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons or circumstances shall not be affected thereby.

<u>Section 5.02</u>: <u>Modification</u>. This Agreement shall be subject to change or modification only with the mutual written consent of New Waverly and the District.

Section 5.03: Assignability. This Agreement shall not be assignable by New Waverly without the prior written consent of the Board of Supervisors of the District, which consent shall not be unreasonably withheld. Upon the request of New Waverly, the District shall acknowledge an assignment of the right to reimbursement hereunder to a lender of New Waverly, so long as said lender is not granted a lien upon any of the facilities constructed as part of the Project and agrees in writing to execute a release and receipt of payment upon any reimbursement.

<u>Section 5.04</u>: <u>Captions</u>. The captions appearing at the first of each numbered section or paragraph in this Agreement shall never be considered or given any effect in construing this Agreement.

<u>Section 5.05</u>: <u>Applicable Law</u>. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas.

<u>Section 5.06</u>: <u>Parties at Interest</u>. This Agreement shall be for the sole and exclusive benefit of the parties hereto and shall never be construed to confer any benefit to any third party, except the successor in title to the Tract.

Section 5.07: Term. Except as otherwise provided herein, this Agreement shall be in force and effect from the date of execution hereof for a term of forty (40) years or until the transactions contemplated herein are consummated, whichever first occurs.

Section 5.08: Force Majeure. If either party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, then the

obligations of either party to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. Such cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure," as used herein, shall include, without limitation of the generality thereof, acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States or of the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of water necessary for operation of the sewer system, or of the District to receive waste, and any other inabilities of either party, whether similar to those enumerated or otherwise, which are not within the control of either party, which either party could not have avoided by the exercise of due diligence and care. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of either party, and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demand of the opposing party or parties when such settlement is unfavorable to it in the judgment of the affected party.

[EXECUTION PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto may execute this Agreement in multiple copies, each of equal dignity, as of the date and year set forth on the first page hereof.

EXECUTED this 26th day of August, 2008.

KICKAPOO FRESH WATER **SUPPLY** DISTRICT OF WALLER COUNTY

Name: Sukhjinder Ohother, M.D. Title: President, Board of Supervisors

ATTEST:

Rajesh Chand wani

Title: Asst. Secretary, Board of Supervisors



IN WITNESS WHEREOF, the parties hereto may execute this Agreement in multiple copies, each of equal dignity, as of the date and year set forth on the first page hereof.

EXECUTED this 26th day of August, 2008.

NEW WAVERLY SOUND INVESTMENTS, LLC, a Texas limited liability company

Bv:

Rajan Shamdasani, Manager

## **EXHIBIT A**

KICKAPOO FRESH WATER SUPPLY DISTRICT OF WALLER COUNTY c/o Allen Boone Humphries Robinson LLP 3200 Southwest Freeway Suite 2600 Houston, Texas 77027-9944

[Date]

NEW WAVERLY SOUND INVESTMENTS	S, LLC
Re: Financing for the construction of Dis WATER SUPPLY DISTRICT OF WA Gentlemen:	
"District") and NEW WAVERLY SOUN liability company ("New Waverly") of Construction of Facilities (the "Financian provide for the financing and construction District. The District and New Waverly 1	PLY DISTRICT OF WALLER COUNTY (the ND INVESTMENTS, LLC, a Texas limited entered into a Financing Agreement for g Agreement") dated August 26, 2008, to a of District facilities to serve land within the have determined to proceed with the design in
accordance with the Financing Agreement.	. The District has entered into a contract with
advantageous to the District and will resul	, the contractor who will be the most t in the best and most economical completion
of the District's facilities, on	, in the amount of
\$ for	construction of
pre-finance the construction to be reim Agreement. [New Waverly has agreed to the amount of \$].	construction of New Waverly has agreed to bursed in accordance with the Financing make an operating advance to the District in
This agreement was duly authorize the District held on the day of	d at a meeting of the Board of Supervisors of, 200
	Very truly yours,
	KICKAPOO FRESH WATER SUPPLY DISTRICT OF WALLER COUNTY
	By:
	By: President, Board of Supervisors

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	TO	AND	ACCEPTED	THIS	DAY	OF _		
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# EXHIBIT D-1 WHOLESALE WATER CONTRACT

