



## **Filing Receipt**

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**Item Number - 1**

# MATHEWS & FREELAND, L.L.P.

ATTORNEYS AT LAW

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AUSTIN, TEXAS 78759

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April 20, 2023

***Via PUC Interchange***

Public Utility Commission of Texas  
Central Records Division  
1701 N. Congress Avenue, Room 8-100  
Austin, Texas 78701

Re: Application of Emerald Bay Municipal Utility District and Aqua Texas, Inc., for Approval of a Service Area Agreement Under Texas Water Code §13.248 and to Amend Certificates of Convenience and Necessity in Smith County

To the Public Utility Commission of Texas:

On behalf of Emerald Bay Municipal Utility District (“Emerald Bay MUD”) and Aqua Texas, Inc. (“Aqua”), please accept this application under Texas Water Code §13.248 and 16 Tex. Admin. Code §24.253 for approval of a service area agreement and to transfer a portion of Emerald Bay MUD’s CCN No. 13047 in Smith County, Texas to Aqua’s CCN No. 13201. Emerald Bay MUD and Aqua have both agreed to the transfer. A copy of the agreement is attached as Exhibit A. The agreement was presented to and approved by Emerald Bay MUD’s Board of Directors. The agenda and minutes from Emerald Bay MUD’s March 21, 2023, Board meeting in which the agreement was considered and approved, and an affidavit attesting to the meeting, are attached as Exhibit B.

The amount of territory is approximately 4.46 acres, and there are no existing Emerald Bay MUD customers or facilities being transferred. Small and large-scale maps of the area to be transferred are attached as Exhibit C. The digital data supporting the maps will be uploaded along with this document. Emerald Bay and Aqua coordinated regarding the creation of these maps.

Please let me know if you need any additional information to allow the Commission to incorporate this agreement into the respective CCNs of Emerald Bay and Aqua.

Sincerely,



Joe Freeland

Attorney for Emerald Bay MUD

cc: William Harris, Emerald Bay MUD President  
Danielle Jouenne, Attorney for Aqua Texas, Inc.

## **Exhibit A**

**TWC §13.248 Agreement between  
Emerald Bay MUD and Aqua Texas, Inc.**

## SERVICE AREA AGREEMENT

This Agreement is entered into by and between Emerald Bay Municipal Utility District (“Emerald Bay”), a retail public utility and conservation and reclamation district organized under Chapter 54 of the Texas Water Code, and Aqua Texas, Inc. a Texas corporation and investor-owned retail public utility (“Aqua Texas”) (collectively, the “Parties,” and individually depending upon the context, “Party”) and is effective upon execution by the second party to sign the same.

### RECITALS

WHEREAS, Emerald Bay is the current holder of Certificate of Convenience and Necessity (“CCN”) No. 13047, and provides retail water utility service to specific areas within Smith County, Texas; and

WHEREAS, Aqua Texas is the holder of CCN No. 13201, and provides retail water utility services in Smith County, Texas, as well as throughout the State of Texas; and

WHEREAS, Emerald Bay and Aqua Texas find it mutually advantageous to amend their respective CCN service area boundaries by agreement pursuant to Texas Water Code § 13.248, in order to achieve and maintain efficient and affordable retail public water service to their respective customers; and

WHEREAS, pursuant to Texas Water Code § 13.248, contracts between retail public utilities designating areas to be served, when approved by the Public Utility Commission of Texas (“PUC”), are valid and enforceable and are incorporated into the appropriate CCNs; AND

WHEREAS, the Emerald Bay and Aqua Texas mutually desire to enter into this Agreement setting forth the terms and conditions pursuant to which they will designate areas and customers to be served and to request the PUC to incorporate such designations into their CCNs;

NOW, THEREFORE, in consideration of the promises, mutual agreements, and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Emerald Bay and Aqua hereby contract and agree as follows:

### ARTICLE I TERMS

1.1 Recitals. The recitals set forth above are incorporated herein and shall compose together with the terms agreed upon herein, the Agreement.

