



## Filing Receipt

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**PUC DOCKET NO. 52442**

<b>PETITION OF MERITAGE HOMES OF TEXAS, LLC TO AMEND NORTH COLLIN SPECIAL UTILITY DISTRICT'S CERTIFICATE OF CONVENIENCE AND NECESSITY IN COLLIN COUNTY BY EXPEDITED RELEASE</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
	<b>§</b>	
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	<b>§</b>	

**MERITAGE HOMES OF TEXAS, LLC'S REPLY TO NORTH COLLIN SPECIAL UTILITY DISTRICT'S RESPONSE AND OBJECTION TO PETITION FOR EXPEDITED RELEASE AND MOTION TO DISMISS**

COMES NOW, Meritage Homes of Texas, LLC ("Meritage") and files this Reply to North Collin Special Utility District's ("NCSUD") Response to Petition and Motion to Dismiss filed with the Public Utility Commission on September 13, 2021. Order No. 3 of this Docket provided a deadline of October 4, 2021 for Meritage's reply to NCSUD's response. Therefore, this Reply is timely filed.

**I. OVERVIEW**

On June 30, 2021, Meritage filed a petition for streamlined expedited release (the "Petition"), seeking to decertify approximately 273.5 acres of real property in Collin County (the "Property") from NCSUD's certificate of convenience and necessity ("CCN") No. 11035 and the City of Melissa's water CCN No. 11482, in the Public Utility Commission of Texas (the "Commission") Docket No. 52293. The Petition included an affidavit from David Aughinbaugh, the Vice President of Land for Meritage, attesting, among other things, that Meritage never requested water service from NCSUD, the tract is not receiving water service from NCSUD, Meritage has never paid NCSUD anything to initiate or maintain water service, and there are no billing records or other documents evidencing an existing account between NCSUD and Meritage for the Property.<sup>1</sup>

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<sup>1</sup> Petition at Exhibit A, Affidavit of David Aughinbaugh (Aug. 29, 2021).

On August 3, 2021, NCSUD filed a Motion to Intervene in Docket No. 52293. On August 13, 2021, Meritage filed a Motion to Sever, requesting the Petition for release from NCSUD's CCN be severed from Docket No. 52293. On August 24, 2021, Order No. 4 issued in Docket 52293 and Order No. 1 issued in Docket No. 52442 granted the severance of the dockets. On September 6, 2021, Commission Staff filed its Recommendation on Administrative Completeness and Notice. On September 13, 2021, NCSUD filed its Response and Objection to the Petition and Motion to Dismiss ("Response"). On September 29, 2021, NCSUD filed its Supplemental Response and Objection to the Petition and Motion to Dismiss ("Supplemental Response").

In NCSUD's responsive filings, NCSUD included an affidavit from Allen Knight, the general manager of NCSUD. Mr. Knight asserts that the Property is receiving service based on the allegations that (1) NCSUD has a two inch (2") water line located *within* the Property; (2) NCSUD has facilities *near* the Property; (3) Altoga Water Supply Corporation had a signed contract from 1965 with a *prior owner* of the Property; (4) Altoga Water Supply Corporation established an account for a *prior owner* of the Property; and (5) NCSUD has incurred federal debt to construct facilities.<sup>2</sup>

## **II. ARGUMENTS AND AUTHORITIES**

### **A. The Property Does Not Receive Service from NCSUD**

The Property is not receiving service from NCSUD. The Commission has reviewed the arguments that NCSUD avers in this docket in previous applications that have come before the Commission. The previous decisions by the Commission disagree with NCSUD's analysis and conclusion in this docket. Furthermore, the Commission decisions on these items have been upheld by the courts. Pursuant to Texas Water Code (TWC) § 13.2541, the tract of land sought

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<sup>2</sup> NCSUD's Response to Petition and Motion to Dismiss at Exhibit A, Affidavit of Allen Knight (September 13, 2021).

to be released from a CCN must not be receiving water or sewer service. Service is defined as “any act performed, anything furnished or supplied, and any facilities or lines committed or used by the retail public utility in the performance of its duties...”<sup>3</sup> In *Texas Gen. Land Office v. Crystal Clear Water Supply Corp.*, the court held:

The mere existence of water lines or facilities on or near a tract would not necessarily mean that a tract was ‘receiving water service.’ Rather...such a determination is essentially a fact-based inquiry requiring the Commission to consider whether the retail public utility has facilities or lines committed to providing water *to the particular tract* or has performed acts or supplied anything *to the particular tract* in furtherance of its obligation to provide water to that tract pursuant to its CCN.<sup>4</sup>

The court in *Crystal Clear* further states that a tract of land would not be receiving service “simply because the retail public utility has performed an act, such as entering into a contract to secure water supply, unless the act was performed in furtherance of providing water to the tract seeking decertification.”<sup>5</sup>

In the *Petition by Tejas Creek, Ltd.*, the Commission decided that “the requirement that facilities be committed and dedicated to serve a tract of land is not satisfied just by facilities that are available and capable of providing water or sewer service.”<sup>6</sup> Further, in the *Petition of John Kimbro to Amend Monarch Utilities*, the Commission determined that the tract was *not receiving water service* where the CCN holder had lines committed to the property, including a line that ran alongside the property and another line located 400 feet from the property, Monarch included in its planning an assumption that the property would be developed, and had incurred debt in order to be able to provide service within its certificated area.<sup>7</sup> The Commission and courts have consistently required more than a utility’s *nearby* pipes and capacity to

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<sup>3</sup> TWC § 13.002(21); see also 16 TAC § 24.3(33).