WHOLESALE WATER PURCHASE CONTRACT

between

Spring Preserve Water Company, LLC

and

Kickapoo Fresh Water Supply District of Waller County,

a water control and improvement district

## WHOLESALE WATER PURCHASE CONTRACT

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## List of Exhibits

Exhibit 1 - Well Site Survey

Exhibit 2 - Demonstration of Capacity of District's Authorized Representative

This Wholesale Water Purchase Contract is made and entered into this \_\_\_\_\_\_ day of \_\_\_\_\_, 2010 by and between the SPRING PRESERVE WATER COMPANY, LLC ("SPWC"), a Texas limited liability company, and the KICKAPOO FRESH WATER SUPPLY DISTRICT OF WALLER COUNTY (the "District"), a water conservation and improvement district organized and empowered under Article XVI, Section 59 of the Texas Constitution and governed by Chapter 51 of the Texas Water Code. Throughout this Agreement SPWC and the District may be referred to jointly as the Parties, and shall each be considered a Party.

### RECITALS

- 1. SPWC is a Texas limited liability company with access to productive groundwater formations through facilities located on that certain 1.262 acre tract of land located in the Shubal Marsh Survey, Abstract No. 217, Waller County, Texas, that is more thoroughly described the real property survey labeled Exhibit No. 1, attached hereto and incorporated herein by this reference for all purposes;
- The District desires to purchase, and SPWC is willing to sell, wholesale potable water produced from facilities located on the Well Site, subject to the terms and conditions of this Agreement; and
- 3. The District desires to beneficially use the water purchased under the terms of this Agreement by making it available for purchase by residential, commercial, and other classes of retail customers served by the District's public water supply system.

### **AGREEMENT**

For and in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, SPWC and the District hereby agree as follows:

### SECTION 1. DEFINITIONS

- "Agreement" shall mean this Wholesale Water Purchase Contract, including exhibits and any amendments made thereto.
- "Actual Monthly Quantity" shall mean the actual volume of water delivered by SPWC to the District at the point of delivery.
- 3) "Bluebonnet GCD" shall mean the Bluebonnet Groundwater Conservation District, or its successor in interest, a conservation and reclamation district organized under Article XVI, Section 59 of the Texas Constitution, and operating pursuant to Chapter 36 of the Texas Water Code and its enabling legislation.
- 4) "Calendar Month" shall mean the period beginning at 12:00 a.m. on the first day of each month and ending at 12:00 a.m. of the first day of the following month.

- "Commission" shall mean the Texas Commission on Environmental Quality and its predecessor and successor agencies.
- 6) "Contract Quantity" shall mean the maximum annual amount of Water available for purchase to the District under this Agreement, which shall be the lesser of the following:
  - a) 44,712,500 gallons of Water; or
  - b) the maximum annual amount of Water SPWC is authorized to produce at any time under the terms of Bluebonnet GCD Permit for Well No. BWLL-0048, as may be amended.
- "District's Office" shall mean the District's primary place of business, the offices of Allen Boone Humphries Robinson LLP, 3200 Southwest Freeway, Suite 2600, Houston, Texas 77027.
- 8) "Effective Date" shall mean the date that this Agreement is fully executed and becomes legally binding on the Parties. The Effective Date is the date that this Agreement is signed by the authorized representative of SPWC, as indicated in Section 33.
- 9) "Fiscal Year" shall mean each one (1) year period beginning on September 1 and ending on August 31 of the following calendar year during the Term of this Agreement.
- 10) "Maximum Delivery Rate" is the maximum rate at which SPWC may be called upon by the District to deliver water to the Point of Delivery, which shall be expressed in terms of gallons per minute. The Maximum Delivery Rate shall not exceed \_\_\_\_ gallons per minute or any limits set forth in SPWC's permit(s) issued by the Bluebonnet GCD.
- 11) "Point of Delivery" shall be the point at which possession of and title to Water passes from SPWC to the District, which shall be at the point described in Section 10.
- 12) "SPWC's Office" shall mean SPWC's principal place of business, the offices of Lloyd Gosselink Rochelle & Townsend, P.C. c/o Michael A. Gershon, 816 Congress Avenue, Suite 1900, Austin, Texas 78701.
- 13) "Water" shall mean groundwater produced by mechanical means from the Evangeline formation using facilities located on the Well Site.
- 14) "Water Production and Treatment Plant Revenue Requirement" or "WPTPRR" shall mean the capital cost, operations and maintenance costs, and repair and replacement costs associated with the purchase, acquisition, improvement and maintenance of the Well Site, the construction, completion, equipment, operation and maintenance of any water production wells and related facilities, and water treatment facilities located on the Well Site. The WPTPRR does not include Water Use Fees.
- 15) "Water Rate" shall mean the rate in dollars per thousand gallons that the District shall pay to SPWC for Water under this Agreement and shall be calculated by

SPWC based on the WPTPRR in a manner that conforms with all applicable law, including but not limited to depreciation expense. The Parties agree that the Water Rate may include SPWC's costs incurred to secure all regulatory approvals, including but not limited to permits and approvals from TCEQ and the Bluebonnet GCD.