1.2 Term. This Agreement shall remain valid and enforceable unless and until superseded by a subsequent written agreement. No other amendments, except those expressly agreed upon herein, shall be made to either Party’s existing certificated service area boundaries pursuant to this Agreement.

1.3 Property Subject to the Agreement. The property subject to this Agreement is the **4.46 - acre** property identified as “Agreement Area for Transfer” as shown on Exhibit A.

1.4 Agreement Area for Transfer. Emerald Bay and Aqua Texas agree that the area identified on Exhibit A as the “Agreement Area for Transfer,” attached and incorporated herein by reference, shall be removed from Emerald Bay’s CCN No. 13047, and transferred to Aqua Texas’s CCN No. 13201.

1.5 PUC Approval. As soon as practical, but in no event later than fifteen (15) days after the Effective Date, the parties agree to jointly file this Agreement with the PUC pursuant to Texas Water Code § 13.248, along with a written petition as required by 16 Texas Administrative Code § 24.253, and such other documents that may be required to incorporate this Agreement into the respective CCNs of Emerald Bay and Aqua Texas. In the event the PUC does not incorporate this Agreement into the respective CCNs, or requires additional evidence, documentation, maps, or action from the Parties, the Parties shall promptly and jointly prepare and submit such cures or additional applications as may be necessary to obtain PUC approval. Emerald Bay agrees to take primary responsibility for drafting and filing necessary documents at the PUC and in complying with all subsequent processing of those documents at the PUC.

1.6 Interim Service. Emerald Bay hereby consents to Aqua Texas providing retail water service to the Proposed Partial Transfer Area beginning on the date of execution of this Agreement and during the pendency of the § 13.248 Application.

1.7 Customers. Parties agree that no customers will be transferred between the Parties as a result of this Agreement or the CCN service area boundary amendments resulting therefrom.

1.8 Compensation. No compensation will be exchanged for the proposed CCN service area transfers to Aqua Texas agreed upon herein. Emerald Bay has agreed to assume the reasonable and necessary legal costs, county recording costs incurred pursuant to Texas Water Code § 13.257(r), and any other costs Emerald Bay might incur as a result of the PUC application process required to affect the agreed proposed CCN service area transfers to Aqua Texas, with the exception of mapping costs, which Aqua Texas will assume.

## **ARTICLE II** **MISCELLANEOUS**

2.1 No agreements other than this Agreement now exist between Emerald Bay and Aqua Texas concerning the subject matter of this Agreement.

2.2 This Agreement shall be binding on Emerald Bay and Aqua Texas and shall be binding on and inure to the benefit of the successors and assigns of the respective Parties to this Agreement.

2.3 This Agreement is the entire agreement between the Parties hereto with respect to the subject matter hereof. No modifications of this Agreement shall be of any force or effect, whatsoever, except as by subsequent modification in writing signed by the Parties.

2.3 The provisions of this Agreement shall be governed by and construed and entered in accordance with the substantive laws of the State of Texas. Any action at law or in equity brought to enforce any provision of this Agreement shall be brought in a court of competent jurisdiction with

venue in Smith County, Texas, except to the extent the PUC is made party to such action in which event venue may be in Travis County, Texas.

2.4 The individuals executing this Agreement on behalf of the respective parties below represent that all necessary and appropriate action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing, and that each individual affixing his or her signature is authorized to do so, and such authorization is valid and effective on the date hereof. If the authority of the individual executing this Agreement is subsequently challenged, the party for which the individual was acting shall take all steps necessary to ratify the authority of the individual.

2.5 This Agreement may be executed in multiple originals, either copy of which shall be considered an original.

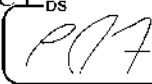
2.6 This Agreement shall be effective on the date of execution below, the latter of which shall be the Effective Date.

2.7 No Party will be penalized for alleged authorship of a particular provision upon judicial construction of this Agreement.

2.8 No Party to this Agreement shall initiate any litigation or arbitration challenging the validity or enforceability of any provision of this Agreement once it has been signed. The Parties reserve only their right to enforce the terms of this Agreement to the extent they are not fully performed by any other Party.

EXECUTED AND AGREED TO by the Parties hereto this 17<sup>th</sup> day of April, 2023.


