

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

January 7, 2010

Ms. LaDonna Castañuela, Chief Clerk
Office of the Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC-105
Austin, Texas 78711-3087

Re: TCEQ Docket No. 2009-1897-UCR; Consideration of a request for a Commission order approving contracts designating water service areas between the City of Longview (Longview), Certificate of Convenience and Necessity (CCN) No. 10361, and Tryon Road Special Utility District (SUD), CCN No. 10362.

Dear Ms. Castañuela:

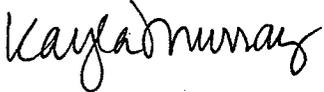
Transmitted herewith for filing with the Texas Commission on Environmental Quality (Commission or TCEQ) are the following items to be filed as backup materials for the January 27, 2010 agenda on a request for an order approving contracts designating water service areas between the City of Longview (Longview) and Tryon Road Special Utility District (SUD):

1. Proposed Order;
2. Agenda Executive Summary;
3. Caption
4. Staff memo detailing financial, managerial, and technical capabilities of Longview to provide continuous and adequate service to the affected area;
5. Request for Commission order approving a Texas Water Code Section 13.248 and 13.255(a) agreement filed jointly by Longview and SUD on January 18, 2008, and declared administratively complete on March 6, 2009;
6. Texas Water Code, Section 13.248 contract between Longview and SUD executed on October 14, 1999;
7. Texas Water Code, Section 13.248 and Texas Water Code, Section 13.255(a), agreement between Longview, SUD, and Quorum Longview 259, L.P. (developer), executed on April 24, 2006;
8. Certificates of Convenience and Necessity (CCN) Nos. 10361 and 10362;
9. Proposed map of the service areas subject to the section 13.248 and 13.255(a) agreements;
10. Notices Mailed to Parties; and
11. Consent forms signed by representatives for both Longview and SUD giving approval to the ED for the above final maps.

Ms. LaDonna Castañuela, Chief Clerk
January 7, 2010
Page 2

Please do not hesitate to contact me at (512) 239-4761 if you have any questions regarding this material. Thank you for your attention to this matter.

Respectfully submitted,

A handwritten signature in cursive script that reads "Kayla Murray".

Kayla Murray, Staff Attorney
Environmental Law Division

Enclosures

cc: Mailing list

**TCEQ DOCKET NO. 2009-1897-UCR
APPLICATION NO. 36331-C**

**IN THE MATTER OF THE
REQUEST FOR AN ORDER
APPROVING THE CONTRACTS
DESIGNATING SERVICE AREAS
BETWEEN THE CITY OF
LONGVIEW AND TRYON ROAD
SPECIAL UTILITY DISTRICT IN
GREGG COUNTY, TEXAS**

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BEFORE THE TEXAS

COMMISSION ON

ENVIRONMENTAL QUALITY

ORDER

A request for a Commission order approving contracts designating service areas between the City of Longview (Longview), Certificate of Convenience and Necessity (CCN) No. 10361, and Tryon Road Special Utility District (SUD), Certificate of Convenience and Necessity (CCN) No. 10362, in Gregg County, Texas, was presented to the Texas Commission on Environmental Quality (TCEQ or Commission) for approval pursuant to Sections 13.248 and 13.255(a) of the Texas Water Code, and Title 30 of the Texas Administrative Code, Sections 291.117 and 291.120.

On October 14, 1999, Longview and the SUD entered into a Water Supply Contract (Contract) regarding their respective water service areas pursuant to Section 13.248 of the Texas Water Code. Under the Contract, the SUD will transfer a portion of its CCN area (Longview University Center) to Longview and Longview will be the sole retail water service provider in Longview University Center. Longview University Center is territory annexed by Longview; approximately 24.5711 acres of SUD's CCN will be transferred to Longview. The Longview University Center contains one customer

who is currently being served by the City with City infrastructure. There will be no transfer of facilities under the Contract. The Contract is attached to this Order.

On April 24, 2006, the City, the SUD, and Quorum Longview 259, L.P. (Quorum), a developer, entered into a Settlement Agreement (Agreement) regarding their respective water service areas pursuant to Section 13.248 of the Texas Water Code. Under the Agreement, the SUD will transfer a portion of its CCN area (the Gore Property) to Longview and Longview will be the sole retail water service provider for the Gore Property. The Gore Property is not within Longview's city limits; however, pursuant to the Agreement, the City plans to annex this area. This area comprises approximately 20.5243 acres of the SUD's CCN that will be transferred to Longview. There are no customers on the Gore Property and there will be no transfer of facilities under the Agreement. The Agreement is attached to this Order.

Also under the Agreement, the SUD will transfer a portion of its CCN area, known as the Commercial Tracts, to Longview. The Agreement states that the Commercial Tracts are to be transferred pursuant to Section 13.255(a) of the Texas Water Code. Longview will be the sole retail water service provider for the Commercial Tracts. The Commercial Tracts is territory annexed by Longview; approximately 52.0511 of the SUD's CCN will be transferred to Longview. The Commercial Tracts contains customers who are currently being served by the City with City infrastructure. There will be no transfer of facilities under the Agreement.

Contracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities, when approved by the commission

after public notice and hearing, are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity. TEXAS WATER CODE, §13.248.

In the event that an area is incorporated or annexed by a municipality, the municipality and a retail public utility that provides water or sewer service to all or part of the area pursuant to a certificate of convenience and necessity may agree in writing that all or part of the area may be served by a municipally owned utility, by a franchised utility, or by the retail public utility. The agreement may provide for single or dual certification of all or part of the area, for the purchase of facilities or property, and for such other or additional terms that the parties may agree on. TEXAS WATER CODE, §13.255(a).

The Commission held a hearing on the request at the January 27, 2010 agenda and found the request had merit.

Longview is capable of rendering continuous and adequate water service to every customer in the Longview University Center, the Gore Property, and the Commercial Tracts, as described by the Agreement and the Contract. The CCN transfer, which results in Longview being the sole retail water service provider for the Longview University Center, the Gore Property, and the Commercial Tracts, is necessary for the service, accommodation, convenience, or safety of the public.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

Pursuant to TEXAS WATER CODE 13.248, the Contract transferring the Longview University Center area of the SUD's CCN No. 10362 to the City of Longview, CCN No. 10361, and designating that the City is the sole retail water service provider for Longview University Center, is hereby approved. Also pursuant to TEXAS WATER CODE 13.248, the Agreement transferring the Gore Property area of the SUD's CCN No. 10362 to the City of Longview, CCN No. 10361, and designating that the City is the sole retail water service provider for the Gore Property, is hereby approved.

Pursuant to TEXAS WATER CODE 13.255(a), the Commission will incorporate the terms of the Agreement transferring the Commercial Tracts area of the SUD's CCN No. 10362 to the City of Longview, CCN No. 10361, and designating that the City is the sole retail water service provider for the Commercial Tracts.

CCN No. 10362 in Gregg County, held by Tryon Road Special Utility District, is hereby amended in accordance with the Contract and the Agreement with respect to the Longview University Center, and the Gore Property and the Commercial Tracts, respectively.

CCN No. 10361 in Gregg County, held by the City of Longview, is hereby amended in accordance with the Contract and the Agreement with respect to the Longview University Center, and the Gore Property and the Commercial Tracts, respectively.

The Executive Director is directed to redraw the maps of the respective CCNs as provided in the Contract and the Agreement and as set forth on the map attached to this Order, and to amend the Commission's official water service area map for Gregg County, Texas.

The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this Order to the parties.

If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

Issue Date:

TEXAS COMMISSION ON
ENVIRONMENTAL
QUALITY

For the Commission

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

TO: Texas Commission on Environmental Quality **DATE:** January 7, 2010

THRU: LaDonna Castañuela, Chief Clerk

FROM: Kayla Murray, Staff Attorney, Environmental Law Division

SUBJECT: **TCEQ Docket No. 2009-1897-UCR.** Consideration of a request for a Commission order approving contracts designating water service areas between the City of Longview (Longview), Certificate of Convenience and Necessity (CCN) No. 10361, and Tryon Road Special Utility District (SUD), CCN No. 10362.

DESCRIPTION OF APPLICATION

Applicant: City of Longview

Regulated Activity: Retail water utility service

Type of Application: Request for a Commission Order approving 2 contracts

Commission Action: Hearing regarding approval of the contracts

Authority: Texas Water Code §§ 13.248 and 13.255(a); 30 Texas Administrative Code §§ 291.117 and 291.120

FACTUAL BACKGROUND

The City of Longview (Longview), water certificate of convenience and necessity (CCN) No. 10361, and Tryon Road Special Utility District (SUD), water CCN No. 10362, provide retail water service in Gregg County, Texas. On October 14, 1999, Longview and the SUD entered into a contract, Water Supply Contract, regarding their respective water service areas pursuant to section 13.248 of the Texas Water Code.

Under the contract, the SUD will transfer a portion of its CCN area (Longview University Center) to Longview and Longview will be the sole retail water service provider in Longview University Center. Longview University Center is territory annexed by Longview; approximately 24.5711 acres of the SUD's CCN area will be transferred to Longview. The Longview University Center contains one customer who is currently being served by the City with City infrastructure. There will be no transfer of facilities under the contract.

Longview, the SUD, and Quorum Longview 259, L.P. (a developer) entered into an agreement, Settlement Agreement, on April 24, 2006, regarding their respective water service areas pursuant to sections 13.248 and 13.255(a) of the Texas Water Code.

Under the agreement, the SUD will transfer a portion of its CCN area (the Gore Property), pursuant to section 13.248, to Longview. Longview will be the sole retail water service provider to the Gore Property. The Gore Property is not within Longview's city limits; however, pursuant to the Agreement, the City plans to annex this area. This area comprises approximately 20.5243 acres of the SUD's CCN that will be transferred to Longview. On the effective date of the agreement the SUD does not have any water utility customers within the Gore Property. There will be no transfer of facilities under the agreement.