16) "Water Use Fee" shall mean all fees legally imposed by the Bluebonnet GCD under the provisions of its rules for the production of groundwater from the facilities located on the Well Site. The Water Use Fee amount shall be the total amount, expressed in U.S. Dollars, that SPWC is under a legal obligation to pay for each 1,000 gallons of groundwater delivered to the District at the Point of Delivery, regardless of whether the Bluebonnet GCD has demanded payment from SPWC.

"Well Site" shall mean that certain 1.262-acre tract of land located in the Shubal Marsh Survey, Abstract No. 217, Waller County, Texas, that is more thoroughly described the real property survey labeled Exhibit No. 1, attached hereto and incorporated herein by this reference for all purposes, and all improvements thereupon, including all groundwater production, water treatment, water storage, and water conveyance facilities up to the Point of Delivery.

### **SECTION 2. TERM**

This Agreement shall remain in force and effect until the fifteenth (15th) anniversary of the Effective Date, unless sooner terminated because SPWC and the District agree to terminate this Agreement or this Agreement is terminated pursuant to its terms. SPWC mutually shall have the sole option to renew this Agreement for four (4) additional five-year (5-year) terms. Thereafter, the Parties may agree in writing to renew this Agreement.

### **SECTION 3. EQUITY**

The District acknowledges and agrees that it will accrue no equity or any other interest in, or pursue condemnation of, the Well Site or any other assets of SPWC, including but not limited to any Bluebonnet GCD permit(s) issued to SPWC, as may be amended, as a result of payment or other performance by the District of its obligations under this Agreement.

### **SECTION 4. VOLUME**

Subject to the limitations and conditions described in this Agreement, SPWC agrees to sell to the District a daily volume of Water produced from the Well Site, as needed, not to exceed the Contract Quantity.

SPWC is under no obligation to the District, and the District may not obligate SPWC, to seek amendments to SPWC's Bluebonnet GCD Permit(s) that would increase the maximum volumes of groundwater that may be produced under its current terms. The District may neither make demands upon SPWC for more than the Contract Quantity nor may it demand that SPWC exceed the Maximum Delivery Rate without a written amendment to this Agreement manifesting the Parties' intent in that regard.

### SECTION 5. RATES AND COMPENSATION

Beginning on the Effective Date, the District shall be obligated to pay to SPWC:

- A. An amount equal to the Water Rate for the Contract Quantity multiplied by the actual volume of Water delivered by SPWC to the District pursuant to this Agreement; and
- B. All Water Use Fees for Water taken by the District pursuant to this Agreement (cumulatively, the "Base Obligation").

### SECTION 6. BILLING AND PAYMENT

On or before the 10th calendar day of each Calendar Month, SPWC shall render to the District at the District's Office, or such other place as designated by the District in writing, by depositing with the United States Postal Service using first class mail a statement for:

- An amount equal to the Actual Monthly Quantity in the immediately preceding month multiplied by the Water Rate; and
- B. The Water Use Fee multiplied by each 1,000 gallons of Water taken by the District at the Point of Delivery during the immediately preceding month.

Payment of such statement shall be due and payable at the SPWC's Office, or such other place as designated by SPWC in writing, on or before the 30th calendar day after receipt of such statement.

### SECTION 7. REASSESSMENT OF THE WATER RATE

During the month of July in each calendar year during the Term of this Agreement, SPWC will adopt a budget for the ensuing Fiscal Year. Within two (2) weeks after adopting a budget, SPWC will advise the District of the Water Rate for the ensuing Fiscal Year.

