



## Filing Receipt

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**Control Number - 51864**

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**DOCKET NO. 51864**

<b>APPLICATION OF THE CITY OF</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>MIDLOTHIAN TO AMEND ITS</b>	<b>§</b>	
<b>WATER CERTIFICATE OF</b>	<b>§</b>	<b>OF TEXAS</b>
<b>CONVENIENCE AND NECESSITY IN</b>	<b>§</b>	
<b>ELLIS COUNTY</b>	<b>§</b>	

**REVISED JOINT MOTION TO ADMIT EVIDENCE AND PROPOSED ORDER**

On March 2, 2021, the City of Midlothian (Midlothian) filed an application to amend its certificate of convenience and necessity (CCN) No. 11706 in Ellis County. Midlothian also seeks to decertify a portion of Mountain Peak Utility District’s (Mountain Peak) water CCN No. 10908 in Ellis County.

On November 29, 2021, Order No. 6 was issued by the administrative law judge (ALJ), requiring Midlothian and the Staff (Staff) of the Public Utility Commission of Texas (Commission) (collectively, the Parties) to file a joint motion to admit evidence and proposed order approving the application on or before January 10, 2022 if no hearing is requested in this matter. On January 11, 2022, the ALJ granted Staff’s request for an extension and set a deadline for the parties to file their joint filing on or before January 19, 2022. The joint filing required by Order No. 6 was filed on January 18, 2022, but it inadvertently did not include the requisite attachments described therein. Therefore, the parties respectfully submit this revised joint filing with the proper attachments included.

Order No. 6 also provides what the parties understand to be an inadvertently redundant deadline for an additional joint proposed findings of fact, including findings that address the factors in Texas Water Code § 13.246(c), and conclusions of law, on or before February 1, 2022. Therefore, the parties respectfully ask that the ALJ consider this revised filing to fulfill the requirement for both deadlines set in Order No. 6.

**I. REVISED JOINT MOTION TO ADMIT EVIDENCE**

The Parties move to admit the following evidence into the record of this proceeding:

1. Application of Midlothian To Amend Its Certificates of Convenience and Necessity in Ellis County, filed on March 2, 2021 (Interchange Item No. 1);
2. Revised Maps and Digital Data, filed on March 10, 2021 (Interchange Item No. 3);

3. Midlothian's capital improvement plan, filed on April 19, 2021 (Interchange Item No. 8);
4. Midlothian and Mountain Peak's CCN Agreement, filed on April 21, 2021 (Interchange Item No. 9);
5. Midlothian's response to Staff's 1<sup>st</sup> Request for Information (RFI), filed on April 23, 2021 (Interchange Item No. 10);
6. Mountain Peak's letter to decertify area of overlap with Midlothian, filed on August 23, 2021 (Interchange Item No. 16);
7. Commission Staff's Recommendation on Administrative Completeness of the Application, filed on September 27, 2021 (Interchange Item No. 17);
8. Midlothian's Proof of Notice, filed October 29, 2021 (Interchange Item No. 19);
9. Midlothian's proof of the inactive water district status of Midlothian MMD 3 for purposes of notice, filed on November 12, 2021 (Interchange Item No. 20);
10. Commission Staff's Recommendation on Sufficiency of Notice, filed on November 19, 2021 (Interchange Item No. 21);
11. Midlothian's and Mountain Peak's consent forms, filed on December 17, 2021 (Interchange Item No. 23); and
12. Staff's Final Recommendation, filed on January 4, 2022 (Interchange Item No. 24); and
13. The final map and certificates attached to this Revised Motion to Admit Evidence.

## **II. REVISED JOINT PROPOSED NOTICE OF APPROVAL**

The attached Joint Proposed Notice of Approval would grant the application for an amendment to Midlothian's CCN No. 11706 and Mountain Peak's CCN No. 10908 in Ellis County, Texas.

## **III. CONCLUSION**

The Parties respectfully request that the Commission grant the Motion to Admit Evidence, including the attached final map and certificates, and adopt the attached Joint Proposed Notice of Approval as described above.

