

Control Number: 51955



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PUC DOCKET NO. 51955ECE/VED

PETITION BY AQUA TEXAS, INC. AND PARKER COUNTY SPECIAL UTILITY SITUATION BY AQUA TEXAS, INC. AND PARKER COUNTY SPECIAL UTILITY SITUATION BY ACCOUNTY SPECIAL UTILITY SITUATION BY ALL OF SITUATION S

BEFORE THE RUBING AUGUST A COMMISSION OF TEXAS

AQUA TEXAS, INC. AND PARKER COUNTY SPECIAL UTILITY DISTRICT'S PETITION UNDER TEXAS WATER CODE § 13.248

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COME NOW, Aqua Texas, Inc. ("Aqua") and Parker County Special Utility District ("PCSUD") (collectively, "Applicants") and hereby file this Petition for approval under Texas Water Code ("TWC") § 13.248 and 16 Texas Administrative Code ("TAC") § 24.253 to designate certificate of convenience and necessity ("CCN") service areas by contract and enforcement of same ("Petition" or "Application"). The relief requested affects a portion of Aqua's water CCN No. 13201, and a portion of PCSUD's water CCN No. 12313 located in Parker County, Texas related to the Estancia development. In support thereof, Applicants show the following.

I. PURPOSE OF THE PETITION

Applicants file this Petition to request the Commission act to approve and enforce a contract in which Applicants have agreed to transfer a portion of PCSUD's water CCN No. 12313 service area to existing Aqua water CCN No. 13201. The Applicants' agreement designates the exchanged area to be served by Aqua. The specific transfer area and terms of the agreement are more specifically set forth in the Agreement Between Parker County Special Utility District and

Aqua Texas, Inc. d/b/a Aqua Texas included as **Exhibit 1** (the "Contract"). No facilities or customers are currently located in the transfer area, but Aqua has received a request that it provide retail water utility service to a planned development in the transfer area.

II. REQUEST FOR TRANSFER/DECERTIFICATION

Pursuant to 16 TAC § 24.253, implementing TWC § 13.248, Applicants hereby provide the following information in furtherance of Commission approval for the CCN service area designations contemplated by this Petition:

- 1. Maps of the subject service area designations prepared in accordance with 16 TAC § 24.257(a) are included with the executed contract in **Exhibit 1** at **Exhibits A** and **B**.²
- 2. A copy of the executed Contract, the entirety of which is included as **Exhibit 1**.³
- 3. The number of customers to be transferred is: 0.4
- 4. The contract was discussed at PCSUD's December 17, 2020 board meeting. Pursuant to 16 TAC § 24.253(c)(2) and (3) attached as **Exhibit 2** is the affidavit of Cole Leatherman as Board President of PCSUD and the PCSUD's Notice for the December 17, 2020 meeting and approved meeting minutes.

The Commission has no standardized application form for the relief sought in this Petition and, thus, Applicants are relying on 16 TAC § 24.253 for the contents of this Petition. However, that rule states that "any other information required by the commission" should be submitted.⁵ Applicants respectfully request that the Commission inform Applicants if any other information is required. The undersigned will be the point of contact for this Petition and PCSUD has authorized this filing in the Contract.

All exhibits are hereafter attached and incorporated by reference.

² 16 TAC § 24.253(b)(1).

³ 16 TAC § 24.253(b)(2).

⁴ 16 TAC § 24.253(b)(3).

⁵ 16 TAC § 24.253(b)(5).

III. REQUEST FOR INFORMAL DISPOSITION

Pursuant to 16 TAC § 22.35, Applicants request informal disposition processing for this Application without a hearing as all requirements for same are met.⁶ 16 TAC § 24.253 does not impose any special notice requirements for this application because no customer transfers are contemplated.⁷ Further, if the Application is approved, the decision will not be adverse to any party other than Commission Staff.⁸ Thus, a hearing should not be required and informal disposition is appropriate.⁹

IV. CONCLUSION

Parker County Special Utility District and Aqua Texas, Inc. respectfully request the Commission process this Petition under TWC § 13.248 and 16 TAC § 24.253 with respect to the agreed upon CCN transfer described herein and approve the CCN designations contemplated by the Contract. If for any reason the Commission finds the information submitted with this Petition is insufficient for Application acceptance, Applicants respectfully request that they be notified immediately and provided an opportunity to cure any deficiencies identified.