### SECTION 8. MEASURING EQUIPMENT

At the District's own cost and expense, the District shall furnish, operate and maintain at the Point of Delivery, measuring equipment, properly equipped with meters and devices of standard types for measuring accurately the quantity of Water taken by the District under this Agreement, with a capacity to measure such quantity of Water in accordance with then-current water industry standards or as prescribed by standards of the American Water Works Association. However, in no case shall the accuracy tolerance of such equipment exceed five percent (5%). The District agrees to have said meters calibrated as necessary, but at least every two (2) years, by qualified personnel. Such qualified personnel shall provide a certified report to the District and SPWC concerning such calibration. The District shall notify SPWC fifteen (15) days in advance of the date for such meter calibration and SPWC shall have the right to be present and witness said calibration. The measuring equipment and the calibration thereof shall be approved by the District and SPWC in writing, but the measuring equipment shall remain the property of the District.

During any reasonable hours SPWC shall have access to such measuring equipment so installed. SPWC shall have access to all records pertinent to determining the measurement and quantity of Water actually delivered. The reading of the meter shall be done by SPWC, or SPWC's designate, for the purpose of billing. The District agrees that SPWC may furnish, install, operate and maintain check meters, and that said check meters shall remain the property of SPWC. The District also agrees that the design and construction of its metering equipment will facilitate SPWC's installation and operation of check meters.

If, for any reason, the District's measuring equipment is out of service or out of calibration and the amount of Water diverted hereunder cannot be ascertained or computed by the reading thereof, the quantity of Water diverted during such period shall be estimated and/or determined by SPWC based on the best data available. Information from SPWC's check meter shall be deemed the best data available. If no information from check meters is available, information from SPWC's flow meter used to report the production of Water to the Bluebonnet GCD shall be deemed the next best data available. In any event, estimations made by SPWC pursuant to this paragraph shall be final and conclusive, and the Water Use Fee for the affected Calendar Month shall be calculated by SPWC accordingly. If the District's measuring equipment is out of service for thirty (30) days or more, SPWC may purchase, install and maintain any required measuring equipment, as determined by SPWC, and charge the expense thereof to the District, for which the District shall remit payment immediately upon receipt of SPWC's invoice.

### SECTION 9. DISPUTE REGARDING RATES AND BILLING

If the District at any time disputes the amount to be paid to SPWC pursuant to this Agreement, the District shall nevertheless promptly make the disputed payment or payments; but, if it is subsequently determined by agreement or court decision that the disputed amount paid by the District should have been less or more, SPWC shall promptly recalculate the District's past, current, and future payments and submit invoices reflecting such and requiring payment or reimbursement in a manner ensuring the District or SPWC will recover the amount due within a period of time not to exceed twelve (12) months.

If a court, the Commission, or any federal or state regulatory authority finds that SPWC's rates or policies for delivering Water to the District under this Agreement are unreasonable or otherwise unenforceable, SPWC has the option to terminate this Agreement without any liability on the part of SPWC to the District. By signing this Agreement, the District stipulates and agrees that SPWC will be prejudiced if the District avoids the obligation to pay the rates for Water specified in this Agreement while accepting the benefits of obtaining Water from SPWC. Nothing in this Agreement shall be construed as constituting an undertaking by SPWC to furnish Water to the District except pursuant to the terms of this Agreement. If the District initiates or participates in any proceeding regarding SPWC's rates and policies under this Agreement and advocates a position that is adverse to SPWC and SPWC prevails, the District shall pay SPWC for its expenses, including attorneys' fees, expert and consultant fees, and costs in the proceeding within thirty (30) calendar days after SPWC's request for payment. The District stipulates and agrees that the rates and policies specified in this Agreement are just, reasonable, and without discrimination.

### SECTION 10. POINT OF DELIVERY.

The Point of Delivery for the District shall be a four-inch (4") meter and twelve-inch (12") connection generally located near the right-of-way of Hegar Springs Parkway. The District shall construct, maintain, and operate, at its own expense, all facilities and equipment necessary to receive and take all potable Water delivered to it pursuant to this Agreement. All facilities and equipment must be inspected and approved by SPWC and construction of any facilities connecting to the Point of Delivery must meet SPWC's standard specifications. No change in the type or size of meters or connections shall be allowed unless this Agreement has been amended accordingly.

### SECTION 11. FACILITIES FOR DELIVERING WATER

The District shall provide, at the District's expense, the facilities required to take, transport and deliver Water from the Point of Delivery to the District's customers and other places of use. All facilities and property of the District used by the District or relating to the use or delivery of Water contemplated by this Agreement are subject to damage. The District acknowledges the possibility of damage and assumes the risk of such an occurrence.

