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DOCKET NO. 52434

PETITION OF CELINA PARTNERS,	§	PUBLIC UTILITY COMMISSION
LTD. TO AMEND MARILEE SPECIAL	§	
UTILITY DISTRICT’S CERTIFICATE	§	OF TEXAS
OF CONVENIENCE AND NECESSITY	§	
IN COLLIN COUNTY BY EXPEDITED	§	
RELEASE	§	

MARILEE SPECIAL UTILITY DISTRICT’S VERIFIED RESPONSE TO PETITION FOR EXPEDITED RELEASE FROM WATER CCN NO. 10150

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE SIEMANKOWSKI:

COMES NOW, MARILEE SPECIAL UTILITY DISTRICT (the “District”) and files this Verified Response (“Response”) to Celina Partners, Ltd.’s (“Petitioner”) Petition for Expedited Release Pursuant to Texas Water Code § 13.2541 (“Petition”), filed in this docket, and respectfully shows as follows:

I. BACKGROUND

1. On August 16, 2021, Petitioner filed its Petition for streamlined expedited release seeking to use the Public Utility Commission’s (“Commission”) streamlined expedited release process, Texas Water Code (“TWC”) § 13.2541, to extract approximately 295.854 acres (“Property”) from the water utility service area the District serves under Certificate of Convenience and Necessity (“CCN”) No. 10150 in Collin County, Texas.¹ The Petition alleges that the Property is greater than 25 acres, is not receiving water or sewer service, and is entirely within Collin County.²

2. On August 20, 2021, the Commission entered Order No. 1, requiring Commission Staff to file comments regarding the administrative completeness of the Petition and notice by September 15, 2021, and permitting the CCN holder to file a verified response, supported by notarized affidavit, by September 22, 2021.³

¹ Petition (Aug. 16, 2021).

² *Id.* at 2.

³ Order No. 1 – Requiring Comments on Administrative Completeness, Notice, and Other Matters, and Establishing Procedural Schedule (Aug. 20, 2021).

3. On August 25, 2021, the District filed a Motion to Intervene, which Honorable Administrative Law Judge (“ALJ”) Siemankowski granted on September 15, 2021.⁴

4. On November 8, 2021, after receiving several extensions to request and review supplemental mapping materials that were missing from the Petition,⁵ Commission Staff filed its Recommendation on Administrative Completeness, recommending that the Petition be found administratively complete and that notice be found sufficient.⁶

5. On November 23, 2021, the District moved for adoption of a protective order. The motion is still pending for decision.

6. Order No. 7 established a deadline of November 29, 2021, for the District to file its Response.⁷ The District’s Response is timely filed.

II. RESPONSE

A. Streamlined Expedited Release Under TWC § 13.2541

7. The District is a retail public utility and political subdivision of the State of Texas and the holder of CCN No. 10150. The District is the successor of the CCN and all plant, equipment and customers of the former Gunter Rural Water Supply Corporation (“Gunter”).⁸ The District currently provides retail water service to approximately 2,592 active connections.

8. Petitioner is Celina Partners, Ltd., a Texas limited partnership. Petitioner’s sole managing partner is Jody O’Donnell, the same individual who provided the sworn affidavit

⁴ Marilee Special Utility District’s Motion to Intervene (Aug. 25, 2021); Order No. 2 – Granting Intervention (Sept. 16, 2021).

⁵ See Order No. 3 – Granting Extension at 1 (Sept. 15, 2021) (granting Commission Staff’s request for an extension to September 30, 2021, to “research potential issues with proof of ownership documents . . . and to work with petitioner to try to resolve such issues”); Order No. 5 – Granting Extension and Amending Deadlines at 1 (Sept. 29, 2021) (granting Commission Staff’s request for an extension to October 18, 2021, to “assess and finalize comments on the administrative completeness of the petition as supplemented”); Order No. 6 – Granting Extension and Amending Deadlines (granting Commission Staff’s request for an extension to November 8, 2021, to “review the supplemental information filed by Celina Partners Ltd.”).

⁶ Commission Staff’s Recommendation on Administrative Completeness and Notice (Nov. 8, 2021).

⁷ Order No. 7 – Finding Petition Administratively Complete and Notice Sufficient, and Establishing Procedural Schedule (Nov. 9, 2021).

⁸ Exhibit A (Affidavit of Donna Loiselle) at ¶ 2.

attached to the Petition as Exhibit A.⁹ Though he omits this fact from his affidavit, Mr. O’Donnell is a District customer.¹⁰

9. Before discussing why decertification is not permitted in this case, it may be helpful to generally discuss the procedure for decertification from a CCN by streamlined expedited release.¹¹ To obtain the release of property from a CCN holder under TWC § 13.2541, a landowner must demonstrate with affirmative evidence that the landowner owns a tract of land that is at least 25 acres, that the tract of land is located in a qualifying county, and that the tract of land is not receiving service of the type that the current CCN holder is authorized to provide under the applicable CCN.¹² The statutory mechanism allows landowners who meet those criteria to decertify their property from the service area of the CCN holder, depriving the CCN holder of the opportunity to serve that landowner’s property.

10. Public policy considerations are important in these cases, on both sides. On one hand, it is important for landowners to have the right to choose a new CCN holder if the CCN holder for their geographic area is not or cannot provide service to their property.¹³ On the other hand, it is important for a CCN holder who has invested in the infrastructure to readily provide service to be able to preserve their customer base. Just as it would be poor policy to force a landowner to remain in a CCN service area which is not and cannot serve their property, it is also

⁹ Mr. O’Donnell is the agent and sole general partner, through his limited liability company Badger Limited Investments, LLC, of Celina Partners, Ltd.

¹⁰ See Exhibit A (Affidavit of Donna Loiselle) at ¶¶ 5-10 (stating that Marilee Meter No. 1344 (the “Meter”) is in Jody O’Donnell’s name); see also Exhibits A-1 to A-5 (documentation reflecting Mr. O’Donnell’s application for membership with Gunter in 2001, Mr. O’Donnell’s membership certificate from Gunter for the Meter, and payment and billing documentation showing that the Meter, which is in Mr. O’Donnell’s name, serves LMI Trees, which is the business that is on the Property).

¹¹ Streamlined expedited release was created in 2019 to be a simplified offshoot of expedited release that better codified the way CCN holders should be compensated for property decertified from their CCN service area. See, e.g., Acts 2019, 86th Leg., R.S., Ch. 688, General and Special Laws of Texas (enrolled bill to be codified at TWC § 13.2541). The policies considered by the legislature regarding the substance of both TWC §§ 13.254 and 13.2541 are best reflected by the legislative history for TWC § 13.254, which was enacted in 2005 in House Bill 2876.

¹² TWC § 13.2541(b).

¹³ See, e.g., House Comm. Bill Analysis at 4-5, C.S.H.B. 2876, 79th Leg., R.S. (May 11, 2005) (noting in support that the bill would “would protect private property rights by unwanted imposition of a CCN on a landowner” and “address problems where residents of MUDs with substandard service are unable to receive improvements” due to the CCN holder’s exclusive right to provide service in its area).

poor policy to remove property from a CCN service area that is providing or can readily provide service to the property.¹⁴

11. In order to foster and perpetuate these important public policies, the Texas legislature created, among other decertification mechanisms in the TWC, the expedited release process, located at TWC § 13.254, and the streamlined expedited release process, located at TWC § 13.2541, together with 16 Texas Administrative Code (“TAC”) § 24.245(h). The process, when properly followed, honors both the policy of providing an efficient and cost-effective decertification process for a landowner who is not or cannot receive service, and the policy of protecting the CCN service area of a utility that is or can readily provide service to the property.

i. What Is “Service” Under TWC § 13.2541?

12. The Water Code authorizes the decertification or expedited release only for property “that is not receiving water or sewer service.”¹⁵ The Water Code broadly defines “service” as:

any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties...to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.”¹⁶

13. Whether or not a tract is “receiving water or sewer service” under TWC § 13.2541 is a fact question. According to the plain text of that definition and how both the Commission and Texas courts have interpreted it, the question of whether or not a tract is receiving “service” is not dependent on whether water or sewer is being used or has been requested on the tract sought to be decertified. Instead, a tract is “receiving” water or sewer service if either of the following conditions are met:

¹⁴ See, e.g., *id.* at 4-5 (stating that TWC § 13.254 was designed to prevent “abuses of CCN authority” where “a landowner looking to develop his or her land might find that although the land was in a CCN, that utility was unable or unwilling to extend service to his or her property.” Section 13.254 was not meant to arbitrarily deprive CCN holders of property they are actively servicing.)

¹⁵ TWC § 13.2541(b).

¹⁶ TWC § 13.002(21); see also 16 TAC § 24.3(33) (same definition).

- Any facilities or lines are committed or used in the performance of the CCN holder’s duties as a retail public utility providing service to the property; or
- Any lines are committed or used in the performance of the CCN holder’s duties as a retail public utility.¹⁷

14. The inquiry into whether a tract is “receiving service” requires the Commission to consider *any* lines or facilities committed to providing water to the tract of land. As defined by TWC § 13.002(9), “facilities” includes “all the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.” In the *Crystal Clear* decision, the Austin Court of Appeals held that facilities or lines “used” or “committed” to providing such service might cause a property to “receive service” under the statutory and regulatory definition.¹⁸ But where water lines are actually present within a tract and “committed” to the property in that manner, the tract is unquestionably “receiving service,” so a streamlined expedited release petition may not be granted under TWC § 13.2541 when such facts are present.

ii. What Is Petitioner’s Burden of Proof?