EMERALD BAY MUNICIPAL UTILITY DISTRICT<sup>DS</sup>

By: William F. Harris   
DocuSigned by: 3B822A57BA7B48C...

Printed Name: William F. Harris

Title: President, Board of Directors

AQUA TEXAS, INC.<sup>DS</sup>

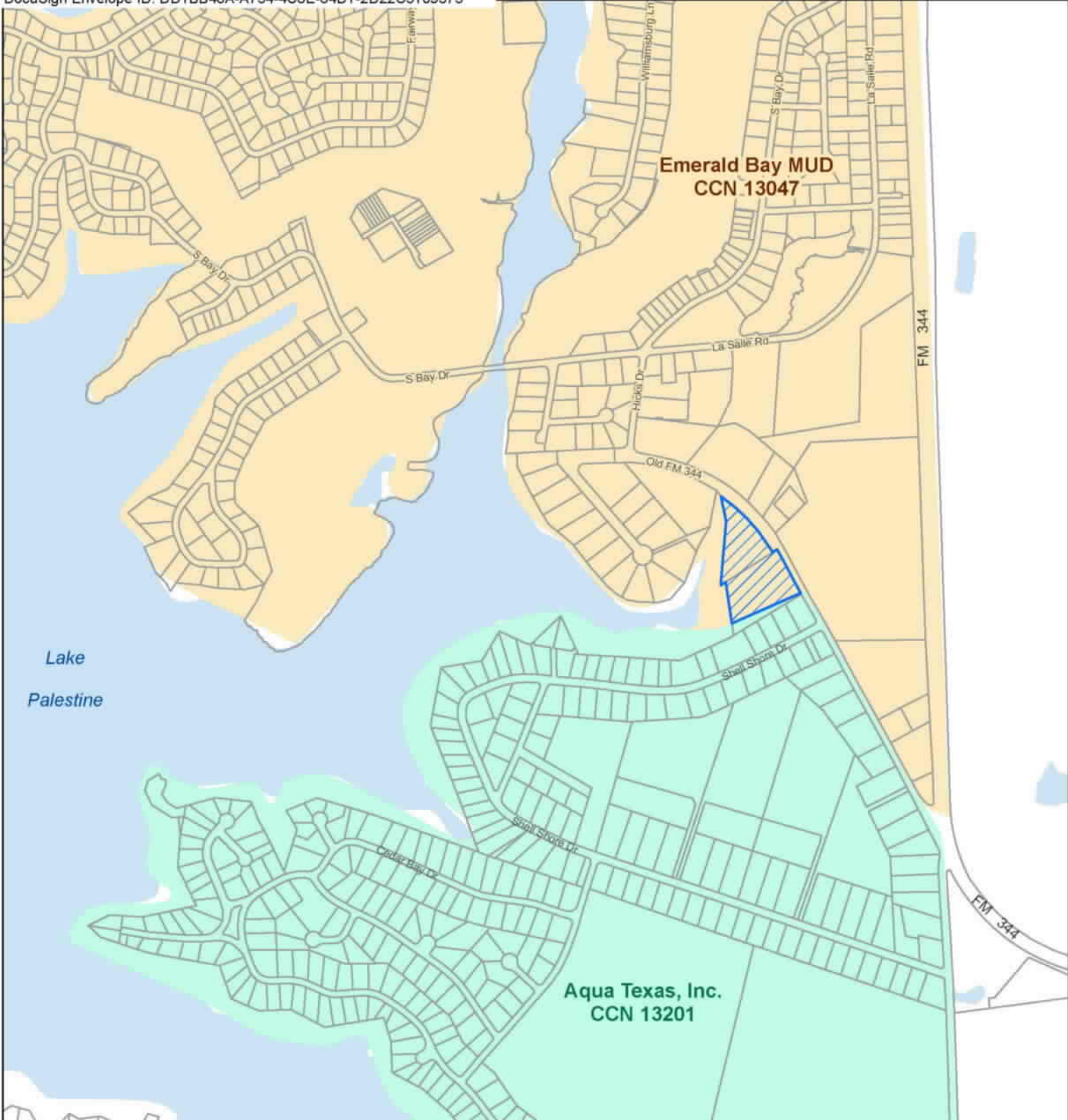
By: Craig L. Blanchette   
DocuSigned by: 824B8C1A43A44C8...