### SECTION 12. QUALITY

All Water delivered by SPWC and received by the District pursuant to the terms of this Agreement shall be potable water. SPWC is obligated to treat such water so as to meet the standards of all state and federal agencies having jurisdiction over water quality. SPWC and the District shall cooperate, each within its legal powers, to prevent, to the extent practicable, the pollution and contamination of any underground sources of drinking water, as that phrase is defined in title 30, Chapter 331 of the Texas Administrative Code, from which Water is produced. THE DISTRICT ACKNOWLEDGES AND AGREES THAT SUCH WATER IS SUITABLE FOR ITS NEEDS. SPWC EXPRESSLY DISCLAIMS ANY WARRANTY AS TO THE QUALITY OF THE WATER OR SUITABILITY OF THE WATER FOR ITS INTENDED PURPOSE BEYOND WHAT IS REQUIRED UNDER APPLICABLE STATE AND FEDERAL WATER QUALITY STANDARDS. SPWC EXPRESSLY DISCLAIMS THE WARRANTIES OF MERCHANTABILITY AND FITNESS. THE DISTRICT AGREES THAT ANY VARIATION IN THE QUALITY OR CHARACTERISTICS OF THE WATER OFFERED FOR SALE AS PROVIDED BY THIS AGREEMENT SHALL NOT ENTITLE THE DISTRICT TO AVOID OR LIMIT ITS OBLIGATION TO MAKE PAYMENTS PROVIDED FOR BY THIS AGREEMENT. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION CONTAINED IN THIS AGREEMENT. THE DISTRICT ASSUMES FULL RESPONSIBILITY WITH RESPECT TO THE MAINTENANCE OF WATER QUALITY ONCE WATER IS RECEIVED AT THE POINT OF DELIVERY, PRIOR TO, AND UP, TO ITS DISTRIBUTION FOR HUMAN CONSUMPTION OR ANY OTHER USES.

### SECTION 13. TITLE TO AND RESPONSIBILITY FOR WATER

For liability purposes, title to all Water supplied to the District pursuant to this Agreement shall remain in SPWC up to the Point of Delivery, at which point title shall pass to the District.

WHILE TITLE FOR LIABILITY PURPOSES REMAINS IN A PARTY, THAT PARTY HEREBY AGREES TO SAVE AND HOLD THE OTHER PARTY HARMLESS FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION WHICH MAY BE ASSERTED BY ANYONE ON ACCOUNT OF THE PRODUCTION, TREATMENT, DELIVERY, TRANSPORTATION, AND USE OF SAID WATER.

### SECTION 14. PURPOSE AND PLACE OF USE

The District shall use Water purchased from SPWC pursuant to this Agreement in accordance with any and all applicable restrictions in the Bluebonnet GCD Well Operating Permit for Well No. BWLL-0048, that Agreement by and between G&W Water Supply Corporation and New Waverly Sound Investments, L.L.C., and any certificate of convenience and necessity issued by the Commission.

### SECTION 15. BLUEBONNET GCD RULES

SPWC and the District shall comply with the rules of the Bluebonnet GCD, as may be amended from time to time.

### SECTION 16. REGULATORY REQUIREMENTS

This Agreement is subject to all applicable federal, state, and local laws and any applicable ordinances, rules, orders, and regulations of any local, state, or federal governmental authority having jurisdiction. However, nothing contained in this Agreement shall be construed as a waiver of any right to question or contest any law, ordinance, order, rule, or regulation in any forum having jurisdiction, and SPWC and the District each agree to make a good faith effort to support proposed laws and regulations which would be consistent with, and refrain from supporting proposed laws and regulations which would be inconsistent or interfere with, the performance of this Agreement in accordance with its terms.