15. Under the Commission’s procedural rules, the petitioner in a proceeding brought under TWC § 13.2541 has the burden to prove that the area requested to be decertified is not receiving service.¹⁹ It is improper for the Commission to decertify property from a CCN when a petitioner fails to set forth facts to establish that the property is not receiving service, and it is improper for the Commission to grant a petition for decertification where the property is or can readily receive service. It is also improper for the Commission to reverse the burden of proof and decertify property unless the CCN holder establishes that the property is receiving or can readily receive service. In this case, for example, Petitioner has provided no facts to support the sworn

¹⁷ See *id.*; see also *Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 137 (Tex. App.—Austin 2014, pet. denied).

¹⁸ *Crystal Clear*, 449 S.W.3d at 140.

¹⁹ 16 TAC § 24.245(h) (requiring that a Petitioner provide a “statement of facts that demonstrate that the property is not currently receiving service.”).

contention that the property is not receiving or cannot receive service, when in fact the District's Meter, which is in affiant's name, currently serves the tract of land on which the Property is located, was dedicated to serve the tract of land on which the Property is located, and has served it for over 20 years.²⁰

16. The proper analysis of a Petitioner's burden is reflected in *Johnson County Special Utility District v. Public Utility Comm'n of Texas*.²¹ The petitioner in that case provided a detailed affidavit by a land broker on the grounds of the property to be decertified, in which the broker stated that he searched the property, which was inhabited, for several hours and found no district water meters or facilities, only "two shuttered ground well heads" and a "small, elevated water storage tank . . . implying that any dwelling on the [p]roperty required that water pressure be generated locally and not from a retail water utility service provider."²² The Commission, based on these facts, properly decertified the property as having not water service from at least 2005.²³

17. In this case, Petitioner has not set out a recitation of facts similar to that in the *Johnson County* case to prove that it is not receiving service—instead, Petitioner has provided a conclusory one-page affidavit that fails to mention material facts regarding District service, including that the affiant is a District customer, that the Meter in affiant's name serves the tract of land where the Property is located, and that the Meter was dedicated to the tract of land where the Property is located at affiant's request.²⁴ Petitioner has not met its burden of proof to decertify the Property under TWC § 13.2541.

18. The District is currently defending against the decertification of 19 tracts of land in its service area, representing a total acreage of approximately 4,838.749 acres.²⁵

²⁰ See Exhibit A (Affidavit of Donna Loiselle) at ¶¶ 5-10 (stating that the Meter is in Jody O'Donnell's name, that he applied to Gunter to place the Meter to serve the Property, and that the District has provided continuous water service to the Property since 2001); see also Exhibits A-1 to A-5 (documentation reflecting Mr. O'Donnell's application for membership with Gunter in 2001, Mr. O'Donnell's membership certificate from Gunter for the Meter, and payment and billing documentation showing that the Meter, which is in Mr. O'Donnell's name, serves LMI Trees, which is the business that is on the Property).

²¹ No. 03-17-00160-CV, 2018 WL 2170259 (Tex. App.—Austin May 11, 2018, pet. denied) (mem. op.).

²² *Id.* at **6-7.

²³ *Id.* at **9-10 (citing Commission's Finding of Fact No. 24).

²⁴ See Exhibit A (Affidavit of Donna Loiselle) at ¶¶ 5-10 and accompanying exhibits.

²⁵ In addition to this case, the District is the CCN holder in 18 other streamlined decertification cases currently before the Commission. See *Petition of Sterling Deason O'Donnell and Darwin Deason, Co-Trustees of the Sterling Deason O'Donnell DD 2012 Trust Under Agreement of the DD 2014-B Grantor Retained Annuity Trust to Amend*

19. The petitions in many of the 19 dockets are supported by conclusory, barebones affidavits like that provided in this case, even where—as in this case—there is ample evidence that the requested area is and has been receiving water service from the District. The District respectfully submits that it is inequitable and procedurally improper for the District to have to affirmatively prove, via verified response, that each of the properties is receiving or is capable of readily receiving water service from the District. Rather, the petitioner should be held to its statutory burden of proof to set out a verified statement of facts proving that the requested area is not receiving service before the petition may be granted. Some petitioners in decertification cases under TWC § 13.2541 “artfully plead” that their property is not receiving service by carefully drawing their requested area to deliberately “cut out” waterlines and meters that are dedicated to the requested area. For example, a petitioner will disingenuously swear that that the “requested area” is not receiving service, when the meter that is dedicated to providing service is just outside

Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release, Docket No. 50404 (pending); Petition of CCD-North Sky, LLC to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release, Docket No. 52101 (pending); Petition of Legacy Equestrian Center LLC to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release, Docket No. 52435 (pending); Petition of Huffines Ranch, LLC to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release, Docket No. 52490 (pending); Petition of HC Celina 414, LLC to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release, Docket No. 52497 (pending); Petition of Belknap, FP, Ltd. to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release, Docket No. 52515 (pending); Petition of CCD-COIT Land, LLC to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release, Docket No. 52516 (pending); Petition of AJ Malone to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release, Docket No. 52517 (pending); Petition of Clifton Van McKnight and Bryan Jeffery McKnight to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release, Docket No. 52518 (pending); Petition of East Tioga 581 LP to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Grayson County by Expedited Release, Docket No. 52529 (pending); Petition of E Real Estate, LLC to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release (Tract 5), Docket No. 52530 (pending); Petition of E Real Estate, LLC to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release (Tract 4), Docket No. 52531 (pending); Petition of E Real Estate, LLC to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release (Tract 3), Docket No. 52532 (pending); Petition of E Real Estate, LLC to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release (Tract 2), Docket No. 52533 (pending); Petition of Central Frisco, Ltd. to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release, Docket No. 52534 (pending); Petition of E Real Estate, LLC to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release (Mesquaokee Ranch), Docket No. 52536 (pending); Petition by Mesquaokee Ranch, LLC for Expedited Release from Water CCN No. 10150 Held by Marilee Special Utility District in Collin County, Docket No. 52542 (pending); Petition of Eland Energy, Inc. to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release, Docket No. 52653 (pending); Petition of Sater, L.P. to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release, Docket No. 52739 (pending).

of the requested area.²⁶ If petitioners are permitted to decertify property that the CCN holder can service and is servicing, then the Commission is not taking into account the important public policy of preserving a CCN holder's service area, and is subjecting CCN holders to abusive tactics of landowners that were not intended by the legislators.²⁷ Such "artful pleading" should not be permitted to succeed because such a property is still receiving or capable of receiving "service" as defined by the TWC and *Crystal Clear*.²⁸

20. For the reasons above, the District respectfully requests that the Petition be denied because it presents insufficient facts to prove that it is not receiving service from the District under TWC § 13.2541 and Texas law.

B. Petitioner Cannot Meet Its Burden of Proof Because the Requested Area is Receiving Water Service

21. The District's General Manager, Donna Loiselle, and engineer of record, Jacob Dupuis with DBI Engineers, are familiar with the Property, and the history of the District's service to the Property. Ms. Loiselle has provided an affidavit, attached hereto as "**Exhibit A**" to provide details about the service being provided to the Property. Mr. Dupuis has provided an affidavit, attached hereto as "**Exhibit B**" to map the Property and the meters, waterlines, and other District facilities surrounding it and serving it.

22. Contrary to Mr. O'Donnell's affidavit,²⁹ he is a District customer and was a member of Gunter before it became the District.³⁰ Mr. O'Donnell initiated water service to the

²⁶ Compare Docket No. 52101, Petition of CCD-North Sky, LLC, at 2 (May 10, 2021) (seeking to decertify 219.976 acres of property), to Docket 52101, First Amended Petition of CCD-North Sky, LLC, at 2 (seeking to decertify 219.67 acres of property, reduced to remove the area of property where the District's meter is located) (July 6, 2021); compare Docket 50404, Petition of Sterling Deason O'Donnell and Darwin Deason, Co-Trustees of the Sterling Deason O'Donnell DD 2012, at 2 (Jan. 2, 2020) (seeking to decertify 260.372 acres of property), to Docket 50404, First Amended Petition of Sterling Deason O'Donnell and Darwin Deason, Co-Trustees of the Sterling Deason O'Donnell DD 2012, at 2 (Apr. 27, 2021) (seeking to decertify 259.504 acres of property, reduced to remove the area of property where the District's meter is located).

²⁷ See *supra* nn.12-13 and accompanying text.

²⁸ See *supra* nn.14-16 and accompanying text.

²⁹ See Petition at 2 & Exhibit A, Affidavit of Jody O'Donnell, at ¶ 3 (stating that the "Property is not receiving water service," that "Petitioner has not requested water service . . . or paid any fees or charges to initiate or maintain water service," and no "billing records or other documents" exist for the Property).