⁶ 16 TAC § 22.35(a)(1)-(3).

⁷ 16 TAC §§ 22.35(a)(1) and 24.253(c)(1)-(3).

⁸ 16 TAC § 22.35(a)(2)

⁹ 16 TAC § 22.35(a)(3).

Respectfully submitted,

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

ATTORNEYS FOR AQUA TEXAS, INC.

Lorund Dorgal

Leonard Dougal State Bar No. 06031400

JACKSON WALKER

100 Congress Ave., Suite 1100

Austin, Texas 78701

(512) 236-2000

(512) 236-2002 - fax

ldougal@jw.com

COUNTY ATTORNEYS FOR PARKER SPECIAL UTILITY DISTRICT

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 March 30, 2021, in accordance with the Orders Suspending Rules issued in Project No. 50664.

Seoffrey P. Kirshbaum

AGREEMENT BETWEEN PARKER COUNTY SPECIAL UTILITY DISTRICT AND AQUA TEXAS, INC. D/B/A AQUA TEXAS

This Agreement (the "Agreement") is executed between Parker County Special Utility District ("PCSUD"), a political subdivision of the State of Texas, and Aqua Texas, Inc. d/b/a Aqua Texas, a Texas corporation ("Aqua"), on the 25th day of March, 2021 (PCSUD and Aqua are also sometimes referred to herein individually as a "Party" and collectively as the "Parties").

WHEREAS, Parker County Special Utility District is a political subdivision of the State of Texas organized and operating under Texas Special District Local Laws Code, Chapter 7202, Texas Water Code, Chapters 49 and 65, and Section 59 Article XVI of the Texas Constitution and a retail public utity as defined by Texas Water Code § 13.002(19); and

WHEREAS, Aqua Texas, Inc. is a Texas corporation organized in accordance with the laws of the State of Texas, a retail public utility as defined by Texas Water Code § 13.002(19), and a water utility as defined by Texas Water Code § 13.002(23); and

WHEREAS, PCSUD holds water Certificate of Convenience and Necessity ("CCN") No. 12313 issued by the Public Utility Commission of Texas ("PUC") or a prior agency with CCN regulatory authority authorizing exclusive retail water utility service by PCSUD within an area comprised of approximately 43,000 acres described and depicted in Exhibit A (Existing CCN/Development Property Overview) in Parker and Palo Pinto Counties, also located within the boundaries of PCSUD, and that includes approximately 45 acres of undeveloped land owned by Graford Holdings LLC ("Developer") in Parker County that Developer seeks to develop as the Estancia residential subdivision depicted in Exhibit B ("Development Property"); and

WHEREAS, Aqua Texas, Inc. holds water CCN No. 13201 issued by the PUC or a prior agency with CCN regulatory authority authorizing, in pertinent part, exclusive retail water utility service to certain areas near Parker County SUD's CCN in Parker County also shown in Exhibit A; and

WHEREAS, PCSUD and Aqua agree pursuant to Texas Water Code § 13.248 that Aqua will extend retail public water utility service to the Development Property; and

WHEREAS, PCSUD has no existing customers or facilities within the Development Property boundaries; and

WHEREAS, conditioned upon PUC approval of this transaction, Aqua agrees to accept the PCSUD CCN water service area that includes the Development Property and accept the obligation to serve it as consideration for the proposed CCN area transfer of the Development Property from PCSUD to Aqua; and

¹ The remainder of Developer's property planned as the Estancia subdivision is depicted in Exhibit A along with both PCSUD and Aqua's existing water CCN locations.