<sup>4</sup> 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. denied).

<sup>5</sup> *Id.*

<sup>6</sup> See *Petition of Tejas Creek, Ltd. to Amend Aqua Texas, Inc.’s Certificates of Convenience and Necessity in Montgomery County by Expedited Release*, Docket No. 48824, Final Order at CoL 7, 8 (Feb. 28, 2019)

<sup>7</sup> *Petition of John Kimbro to Amend Monarch Utilities 1, LP’s Certificate of Convenience and Necessity in Hays County by Expedited Release*, Docket No. 49360

demonstrate receipt of service by a property. NCSUD's assertion that it has "facilities located *very close* to the Property" as well as "storage facilities *nearby*" does not rise to the level that the Property is "receiving" service from NCSUD or that NCSUD has lines and facilities "committed" to the Property. The claims from NCSUD that it has facilities that *could* provide water service to the Property or that it has facilities that are *available* to provide water service are not proof that the Property *is receiving* water service from NCSUD.

NCSUD avers that the Property is receiving service from NCSUD pursuant to a past account that was established by Altoga Water Supply Corporation. NCSUD offers an Altoga Water Supply Corporation Service Agreement from 1965 and a handwritten note from 1999 as evidence of service to the Property.<sup>8</sup> A fifty-six-year-old agreement with a different entity and an unverifiable barely legible handwritten note do not rise to the level of service to the Property. However, NCSUD seemed to gloss over the fact that the current owner of the Property has never requested service from NCSUD or paid any money to NCSUD regarding water service for the Property.

The establishment of a past account for the Property or a capacity inquiry by a prior owner of the Property *does not* mean the Property is receiving service. These very questions have been addressed by the Commission and upheld by the Austin Court of Appeals. The Commission and the Austin Court of Appeals have determined that the *only* relevant time for consideration is the time that a petition for expedited release is filed and that “[w]hether a tract might have previously received water or sewer service is irrelevant.”<sup>9</sup>

<sup>8</sup> See NCSUD's Supplemental Response at Attachment 2 and Attachment 3.

<sup>9</sup> *Petition by HMP Ranch, Ltd. For Expedited Release from Water CCN No. 10081 in Johnson and Tarrant Counties*, PUC Docket No. 45037, December 18, 2015; see also *Johnson Cty. Special Util. Dist. v. Pub. Util. Comm’n of Texas*, No. 03-17-00160-CV, 2018 WL 2107259, at \*8 (Tex. App.—Austin May 11, 2018), review denied (Aug. 30, 2019); see also, *Mountain Peak Special Util. Dist. v. Pub. Util. Comm’n of Texas*, No. 03-16-

In *HMP Ranch Ltd.*, the Commission determined although a feasibility study may have been conducted to determine whether the retail provider could serve the proposed development, the landowner did not request service or consent to any activities conducted by the retail provider on the petition property and therefore the property was not receiving service.<sup>10</sup> In this case, the *current owner* did not request a feasibility study and has *never* requested or consented to any activities conducted by NCSUD.

## **B. Federal Indebtedness Does Not Prevent SER**

NCSUD avers that the Commission is not permitted to act on a streamlined expedited release petition because it is not permitted under federal law. NCSUD relies on the decision in *Green Valley Special Utility District v. Schertz* for its assertion that 7 U.S.C. § 1926, preempts TWC § 13.2541.<sup>11</sup> However, the Commission has made a decision that considered the *Green Valley* case and the Commission disagreed with NCSUD's analysis. The Commission analyzed *Green Valley* in the *Petition of Alamo Mission LLC*.<sup>12</sup> In Commission Staff's Response to Order No. 12 in the *Alamo Mission LLC* petition, the Commission Staff determined that *Green Valley* "offered no opinion on preemption" and that Commission Staff can "only rely upon the pertinent Texas state statutes" to make a recommendation. Commission Staff further determined that TWC § 13.2541 (d) states, "[t]he utility commission may not deny the petition based on the fact that the certificate holder is a borrower under a federal loan program."<sup>13</sup> On December 22, 2020, the ALJ in the *Alamo Mission LLC* petition decided "the Commission may not

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00796-CV, 2017 WL 5078034, at \*4 (Tex. App.—Austin Nov. 2, 2017), review denied (Mar. 1, 2019) (upholding a PUC Order that allowed a landowner to carve out a 6.7 acre segment of land that was actually receiving water service and to decertify the remainder of the tract).