³⁰ See Exhibit A, Affidavit of Donna Loiselle, at ¶¶ 7-9 and accompanying exhibits (describing and documenting Mr. O'Donnell's membership with the District).

tract of land on which the Property is located by applying for the Meter in 2001 and paying the fees for District membership and to have a water line extended and the Meter placed.³¹

23. The District's records for the Meter reflect that it has been supplying water service continually since Mr. O'Donnell took the necessary steps to have the District put the Meter in service.³² The most recent Meter reading date is August 23, 2021.³³ The District does not have any records indicating a request for termination of water service or of the Mr. O'Donnell's Membership.

24. The District has ample waterlines and facilities near the Property to provide it with water service. These waterlines and facilities include, but are not limited to, the following:

- Well No. 7, south of the Property;
- A 10" well line, south of the Property;
- An 8" waterline, east of the Property;
- A 6" waterline, north of the Property;
- A 2" waterline on the northwest corner of the Property; and
- A 1 ½" waterline on the south side of the Property.³⁴

25. In the *Crystal Clear* decision, the Austin Court of Appeals held that facilities or lines "used" or "committed" to providing such service might cause a property to "receive service" under the statutory and regulatory definition. Where water lines are actually present within a tract and "committed" to the property in that manner, the tract is unquestionably "receiving service" and the Commission has determined that a streamlined expedited release petition may not be granted under TWC § 13.2541, as interpreted by *Crystal Clear*, when such facts are present. The District, through the Meter, waterlines, and other facilities, is providing water service to the

³¹ See Exhibit A, Affidavit of Donna Loiselle, at ¶¶ 7-12 and accompanying exhibits (stating that Mr. O'Donnell became a member of the District, then Gunter, in 2001, and paid for Meter No. 1344, which has provided continuous service to the Property).

³² *Id.* at ¶ 10.

³³ *Id.*; Exhibit A-9.

³⁴ These waterlines and facilities are reflected in the maps of a portion of the District's water system encompassing the Property, attached to the affidavit of Jacob Dupuis, Exhibit B, as Exhibit B-1. The District has moved for adoption of a protective order to protect the sensitive information regarding the District's critical infrastructure from disclosure, *see, e.g.*, Tex. Att'y Gen. OR2021-02126, and will produce Exhibit B-1 as "Confidential" upon the entry of a protective order.

Property under TWC §§ 13.002(21) and 13.2541(b) as interpreted by *Crystal Clear*. Accordingly, under the facts presented and sworn by the District, streamlined expedited release is not available to Petitioner because the Property is receiving service, and the Petition must be denied.

C. Decertifying the Requested Area Will Impair the District’s Ability to Service Its Federal Debt

26. Pursuant to the Consolidated Farm and Rural Development Act of 1961 and 7 U.S. Code § 1926, the USDA may make or insure loans to associations and public and quasi-public agencies. In order to protect a USDA debtor’s ability to service its debt, it is prohibited by federal law to “curtail or limit” the service area of a USDA debtor. The statute provides:

The service provided or made available through any such association shall not be curtailed or limited by inclusion of the area served by such association within the boundaries of any municipal corporation or other public body, or by the granting of any private franchise for similar service within such area during the term of such loan; nor shall the happening of any such event be the basis of requiring such association to secure any franchise, license, or permit as a condition to continuing to serve the area served by the association at the time of the occurrence of such event.³⁵

27. On July 12, 2021, the District received approval from the United States Department of Agriculture (“USDA”) for a Water and Wastewater Guaranteed loan of \$1,553,000.³⁶ The District has not closed on the USDA loan, but is working diligently to do so.

28. To be eligible for protection under § 1926(b), the District must show, in addition to federal indebtedness, that it satisfies the “physical abilities” test, as adopted by the U.S. Court of Appeals for the Fifth Circuit, sitting en banc in *Green Valley Special Utility District v. City of Schertz*.³⁷ Judge Smith, writing for the majority, characterized the “physical abilities” test this way:

To make the test easy to apply to both water and sewer service, we hold that a utility must show that it has (1) adequate facilities to

³⁵ 7 U.S.C § 1926(b).

³⁶ Exhibit A, Affidavit of Donna Loiselle, at ¶¶ 13-15 and accompanying exhibits.

³⁷ 969 F.3d 460 (5th Cir. 2020) (en banc).

provide service to the area within a reasonable time after a request for service is made and (2) the legal right to provide service. A utility cannot satisfy that test if it has no nearby infrastructure. But ‘pipes in the ground’ is a colloquial shorthand, not a strict requirement.³⁸

29. The en banc court cited with approval precedent from the U.S. Court of Appeals for the Sixth Circuit that to satisfy the “physical abilities” test, the utility must have “something in place to merit § 1926(b)’s protection.”³⁹ The Court further explained, “Service may be ‘available’ even if it cannot be immediately used. No water or sewer utility can make service immediately available to rural, undeveloped land; providing such service involves building or installing facilities, which necessarily takes time to accomplish.”⁴⁰

30. Under *Green Valley*, a federally indebted CCN holder has an equitable cause of action for prospective injunctive relief, preventing ongoing or future limitation or curtailment of its service area by the Commissioners.

31. The District’s ability to provide service to Petitioner satisfies the “physical abilities” test. The District can provide and is providing water service to the Property through its existing Meter; additionally, the District placed the Meter for the specific purpose of serving the Property.⁴¹

32. With the scheduled closing of the District’s USDA loan approaching, equity favors granting the District protection from the limiting or curtailment of its service area.

D. Alternatively, the District Must Be Compensated if the Petition is Granted.

33. The Petition should be dismissed for the reasons the District has given; however, if the Commission does decertify the Property and reduce the District’s CCN No. 10150, the District is entitled to a determination of just and adequate compensation.

34. The TWC prohibits a retail public utility from “in any way render[ing] retail water or sewer service directly or indirectly to the public in an area that has been decertified ... unless

³⁸ *Id.* at 477.

³⁹ *Id.* at 477 & n.36 (quoting *Lexington—S. Elkhorn Water Dist. v. City of Wilmore*, 93 F.3d 230, 238 (6th Cir. 1996)).

⁴⁰ *Id.* at n.38.

⁴¹ Exhibit B, Affidavit of Jacob Dupuis, at ¶ 7.

just and adequate compensation ... has been paid to the decertified retail public utility,” in this case, the District.⁴² Under the TWC and the Commission’s implementing regulations, “the value of real property owned and utilized by the retail public utility for its facilities shall be determined according to the standards set forth in Chapter 21, Property Code, governing actions in eminent domain,”⁴³ and the value of personal property shall be determined according to the factors in that subsection. The factors ensuring that the compensation to a retail public utility is just and adequate shall include:

The amount of the retail public utility’s debt allocable for service to the area in question; the value of the service facilities of the retail public utility located within the area in question; the amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question; the amount of the retail public utility’s contractual obligations allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification; the impact on future revenues lost from existing customers; necessary and reasonable legal expenses and professional fees; and other relevant factors.⁴⁴

35. If the Property is removed from the District’s CCN No. 10150, the District is entitled to compensation under several of these factors including, but not limited to, the amount of its debt allocable for service to the area; the amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question; the costs of obtaining permits, planning, design, and construction of facilities, and the necessary and reasonable legal expenses and professional fees that are incurred as a result of the Petition.

III. PRAYER

WHEREFORE, PREMISES CONSIDERED, the District respectfully requests that the ALJ enter a Proposed Order denying the Petition because it cannot lawfully be granted under Texas

⁴² TWC § 13.254(d); see also TWC § 13.2541(a) (providing that “Sections 13.254(a-7), (c), (d), and (h) apply to a proceeding under this section.”).

⁴³ TWC § 13.254(g); *see also* TWC § 13.2541(h) (providing that “Section 13.254(g) applies to a determination of the monetary amount of compensation under this section.”).

⁴⁴ *See* TWC § 13.254(g) (“The utility commission shall adopt rules governing the evaluation of these factors.”).

Water Code § 13.2541, 16 TAC § 24.245(h), and Texas state law. Alternatively, if the ALJ proposes that the Petition be granted, the District seeks just and adequate compensation for the reduction of its CCN No. 10150. The District also seeks all other and further relief to which it may be justly entitled at law or in equity.

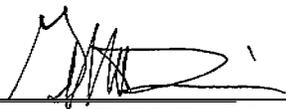
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ATTORNEYS FOR MARILEE SPECIAL
UTILITY DISTRICT

CERTIFICATE OF SERVICE

I hereby certify that I have served or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail and/or Certified Mail Return Receipt Requested to all parties on this 29th day of November 2021.