WHEREAS, Aqua also desires to add additional existing service territory to its water CCN located within approximately one mile of the PCSUD CCN service area through a separate CCN amendment application;

NOW, THEREFORE, for and in consideration of the promises, covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, PCSUD and Aqua hereby agree as follows:

- 1. <u>Term.</u> This Agreement shall continue in effect for five (5) years from the Effective Date. Notwithstanding the foregoing, this Agreement will terminate earlier on the date the approval by the PUC of this Agreement is final and non-appealable.
- 2. <u>Property Subject to the Agreement</u>. The property that is the subject of this Agreement and the water CCN service area proposed for transfer to Aqua is the Development Property shown in Exhibit B. The general location of the Development Property is also shown in Exhibit B
- 3. <u>Transfer of PCSUD CCN Service Areas.</u> PCSUD consents and agrees to the transfer of the Development Property and corresponding PCSUD water CCN service area to Aqua Texas, Inc. provided the following conditions and obligations are satisfied:
 - 3.1 Within 30 days of execution of this Agreement, Aqua shall prepare, file and diligently prosecute, at Aqua's expense, an application pursuant to Texas Water Code Section 13.248 with the PUC ("13.248 Application") to have the Development Property transferred from PCSUD CCN No. 12313 to Aqua Texas, Inc. CCN No. 13201. PCSUD shall not oppose the 13.248 Application, consents to Aqua water service within the Development Property, and will not object or otherwise attempt to defeat the 13.248 Application to include the Development Property within Aqua's water CCN.
 - 3.2 Aqua shall serve the Development Property pursuant to separately agreed upon terms with Developer.
 - 3.3 If the PUC denies the 13.248 Application for any reason, this Agreement shall be terminated.
 - 3.4 Upon receipt of an invoice from PCSUD, Aqua agrees to reimburse PCSUD for its actual legal costs incurred to review and approve this agreement up to \$5,000.00. Payment for these costs may be made by Aqua directly or by Developer on Aqua's behalf.
- 4. <u>Retail Service</u>. PCSUD hereby consents to Aqua serving the Development Property as contemplated by this Agreement during the pendency of the 13.248 Application at the PUC. The Parties agree that upon PUC approval of the 13.248 Application, PCSUD shall have no further obligation to provide service to the Development Property. If the PUC denies the 13.248 Application, the Parties agree to continue to discuss how best to achieve the purpose of this Agreement.

- 5. Other Properties. PCSUD does not object to Aqua serving additional property owned by Developer adjacent to the Development Property and immediately north of PCSUD's CCN service area. PCSUD also does not object 'to Aqua continuing to serve additional properties within one mile north of PCSUD's CCN service area that currently receive retail water utility service from Aqua not within Aqua's current water CCN areas shown in Exhibit A. PCSUD further does not object to Aqua applying to PUC to add the areas described in this section to Aqua's existing CCN areas shown in Exhibit A and PCSUD agrees not to contest any such Aqua application.
- 6. <u>Default</u>. In the event PCSUD or Aqua fails to comply with the terms of this Agreement, each Party has the right to enforce the terms of this Agreement by any remedy permitted by law.

7. Miscellaneous.

- a. This Agreement may not be assigned by any Party without the prior written consent of the other Party.
- b. This Agreement contains the entire agreement of the Parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the Parties hereto.
- c. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Parker County, Texas.
- d. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.
- e. The individuals executing this Agreement on behalf of the respective Parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the Party for which his or her signature appears, that there are no other Parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the Party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.
- f. This Agreement is executed by the Parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed. Each signatory represents this Agreement has been read by the Party for which this Agreement is executed and that such Party has had an opportunity to confer with its counsel.
- g. Any notice provided for under the terms of this Agreement by either party to the other shall be in writing and shall be deemed to have been properly given when delivered to the respective Party at the addresses below:

to PCSUD: Parker County Special Utility District

500 Brock Spur Milsap, TX 76066

Attn: Cole Leatherman

President

Email: pam@parkercountywater.com

to Aqua: Aqua Texas, Inc.