Printed Name: Craig L. Blanchette

Title: President

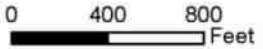
# Exhibit A




## Agreement Area for Transfer



### Agreement Map

13.248 Petition to Transfer a Portion of Emerald Bay MUD, CCN No. 13047 to Aqua Texas, Inc., CCN No. 13201  
Smith County



	Requested Water Area to Transfer
	CCN 13047 - Emerald Bay MUD
	CCN 13201- Aqua Texas, Inc.



## **Exhibit B**

**Emerald Bay MUD Meeting  
March 21, 2023**

**Agenda and Minutes and Supporting Affidavit**



**Emerald Bay Municipal Utility District**  
**Notice of Special Meeting**  
**March 21, 2023**

The Board of Directors of the Emerald Bay Municipal Utility District will meet in special session on Tuesday, March 21, 2023, at 4:45 PM for the purpose of considering the following agenda:

1. Call to order
2. Approve/Reject the minutes from January 16, 2023
3. Discussion and possible action to approve a service area agreement with Aqua Texas, Inc. (Aqua), allowing Aqua to provide retail water utility service to two tracts currently in Emerald Bay MUD's water certificate of convenience and necessity (CCN).
4. Motion to approve Compromise and Settlement Agreement with Cowan Land & Cattle Co. Inc., resolving the lawsuit filed by the District to acquire certain property by condemnation, authorizing payment of the Settlement Amount and directing Bill Harris to sign the Compromise and Settlement Agreement for the District and to take such other action as required under the Compromise and Settlement Agreement to accomplish its terms.
5. Motion to Approve the completed financial audit prepared by Acker & Company
6. Discussion on operating cost and capital cost
7. Adjournment

Posted March 17, 2023, at 3:30 PM

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Becky Kirkpatrick, Secretary

IMPORTANT (1) Each subject listed above includes discussion, consideration, action, etc. (2) Subjects may be taken up in the order listed or in another order and may be taken up more than once during the meeting. (3) Each subject listed above includes an executive or closed session to the extent allowed by: (i) Section 551.071 Texas Government Code for attorney consultations to seek advice about pending or contemplated litigation or a settlement offer, or a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551, Texas Government Code; or (ii) Section 551.072, Texas Government Code for deliberating purchase, exchange, lease, or value of real property; or (iii) Section 551.074, Texas Government Code to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee or to hear a complaint of charge against such officer or employee. (4) IF YOU HAVE A DISABILITY REQUIRING SPECIAL ARRANGEMENTS AT THE MEETING, PLEASE CONTACT BECKY KIRKPATRICK AT 903-825-6960 IN ADVANCE OF THE MEETING. REASONABLE ACCOMMODATIONS WILL BE MADE TO ASSIST YOUR PARTICIPATION. THE MEETING PLACE MENTIONED ABOVE IS ACCESSIBLE BY WHEELCHAIRS.



Emerald Bay Municipal Utility District Special Session Minutes Tuesday, March 21, 2023.

The Board of Directors of the Emerald Bay Municipal Utility District met at the District Office, 155 LaSalle Road, Bullard, TX 75757. Present were Directors Dwight Cole, Cayla Washburn, Inge Grant, Bill Harris and Becky Kirkpatrick. Also in attendance was District Manager Laurie Threet.

Director Harris called the meeting to order at 4:46 PM.

Director Harris asked the Board to approve the Regular Session Minutes of January 16, 2023. Director Grant made a motion to approve the minutes, President Harris seconded, and the motion was approved unanimously.

A motion was made by President Harris to approve a service area agreement with Aqua Texas, Inc. (Aqua), allowing Aqua to provide retail water utility service to two tracts currently in Emerald Bay MUD's water certificate of convenience and necessity (CCN). Director Cole seconded the motion, and the motion was approved unanimously.