<sup>10</sup> *Petition by HMP Ranch, Ltd. For Expedited Release from Water CCN No. 10081 in Johnson and Tarrant Counties*, PUC Docket No. 45037, Commission's Final Recommendation at 5

<sup>11</sup> *Green Valley Special Util. Dist v City of Schertz*, 969 F.3d 460 (5<sup>th</sup> Cir Aug 7, 2020) (en banc)

<sup>12</sup> *Petition of Alamo Mission LLC to Amend Rockett Special Utility District's Water Certificate of Convenience and Necessity by Expedited Release in Ellis County*, Docket No. 49863, *See* Commission Staff Response to Order No. 12 and Order No. 13

<sup>13</sup> *Id.*

deny a [streamlined expedited release] petition...based on the fact that a certificate holder is a borrower under a federal loan program” and denied the Motion to Dismiss filed under a preemption argument.<sup>14</sup>

### C. Princeton and NCSUD Settlement Agreement

In NCSUD’s Response, NCSUD argues that the Commission’s CCN maps are incorrect related to the Property pursuant to the Commissions decision in Docket No. 46452.<sup>15</sup> The mapping items that NCSUD references are discussed in the Settlement Agreement to Resolve Water CCN Dispute (the “Settlement Agreement”) that was filed in Docket No. 46452, which is Attachment 1 of this Reply. Section 2.01(a) of the Settlement Agreement is relevant to the issues related to the Property that is the subject of this docket. Specifically, Section 2.01(a) of the Settlement Agreement grants exclusive rights to NCSUD and Princeton as follows:

- (i) NCSUD shall have the right and duty to serve, to the exclusion of Princeton, all new retail water customers in the CCN Acquisition Area **except** those lands: (A) that are **located within the City limits of Princeton** as now or hereafter existing; (B) that **request sanitary sewer service and are located in a subdivision containing lots of less than one acre**; or (C) that request sanitary sewer service for property that contains or will contain uses allowed by Princeton’s Comprehensive Zoning Ordinance for Non-Residential Zoning Districts or Special Zoning Districts regardless of whether the property is within Princeton’s corporate limits; and
- (ii) Princeton shall have the right and duty to serve, to the exclusion of NCSUD, all new retail water customers in the CCN Acquisition Area who: (A) are **located within the City limits of Princeton as now or hereafter existing**; (B) **request sanitary sewer service** and are located in a subdivision containing **lots of less than one acre**; or (C) request sanitary sewer service for property that contains or will contain uses allowed by Princeton’s Comprehensive Zoning Ordinance for Non-Residential Zoning Districts or Special Zoning Districts regardless of whether the property is within Princeton’s corporate limits.

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<sup>14</sup> *Id.*

<sup>15</sup> *North Collin Special Utility District’s Response and Objection to the Petition by Meritage Homes of Texas, LLC for Streamlined Expedited Release and Motion to Dismiss*, at 9 (Sept. 13, 2021).

The development that is planned for the Property meets all the elements referenced in the Settlement Agreement. The Property subject of this Petition is: (1) located within Princeton city limits; (2) the developer has requested sanitary sewer service from the City of Princeton; and (3) the development is high density and will consist of lots of less than one acre. The Property should be served by the City of Princeton and all matters related to service of the Property should be resolved in accordance with the Settlement Agreement that NCSUD signed in 2017.

### **III. CONCLUSION AND PRAYER**

NCSUD is *not* providing service to the Property. The City of Princeton has the right to serve the Property pursuant to the Settlement Agreement attached hereto. Additionally, § 1926(b) preemption *does not* preclude the Commission from considering the Petition. Meritage has fully satisfied the criteria under TWC § 13.2541 for decertification from NCSUD's CCN. For all the reasons discussed herein, Meritage respectfully requests that the Honorable Administrative Law Judge deny the Motion to Dismiss and for the Commission to approve the Petition.

Respectfully submitted,

WINSTEAD PC

/s/ Scott W. Eidman  
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**ATTORNEY FOR PETITIONER**



**CERTIFICATE OF SERVICE**

I hereby certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record vial electronic mail on October 4, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Scott W. Eidman  
Scott W. Eidman

## **Attachment 1**



Control Number: 46452



Item Number: 38

Addendum StartPage: 0

P.U.C. DOCKET NO. 46452  
SOAH DOCKET 473-17-2085.WS

RECEIVED  
2017 DEC -5 AM 11:53  
PUBLIC UTILITY COMMISSION  
TREAS CLERK

APPLICATION OF ALTOGA WATER §  
SUPPLY CORPORATION AND NORTH § BEFORE THE  
COLLIN SPECIAL UTILITY DISTRICT §  
FOR SALE, TRANSFER, OR MERGER OF § PUBLIC UTILITY COMMISSION  
FACILITIES AND CERTIFICATE RIGHTS § OF TEXAS  
IN COLLIN COUNTY §

**NOTICE OF SETTLEMENT**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE OF THE STATE OFFICE OF  
ADMINISTRATIVE HEARINGS:

COMES NOW, North Collin Special Utility District ("*NCSUD*"), by and through its  
counsel, and files this Notice of Settlement, and in support thereof would state as follows:

1. On August 18, 2017, the City of Princeton ("*Princeton*") filed a Status Report in  
this docket advising the Administrative Law Judge that Princeton, NCSUD and Altoga Water  
Supply Corporation ("*Altoga*") had reached an agreement in principle to resolve all matters  
in dispute relating to the applications that are the subject of this Docket (the "*STM*  
*Application*") and Docket No. 46835 (the "*Princeton CCN Application*").