### SECTION 17. WATER CONSERVATION PLANS

The District shall develop and implement plans, programs, and rules to promote practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in use of water, or increase the recycling and reuse of water. SPWC's obligations under this Agreement shall be subject to the District preparing and implementing a water conservation plan or water conservation measures, as well as implementing any water conservation plans and drought contingency plans adopted by SPWC and required or approved by the Bluebonnet GCD, the Commission, the Texas Water Development Board, or any other federal, state, or local regulatory authority with power to require or approve water conservation and drought contingency plans affecting either or both of the Parties to this Agreement. Upon execution of this Agreement, the District shall submit any water conservation plans, drought contingency plans, and water conservation measures required of the District by this section to SPWC for its review and written approval. SPWC will not approve of any water conservation plans, drought contingency plans, and water conservation measures that are not, at a minimum, consistent with applicable rules of the Bluebonnet GCD, the Commission, the Texas Water Development Board, or any other federal, state, or local regulatory authority with power to

require or approve water conservation and drought contingency plans affecting either or both of the Parties to this Agreement. Until the all plans required of the District pursuant to the terms of this section are approved by SPWC, SPWC is under no obligation to make any water available to the District.

When the District resells Water, the District shall require appropriate contractual terms and provisions mandating all successive users of the Water to implement water conservation measures that comply with water conservation plans, programs, and rules of the State of Texas, SPWC, and the District.

### SECTION 18. SOURCE AND ADEQUACY OF SUPPLY

Water supplied by SPWC to the District under this Agreement shall be Water produced by SPWC from the Evangeline formation and from no other source, unless SPWC, at its sole discretion, elects to supply Water from another source available to SPWC. SPWC and the District hereby agree that the District shall have no right or entitlement to any Water after the expiration of the Term of this Agreement. SPWC will use all reasonable efforts to remain in a position to furnish Water sufficient to satisfy the reasonable demands of the District consistent with the terms of this Agreement. SPWC's agreement to provide Water to the District shall not be deemed a guarantee on SPWC's part that any particular quantity of Water will be available, and the quantity of Water taken by the District shall at all times be subject to the right of SPWC to reduce said quantity of Water as SPWC, in its sole judgment, may deem necessary in order to: (i) comply with any production limitation or restriction imposed by the Bluebonnet GCD, (ii) comply with any order of any court or administrative body having appropriate jurisdiction, (iii) prevent waste, or (iv) prevent injury to persons and/or property.

SPWC will adopt a Water Conservation and Drought Contingency Plan. If the District fails to implement SPWC's and its own Drought Contingency Plan when trigger conditions occur under such plans, SPWC's Well Site operator is authorized to institute rationing pursuant to any applicable statutory, regulatory, or common law obligations imposed upon SPWC for Water produced from the Well Site, and as may be necessary to protect the public welfare. When the District is not in compliance with SPWC's Water Conservation and Drought Contingency Plan, Water made available to the District pursuant to this Agreement will be reduced to the amount of Water that the SPWC's Well Site operator estimates would be necessary to satisfy the District's demand if the District was operating in compliance with both SPWC's and the District's Drought Contingency Plans.

SPWC's rights to maintain and operate the Well Site in any lawful manner and to any lawful extent SPWC may see fit is recognized by the District, and, except as otherwise provided herein, there shall be no obligation hereunder upon SPWC to produce or not produce Water at any time or to maintain a Maximum Delivery Rate at any specified level. Further, the District recognizes that the total annual amount of Water authorized by the Bluebonnet GCD to be produced from the Well Site may at all times be subject to permanent or temporary reduction.

### SECTION 19. ADDITIONAL ASSESSMENTS NOT OTHERWISE ADDRESSED

If sales or use taxes, or taxes, assessments, or charges of similar nature are imposed for the production, storing, delivering, gathering, taking, selling, using, or consuming the Water received

by the District beyond what is otherwise expressly addressed by the terms of this Agreement, the amount of the tax, assessment, or charge shall be borne by the District. In the event SPWC shall be required to pay, collect, or remit any tax, assessment, or charge on Water received by the District pursuant to this Agreement that is not otherwise expressly addressed by this Agreement, then the District shall promptly pay or reimburse SPWC for the tax, assessment, or charge in the manner directed by SPWC within thirty (30) calendar days of receipt of SPWC's invoice for same.

### SECTION 20. DEFAULT IN PAYMENTS

All amounts due and owing to SPWC by the District shall, if not paid when due, bear interest at the Texas post-judgment interest rate set out in Section 304.003 of the Texas Finance Code, or any successor statute, from the date when due until paid, provided that such rate shall never be usurious or exceed the maximum rate permitted by law. If any amount due and owing by the District to SPWC is placed with an attorney for collection, the District shall pay to SPWC, in addition to all other payments provided for by this Agreement, including interest, SPWC's expenses, including court costs and attorneys' fees. SPWC shall, to the extent permitted by law, suspend delivery of Water produced from the Well Site to the District if the District remains delinquent in any payments due hereunder for a period of sixty (60) days and shall not resume delivery of Water while the District is so delinquent and may, at its option, terminate this Agreement without further liability on the part of SPWC to the District. SPWC may pursue any and all legal remedies against the District to enforce and protect the rights of SPWC.