1106 Clayton Lane, Suite 400W

Austin, Texas 78723

Attn: Robert L. Laughman

President

Email: RLLaughman@aquaamerica.com.

Each Party may change the address to which notice may be sent to that Party by giving notice of such change to the other Party in accordance with the provisions of this Agreement.

- h. This Agreement may be executed in multiple identical counterparts, each of which shall be deemed an original for all purposes.
- i. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- j. This Agreement shall be deemed drafted equally by each Party hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply. Headings in this Agreement are for the convenience of the Parties and are not intended to be used in construing this document.

IN WITNESS WHEREOF, the Parties have executed this Agreement and caused this Agreement to be effective on the latest date as reflected by the signatures on the following pages (the "Effective Date").

PARKER COUNTY, SPECIAL UTILITY DISTRICT

By: Name: Cole Leatherman, President

ACKNOWLEDGEMENT

STATE OF TEXAS

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COUNTY OF PARKER

This instrument was acknowledged before me on this 15th day of 1/2001, 2021, by Bob Holder, President of Parker County Special Utility District, a political subdivision of the State of Texas, on behalf of same.

PAM HARDY Notary ID #125838664 My Commission Expires September 16, 2022

Notary Public, State of Texas

AQUA TEXAS, INC. D/B/A AQUA TEXAS

Name: Robert L. Laughman, President

ACKNOWLEDGEMENT

STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this 25 day of March, 2021, by Robert L. Laughman, President of Aqua Texas, Inc. d/b/a Aqua Texas, a Texas corporation, on behalf of same.