2. Princeton's Status Report advised the Administrative Law Judge that if  
Princeton approved the proposed Settlement Agreement, either Princeton or another party  
would notify the Court of said settlement.

3. NCSUD hereby notifies the Administrative Law Judge that a final Settlement  
Agreement has been approved and executed by all parties. Attached hereto as **Exhibit "A"**  
is a true and correct copy of said Settlement Agreement.

4. The Settlement Agreement sets forth certain agreements between the parties  
relating to the provision of service and customers. Without limitation, Section 2.01 of the  
Settlement Agreement provides for geographical dual certification of NCSUD and Princeton  
within the "CCN Acquisition Area", as identified on **Exhibit "A"** of the Settlement Agreement.  
Section 2.01(a) further grants exclusive service rights to NCSUD and Princeton within said  
dually certificated area as follows:

- (i) NCSUD shall have the right and duty to serve, to the exclusion of  
Princeton, all new retail water customers in the CCN Acquisition Area

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except those lands: (A) that are located within the City limits of Princeton as now or hereafter existing; (B) that request sanitary sewer service and are located in a subdivision containing lots of less than one acre; or (C) that request sanitary sewer service for property that contains or will contain uses allowed by Princeton's Comprehensive Zoning Ordinance for Non-Residential Zoning Districts or Special Zoning Districts regardless of whether of whether the property is within Princeton's corporate limits; and

- (ii) Princeton shall have the right and duty to serve, to the exclusion of NCSUD, all new retail water customers in the CCN Acquisition Area who: (A) are located within the City limits of Princeton as now or hereafter existing; (B) request sanitary sewer service and are located in a subdivision containing lots of less than one acre; or (C) request sanitary sewer service for property that contains or will contain uses allowed by Princeton's Comprehensive Zoning Ordinance for Non-Residential Zoning Districts or Special Zoning Districts regardless of whether of whether the property is within Princeton's corporate limits

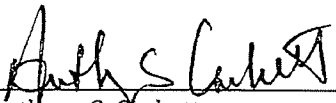
5. Section 2.03 of the Settlement Agreement obligates all parties to withdraw objections or opposition to the STM Application and the Princeton CCN Application.

6. Section 2.03 of the Settlement Agreement further obligates Princeton to amend its pending CCN Application to request: (i) PUC approval of the Settlement Agreement pursuant to Section 13.248 and 13.255 of the Texas Water Code; and (ii) the issuance of amended CCNs consistent with the terms of the Settlement Agreement, and incorporation of the Settlement Agreement into each party's amended water CCN to reflect the CCN Acquisition Area and the customer classes that the Parties are entitled to serve within the CCN Acquisition Area, all at Princeton's sole cost and expense.

7. By filings made October 18, 2017 and October 25, 2017, Princeton amended the Princeton CCN Application.

8. As a result of the Settlement Agreement, NCSUD requests that the STM Application be approved without further delay; provided, that the CCN Acquisition Area be dually certificated to NCSUD and Princeton in accordance with the terms of the Settlement Agreement.

Respectfully submitted,

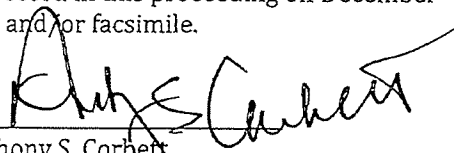
By:   
Anthony S. Corbett

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**ATTORNEYS FOR NORTH COLLIN  
SPECIAL UTILITY DISTRICT**

**CERTIFICATE OF SERVICE**

I, Anthony S. Corbett, legal counsel to North Collin Special Utility District, certify that a copy of this document was served on all parties of record in this proceeding on December 5th, 2017 in the following manner: by electronic mail and/or facsimile.

  
Anthony S. Corbett

## SETTLEMENT AGREEMENT TO RESOLVE WATER CCN DISPUTE

The parties to this Settlement Agreement to Resolve Water CCN Dispute ("Settlement Agreement") are North Collin Special Utility District ("North Collin"), Altoga Water Supply Corporation ("Altoga"), and the City of Princeton, Texas ("Princeton"), hereinafter individually referred to as a "Party" and collectively as the "Parties".