Grayson E. McDaniel

EXHIBIT A

**AFFIDAVIT OF DONNA LOISELLE,
MARILEE'S GENERAL MANAGER**

DOCKET NO. 52434

**PETITION OF CELINA PARTNERS, § PUBLIC UTILITY COMMISSION
LTD. TO AMEND MARILEE SPECIAL §
UTILITY DISTRICT'S CERTIFICATE § OF TEXAS
OF CONVENIENCE AND NECESSITY §
IN COLLIN COUNTY BY EXPEDITED §
RELEASE §**

**SUPPORTING AFFIDAVIT OF DONNA LOISELLE,
GENERAL MANAGER OF MARILEE SPECIAL UTILITY DISTRICT**

**STATE OF TEXAS §
§
COUNTY OF COLLIN §**

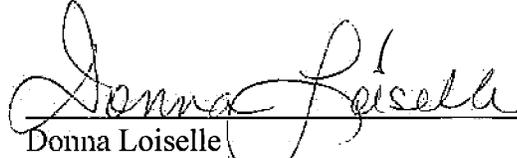
BEFORE ME, the undersigned authority, on this date personally appeared Donna Loisel, who being by me first duly sworn, on her oath deposed and testified as follows:

1. "My name is Donna Loisel. I am more than 18 years of age and I am of sound mind and qualified to make this affidavit. I have personal knowledge of all facts stated herein.
2. "Since 1996, I have been the duly appointed General Manager of Marilee Special Utility District (the "District") and I am the District's custodian of records. The District is the successor to Gunter Rural Water Supply Corporation ("Gunter").
3. "I am authorized to make this affidavit on behalf of the District in Docket 52434 in support of its response to Celina Partners, Ltd.'s ("Petitioner") request to remove 295.854 acres of Property ("Property") from areas for which the District holds water certificate of convenience and necessity ("CCN") No. 10150.
4. "Attached as Exhibits B-1 and B-2 to the Response are true and correct copy of a portion of Marilee's water system map prepared by the District's engineer of record, DBI Engineers. The Property that is the subject matter of Docket No. 52434, being 295.854 acres of contiguous property acres, is accurately located on the map according to the metes and bounds of Exhibit "B" to the Petition filed in this docket on August 16, 2021.
5. "The District provides water service to the Property, specifically through Meter No. 1344 ("the Meter"), which is marked on Exhibits B-1 and B-2. The Meter was placed with the intent to serve the Property by Gunter, the District's predecessor.
6. "The Meter receives water service from the District through an 6" waterline that serves the Property, which waterline is extends along County Road 131 to County Road 132. The waterline is marked on Exhibit B-1.
7. "The Meter is in the name of Jody O'Donnell. The Certificate of Membership for Jody O'Donnell for the Meter, dated January 18, 2002, is attached to this affidavit as Exhibit A-5.

8. "Jody O'Donnell applied to Gunter to place the Meter to serve the Property and the tract where the Property is located on or around August 20, 2001. A true and correct copy of Jody M. O'Donnell's Service Application and Agreement with Gunter, the District's predecessor, is attached to this affidavit as Exhibit A-1.
9. "A true and correct copy of the checks for fees for setting up and connecting the Meter and for membership fees, made out in the amount of \$9,325.00 and \$3,400.00 to Gunter, the District's predecessor, by LMI Landscapes, Inc., are attached to this affidavit as Exhibit A-4. A true and correct copy of Gunter's work order and the estimate for setting up the Meter are attached as Exhibits A-2 and A-3. A true and correct copy of a January 3, 2002, fax transmittal explaining the setup and membership fees for Mr. O'Donnell's Meter is attached hereto as Exhibit A-6.
10. "Gunter, and then the District, have supplied continuous water service through the Meter to Petitioner since January 17, 2002. A true and correct copy of the details of the account for the Meter is attached to this affidavit as Exhibit A-9. Exhibit A-9 reflects that the Meter is currently in service and dedicated to LMI Trees.
11. "Attached as Exhibit A-7 and A-8 to this affidavit are true and correct copies of Gunter and District work orders pertaining to the Meter. The Work Orders reflect that the Meter is are dedicated to LMI Tree Farm.
12. The District has not received a request to terminate service to the Meter.
13. "On February 11, 2021, the Board of Directors of the District authorized me, as General Manager for the District, to prepare and submit application documents as needed to Live Oak Banking Company ("Live Oak") in an effort to secure funding for construction of a 300,000-gallon water tank. Attached as Exhibit A-10 is a true and correct copy of the Board's resolution.
14. "Live Oak sent a commitment letter to the District's Board on April 13, 2021, committing to provide the District with a \$1,553,000 loan through the USDA Water and Environmental Guaranteed Loan Program (the "Loan"). A true and correct copy of that letter is attached to this affidavit as Exhibit A-11.
15. "The United States Department of Agriculture ("USDA") sent correspondence to me, dated July 19, 2021, stating that USDA Rural Development approved the Loan on July 12, 2021. A true and correct copy of that letter is attached to this affidavit as Exhibit A-12.
16. "Exhibits A-1 through A-12 attached to this affidavit were made at or near the time of each act, event or condition set forth. Exhibits A-1 through A-12 were made by or from information transmitted by persons with knowledge of the matters set forth.

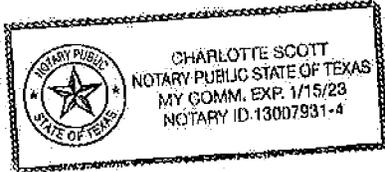
17. "Exhibits A-1 through A-12 are records that have been kept in the course of regularly conducted business activity of the District. It is the regular practice of the District to make the records reflected in Exhibits A-1 through A-12.

FURTHER, AFFIANT SAYETH NOT.



Donna Loiselle
General Manager of Marilee Special Utility
District

SWORN TO AND SUBSCRIBED before me by Donna Loiselle on this 24 day of November 2021.





Notary Public in and for the State of Texas

Exhibit A-1

USDA Form RUS-TX 1942-11 (8/96)

CORPORATION USE ONLY

Date Approved _____
 Service Classification _____
 Cost _____
 Work Order Number _____
 Eng. Update _____
 Account Number _____
 Service Inspection Date _____

1344

GUNTER RURAL
WATER SUPPLY CORPORATION
SERVICE APPLICATION AND AGREEMENT

Please Print: DATE 8/20/01

APPLICANT'S NAME Jody M. O'Donnell

CO-APPLICANT'S NAME _____

CURRENT BILLING ADDRESS: 1437 Halsen Way
Carrollton, TX 75007-9410

FUTURE BILLING ADDRESS: Same

PHONE NUMBER - Home (972) 838-2570 Work (972) 446-0020

PROOF OF OWNERSHIP PROVIDED BY _____

DRIVER'S LICENSE NUMBER OF APPLICANT
04915238 Texas

LEGAL DESCRIPTION OF PROPERTY (Include name of road, subdivision with lot and block number) 9260 County Road 132, Celina, TX 75009 *see attached*

PREVIOUS OWNER'S NAME AND ADDRESS (if transferring Membership)

ACREAGE 93.492 HOUSEHOLD SIZE _____

NUMBER IN FAMILY _____ LIVESTOCK & NUMBER _____

SPECIAL SERVICE NEEDS OF APPLICANT: _____

NOTE: FORM MUST BE COMPLETED BY APPLICANT ONLY. A MAP OF SERVICE LOCATION REQUEST MUST BE ATTACHED.

The following information is requested by the Federal Government in order to monitor compliance with Federal laws prohibiting discrimination against applicants seeking to participate in this program. You are not required to furnish this information, but are encouraged to do so. This information will not be used in evaluating your application or to discriminate against you in any way. However, if you choose not to furnish it, we are required to note the race/national origin of individual applicants on the basis of visual observation or surname.

- White, Not of Hispanic Origin
- Black, Not of Hispanic Origin
- American Indian or Alaskan Native
- 19 Hispanic
- Asian or Pacific Islander
- Other (Specify)
- Male
- Female

USDA Form RUS-TX 1942-11 (8/96)

Service Application and Agreement
page 2 of 4

AGREEMENT made this ____ day of _____, 20____, between Gunter Rural Water Supply Corporation, a corporation organized under the laws of the State of Texas (hereinafter called the corporation) and _____ (hereinafter called the Applicant and/or Member),

Witnesseth:

The Corporation shall sell and deliver water and/or wastewater service to the Applicant and the Applicant shall purchase, receive, and/or reserve service from the Corporation in accordance with the bylaws and tariff of the Corporation as amended from time to time by the Board of Directors of the Corporation. Upon compliance with said policies, including payment of a Membership Fee, the Applicant qualifies for Membership as a new applicant or continued Membership as a transferee and thereby may hereinafter be called a Member.

The Member shall pay the Corporation for service hereunder as determined by the Corporation's tariff and upon the terms and conditions set forth therein, a copy of which has been provided as an information packet, for which Member acknowledges receipt hereof by execution of this agreement. A copy of this agreement shall be executed before service may be provided to the Applicant.

The Board of Directors shall have the authority to discontinue service and cancel the Membership of any Member not complying with any policy or not paying any utility fees or charges as required by the Corporation's published rates, fees, and conditions of service. At any time service is discontinued, terminated or suspended, the Corporation shall not re-establish service unless it has a current, signed copy of this agreement.

If this agreement is completed for the purpose of assigning utility service as a part of a rural domestic water and/or wastewater system loan project contemplated with the Rural Development, an Applicant shall pay an Indication of Interest Fee in lieu of a Membership Fee for the purposes of determining

- a. The number of taps to be considered in the design and
- b. The number of potential ratepayers considered in determining the financial feasibility of constructing
 - 1) a new water system or
 - 2) expanding the facilities of an existing water system.