LAURA SCHROETER
Notary ID #131492026
My Commission Expires
March 15, 2022

Notary Public, State of Texas

EXHIBIT A

Existing CCN/Development Property Overview Map

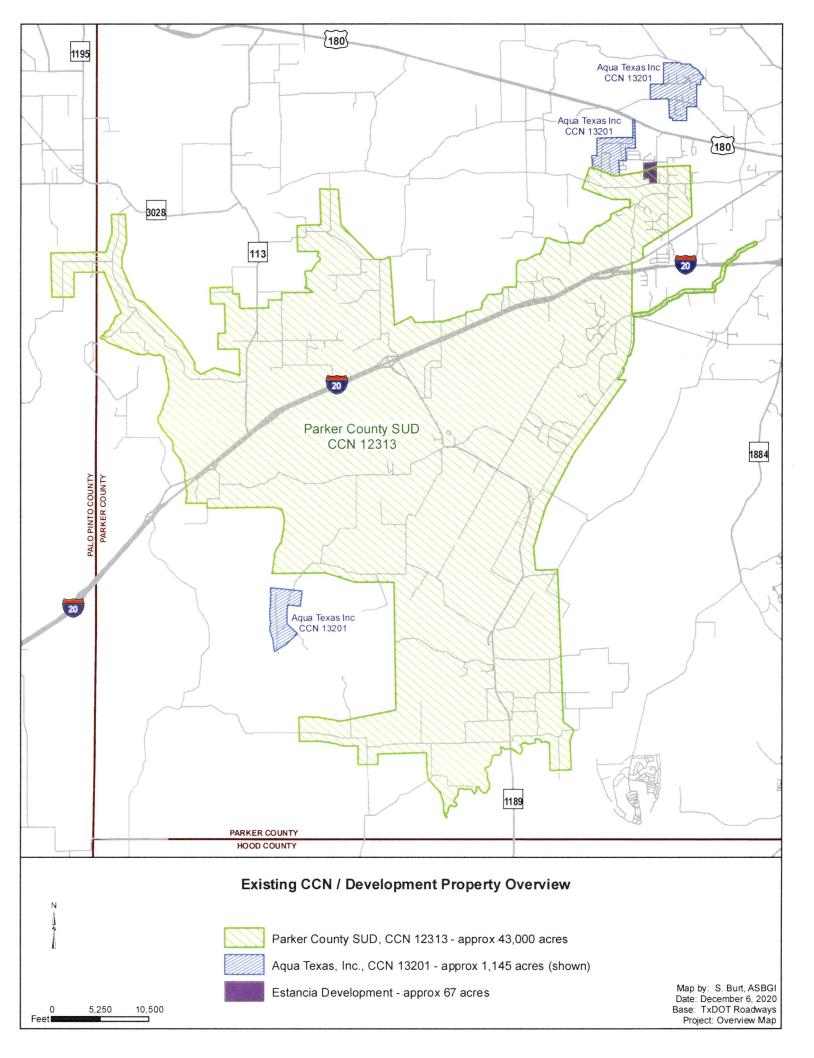
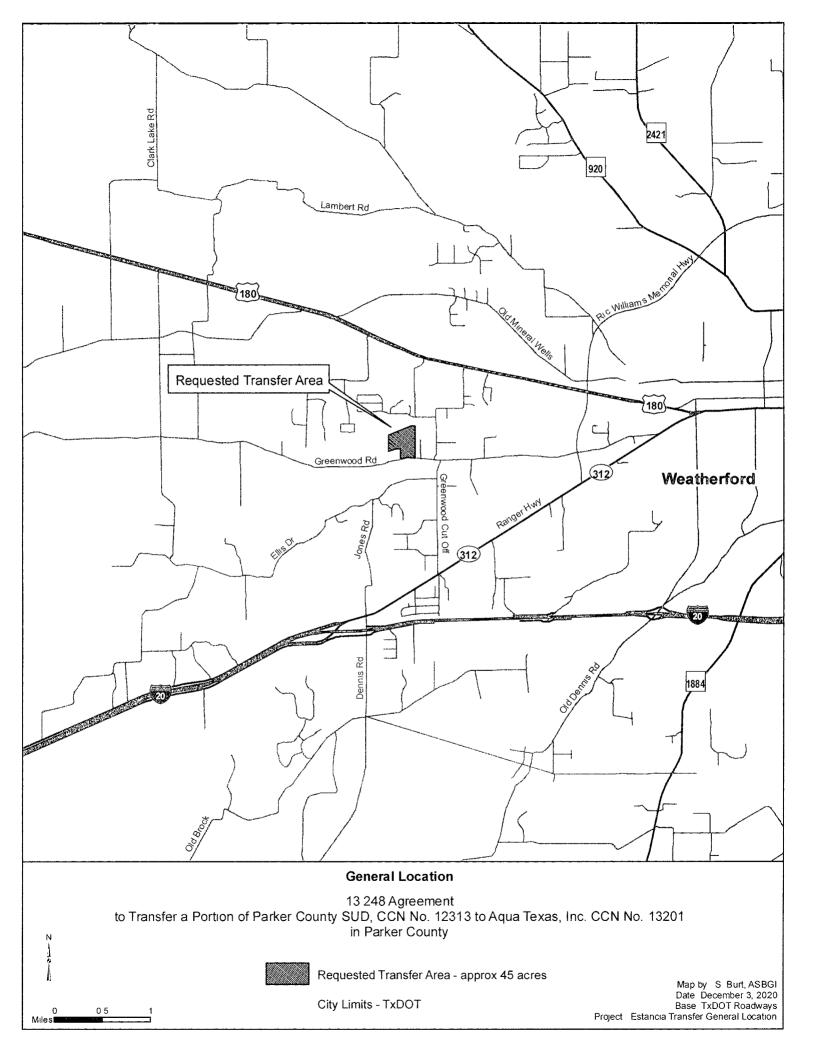
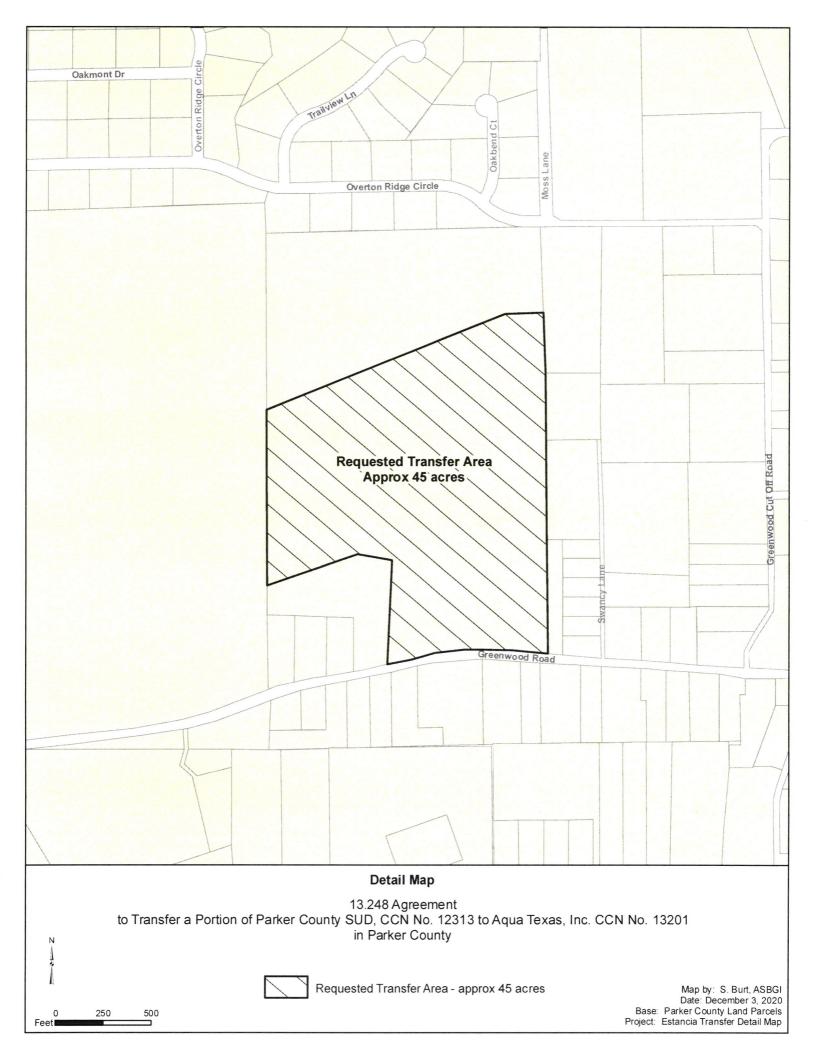