President Harris made a motion to approve the Compromise and Settlement Agreement with Cowan Land & Cattle Co. Inc. This action will resolve the lawsuit filed by the District to acquire certain property by condemnation, and authorize payment of the Settlement Amount. Additionally, it will direct President Harris to sign the Compromise and Settlement Agreement for the District and to take such other action as required under the Compromise and Settlement Agreement to accomplish its terms. Director Grant seconded the motion, and the motion passed unanimously. President Harris added that he would be directing the District's Council, Mr. Glen Patrick, to contact counsel for Cowan Land & Cattle Co., Inc. requesting the cessation of any and all verbal threats and to assure that all personnel of the Cowan Land & Cattle Company are completely informed of the District's legal rights of access to all property and easements under the law.

Business Manager Laurie Threet presented the completed financial audit prepared by Acker & Company. Director Cole requested several clarifications in the document wording. President Harris then made a motion to approve the document, contingent on approval of the changes submitted by Director Cole. The motion was seconded by Mr. Cole seconded, and the motion passed unanimously.

President Harris noted the exceptional contributions of Ms. Threet and her work not only enhancing the functionality of our system but also working with the auditor to prepare such a thorough document.

Ms. Threet then presented the Operations Cost & Capital Report. Supply chain issues still persist, as do hiring difficulties. The District continues to seek qualified personnel that can assist with operations. A significant rate increase should be expected in the near future.

There being no further business, Director Harris adjourned the meeting at 6:15 PM.

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William F. Harris  
President



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Becky Kirkpatrick  
Secretary

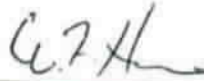
Attachment:

President Harris presented a list of repairs/improvements that the District can anticipate becoming necessary in the next 12-36 months.

AFFIDAVIT OF WILLIAM F. HARRIS


BEFORE ME, the undersigned authority, personally appeared William F. Harris, known to me to be the person who subscribed his name below, who, being by me first duly sworn did depose on his oath as follows:

1. "I am over 18 years of age, have not been convicted of a crime, and I am of sound mind.
2. I am the President of the Board of Directors of the Emerald Bay Municipal Utility District ("EBMUD"). I am capable of making this Affidavit, and personally acquainted with the facts herein stated.
3. EBMUD considered and approved an agreement between EBMUD and Aqua Texas, Inc., ("Aqua") whereby certain water certificate of convenience and necessity ("CCN") service territory of EBMUD's would be transferred to Aqua.
4. A true and correct copy of EBMUD's Board of Directors meeting agenda and minutes for the meeting on March 21, 2023, are attached hereto. Notice for this meeting complied with the Texas Open Meetings Act. At this meeting, the Board of Directors discussed and approved the agreement with Aqua.
5. There are no EBMUD customers being transferred pursuant to the agreement referenced above.
6. Further affiant sayeth not."