The Applicant hereby agrees to obtain, utilize, and/or reserve service as soon as it is available. Applicant, upon qualification for service under the terms of the Corporation's policies, shall further qualify as a Member and the Indication of Interest Fee shall then be converted by the Corporation to a Membership Fee. Applicant further agrees to pay, upon becoming a Member, the monthly charges for such service as prescribed in the Corporation's tariff. Any breach of this agreement shall give cause for the Corporation to liquidate, as damages, the fees previously paid as an indication of interest. In addition to any Indication of Interest Fees forfeited, the Corporation may assess a lump sum of \$300.00 as liquidated damages to defray any losses incurred by the Corporation. If delivery of service to said location is deemed infeasible by the Corporation as a part of this project, the Applicant shall be denied Membership in the Corporation and the Indication of Interest Fee, less expenses, shall be refunded. The Applicant may re-apply for service at a later date under the terms and conditions of the Corporation's policies. For the purposes of this agreement, an Indication of Interest Fee shall be of an amount equal to the Corporation's

2USDA Form RUS-TX 1942-11 (8/96)

Service Application and Agreement
page 3 of 4**Membership Fees.**

All water shall be metered by meters to be furnished and installed by the Corporation. The meter and/or wastewater connection is for the sole use of the Member or customer and is to provide service to only one (1) dwelling or one (1) business. Extension of pipe(s) to transfer utility service from one property to another, to share, resell, or submeter water to any other persons, dwellings, businesses, or property, etc., is prohibited.

The Corporation shall have the right to locate a water service meter and the pipe necessary to connect the meter on the Member's property at a point to be chosen by the Corporation, and shall have access to its property and equipment located upon Member's premises at all reasonable and necessary times for any purpose connected with or in the furtherance of its business operations, and upon discontinuance of service the Corporation shall have the right to remove any of its equipment from the Member's property. The Member shall install at their own expense any necessary service lines from the Corporation's facilities and equipment to the point of use, including any customer service isolation valves, backflow prevention devices, clean-outs, and other equipment as may be specified by the Corporation. The Corporation shall also have access to the Member's property for the purpose of inspecting for possible cross-connections and other undesirable plumbing practices.

The Corporation is responsible for protecting the drinking water supply from contamination or pollution which could result from improper plumbing practices. This service agreement serves as notice to each customer of the plumbing restrictions which are in place to provide this protection. The Corporation shall enforce these restrictions to ensure the public health and welfare. The following undesirable plumbing practices are prohibited by state regulations:

- a. No direct connection between the public drinking water supply and a potential source of contamination is permitted. Potential sources of contamination shall be isolated from the public water system by an airgap or an appropriate backflow prevention assembly in accordance with state plumbing regulations. Additionally, all pressure relief valves and thermal expansion devices must be in compliance with state plumbing codes.
- b. No cross-connection between the public drinking water supply and a private water system is permitted. These potential threats to the public drinking water supply shall be eliminated at the service connection by the proper installation of an airgap or a reduced pressure-zone backflow prevention assembly and a service agreement must exist for annual inspection and testing by a certified backflow prevention device tester.
- c. No connection which allows condensing, cooling or industrial process water to be returned to the public drinking water supply is permitted.
- d. No pipe or pipe fitting which contains more than 8.0 % lead may be used for the installation or repair of plumbing on or after July 1, 1988, at any connection which provides water for human consumption.
- e. No solder or flux which contains more than 0.2 % lead may be used for the installation or repair of plumbing on or after July 1, 1988, at any connection which provides water for human consumption.

The Corporation shall maintain a copy of this agreement as long as the Member and/or premises is connected to the public water system. The Member shall allow his property to be inspected for possible cross-connections and other undesirable plumbing practices. These inspections shall be conducted by the Corporation or its designated agent prior to initiating service and periodically thereafter. The inspections shall be conducted during the Corporation's normal business hours.

3USDA Form RUS-TX 1942-11 (8/96)

Service Application and Agreement
page 4 of 4

The Corporation shall notify the Member in writing of any cross-connections or other undesirable plumbing practices which have been identified during the initial or subsequent inspection. The Member shall immediately correct any undesirable plumbing practice on their premises. The Member shall, at his expense, properly install, test, and maintain any backflow prevention device required by the Corporation. Copies of all testing and maintenance records shall be provided to the Corporation as required. Failure to comply with the terms of this service agreement shall cause the Corporation to either terminate service or properly install, test, and maintain an appropriate backflow prevention device at the service connection. Any expenses associated with the enforcement of this agreement shall be billed to the Member.

In the event the total water supply is insufficient to meet all of the Members, or in the event there is a shortage of water, the Corporation may initiate the Emergency Rationing Program as specified in the Corporation's Tariff. By execution of this agreement, the Applicant hereby shall comply with the terms of said program.

By execution hereof, the Applicant shall hold the Corporation harmless from any and all claims for damages caused by service interruptions due to waterline breaks by utility or like contractors, tampering by other Member/users of the Corporation, normal failures of the system, or other events beyond the Corporation's control.

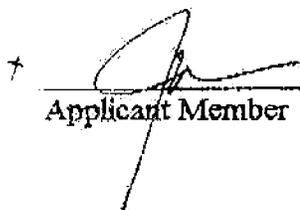
The Member shall grant to the Corporation, now or in the future, any easements of right-of-way for the purpose of installing, maintaining, and operating such pipelines, meters, valves, and any other equipment which may be deemed necessary by the Corporation to extend or improve service for existing or future Members, on such forms as are required by the Corporation.

By execution hereof, the Applicant shall guarantee payment of all other rates, fees, and charges due on any account for which said Applicant owns a Membership Certificate. Said guarantee shall pledge any and all Membership Fees against any balance due the Corporation. Liquidation of said Membership Fees shall give rise to discontinuance of service under the terms and conditions of the Corporation's tariff.

By execution hereof, the Applicant agrees that non-compliance with the terms of this agreement by said Applicant shall constitute denial or discontinuance of service until such time as the violation is corrected to the satisfaction of the Corporation.

Any misrepresentation of the facts by the Applicant on any of the four pages of this agreement shall result in discontinuance of service pursuant to the terms and conditions of the Corporation's tariff.

 Applicant acknowledges that the Corporation's water distribution system provides potable water for domestic consumption only and does not provide "fire flows" as defined by the Uniform Fire Code or similar code or regulation to fight structure fires.


Applicant Member

Approved and Accepted

22

Date Approved

Exhibit A-2

Glenn Cashon Construction L.L.C.

Estimate

**6686 E. FM 1461
Prosper, TX 75078**

DATE ESTIMATE #

9/20/01 352

Oct 18 2001

NAME / ADDRESS
Gunter Rural Water
CR 132/ 4 inch

DESCRIPTION	QTY	RATE	TOTAL	PROJECT
1650' 4" class 200 @ \$4.50 ft	1,650	4.50	7,425.00	
(1) creek crossing concrete encasement across casing	1	850.00	850.00	
(1) flush valve @ \$350.00	1	350.00	350.00	
(2) meter taps @ \$350.00	2	350.00	700.00	
TOTAL			\$9,325.00	

Thank you for your business.

Exhibit A-3

Gunter Rural Water Supply Corp.

P.O. Box 1017 • Celina Texas 75009
(972) 382-3222

No. 00967

WORK ORDER

Account # _____ Date 10-18-01
Name Lm l Tree Farm Previous Reading _____
CR#132
Current Reading _____

Person Issuing Order: _____

Cause of Complaint: Need a measurement from
E Reardon's 4" W.L. to Tree Farm
and a bid from Glenn.

Action Taken: 1650'

Exhibit A-4

THIS DOCUMENT HAS A COLORED BACKGROUND AND A SIMULATED WATERMARK ON THE BACK



LMI LANDSCAPES, INC.
1437 HALSEY WAY
CARROLLTON, TEXAS 75007-4410
972-446-0020

LEGACY BANK
Plano, Texas

88-123
1119

019116
CHECK NO.

Nine thousand three hundred twenty-five dollars & 00/100

DATE
01/07/02

AMOUNT
\$9,325.00

PAY
TO THE
ORDER
OF

Gunter Rural Water Supply Corp.

AUTHORIZED SIGNATURE

⑆019116⑆ ⑆111901234⑆ ⑆08 7167 3⑆

THIS DOCUMENT HAS A COLORED BACKGROUND AND A SIMULATED WATERMARK ON THE BACK



LMI LANDSCAPES, INC.
1437 HALSEY WAY
CARROLLTON, TEXAS 75007-4410
972-446-0020

LEGACY BANK
Plano, Texas

88-123
1119

019117
CHECK NO.

Three thousand four hundred dollars & 00/100

DATE
01/07/02

AMOUNT
\$3,400.00

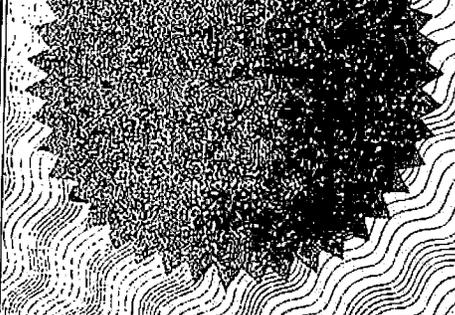
PAY
TO THE
ORDER
OF

Gunter Rural Water Supply Corp.