Dated: February 1, 2022

Respectfully submitted,

**CITY OF MIDLOTHIAN, TEXAS**



Mike Adams, P.E.  
Executive Director of Engineering & Utilities

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

Rachelle Nicolette Robles  
Division Director

/s/ Kevin R. Bartz  
Kevin R. Bartz  
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P.O. Box 13326  
Austin, Texas 78711-3326  
(512) 936-7203  
(512) 936-7268 (facsimile)  
[kevin.bartz@puc.texas.gov](mailto:kevin.bartz@puc.texas.gov)

**CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on February 1, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Kevin R. Bartz  
Kevin R. Bartz

**DOCKET NO. 51864**

<b>APPLICATION OF THE CITY OF</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>MIDLOTHIAN TO AMEND ITS</b>	<b>§</b>	
<b>WATER CERTIFICATE OF</b>	<b>§</b>	<b>OF TEXAS</b>
<b>CONVENIENCE AND NECESSITY IN</b>	<b>§</b>	
<b>ELLIS COUNTY</b>	<b>§</b>	

**REVISED JOINT PROPOSED NOTICE OF APPROVAL**

This Notice of Approval addresses the March 2, 2021 application of the City of Midlothian (Midlothian) for an amendment to its certificate of convenience and necessity (CCN) No. 11706 in Ellis County. Midlothian also seeks to decertify a portion of Mountain Peak Utility District’s (Mountain Peak) water CCN No. 10908 in Ellis County. The Commission amends CCN numbers 11706 and 10908 to the extent provided in this Notice of Approval.

**I. Findings of Fact**

The Commission makes the following findings of fact.

**Applicant**

1. Midlothian is a public water system (PWS) registered with the TCEQ under PWS ID Number 0700005.

**Application**

2. On March 2, 2021, Midlothian filed the application at issue to amend its CCN number 11706 and to decertify a portion of Mountain Peak’s CCN No. 10908 in Ellis County, Texas.
3. On March 10, 2021 and April 19, 2021, April 21, 2021, and August 23, 2021, Midlothian filed supplements to the application.
4. The requested area includes no customer connections and approximately 53 acres, comprised of 41 acres of uncertificated area and 12 acres of decertified area from Mountain Peak’s CCN No. 10908.

5. The application will result in the addition of approximately 53 acres that lie within Midlothian's city limits to CCN No. 11706 and the subtraction of approximately 12 acres from CCN No. 10908.
6. In Order No. 2 filed on April 1, 2021, the administrative law judge (ALJ) found the application administratively complete.

### **Notice**

7. On October 29, 2021, Midlothian filed the affidavit of Mike Adam, Executive Director of Engineering & Utilities, attesting that notice was mailed on October 7, 2021 to landowners, customers, and other entities as requested by Staff.
8. On October 29, 2021, Midlothian also filed a publishers affidavit attesting to the publication of notice in the *Midlothian Mirror*, a newspaper of general circulation in Ellis County, on October 7, 2021 and October 14, 2021.
9. In Order No. 6 filed on November 29, 2021, the ALJ found the notice provided by Midlothian sufficient.

### **Map and Certificates**

10. On December 13, 2021, Commission Staff emailed the proposed final map and certificates to the Applicants.
11. On December 17, 2021, Midlothian and Mountain Peak filed their consent forms to the proposed final map and certificates.
12. On January 10, 2022, the parties filed the final maps, certificates, and tariffs as attachments to their Joint Motion to Admit Evidence.

### **Evidentiary Record**

13. On January 10, 2022, the parties filed a joint motion to admit evidence and proposed notice of approval.
14. On January 31, 2022, the parties filed a revised joint motion to admit evidence with attachments and proposed notice of approval.
15. In Order No. \_\_\_ filed on \_\_\_\_\_, 2022, the ALJ admitted the following evidence into the

record of this proceeding: (a) the application of Midlothian, filed on March 2, 2021; (b) the revised maps and digital data, filed on March 10, 2021; (c) Midlothian's CIP, filed on April 19, 2021; (d) Midlothian and Mountain Peak's CCN agreement, filed on April 21, 2021; (e) Midlothian's response to Staff's 1<sup>st</sup> Request for Information (RFI), filed on April 23, 2021; (f) Mountain Peak's letter to decertify area of overlap with Midlothian, filed on August 23, 2021; (g) Staff's recommendation on the administrative completeness of the application, filed on September 27, 2021; (h) Midlothian's Proof of Notice, filed October 29, 2021 (Interchange Item No. 19); (i) Midlothian's proof of the inactive water district status of Midlothian MMD 3 for purposes of notice, filed on November 12, 2021; (j) Staff's Recommendation on Sufficiency of Notice, filed on November 19, 2021; (k) Midlothian's and Mountain Peak's consent forms, filed on December 17, 2021; (l) Staff's Final Recommendation, filed on January 4, 2022; and (m) the final map and certificates attached to the parties' revised joint motion to admit evidence.