### SECTION 1

#### RECITALS

**1.01** North Collin is a political subdivision of the State of Texas created under the authority of Section 59, Article XVI, Texas Constitution, and operating pursuant to Chapters 49 and 65, Texas Water Code. North Collin holds Certificate of Convenience and Necessity ("CCN") No. 11035 by Order of the Texas Commission on Environmental Quality ("TCEQ"), or its predecessor agency, granting to North Collin the exclusive right to own and operate a retail public water utility system (a/k/a "water system") serving persons located inside a defined geographical service area in north-central Collin County. North Collin is a rural water system so North Collin does not possess a sewer CCN nor does it intend to provide sewer service in the future.

**1.02** Altoga is a nonprofit rural water supply corporation organized under Texas Water Code, Chapter 67, for the purposes stated in Water Code § 67.002. Altoga holds CCN No. 12580 issued by the TCEQ, or its predecessor agency, granting to Altoga the exclusive right to own and operate a retail public water utility system serving persons located inside a defined geographical service area in north-central Collin County (the "Altoga System"). Altoga's water service area is located immediately to the east of North Collin's service area. Altoga is a rural water system so Altoga does not possess a sewer CCN nor does it intend to provide sewer service in the future.

**1.03** Princeton is a Type-A general law municipal corporation organized and existing under the laws of the State of Texas and located wholly within Collin County, Texas. Princeton holds CCN No. 13195 to provide retail water utility service and CCN No. 21057 to provide retail sewer service to defined service areas covering Princeton's corporate limits and portions of its extra-territorial jurisdiction ("ETJ"). Princeton owns and operates a municipal water system and a municipal sewer system. Princeton's water service area is located immediately to the south of Altoga's water service area. Princeton's sewer service area covers approximately one-third of Altoga's water service area as shown on the map attached hereto as Exhibit "A" and incorporated herein by reference for all purposes.

**1.04** Altoga has entered into a contract to convey its water system and to transfer CCN No. 12580 to North Collin. To effect the transfers, on October 18, 2016, Altoga and North Collin filed an application with the Texas Public Utility Commission ("PUC") entitled, *Application of Altoga Water Supply Corporation and North Collin Special Utility District for Sale, Transfer, or Merger of Facilities and Certificate Rights in Collin County*; PUC Docket No. 46452 ("STM Application"). Princeton subsequently filed a request for public contested case hearing on the STM Application. On January 11, 2017, the PUC issued an order referring the STM Application to the State Office of

Administrative Hearings ("SOAH") where it was assigned SOAH Docket No. 473-17-2085.WS ("STM Proceeding"). Princeton filed a motion to intervene as a party to the STM Proceeding, which was granted on February 6, 2017.

1.05 On February 6, 2017, Princeton filed an application with the PUC entitled, *Application of City of Princeton to Amend its Water and Sewer Certificates of Convenience and Necessity and to Decertify a Portion of Altoga Water Supply Corporation's Water Service Area in Collin County*; PUC Docket No. 46835 ("CCN Application"). The PUC has not declared the CCN Application to be administratively complete.

1.06 The Parties acknowledge that the STM Proceeding and the CCN Application described above (collectively, the "PUC Proceedings") reflect bona fide disputes and controversies between the Parties. The PUC Proceedings concern identifying whether North Collin or Princeton will provide water service to different classes of new customers in a certain portion of Altoga's water service area that is also located in Princeton's ETJ.

1.07 Altoga and North Collin are currently indebted to the United States Department of Agriculture/Rural Development (USDA/RD) under the Consolidated Farm and Rural Development Act of 1961, 7 U.S.C. §§ 1921, et seq., for water system improvement loans and have pledged water service revenue and water system facilities as security for the loans. Altoga and North Collin maintain that their state law right to provide water service within Altoga's certificated water service area may not be altered, curtailed or limited by any state court or administrative proceeding, because local and state law is preempted by 7 U.S.C. § 1926(b).

1.08 Following the conveyance of Altoga's water system and CCN No. 12580 to North Collin, North Collin intends to continue operating as rural water system so long as there exists sufficient rural area and a rural customer base to maintain operational effectiveness, fiscal stability, and reasonable water rates. Princeton agrees that North Collin should continue to operate as a rural water system and potable water delivery entity inside Altoga's water service area after taking ownership and control of Altoga's water system.

1.09 For the foreseeable future North Collin intends to operate Altoga's water system separate and apart from North Collin's water system, except for an emergency interconnection between the two water systems.

1.10 Princeton is experiencing rapid development of single-family residential subdivisions within its ETJ and especially to the immediate south of Altoga's water service area. Princeton desires to provide both water and sewer service to certain single-family residential subdivisions located within its ETJ, including that portion of its ETJ that overlaps Altoga's water service area as shown on the map attached hereto as Exhibit "A" (the "CCN Acquisition Area"). North Collin and Altoga agree that Princeton should serve developments located in its ETJ that require sewer service, including within the CCN Acquisition Area.

1.11 The Parties desire to avoid the annoyance, cost, delay, and uncertainty associated



with contested legal and administrative proceedings by settling all disputed water service matters between the Parties with regard to Altoga's water service area defined by CCN No. 12580. Therefore, in order to fully and finally compromise and settle all claims that have been or could have been asserted, and all applications regarding water and sewer service that have been submitted, in the PUC Proceedings - as well as all other matters in controversy between them - the Parties hereby enter into this Settlement Agreement.