### SECTION 21. TERMINATION, RENEWAL AND EXPIRATION

If SPWC elects to terminate this Agreement as provided herein, SPWC shall deliver written notice of the election to the District. The District shall cease taking water from SPWC under this Agreement within one hundred eighty (180) days after SPWC delivers written notice to the District or as soon as the District secures an alternative supply, whichever comes later. The District shall exercise its best efforts to secure an alternative water supply under this circumstance. No later than two (2) calendar years prior to the expiration of this Agreement, each Party shall provide written notice to the other Party of its intention to either renew this Agreement or allow it to expire without renewal. If either Party indicates in this notice its intention to allow the Agreement to expire without renewal, each Party is obligated to take any and all actions necessary to prepare for the expiration of the Agreement. The Parties recognize and agree that this two-year notice period is designed to afford both Parties sufficient opportunity to develop alternative water supply, alternative wholesale customers, and to take any other action necessary recognizing that neither Party will be under any duty to the other Party upon expiration of the Agreement. The Parties agree that this contractual provision is subject to enforcement by either Party prior to the expiration of the Agreement, and a breach-of-contract lawsuit in the event of failure to comply with the terms of this section.

### SECTION 22. WAIVER AND AMENDMENT

Failure to enforce any provision of this Agreement or any breach or nonperformance by SPWC or the District shall not be deemed a waiver by the District or SPWC of the right in the future to demand strict compliance and performance of any provision of this Agreement. Regardless of any provision contained in this Agreement to the contrary, any right or remedy or

any default under this Agreement, except the right of SPWC to receive the Base Obligation, as defined in Section 5, which shall never be determined to be waived, shall be deemed to be conclusively waived unless asserted by a proper proceeding at law or in equity within two (2) years after the occurrence of the default.

No officer or agent of SPWC or the District is authorized to waive or modify any provision of this Agreement, unless authorized by their respective governing boards. No modifications to or rescission of this Agreement may be made except by a written document signed by the Parties' authorized representatives.

### SECTION 23. REMEDIES

This Agreement is not intended hereby to specify and this Agreement shall not be considered as specifying an exclusive remedy for any default, but all such other remedies (other than termination) existing at law or in equity may be availed of by any Party hereto and shall be cumulative. Recognizing, however, that failure in the performance of any Party's obligations hereunder could not be adequately compensated in money damages alone, each Party agrees in the event of any default on its part that each Party shall have available to it the equitable remedies of injunction and specific performance, in addition to any other legal or equitable remedies (other than termination which also may be available to SPWC only).

### SECTION 24. FORCE MAJEURE

If, for any reason of force majeure, either SPWC or the District shall be rendered unable, wholly or in part, to carry out its obligation under this Agreement, other than the obligation of the District to make the payments required under the terms of this Agreement, then if the Party shall give notice of the reasons in writing to the other Party within a reasonable time after the occurrence of the event or cause relied on, the obligation of the Party giving the notice, so far as it is affected by the "force majeure," shall be suspended during the continuance of the inability then claimed, but for no longer period. The term "force majeure," as used in this Agreement, shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders or actions of any kind of government of the United States or of the State of Texas, or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accident to dams, machinery, pipelines, wells, treatment facilities, storage facilities, delivery facilities, or other structures, partial or entire failure of water supply, including pollution (accidental or intentional), and any inability on the part of SPWC to deliver water, or of the District to receive water, on account of any other cause not reasonably within the control of the Party claiming the inability.

### SECTION 25. NO ALTERNATIVE SUPPLY

Until the Well Site is operational and finally authorized for the production, treatment, and conveyance of Water to the Point of Delivery, SPWC is under no obligation to make any water available to the District.

### SECTION 26. ASSIGNMENT

Neither Party may assign its rights or delegation of its duties under this Agreement without the prior written consent of the other Party.

### SECTION 27. NO THIRD-PARTY BENEFICIARIES

This Agreement shall inure only to the benefit of the Parties. Third persons not privy hereto shall not, in any form or manner, be considered a third-party beneficiary of this Agreement. Each Party hereto shall be solely responsible for the fulfillment of its customer contracts or commitments.