**Adequacy of Existing Service Currently Provided and System Compliance—Texas Water Code (TWC) § 13.246(c)(1); 16 Texas Administrative Code (TAC) § 24.227(a) and (e)(1)**

16. There are no customers currently in the requested area.

**Need for Additional Service—(TWC § 13.246(c)(2); 16 TAC § 24.227(e)(2)**

17. There is a need for service as there are requests for service from a developer and a school district in the requested area.

**Effect of Granting the Amendment—TWC § 13.246(c)(3), 16 TAC § 24.227(e)(3)**

18. Midlothian will be the certificated entity for the requested area and will be required to provide adequate and continuous service to the requested area.

19. The landowners in the area will have a water provider available when they need to request water service.

20. There will be no effect on any retail public utility servicing the proximate area, as Midlothian stated that they have an agreement with the neighboring utilities to service areas that best utilize the resources available to meet the needs of service for the requested area.

21. All retail public utilities in the proximate area were provided notice of the CCN amendment requested in this application and did not request to intervene.

**Ability to Serve: Managerial and Technical—TWC §§ 13.241(a), (b), 13.246(c)(4); 16 TAC §§ 24.227(a), (e)(4)**

22. Midlothian has a TCEQ approved PWS registered under PWS ID number 0700005.
23. Midlothian does not have any violations listed in the TCEQ database.
24. The Commission's complaint records, which go back to 2014, show one complaint against Midlothian.

**Regionalization or Consolidation—(TWC § 13.241(d); 16 TAC§ 24.227(b)**

25. Midlothian stated that they have an agreement with the neighboring utilities to service areas that best utilize the resources available to meet the needs of service of the requested area.
26. TCEQ has approved plans for Midlothian to extend service to the requested area by installing distribution lines and building facilities to serve future customers.
27. The additional facilities will provide sufficient capacity to serve the requested area at full build out.
28. Therefore, concerns of regionalization or consolidation do not apply.

**Ability to Serve; Financial Ability and Stability—TWC §§ 13.241(a), 13.246(c)(6)**

29. Midlothian's financial statements indicate a debt-to-equity ratio of 0.43, which is less than 1.0.
30. Midlothian demonstrated sufficient cash and net operating income available to cover possible future shortages and provided an indication of financial stability and financial and managerial capability.
31. Midlothian's financial statements meet the leverage test, as well as the operations test.

**Financial Assurance— TWC §§ 13.246(d)**

32. Because Midlothian meets the leverage and operations tests, additional financial assurance is not required.

**Environmental Integrity and Effect on the Land—TWC 13.246(c)(7), (c)(9); 16 TAC § 24.227(e)(7), (e)(9)**



33. The environmental integrity of the land will be minimally affected, as the additional facilities are constructed to provide service to the requested area.

**Improvement in Service or Lowering of Cost—TWC § 13.246(c)(8); 16 TAC § 24.227(e)(8)**

34. Future residents of the planned development and students attending the school to be built in the requested area will have water service available.

***Informal Disposition***

35. More than 15 days have passed since the completion of notice provided in this docket.
36. No person filed a protest or motion to intervene.
37. Midlothian, Mountain Peak and Staff are the only parties to this proceeding.
38. No party requested a hearing and no hearing is needed.
39. Commission Staff recommended approval of the application.
40. The decision is not adverse to any party.

**II. Conclusions of Law**

The Commission makes the following conclusions of law.

1. The Commission has authority over this proceeding under TWC §§ 13.041, 13.241, 13.244, and 13.246.
2. Midlothian is a retail public utility as defined in TWC § 13.002(19) and 16 TAC § 24.3(31).
3. Midlothian provided notice of the application that complies with TWC § 13.246(a) and 16 TAC § 24.235.
4. The Commission processed the application in accordance with the Administrative Procedure Act,<sup>1</sup> the TWC, and Commission rules.
5. After consideration of the factors in TWC § 13.246(c) and 16 TAC § 24.227(e), Midlothian has demonstrated adequate financial, managerial, and technical capability to provide

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<sup>1</sup> Tex. Gov't Code § 2001.001–.903.

continuous and adequate service to the requested area and Ellis County its current service area, as required by TWC § 13.241(a) and 16 TAC § 24.227.