## SECTION 2

### TERMS OF AGREEMENT

In full consideration of the mutual promises and agreements contained in this Settlement Agreement, including the Recitals set forth in Section 1 above, as well as the financial consideration to be paid by Princeton to North Collin for the acquisition of portions of the CCN Acquisition Area by Princeton under Section 2.04 below, if any, the Parties agree as follows:

**2.01 CCN Acquisition Area.** All territory located inside the CCN Acquisition Area will be geographically certificated to both North Collin and Princeton for single certification by customer class, as follows:

(a) North Collin's CCN will be amended to reflect that it will have the right and duty to serve, pursuant to its Rate Order, and to the exclusion of Princeton, all new retail water customers in the CCN Acquisition Area except those that: (i) are located within the city limits of Princeton as now or hereafter existing; (ii) request sanitary sewer service and are located in a subdivision containing lots of less than one acre; or (iii) request sanitary sewer service for property that contains or will contain uses allowed by Princeton's Comprehensive Zoning Ordinance for Non-Residential Zoning Districts or Special Zoning Districts, regardless of whether the property is within Princeton's corporate limits at the time sewer service is requested.

(b) Princeton's water CCN will be amended to reflect that it has the right and duty to serve, pursuant to its ordinances, and to the exclusion of North Collin, all new retail water customers in the CCN Acquisition Area who: (i) are located within the city limits of Princeton as now or hereafter existing; (ii) request sanitary sewer service and are located in a subdivision containing lots of less than one acre; or (iii) request sanitary sewer service for property that contains or will contain uses allowed by Princeton's Comprehensive Zoning Ordinance for Non-Residential Zoning Districts or Special Zoning Districts, regardless of whether the property is within Princeton's corporate limits at the time sewer service is requested.

(c) The territory presently located inside North Collin's CCN No. 11035 will remain singly certificated to North Collin and is not subject to being acquired by Princeton under this Settlement Agreement.

(d) The map designating the CCN Acquisition Area and attached to this Settlement Agreement as Exhibit "A" is incorporated herein by reference for all purposes.

**2.02 USDA Approval.** Any acquisition of territory, customers, or facilities located in the CCN Acquisition Area to Princeton must comply with applicable regulations of the USDA/RD, if any apply.

**2.03 PUC Proceedings; Amended CCNs.** Immediately upon approval of this Settlement Agreement by the Parties, the Parties will withdraw objections or opposition to the STM Application and CCN Application, if any, and Princeton will amend the pending CCN Application to request (i) PUC approval of this Settlement Agreement pursuant to Texas Water Code §§ 13.248 and 13.255, (ii) the issuance of amended CCNs consistent with the terms of this Settlement Agreement, and incorporation of the this Settlement Agreement into each Party's amended water CCN to reflect the CCN Acquisition Area and the customer classes that the Parties are entitled to serve within the CCN Acquisition Area. Princeton shall bear the costs to amend and prosecute the CCN Application before the PUC, and also the State Office of Administrative Hearings should another entity object to the application and be allowed to intervene. The Parties will take all acts necessary to expedite PUC approval of this Settlement Agreement together with the issuance of amended CCNs including, but not limited to, preparation of a proposed agreed final order for submission to the Commissioners for approval under Texas Water Code §§ 13.248 and 13.255, and preparation of maps, forms, or other necessary documents. The Parties expressly waive their rights to file a motion for reconsideration or rehearing of any order entered by the PUC in the PUC Proceedings consistent with this Settlement Agreement.

**2.04 Territory and Customer Acquisition.** From time-to-time Princeton will acquire territory located in the CCN Acquisition Area so Princeton may facilitate or regulate utility infrastructure for proposed commercial and residential developments that require sewer service. Princeton agrees to pay to North Collin a price of \$200.00 per acre for territory acquired by Princeton under this Section 2. Should the PUC grant expedited release of property located in the CCN Acquisition Area under Texas Water Code § 13.254, Princeton agrees that it remains obligated to pay the \$200 per acre CCN acquisition fee to North Collin provided the owner requests Princeton provide water service to the affected property. Princeton will pay to North Collin the foregoing amount for each acre and partial acre contained within a plat or tract within 10 days of (i) approving a final plat affecting land in the CCN Acquisition Area or (ii) entering into a water and sewer service agreement with the owner of a tract of land in the CCN Acquisition Area that is or will be put to commercial use and that does not require plat approval.