AUTHORIZED SIGNATURE

⑆019117⑆ ⑆111901234⑆ ⑆08 7167 3⑆

Exhibit A-5



This Certifies that
One Membership of

Jody O. Donaldson

GUNTER

WATER SUPPLY CORPORATION

Membership Fee of One hundred

Dollars

a corporation organized under the laws of the State of Texas, transferable only on the books of the Corporation by the holder hereof in person or by duly authorized attorney upon surrender of this Certificate properly endorsed. IN WITNESS WHEREOF, the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation this _____ day of January, A.D. 2002.

President

GUNTER
WATER SUPPLY CORPORATION

(Limitations as to transferability set forth on reverse side)

NOV 19 1999

ONE
MEMBERSHIP

1344



INCORPORATED

Exhibit A-6

Gunter Rural Water Supply Corporation
P O Box 1017
Celina, TX 75009-1017
972-382-3222 * Fax# 972-382-4264

FAX TRANSMITTAL

TO: David Brown

FROM: Donna Wiselle RE: Line Extension

Number of Pages (including cover) 5 Date: 1-3-02

MESSAGE OR SPECIAL INSTRUCTIONS:

Please have Mr. O'Donnell sign the Right-of-way and return to me so I may file it at the Courthouse. I spoke w/ Cashon - Oct 2001 Bid for 4-inch is still good price quoted \$9325.⁰⁰ He should be able to start w/in 2-weeks. Please remit check for line extension cost plus \$3,400.⁰⁰ for meter/membership.

Fax Number: _____

Exhibit A-7

Gunter Rural Water Supply Corp.

P.O. Box 1017 • Celina Texas 75009
(972) 382-3222

No. 01089

WORK ORDER

Account # 1344 New Date 1-10-02
Name Longtree Farm Previous Reading _____
CR#132 Current Reading -0-

Person Issuing Order: _____

Cause of Complaint: Need to set meter
at near end of extension
near their entrance.

Action Taken: SET METER
70 PSI

Exhibit A-8

METER ADDITIONS

ACCT # 1344

NAME LMI Tree Farm

SERVICE ADDRESS: 9260 CR#132

ADDRESS

CARRIER ROUTE: _____

PHONE

LAST METER READING

RATE CODE: 2

ROUTE #: _____

PUMP/WELL # 23

SERIAL NUMBER

READING SEQUENCE: 2823

**** Adjust additional sequence numbers to these accounts:**

Acct#: _____ Sequence #: _____

Acct#: _____ Sequence #: _____

Acct#: _____ Sequence #: _____

STARTING DATE: _____

PRORATE: _____

FLAG: _____

NOTES: yes - chg to 100 code after Jan bills go out

MEMBERSHIP PAID: 100⁰⁰

Special Instructions:

Mail Group: _____

Carrier Route: _____

Membership Payout: _____

Number of Months: _____

Issue Certificate & Label: yes

Additional Instructions: Map sheet #46

Exhibit A-9

Customer Detail

LMI Trees

Account Number

1344

LMI Trees
 1437 Halsey Way

Carrollton TX
 75007 (972)382-4300
 Service Address: 9260 CR# 132

Months On System 236
 Total Usage 709,000
 Average Usage 3,004
 Sequence Number 5270
 Meter Serial Number 200589747
 Route Number 1
 Last Read Date 8/23/2021
 12 Month Average 2,525
 Last Year Average 900
 Previous Year Average 700
 Last 'Paid On Time" Date 9/3/2021
 Last Late Charge Date 12/17/2018
 Number Of Late Months 23
 Next Due Date 10/15/2021
 Year To Date Charges \$373.58

Date Turned On 1/17/2002
 Date Turned Off
 Meter Check Date 7/28/2020
 Rate Code 1
 Pump/Well Number 23
 Last Reading 304
 Previous Reading 300
 Usage 400
 # of Units 1

Meter 120619301J
 Old Account # 1,344
 Servicezipcode 75,009.00

Readresolution 0.01 brand&size Badger .625

Deposit Information

Deposit Amount	\$100.00	Deposit Date	1/17/2002	Certificate Number	0
Deposit Amount 2	\$0.00	Deposit 2 Date		Services	Current Balance
0					
	Usage	Charges	Read Date	Reading	
January	400	30.99	1/20/2021	90	
February	19,100	156.99	2/24/2021	281	
March	600	31.72	3/22/2021	287	
April	500	31.36	4/21/2021	292	
May	400	30.99	5/21/2021	296	
June	200	30.27	6/23/2021	298	
July	200	30.27	7/21/2021	300	
August	400	30.99	8/23/2021	304	
September	400	29.95	9/23/2020	5	
October	1,700	34.52	10/20/2020	22	
November	400	29.95	11/19/2020	26	Previous Charges \$30.99
December	6,000	57.89	12/21/2020	86	Paid This Month \$30.99
					Current Balance 0.00
Last Payment	9/3/2021	\$30.99	Check Number	20,027	
Age 1	\$0.00	Age 2	\$0.00	Age 3	\$0.00

Exhibit A-10

RESOLUTION NO. 2021-001

A RESOLUTION OF THE BOARD OF DIRECTORS OF MARILEE SPECIAL UTILITY DISTRICT, COLLIN AND GRAYSON COUNTIES, TEXAS (THE DISTRICT), DESIGNATING THE GENERAL MANAGER AS AUTHORIZED REPRESENTATIVE OF THE DISTRICT REGARDING ANY APPLICATION TO LIVE OAK BANKING COMPANY FOR FUNDING OF THE DISTRICT'S 300,000 GALLON TANK AT PUMP STATION 3E; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of Directors of Marilee Special Utility District (the "District") approved initiating an application to Live Oak Banking Company, a North Carolina financial institution ("Live Oak"), for funding of a 300,000 gallon tank at the District's Pump Station 3E (the "Project"), among other actions related thereto, at its monthly meeting on February 1, 2021, open to the public; and

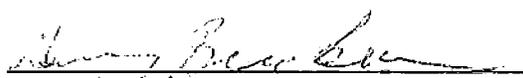
WHEREAS, the Board of Directors finds it is in the best interest of the District and its customers, including for efficiency of the application process, to designate the District's General Manager Donna Loiselle as the authorized representative on behalf of the District to conduct the preparation and submission of any and all documents and information related to any application to Live Oak for funding of the Project.

NOW, THEREFORE, BE IT RESOLVED, BY THE BOARD OF DIRECTORS OF MARILEE SPECIAL UTILITY DISTRICT THAT:

The District's General Manager, Donna Loiselle is hereby approved and designated as the authorized representative on behalf of the District, and she shall conduct the preparation and submission of any and all documents and information related to any application to Live Oak Banking Company for funding of a 300,000 gallon tank at the District's Pump Station 3E. This Resolution is effective immediately upon its passage.

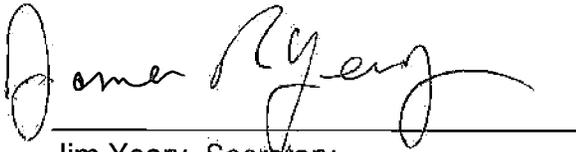
APPROVED and PASSED by the Board of Directors of Marilee Special Utility District, Collin and Grayson Counties, Texas, on this the 11th day of February, 2021.




Denny Brackeen, President

ATTEST:

APPROVED AS TO FORM:



Jim Yeary, Secretary
or Donna Loiselle, Assistant Secretary

Maria Huynh, Attorney

Exhibit A-11



LOAN COMMITMENT LETTER

April 13, 2021

Board of Directors
Marilee Special Utility District
230 W. Pecan Street
Celina, TX 75009

Dear Board of Directors:

Live Oak Banking Company dba Live Oak Bank ("Live Oak") is pleased to commit to provide Marilee Special Utility District (Borrower), a credit facility (Loan) in the principal amount of \$1,553,000 through the USDA Water and Environmental Guaranteed Loan Program. The following credit facility described is subject to all the terms and conditions contained herein, provided there has been no material adverse change in Borrower's financial condition as determined by the Bank.

Borrower: Marilee Special Utility District

Borrowing Amount: \$1,553,000; funded under USDA Water and Environmental Program Guaranteed term loan

Purpose: To provide funds to finance a new 300,000-gallon elevated storage tank; related soft costs and closing costs.

Construction Phase

Interest Rate: The loan will have an interest rate that is adjusted quarterly during the construction phase based on Wall Street Journal Prime plus 2.00% at the time of closing. If the loan were to close today, the fully indexed rate would be 5.25%. The interest rate will continue to adjust quarterly at the then current index plus applicable spread until the loan is converted to the permanent phase.

Floor Rate: 5.00%

Repayment: Interest only during the construction phase up to a maximum of 12 months.

Prepayment Penalty: A 10% penalty will be applied on any amount prepaid prior to conversion to the permanent phase.

**DEDICATED
TO THE
DOERS™**

1741 Tiburon Dr
Wilmington, NC 28403
liveoakbank.com

©2020 Live Oak Banking Company. All rights reserved. Member FDIC. Equal Housing Lender.



Construction Origination Fee: 1% of the total loan amount

Permanent Phase

Interest Rate: The loan will have an interest rate that fixed for fifteen years based on the Fifteen-Year LIBOR (or similar index if that index becomes unavailable) plus 3.75%, adjusting at the end of the initial fixed rate period based on the then current index (or index equivalent) plus the original spread. If the loan were to close today, the fully indexed rate would be 5.71%.