EXHIBIT B

Development/Transfer Property Map







Detail Map on Imagery

13.248 Agreement
to Transfer a Portion of Parker County SUD, CCN No. 12313 to Aqua Texas, Inc. CCN No. 13201
in Parker County



Requested Transfer Area - approx 45 acres

Map by: S. Burt, ASBGI
Date: December 3, 2020
Base: ESRI World Imager
Project: Estancia Transfer Detail on Imagery

AFFIDAVIT OF COLE LEATHERMAN

STATE OF TEXAS §

COUNTY OF PARKER §

On this day, Cole Leatherman, appeared before me, the undersigned notary public, and after I administered an oath to him, upon his oath he said:

"My name is Cole Leatherman. I am the Board President of the Parker County Special Utility District (PCSUD). I am more than 21 years of age and capable of making this affidavit. I have personal knowledge of the facts stated herein, which are true and correct.

- 1. On March 15, 2021, PCSUD and Aqua Texas, Inc. (Aqua) entered into certain Agreements between Parker County Special Utility District and Aqua Texas, Inc. d/b/a Aqua Texas (the Agreements), pursuant to Texas Water Code § 13.248 and 16 Texas Administrative Code § 24.253 transferring portions of PCSUD's water service areas under Certificate of Convenience and Necessity (CCN) No. 12313 to Aqua's CCN No. 13201.
- 2. The Agreements were discussed and approved by the Board of Directors of Parker County Special Utility District (Board) during its regular meeting held on December 17, 2020.
- 3. Notice of the December 17, 2020 Board meeting was issued on December 14, 2020 and publicly posted as required by law.
- 4. A copy of the Notice and the Board Meeting Minutes from the December 17, 2020 Board meeting are attached to this Affidavit as **Exhibit 1**.

FURTHER AFFIANT SAYETH NOT.

PARKER COUNTY SPECIAL UTILITY

Cole Leatherman, Board President

Date: 3/29/2/

STATE OF TEXAS

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COUNTY OF PARKER

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This instrument was acknowledged before me on Much 29. 2021 by Cole Leatherman, Board President of Parker County Special Utility District, on behalf of said special utility district.

PAM HARDY Notary ID #125838664 My Commission Expires September 16, 2022

Notary Public, State of Texas





NOTICE OF PUBLIC MEETING PARKER COUNTY SPECIAL UTILITY DISTRICT BOARD OF DIRECTORS

NOTICE IS HEREBY GIVEN THAT ON Thursday, December 17, 2020 at 7:00 PM the Board of Directors of the PARKER COUNTY SPECIAL UTILITY DISTRICT will hold a public meeting at the PCSUD Main Office located at 500 Brock Spur.

This meeting is open to the public and the following items will be covered for consideration and action by the Board of Directors:

- Call Meeting to Order
- Approval of Minutes from the November 19th Board Meeting
- Update on the Water System Improvements Project by District's Engineer, eHT
- Update on the Water Distribution System Project by eHT
- Discussion and Action on Engineer's Updates and Discussions
- Update from Pinnacle Consulting Management Group
- Concerns/Questions from Customers and the Public Attending the Meeting
- Adopt Resolution to Allow Approval of Agreements with Aqua Texas and Delegation of Authority to Execute Agreements, and to Review and Approve all Filings at the PUC, Including Providing an Affidavit of Support for the Filing
- Approval of Transfer Report
- Review/Revise/Approve 2021 Budget
- Manager's Update on Current Projects
- All Business Dealing with Personnel
- Old Business
- Accept Resignation from Board Member
- Approval of Financial Statements
- Authorize Payment of Bills
- Adjournment of Meeting

Executive Session - The Board may enter into closed or executive session as authorized by the following

- 1. Gov. Code 551.071: Consultation with Attorney
- 2 Gov. Code 551.072: Deliberations about Real Property
- 3. Gov. Code 551 074. Personnel Matters

Action from Executive Session

- The Board may vote and/or act upon each of the items listed in this agenda
- The Board reserves the right to retire into executive session concerning any of the items listed on this Agenda, whenever it is considered necessary and legally justified under the Open Meetings Act

Parker County Special Utility District Thursday December 17, 2020 Board of Directors Meeting Minutes

REGULAR SESSION: 7 pm

Present: President Cole Leatherman

Vice-President Johnny Hook
Secretary/Treasurer Tim Oakes
Board Member Mike Hooten

Board Member Katha'leene Wallace

Absent: Board Member Jim Thompson

Board Member Angela McMurry

Staff: General Manager Dakota Tawater

Office Manager Pam Hardy AP/Payroll Clerk Karan Towe

Others Present: Michael McSwain with Brock ISD, Josh Berryhill-eHT engineer, Duane Dixon with City of Dennis, Kent Riker- Customer, and Sarah Riebe with Pinnacle Group

President, Cole Leatherman welcomed everyone and called the meeting to order at 7:00 pm.

Approval of Minutes:

Cole Leatherman asked the members of the board to review the minutes for the November 19, 2020 Board Meeting. /Tim Oakes made a motion to accept the minutes as written. Katha'leene Wallace seconded the motion. Motion carried.