6. Regionalization and consolidation concerns under TWC § 13.241(d) do not apply in this proceeding because construction of a physically separate water system or sewer system is not required.
7. It is not necessary for Midlothian to provide a bond or other financial assurance under TWC § 13.246(d).
8. Midlothian demonstrated that the amendment of its CCN number 11706 and Mountain Peak's CCN number 10908 will serve the public interest and is necessary for the service, accommodation, convenience, or safety of the public as required by TWC § 13.246(b) and 16 TAC § 24.227(d).
9. Under TWC § 13.257(r) and (s), Midlothian must record a certified copy of the approved maps and certificates, along with a boundary description of the service areas, in the real property records of Ellis County within 31 days of this Order and must submit evidence of the recording to the Commission.
10. The requirements for informal disposition in 16 TAC § 22.35 have been met in this proceeding.

### **III. Ordering Paragraphs**

In accordance with the preceding findings of fact and conclusions of law, the Commission issues the following orders:

11. The Commission amends Midlothian's CCN number 11706 and decertifies a portion of Mountain Peak's CCN number 10908 to add the requested areas as described in this Notice of Approval and shown on the attached map.
12. The Commission issues the certificates attached to this Notice of Approval.
13. Midlothian must provide service to every customer and applicant for service within the approved area under CCN number 11706 who requests water service and meet the terms of Midlothian's water service, and such service must be continuous and adequate.

14. Midlothian must comply with the recording requirements in TWC § 13.257(r) and (s) for the areas in Ellis County affected by this application and file in this docket proof of the recording no later than 45 days after the date of this Notice of Approval.
15. The Commission denies all other motions and any other requests for general or specific relief that have not been expressly granted.

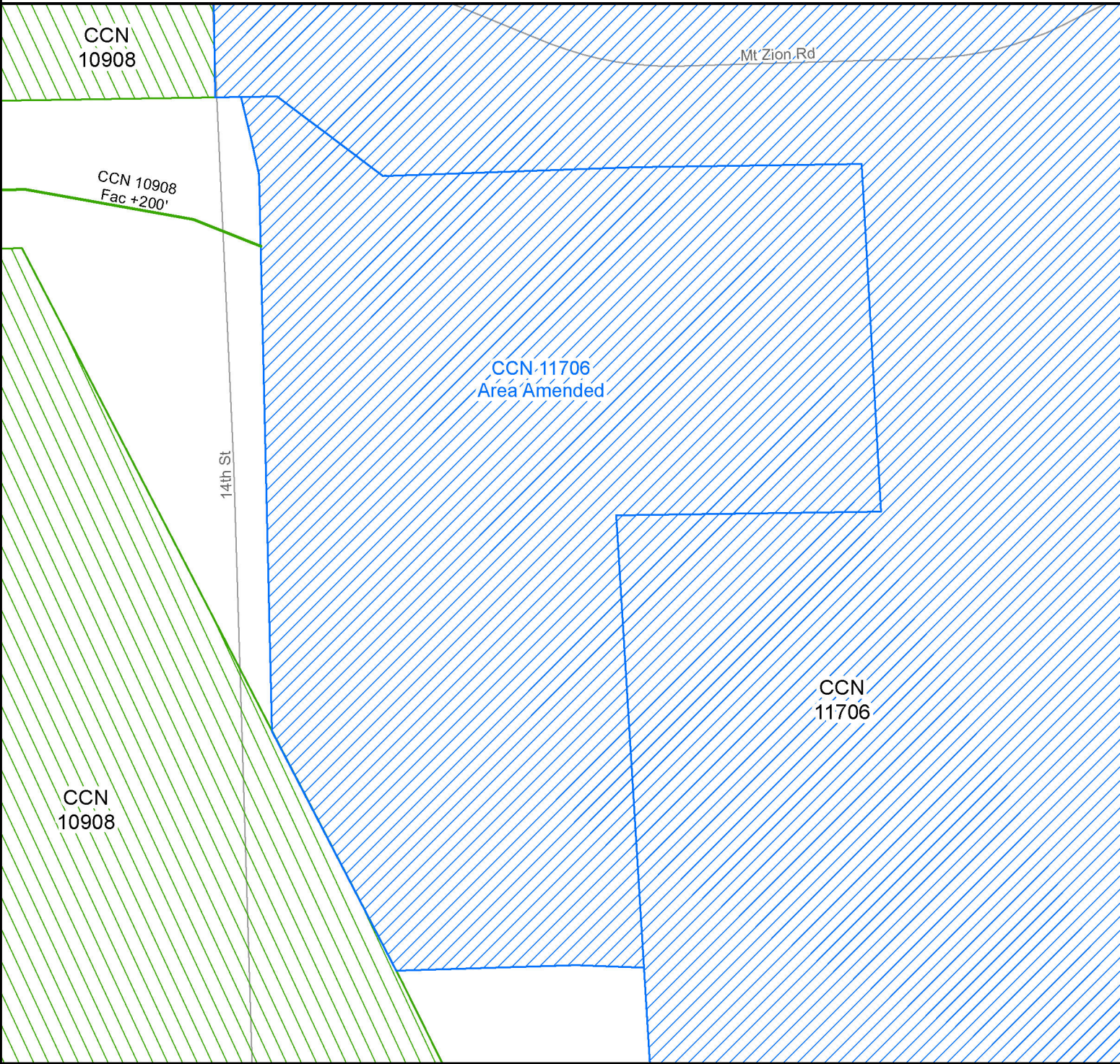
Signed at Austin, Texas this \_\_\_ day of \_\_\_\_\_, 2022.