**2.05 Area Utility and Service Cooperation.**

(a) North Collin shall maintain the water supply and transmission system components of the Altoga System to preserve the Altoga System's integrity, subject to coordination with Princeton when necessary. In the event Princeton approves a development or subdivision having infrastructure that conflicts or interferes with existing waterlines of the Altoga System, Princeton agrees to either (i) relocate the affected

waterlines in a manner that maintains the Altoga System's continuing operations and water pressure, or (iii) to provide North Collin with additional connections to maintain the Altoga System's continuing operations and water pressure. The relocation of an affected waterline shall be at no cost to North Collin unless the affected waterline is located within the public right-of-way of a state highway or farm-to-market road maintained by the Texas Department of Highways and Public Transportation (TxDOT) and relocation is required to accommodate expansion or reconstruction of a state highway or farm-to-market road, in which case North Collin shall be responsible for the cost of relocation as provided for in the Texas Transportation Code and TxDOT regulations.

(b) In the event Princeton desires to acquire a large or vital waterline from the Altoga System as part of a CCN territory acquisition, Princeton shall work with North Collin to identify and implement an acceptable plan to maintain Altoga System operations and water pressure; under this circumstance, Princeton shall pay to North Collin (i) the cost for territory taken from the CCN Acquisition Area as provided for in Section 2.04(a) above, (ii) the cost of any customers acquired from North Collin as provided for in Section 2.04(b), and (iii) the cost to construct a replacement waterline with appurtenances.

#### **2.06 Construction/Waterline/Fire-flow Standards.**

(a) It is agreed by the Parties that North Collin will comply with Princeton subdivision regulations and public works construction standards/specifications for the construction of new waterlines and appurtenances and for the replacement of damaged waterlines and appurtenances located, or to be located, within the CCN Acquisition Area. After the PUC issues an order approving this Settlement Agreement, all new or replacement waterlines in the CCN Acquisition Area shall have a minimum diameter of six inches (6") unless Princeton agrees in writing to allow North Collin to install a smaller diameter waterline. It is the intent of Princeton that the 6" minimum diameter standard is for the purpose of insuring that adequate water volume and pressure is available in growth areas and to provide fire flows as transmission lines are upgraded. It is not the intent to prevent the extension of water service or improvement of water service to existing customers in rural areas of the CCN Acquisition Area that are not experiencing or are not anticipated to experience urban development activity. The Parties agree to meet periodically as needed to discuss development trends and line size issues.

(b) At the request of Princeton, North Collin agrees to cooperate with Princeton to prepare a projected waterline size map for the CCN Acquisition Area to delineate areas where waterline size is of significant concern.

(c) All water utility infrastructure to be constructed for new residential and commercial developments in the CCN Acquisition Area and designated for service by North Collin under the terms of this Settlement Agreement must comply with the fire-flow standards set forth in North Collin's duly adopted Rate Order.

**2.07 Effective Date.** This Settlement Agreement shall be effective on the date that this Settlement Agreement is executed by authorized representatives of the Parties hereto.

### **SECTION 3**

#### **ADDITIONAL TERMS OF AGREEMENT**

**3.01** This Settlement Agreement is solely for the benefit of the Parties hereto. There are no third party beneficiaries of this Settlement Agreement.

**3.02** This Settlement Agreement may be recorded in the real property records or official records of Collin County, Texas.

**3.03** Any reference to a state or federal administrative agency in this Settlement Agreement, such as the TCEQ or USDA/RD, includes the named agency's predecessor and successor agencies, if any.

**3.04** In executing this Settlement Agreement, the Parties acknowledge that they are not relying on any statement or representation of any other Party regarding the matters in dispute. Each of the Parties is relying on their own judgment and each is represented by attorneys in this matter.

**3.05** This Settlement Agreement is a compromise of doubtful and disputed claims. Nothing in this Settlement Agreement is an admission of liability by any of the Parties hereto, and nothing in this Settlement Agreement may be interpreted as an admission of liability. Each Party to this Settlement Agreement expressly denies liability to the other Parties to this Settlement Agreement.

**3.06** Without being forced to elect remedies, each Party is entitled to exercise all rights and remedies allowed in equity and under applicable law to enforce this Settlement Agreement. Notwithstanding the foregoing, the Parties expressly have the right to file an action or claim for injunctive relief and/or specific performance to enforce the terms of this Settlement Agreement.

**3.07** This Settlement Agreement is made in accordance with the laws of the State of Texas. The Parties agree that this Settlement Agreement is governed by, and will be construed and enforced in accordance with Texas law. Exclusive venue for any lawsuit related in any way to this Settlement Agreement is in Collin County, Texas; however, if the lawsuit involves the enforcement by the TCEQ or PUC of any obligations under the Parties' respective CCNs issued by the TCEQ or PUC, venue is in Travis County, Texas, to the extent required by law.

**3.08** This Settlement Agreement is binding on and inures to the benefit of the Parties and their respective administrators, legal representatives, officers, agents, employees, successors and assigns.

**3.09** This Settlement Agreement contains the entire agreement between the Parties and it supersedes any and all prior agreements, arrangements or understandings between the Parties

on all subjects in any way related to the transactions or occurrences described in the PUC Proceedings. No oral understandings, statements, promises or inducements contrary to or inconsistent with the terms of this Settlement Agreement exist. This Settlement Agreement is not subject to any oral modification, waiver, addition or deletion, and any modification, waiver, addition or deletion of any provision in this Settlement Agreement must be made in writing and signed by the Parties.