Repayment: 348 regular monthly payments (29 years) of principal and interest payments. If the loan were to fund today, the monthly payments of principal and interest would be \$9,225.

Prepayment Penalty: There will be a sliding prepayment allowed over the life of the proposed loan request (10% in year one, 9% in year two, 8% in year three, 7% in year four, 6% in year five, 5% in year six, 4% in year seven, 3% in year eight, 2% in year nine, 1% in year 10). The ten-year prepayment timeline begins once the loan is fully disbursed.

Maturity Date: 360 months from the date the loan closes.

USDA Fee: 1.00% of the guaranteed portion of the loan

Origination Fee: 1% of the total loan amount

USDA Annual Renewal Fee: N/A – The USDA does not charge an annual renewal fee on WEP Guaranteed Loans per Fiscal Year 2021 Annual Notice.

Source and Use of Proceeds:

Use of Proceeds:	Total
Construction – Elevated Tank	\$ 1,057,500
Contingency	\$ 106,317
Engineering, Testing, Inspection	\$ 171,525
Interest Reserve	\$ 92,644
USDA Guaranty Fee	\$ 12,424
LOB Origination Fee	\$ 31,060
Closing Costs & Other Misc.	\$ 81,530
Total	\$ 1,553,000

Borrower acknowledges that they must notify Live Oak Bank before proceeding with any changes as it relates to the use of funds as referenced above. All loan funds are to be used to cover cost



associated with the expansion of the facility and cannot be used for any capital expenditures that have not been approved. (Initial)

CO

Collateral: The loan will be evidenced by a water and sewer revenue bond issued by the District. The bond will be payable from and secured by a pledge of net revenues of the District's water and sewer system, on parity with the Districts outstanding Water and Sewer Revenue Bonds; UCC-1 financing statement on all business assets in best available position.

Insurance: Business Personal Property Insurance
Borrower to provide Business Personal Property Insurance (Business Contents) in the amount of the replacement cost of the business assets collateral listed above with a Mortgagee Clause, or a Lender's Loss Payable Endorsement in favor of Live Oak Banking Company, ISAOA (satisfactory to the bank) prior to final disbursement of the loan. A Loss Payable Endorsement equivalent to a Lender's Loss Payable may be permissible if a copy of the endorsement on the policy is received and approved by the Bank.

Worker's Compensation Insurance
Worker's Compensation Insurance in an amount meeting the state law requirement and with an insurance company satisfactory to Live Oak Bank.

General Liability Insurance
General Liability Insurance policy in an amount meeting typical requirements for a manufacturing facility of similar size and an amount that is deemed acceptable by the USDA.

Disbursements: The loan will be disbursed over 12 months following closing. All disbursements from the control account will be made in accordance with the USDA authorization and as defined in the Loan Agreement.

Financial Reporting:

Quarterly:

- Internally prepared financial statements in accordance with GAAP within 45 days of quarter end for the borrowing entity and consolidated.

Annually:

- Audited financial statements prepared in accordance with GAAP within 120 days after fiscal year end for the borrowing entity and consolidated.
- Officer Compliance Certificate
- Annual approved operating budget



Covenants:

- Minimum DSCR $\geq 1.10x$ (tested annually based on audited financial statements)
- Borrower must obtain approval to from Live Oak Bank prior to any purchases over \$5,000,000 related to fixed assets

**Power of Attorney
For UCC Filings:**

Borrower appoints Live Oak its true attorney in fact to prepare, execute, file, record, or deliver financing statements, continuation statements, termination statements, statements of assignment, applications for registration, or like papers to perfect, preserve, or release Live Oak's interests in the Collateral; cause any Collateral to be transferred to Live Oak's name or the name of Live Oak's nominee; and execute all documents in the name of Borrower or otherwise as Live Oak deems necessary, proper, or convenient in order to preserve, perfect, or enforce its rights in the Collateral.

**Material Adverse
Change:**

Live Oak's obligations and Commitments under this letter are subject to the accuracy of all information, representations, and materials submitted with or in support of the Borrower's request for the Loan and any material and inaccuracy, omission or change therein, shall, in the Live Oak's discretion, operate to terminate this offer and the Live Oak's Commitment hereunder. This Commitment letter may also be terminated by Live Oak upon the occurrence of any material adverse change in the financial condition, business, prospects, properties, or management of the Borrower or the occurrence of any other event as a result of which Live Oak believes that the prospect of the Borrower repaying its liabilities to Live Oak as contemplated herein may be impaired. Without limiting the generality of the foregoing, the Commitment hereunder shall immediately terminate in the event the Borrower becomes the subject of any proceeding under the United States Bankruptcy Code or any other insolvency, reorganization, liquidation, or moratorium of law.

Expenses:

The Loan shall be made and administered without cost to the Live Oak. The Borrower's and any guarantor acceptance of this Commitment shall constitute the unconditional agreement, jointly and severally, whether or not the Loan closes, to pay all reasonable fees, expenses, taxes, costs and charges incurred in connection with the Loan, or in any way incident to the making of or the ongoing administration of the Loan, including, but not limited to, reasonable attorneys' fees and expenses (including fees and expenses of the Live Oak's counsel), appraisal fees, title searching fees, title or other insurance premiums, fees and costs for environmental tests and studies, engineer's and architect's fees, inspector's fees, surveyor's fees, recording costs, and recordation and transfer taxes. The Live Oak shall not pay any brokerage fees or commissions arising from the Loan, and the borrower and all guarantors agree, jointly and severally, to defend, indemnify, and hold the Live Oak harmless against any and all expenses,



liabilities and losses (including attorneys' fees) arising from any such claims. The Borrower and each of the guarantors, jointly and severally, promise to pay to the Live Oak on demand all costs and expenses incurred by the Live Oak in connection with the enforcement of this Commitment or any of the Live Oak's rights hereunder or any defense of the Live Oak against any claim made in connection with or arising out of this Commitment, including, without limitation, all of the Live Oak's reasonable attorneys' fees and expenses and court costs, whether or not proceedings are brought.

LIBOR

Replacement:

Notwithstanding any provision to the contrary set forth in this letter, the applicable interest rate for this loan shall be subject to LIBOR replacement rate language, stating that, in the event the Lender determines that reasonable means do not exist for ascertaining the applicable LIBOR rate and the Lender determines that the syndicated loan market has broadly accepted a replacement standard for the LIBOR rate, then the Lender may, without the consent of the borrower, apply such new broadly accepted market standard and make such other changes as shall be necessary or appropriate in the good faith determination of the Lender in order to implement such new market standard.

Commitment Fee:

A \$10,000 commitment fee is required upon execution of the commitment letter and due within fourteen days from the date of this letter; otherwise, this commitment will have expired. The commitment fee will be applied to engage legal counsel and any other third-party costs incurred. The deposit held by Live Oak will be applied to any expenses incurred by Live Oak in connection with the Loan, including without limitation, lien and judgement searches, title searching fees, appraisals, business valuations, surveys, environmental tests and studies, and reasonable attorneys' fees and expenses, should the Loans not close. At the time the Loan closes, any unused portion of the deposit, if any, shall be returned to the borrower.

This Commitment letter is addressed solely to you, it is solely for your benefit, and may not be relied upon or used by any other person or entity and may not be disclosed by you without LOB's prior written consent to any person other than your attorneys and other advisors. This Commitment letter and the Commitment evidenced herein may not be assigned by you to any other person or entity.

This Commitment letter shall be governed by the laws of the state of North Carolina.

Live Oak's obligations and/or Commitments as contained in this letter are also subject to approval by the United States Department of Agriculture and the issuance of a written loan authorization by the USDA setting forth the terms and conditions of such Loan. In the event that there is any discrepancy between the terms of the Commitment as contained herein and the loan authorization as issued and approved by the USDA for this Loan, then the terms of the USDA loan authorization shall control. In the event that the USDA should fail or refuse to issue a Loan Note Guarantee as to this Loan, then this



Commitment shall terminate, and Live Oak shall have no further obligations or responsibilities hereunder. Furthermore, Live Oak's obligations hereunder are contingent upon the Borrower and/or Guarantor(s) being in compliance with all terms and conditions of any USDA Conditional Commitment which may be issued as to this Loan, and failure to comply with such will likewise terminate the terms and conditions of the Commitment letter and Live Oak shall have no further obligations hereunder in such event.

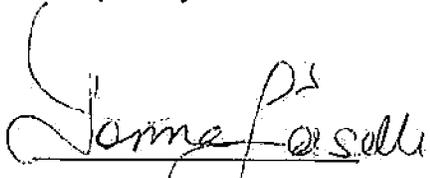
This credit accommodation is made available subject to the terms, conditions, and provisions of comprehensive loan documents to be executed within 180 days from Live Oak's Credit approval dated April 12, 2021. Should the loan not close within 180 days of same approval, updated financials and re-approval will be required.

If the terms outlined in this commitment letter are acceptable to you, please execute and return a copy to Live Oak Bank.

Sincerely,


Anna West
Loan Officer
Live Oak Bank

Accepted By:



Name: Donna Loiselle
Title: General Manager
Date:

Other Conditions:
Please note that a detailed checklist will be prepared for use during the closing process by your closing specialist.