Update on the Water System Improvements Project by District's Engineer, eHT:

Josh Berryhill updated the District: TWDB issued approval of the WTP plans and specifications on December 14, 2020. eHT is still working on revisions of the plans and specifications to incorporate internal review comments as well as District staff review comments, eHT met with the District on December 17th to go over additional District review comments. Cole Leatherman advised Josh that he'd like to have the bids advertised as soon as possible.

Update on the Water Distribution System Project by eHT:

Josh Berryhill update: We have provided the reduced project cost to the District's Financial Advisor in order to develop an updated Proforma to determine anticipated annual debt service costs. As soon as the updated Proforma is ready, the updated project scope, costs and Proforma will be provided to TWDB to continue TWDB's evaluation of the distribution project funding application. TWDB recently issued a notice regarding limitations in TWDB funding due to high number of applicants requesting DWSRF funds in 2020. It is uncertain at this time how this new funding limitation will impact timing on the distribution project, until TWDB completes its funding reprioritization analysis in January 2021. Pending the results of that analysis, it may be necessary to further evaluate other project funding options, such as the USDA's Rural Development (RD) program.

Discussion and Action on Engineer's Updates and Discussions:

None

Update from Pinnacle Consulting Management Group:

Sarah, with Pinnacle, discussed easements she has received and easements she is having trouble receiving. Cole made a motion for Pinnacle to complete the appraisal and send letters to get easements locked in. Advise the District's attorney. Leonard, of the situation the District is having with getting easements. If no response is received, Leonard may send a letter to customer to start condemnation.

Concerns/Questions from Customers and the Public Attending the Meeting:

None

Adopt Resolution to Allow Approval of Agreements with Aqua Texas and Delegation of Authority to Execute Agreements, and to Review and Approve all Filings at the PUC, Including Providing an Affidavit of Support for the Filing:

Cole Leatherman made a motion to approve the forms of Agreement, with changes recommended by the District's attorney, and subject to final approval by the Board President. Tim Oakes seconded the motion. Motion carried. Tim Oakes made a motion to allow the President, Cole Leatherman, to execute the final Agreement and all other documents regarding the matter. Katha'leene Wallace seconded the motion. Motion carried.

Approval of Transfer Report:

Cole Leatherman made a motion to accept the Transfer Report. Katha'leene Wallace seconded the motion. Motion carried.

Review / Revise / Approve 2021 Budget:

Budget was not ready in time for the meeting, add to the January agenda.

Manager's Update on Current Projects:

General Manager, Dakota Tawater informed the board that the meter for the new gas station at FM 1189 and Service Road has been installed. They placed the Brock pump station on the plant water instead of Mineral Wells water; plan on pushing it further north later in the month. Pilot Study: The Nanostone pilot project is progressing. Leaks: Weatherford City's Dump service line was leaking under Old Brock Road. SugarTree has an irrigation leak at their entrance that is not the District's leak. Plant Improvements: Phil King's office contacted and a representative from his office contacted TWDB to see the status of the plant's approval. Within the next day or two, Josh received questions about the environmental approval of the project, and Josh answered them. Notables: Dakota accepted SCMA's offer to be a presenter at their next event in February 2021.

All Business Dealing with Personnel:

None

Old Business:

None

Accept resignation from Board Member:

Cole Leatherman made a motion to accept Board Member, Jim Thompson's resignation. Katha'leene Wallace seconded the motion. Motion carried.

Approval of Financial Statements:

Tim Oakes made a motion to accept the financials from George Morgan & Sneed. Cole Leatherman seconded the motion. Motion carried.

Authorize Payment of Bills:

Tim Oakes made a motion to authorize the payment of the bills. Katha'leene Wallace seconded the motion. Motion carried.

Adjournment of Meeting:

Tim Oakes made a motion to adjourn. Katha'leene Wallace seconded the motion. Motion carried.

The meeting was adjourned at 8:00 PM.

Approved. President

Approved, Secretary / Treasurer

 $\frac{1-21-21}{\text{Date}}$

Date