William F. Harris

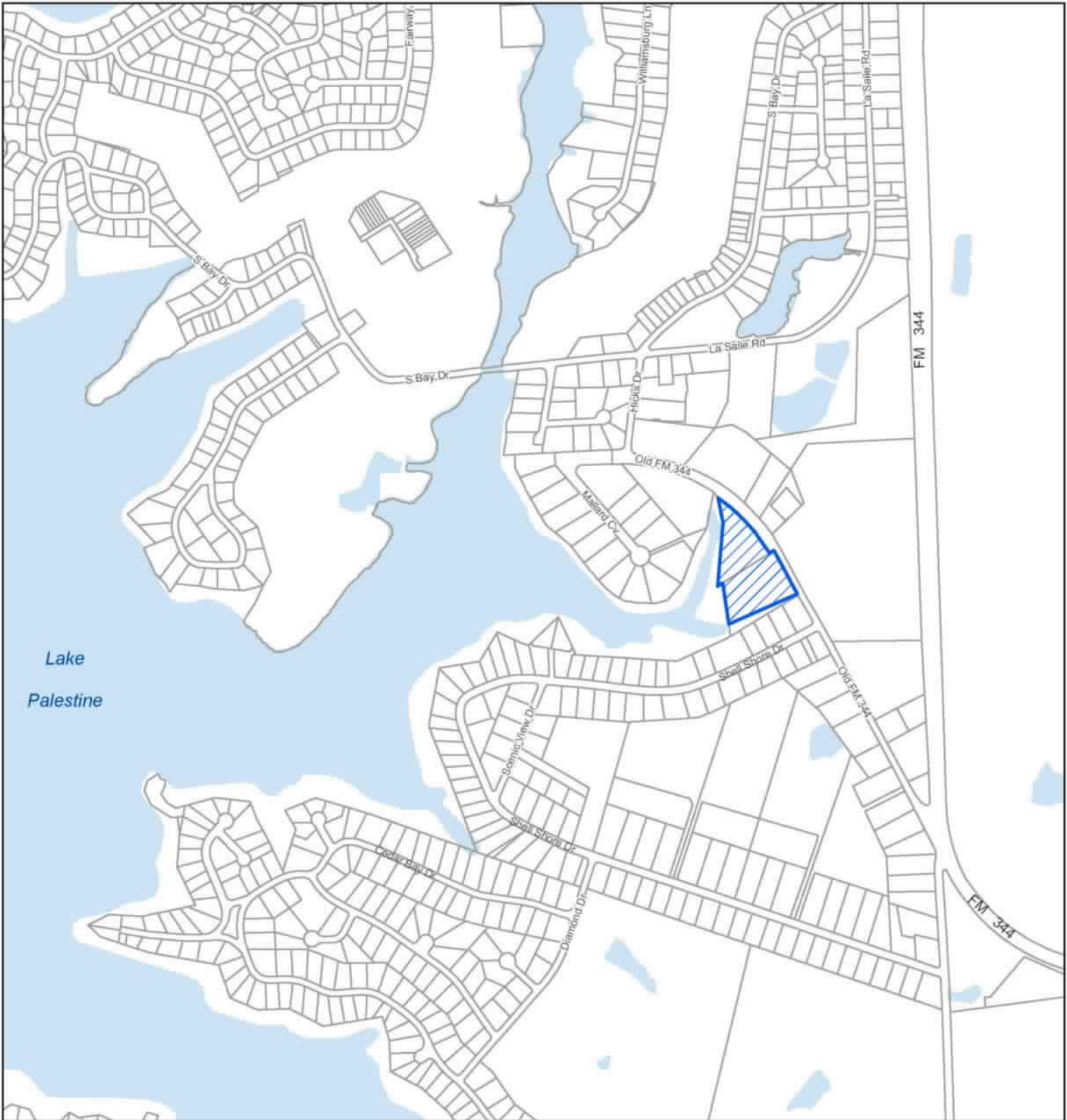
Subscribed to and sworn to before me, the undersigned authority on this the 21<sup>st</sup> day of March, 2023.



Notary Public in and for  
the State of Texas

# **Exhibit C**


## **Small and Large Scale Maps**



**General Location**

13.248 Petition to Transfer a Portion of Emerald Bay MUD, CCN No. 13047 to Aqua Texas, Inc., CCN No. 13201  
Smith County



 Requested Water Area to Transfer



### Detail Map

13.248 Petition to Transfer a Portion of Emerald Bay MUD, CCN No. 13047 to Aqua Texas, Inc., CCN No. 13201  
Smith County

 Requested Water Area to Transfer



0 125 250  
Feet

Map by: S. Burt, ASBGI  
Date: April 14, 2023  
Base: Smith CAD Parcels, NHD Waterbody  
Project: MUD to Aqua Tx Detail Map






**Detail Map on Imagery**

13.248 Petition to Transfer a Portion of Emerald Bay MUD, CCN No. 13047 to Aqua Texas, Inc., CCN No. 13201  
Smith County



 Requested Water Area to Transfer

Map by: S. Burt, ASBGI  
Date: April 14, 2023  
Base: ESRI World Imagery, Smith CAD Parcels  
Project: MUD to Aqua Tx Detail Map on Imagery

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TransferArea.shp  
TransferArea.shx

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