Exhibit A-12



JUL 19 2021

Ms. Donna Loiselle
Marilee Special Utility District (SUD)
P. O. Box 1017
Celina, TX 75009

Dear Ms. Loiselle:

Congratulations on being selected to receive a \$1,553,000 Water and Waste Guaranteed Loan for Marilee SUD.

We have enclosed a copy of USDA-RD Form RD 1940-3, "Request for Obligation of Funds Guaranteed Loan." This form indicates that on July 12, 2021, USDA Rural Development approved loan of \$1,553,000 for Marilee SUD.

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

Sincerely,

DANIEL TORRES
Acting State Director

Enclosure

Rural Development • Texas State Office
101 South Main Street, Suite 102, Temple, Texas 76501
Voice 254.742-9789 • Fax 844.767.7087

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

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT
FARM SERVICE AGENCY

**REQUEST FOR OBLIGATION OF FUNDS
GUARANTEED LOANS**

INSTRUCTIONS: Complete Items 1 through 25 and applicable Items 26 through 35. See FMI.				
1. CASE NUMBER ST CO BORROWER ID 49-093-*****8804		2. LOAN NUMBER 40	3. FISCAL YEAR 21	4. SOURCE OF FUNDS 1 (See FMI)
5. BORROWER NAME Marilee Special Utility District		6. NUMBER NAME FIELDS (1, 2, or 3 from Item 5)		
7. STATE NAME Texas		8. COUNTY NAME Collin		
9. RACE CODE 1 - WHITE 4 - HISPANIC 2 - BLACK 5 - A/PI 3 - A/IN 1	10. EMPLOYEE RELATIONSHIP CODE (See FMI)	11. SEX CODE 1 - MALE 4 - ORGANIZATION MALE OWNED 2 - FEMALE 5 - ORGANIZATION FEMALE OWNED 3 - FAMILY UNIT 6 - PUBLIC BODY 6		12. MARITAL STATUS 1 - MARRIED 2 - SEPARATED 3 - UNMARRIED (INCLUDES WIDOWED OR DIVORCED)
13. VETERAN CODE 1 - YES 2 - NO	14. TYPE OF PAYMENT 3 1 - MONTHLY 3 - SEMI-ANNUALLY 2 - ANNUALLY 4 - QUARTERLY		15. COMMUNITY SIZE 1 - 10,000 OR LESS (FOR SFH ONLY) 2 - OVER 10,000	
16. TYPE OF ASSISTANCE 061 (See FMI)	17. PURPOSE CODE	18. GUARANTEE PERCENT OF LOAN 1 %		
19. TERM OF INTEREST ASSISTANCE	20. SUBMISSION CODE 2 1 - INITIAL 2 - SUBSEQUENT	21. AMOUNT OF LOAN 1,553,000.0		
22. APPROVAL DATE MO DA YR JUL 12 2021	23. NOTE INTEREST RATE 5.7100 %	24. BORROWER EFFECTIVE INTEREST RATE %		
25. REPAYMENT PERIOD 30	26. INCOME CATEGORY 1 - VERY LOW 2 - LOW 3 - MODERATE	27. ADJUSTED FAMILY INCOME		
28. TYPE OF UNIT 1 - FARM TRACT 2 - NON-FARM TRACT	29. DWELLING TYPE USE OF FUNDS CODE (See FMI)	30. INTEREST ASSISTANCE CODE 1 - ELIGIBLE FOR INTEREST ASSIST PROGRAM 2 - INELIGIBLE FOR INTEREST ASSIST PROGRAM		
31. PERCENT OF INTEREST ASSISTANCE %	32. HIGH COST AREA Y = YES N = NO	33. BORROWER HISTORY CODE (See FMI)		
34. AMOUNT AGENCY DIRECT DEBT REFINANCE		35. OBLIGATION DATE (Finance Office use only) MO DA YR JUL 12 2021		
36. BEGINNING FARMER/RANCHER (See FMI)				

ORIGINAL - Borrower's Case Folder

COPY 1 - Applicant

COPY 2 - Lender

COPY 3 - State Office

Position 2

51

Exhibit A-12

CERTIFICATION APPROVAL

APPROVAL CONDITIONS:

(1) (Farm Loan Programs Only) This loan guarantee is approved subject to the availability of funds. If this loan guarantee is not issued for any reason within 90 calendar days from the date of approval on this document, the approval official may request updated information concerning the lender and the loan applicant. The approval official will have 14 working days to review any updated information and decide whether to submit this document for obligation of funds.

(2) This loan guarantee is approved subject to the conditions on the Conditional Commitment.

37. COMMENTS AND REQUIREMENTS OF CERTIFYING OFFICIAL

38. I HEREBY CERTIFY that all determinations and certifications required by the respective United States Department of Agriculture (USDA) Agency regulations prerequisite to providing assistance of the type indicated above have been made and that evidence thereof is in the docket, and that all requirements of pertinent regulations have been complied with. I hereby approve the above-described assistance in the amount set forth above, subject to the availability of funds, and subject to conditions prescribed by Agency regulations applicable to this type of assistance.

I further certify that USDA has complied with the applicable provisions of Title XI, Public Law 95-630, seeking financial information regarding the applicant.


(Signature of Approval Official)

Typed or Printed Name: Daniel Torres

JUL 12 2021

Date Approved _____ Title: Acting State Director

JUL 12 2021

39. TO THE APPLICANT/LENDER: As of this date _____, this is notice that your application for the above loan guarantee/Interest Assistance from USDA has been approved, as indicated above, subject to the availability of funds and other conditions required by the respective USDA Agency. If you have any questions contact the Approval Official.

DOCKET NO. 52434

PETITION OF CELINA	§	PUBLIC UTILITY
PARTNERS, LTD. TO AMEND	§	
MARILEE SPECIAL UTILITY	§	
DISTRICT'S CERTIFICATE OF	§	COMMISSION OF TEXAS
CONVENIENCE AND NECESSITY	§	
IN COLLIN COUNTY BY	§	
EXPEDITED RELEASE	§	

SUPPORTING AFFIDAVIT OF JACOB DUPUIS,
PROFESSIONAL ENGINEER FOR MARILEE SPECIAL UTILITY DISTRICT

STATE OF TEXAS	§
	§
COUNTY OF COLLIN	§

BEFORE ME, the undersigned authority, on this date personally appeared Jacob Dupuis, who being by me first duly sworn, on her oath deposed and testified as follows:

1. "My name is Jacob Dupuis. I am more than 18 years of age and I am of sound mind and qualified to make this affidavit. I have personal knowledge of all facts stated herein.
2. "I am an engineer and employee of DBI Engineers. The company serves as the engineer of record for Marilee Special Utility District (the "District"), the Intervenor in this matter, and I am the project engineer for the utility. I have been in that position for seven years.
3. "I am authorized to make this affidavit on behalf of the District in Docket 52434 in support of its response to Celina Partners, Ltd.'s ("Petitioner") request to remove 295.854 acres of Property ("Property") from areas for which the District holds water certificate of convenience and necessity ("CCN") No. 10150.
4. "I prepared the maps of the District's water system and of the Property attached to this affidavit as Exhibits B-1 and B-2.
5. "The District provides water service to the Property, on which LMI Tree Farm is located, specifically through Meter No. 1344 ("the Meter"), which is marked on Exhibits B-1 and B-2.
6. The Meter was placed with the intent to serve the Property and the tract where the Property is located.

7. The Meter receives water service from the District through an 6" waterline that serves the Property, which waterline is extends along County Road 131 to County Road 132. The waterline are marked on Exhibit B-1.
8. "Additional facilities that are available to provide water service to the Property are:
- Well No. 7, south of the Property;
 - A 10" well line, south of the Property;
 - An 8" waterline, east of the Property;
 - A 6" waterline, north of the Property;
 - A 2" waterline on the northwest corner of the Property; and
 - A 1 ½" waterline on the south side of the Property.

These facilities are marked on Exhibit B-1.

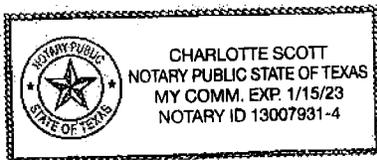
9. "In my professional opinion, the District provides and has the ability and facilities dedicated to continue to provide water service to the Property.

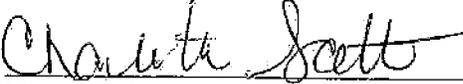
FURTHER, AFFIANT SAYETH NOT.



Jacob Dupuis
Engineer of Record for Marilee Special Utility
District

SWORN TO AND SUBSCRIBED before me by Jacob Dupuis on this 24 day of November 2021.





Notary Public in and for the State of Texas

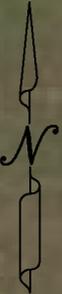
EXHIBIT B

**AFFIDAVIT OF JACOB DUPUIS, PE NO. 133398
MARILEE SPECIAL UTILITY DISTRICT'S
ENGINEER OF RECORD**

Exhibit B-1

Exhibit B-1 shall be submitted upon entry of a protective order.

Exhibit B-2



#1344
LMI TREE FARM
33.35321425
-96.73772291

CR 132

CELINA PARTNERS, LTD.
295.854 ACRES