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**ADMINISTRATIVE LAW JUDGE**

City of Midlothian  
 Portion of Water CCN No. 11706  
 PUC Docket No. 51864  
 Amended CCN No. 11706 and  
 Decertified a Portion of Mountain Peak Special Utility District, CCN No. 10908 in Ellis County



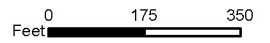
Public Utility Commission of Texas  
 1701 N. Congress Ave  
 Austin, TX 78701

**Water CCN**

- 11706 - City of Midlothian
- 10908 - Mountain Peak SUD

**Water CCN Facilities +200'**

- 10908 - Mountain Peak SUD



Map by: Komal Patel  
 Date: December 10, 2021  
 Project: 51864CityofMidlothian.mxd



# **Public Utility Commission of Texas**

**By These Presents Be It Known To All That**

## **Mountain Peak Special Utility District**

having obtained certification to provide sewer utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, Mountain Peak Special Utility District is entitled to this

### **Certificate of Convenience and Necessity No. 10908**

to provide continuous and adequate sewer utility service to that service area or those service areas in Johnson and Ellis Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 51864 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of Mountain Peak Special Utility District, to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.



# **Public Utility Commission of Texas**

**By These Presents Be It Known To All That**

## **City of Midlothian**

having obtained certification to provide sewer utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, the City of Midlothian is entitled to this

### **Certificate of Convenience and Necessity No. 11706**

to provide continuous and adequate sewer utility service to that service area or those service areas in Ellis County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 51864 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the City of Midlothian, to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

**CONSENT FORM**

Docket No. 51864 – *Application of the City of Midlothian to Amend its Water Certificate of Convenience and Necessity in Ellis County*

- I concur with the map and certificate transmitted by e-mail on **December 13, 2021.**
- I do not concur with the map and certificate transmitted by e-mail on **December 13, 2021.**

I understand that I have until **December 27, 2021** to provide my response.

I am authorized by Mountain Peak Special Utility District to sign this form.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Relationship to Applicant: \_\_\_\_\_

Date signed: \_\_\_\_\_

Please upload the signed consent form to the PUC Interchange Filer at:  
<https://interchange.puc.texas.gov/filer>.

You can find instructions for E-Filing the consent form at:  
<http://www.puc.texas.gov/industry/filings/E-Filing%20Instructions.pdf>.

**CONSENT FORM**

Docket No. 51864 – *Application of the City of Midlothian to Amend its Water Certificate of Convenience and Necessity in Ellis County*

- I concur with the map and certificate transmitted by e-mail on **December 13, 2021.**
- I do not concur with the map and certificate transmitted by e-mail on **December 13, 2021.**

I understand that I have until **December 27, 2021** to provide my response.

I am authorized by the City of Midlothian to sign this form.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Relationship to Applicant: \_\_\_\_\_

Date signed: \_\_\_\_\_

Please upload the signed consent form to the PUC Interchange Filer at:  
<https://interchange.puc.texas.gov/filer>.

You can find instructions for E-Filing the consent form at:  
<http://www.puc.texas.gov/industry/filings/E-Filing%20Instructions.pdf>.