3.10 For purposes of notice, the addresses, email addresses and fax numbers of the Parties are as follows:

**To North Collin and Altoga:**

North Collin SUD  
Attn: General Manager  
2333 Sam Rayburn Hwy.  
Melissa, Texas 75454  
Fax: (972) 837-2930  
Email: [aknight@northcollinsud.com](mailto:aknight@northcollinsud.com)

**with copy to:**

James W. Wilson  
Gay, McCall, Isaacks & Roberts, P.C.  
777 East 15th Street  
Plano, Texas 75074  
Email: [jwilson@gmigr.com](mailto:jwilson@gmigr.com)

**To Princeton:**

City of Princeton  
Attn: City Manager  
123 West Princeton Drive  
Princeton, TX 75407  
Fax: (972) 734-2548  
Email: [dborg@princetontx.us](mailto:dborg@princetontx.us)

**with copy to:**

Arturo D. Rodriguez, Jr.  
1633 Williams Drive, Suite 200  
Georgetown, Texas 787628  
Email: [arodriguez@txadminlaw.com](mailto:arodriguez@txadminlaw.com)

For purposes of notice under this Settlement Agreement, any Party that desires to change its address, email address or fax number must give the other Parties at least seven (7) days prior notice of the change. All notices given pursuant to this Settlement Agreement must be in writing.

**3.11** This Settlement Agreement may be executed in multiple counterparts, each of which shall be deemed an original for all purposes.

**3.12** This Settlement Agreement has been prepared and drafted by the joint efforts of the respective attorneys for each Party and thus shall be construed equally against all Parties.

**3.13** If, after the date of its approval by the PUC or USDA/RD, any provision of this Settlement Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Settlement Agreement, such provision(s) shall be fully severable.

**3.14** The Parties agree to cooperate fully and to execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Settlement Agreement.

**3.15** The failure of any Party to enforce at any time any provision of this Settlement Agreement shall not be construed to be a waiver of such provision, or to affect the validity of this Settlement Agreement or any part thereof, or to affect any right of any of the Parties to enforce its provisions. No waiver of any breach of this Settlement Agreement shall be held to constitute a waiver of any other breach.

**3.16** This Settlement Agreement must be approved by the Princeton City Council and by the Boards of Directors of North Collin and Altoga to become effective, which approval shall be expressly affirmed upon execution of this Settlement Agreement by the respective Mayor and Board Presidents of said Parties.

**3.17** The attached Exhibit "A" is incorporated herein by reference for all purposes.

*[SIGNATURE PAGES TO FOLLOW.]*

APPROVED AND AGREED TO on the 29<sup>th</sup> day of August, 2017, by:

NORTH COLLIN SPECIAL UTILITY DISTRICT, a  
Texas political subdivision

By: [Signature]  
Duke Monson, President

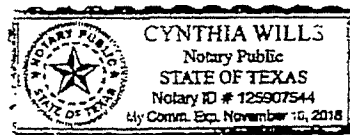
ACKNOWLEDGMENT

STATE OF TEXAS     §  
                                  §  
COUNTY OF COLLIN   §

Before me, the undersigned notary public, on this day personally appeared Duke Monson, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as the act of North Collin Special Utility District, a Texas political subdivision, as President of its Board of Directors, for the purposes and consideration therein expressed.

Given under my hand and seal of office this 29 day of August, 2017.

Cynthia A. Wills  
Notary Public, State of Texas



APPROVED AND AGREED TO on the 29 day of August, 2017, by:

ALTOGA WATER SUPPLY CORPORATION, a  
Texas nonprofit corporation

By: Billy Boone  
Billy Boone, President

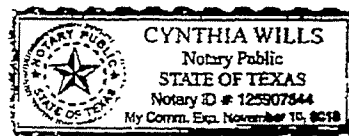
ACKNOWLEDGMENT

STATE OF TEXAS     §  
                                  §  
COUNTY OF COLLIN §

Before me, the undersigned notary public, on this day personally appeared Billy Boone, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as the act of Altoga Water Supply Corporation, a Texas nonprofit corporation, as President of its Board of Directors, for the purposes and consideration therein expressed.

Given under my hand and seal of office this 29 day of August, 2017.

Cynthia A. Wills  
Notary Public, State of Texas





APPROVED AND AGREED TO on the 23 day of August, 2017, by:

CITY OF PRINCETON, TEXAS, a Texas  
municipal corporation

By: [Signature]  
John-Mark Caldwell, Mayor

ACKNOWLEDGMENT

STATE OF TEXAS     §  
                             §  
COUNTY OF COLLIN §

Before me, the undersigned notary public, on this day personally appeared John-Mark Caldwell, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as the act of the City of Princeton, Texas, a Texas municipal corporation, as its Mayor, for the purposes and consideration therein expressed.

Given under my hand and seal of office this 23 day of August, 2017.



[Signature]  
Notary Public, State of Texas

EXHIBIT "A"