### SECTION 28. RELATIONSHIP OF THE PARTIES

This Agreement is by and between SPWC and the District and is not intended, and shall not be construed to create, the relationship of agent, servant, employee, partnership, joint venture, or association as between SPWC and the District or between SPWC and any officer, employee, contractor, or representative of the District. No joint employment is intended or created by this Agreement for any purpose. The District agrees to so inform its employees, agents, contractors, and subcontractors who are involved in the implementation this Agreement of or construction of facilities contemplated under this Agreement.

Each Party acknowledges that it has sought independent legal counsel to review and provide counsel on this Agreement.

### SECTION 29. SOLE AGREEMENT

This Agreement constitutes the sole and only agreement of the District and SPWC and supersedes any prior understanding or oral or written agreements between SPWC and the District respecting the subject matter of this Agreement.

### SECTION 30. SEVERABILITY

The provisions of this Agreement are severable, and if, for any reason, any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall remain in effect and be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Agreement.

### SECTION 31. NOTICES

All notices, payments, and communications (collectively "notices") required or allowed by this Agreement shall be in writing and be given by hand delivery, nationally recognized common-carrier, or by depositing the notice in the United States mail, postage prepaid, registered or certified, with return receipt requested, and addressed to the Party to be notified. Notice deposited in United States mail in the previously described manner shall be conclusively deemed to be effective from and after the expiration of three (3) calendar days after the notice is deposited in

United States mail. For purposes of notice, the addresses of and the designated representative for receipt of notice for each of the Parties shall be shown above the signatures of the individuals who signed this Agreement on behalf of SPWC and the District. Either Party may change its address by giving written notice of the change to the other Party at least fifteen (15) calendar days before the change becomes effective.

### SECTION 32. PLACE OF PERFORMANCE

All acts performable under the terms of this Agreement and all amounts due under this Agreement, including, but not limited to, payments due under this Agreement and/or damages for breach of this Agreement, shall be due and payable in Waller County, Texas, said Waller County, Texas, being the place of performance agreed to by the Parties to this Agreement.

### SECTION 33. DUPLICATE ORIGINALS

The District and SPWC, acting under the authority of their respective governing bodies, shall authorize the execution of this Agreement in three original counterparts. The District shall submit written evidence in the form of bylaws, charters, resolutions, or other written documentation specifying the authority of the District's representative to sign this Agreement, which evidence shall be attached to this Agreement as Exhibit 2.

### SECTION 34. SIGNATURES OF PARTIES

EFFECTIVE as of the date signed by the authorized representative of SPWC.

# SPRING PRESERVE WATER COMPANY, LLC c/o Lloyd Gosselink Rochelle & Townsend, P.C. 816 Congress Avenue, Suite 1900 Austin, Texas 78701 Attn.: Michael A. Gershon BY: TITLE: Mug Menda

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## KICKAPOO FRESH WATER SUPPLY DISTRICT OF WALLER COUNTY

200 Southwest Freeway, Suite 2600

Houston, Texas 77027

Attn.: Stephen M. Robinson

BY:

TITLE:

DATE:

1 1201

Exhibit 1
Well Site Survey

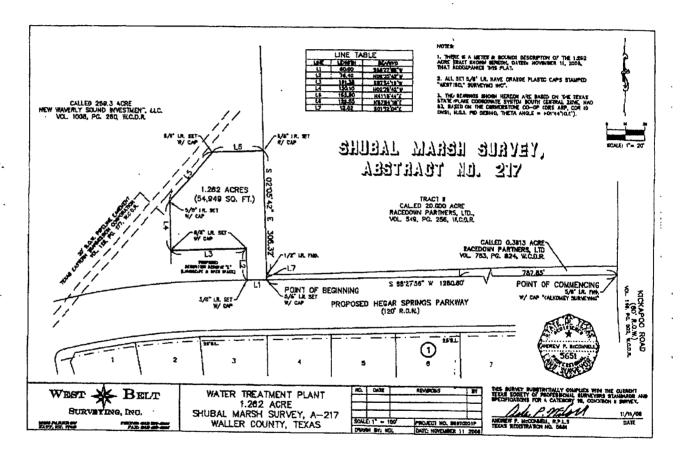


Exhibit 2

Demonstration of Capacity of District's Authorized Representative