Also under the agreement, the SUD will transfer another portion of its CCN area (Commercial Tracts), pursuant to 13.255(a), to Longview. Longview will be the sole retail water service provider to the Commercial Tracts. The Commercial Tracts is territory annexed by Longview; approximately 52.0511 of the SUD's CCN will be transferred to Longview. The Commercial Tracts contains customers who are currently being served by the City with City infrastructure. There will be no transfer of facilities under the agreement.

LEGAL AUTHORITY

The Texas Water Code prohibits a utility, a utility operated by an affected county, or a water supply corporation from rendering retail water or sewer utility service directly or indirectly to the public without first obtaining a CCN.¹ Conversely, a municipality is not required to obtain a CCN to provide retail water service.² However, a municipality may not provide service to areas that are outside of its corporate boundaries but within the CCN of another retail public utility without first obtaining written consent from that retail public utility.³

The Texas Water Code and TCEQ rules allow retail public utilities to enter into service area agreements and have the Commission affirm the agreements by amending the entities' respective CCNs.⁴ A transfer of a water or sewer system that also includes the

¹ TEX. WATER CODE ANN. § 13.242(a) (Vernon 2006).

² A municipality is a "retail public utility" under section 13.002(19) of the Texas Water Code but is not a "utility" under section 13.002(23). Therefore, the section 13.242(a) requirement that a "utility" must obtain a CCN before providing retail water utility service does not apply to a municipality.

³ *Id.* § 13.242(b).

⁴ *Id.* § 13.248; 30 TEX. ADMIN. CODE § 291.117 (West 2005) (Tex. Comm'n on Env'tl. Quality, Contracts Valid and Enforceable). Section 13.248 states "contracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities, when approved by the commission after public notice and hearing, are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity." Section 13.255(a) states that "[i]n the event that an area is incorporated

transfer of customers and/or facilities may, in some cases, also require separate Commission approval for the transfer of customers and/or facilities.⁵

The requests to approve the 13.248 agreements are not subject to the notice provisions of section 291.106, Title 30 of the Texas Administrative Code, which apply to applications for new and amended CCNs. The Commission may approve the service area agreement pursuant to section 13.248 of the Texas Water Code with the appropriate notice under the Open Meetings Act. The Executive Director will mail notice of the hearing upon the setting of an Agenda date.

BASIS FOR STAFF RECOMMENDATION

The following items were considered in developing the staff's recommendation:

1. Request for a Commission order approving the 13.248 contract filed by the City of Longview and Tryon Road Special Utility District on February 23, 2009 (Application No. 36331-C);
2. Request for a Commission order approving the 13.248 agreement filed by the City of Longview and Tryon Road Special Utility District on February 23, 2009 (Application No. 36331-C);
3. Request for the Commission to incorporate the terms of the 13.255(a) agreement filed by the City of Longview and Tryon Road Special Utility District on February 23, 2009 (Application No. 36331-C);
4. Water Supply Contract between the City of Longview and Tryon Road Special Utility District, executed on October 14, 1999;
5. Settlement Agreement between the City of Longview, Tryon Road Special Utility District, and Quorum Longview 259, L.P., executed on April 24, 2006;
6. Final proposed map of the water service areas subject to the aforementioned agreement and contract;

or annexed by a municipality, ... the municipality and a retail public utility that provides water or sewer service to all or part of the area pursuant to a certificate of convenience and necessity may agree in writing that all or part of the area may be served by a municipally owned utility, by a franchised utility, or by the retail public utility. ... The executed agreement shall be filed with the commission, and the commission on receipt of the agreement, shall incorporate the terms of the agreement into the respective certificates of convenience and necessity of the parties to the agreement."

⁵ TEX. WATER CODE § 13.301. The section requires that some applicants also demonstrate "adequate financial, managerial, and technical capability for providing continuous and adequate service to the service area being acquired and to any areas currently certificated to the person" for the separate transaction relating to the transfer of facilities and/or customers.

7. Financial, Managerial, and Technical analysis of the City of Longview to operate in the affected area;
8. Proposed Order; and
9. Consent forms signed by representatives for both the City of Longview and Tryon Road Special Utility District which give approval to the ED for the above final map.

STAFF RECOMMENDATION

Based on the facts stated in the application and the supporting documentation submitted by the City of Longview and Tryon Road Special Utility District, Staff supports the request for a Commission order approving the contracts designating service areas between the City of Longview and Tryon Road Special Utility District. Staff has confirmed that both parties are retail public utilities with active water CCNs and that the areas the parties are seeking to transfer are certificated to Tryon Road Special Utility District. Two of the areas to be transferred, Longview University Center and Commercial Tracts, have been annexed by the City. The remaining area, the Gore Property, will be annexed by the City pursuant to the Settlement Agreement. Further, staff is satisfied that the City of Longview possesses the adequate financial, managerial, and technical capability to provide continuous and adequate service to the areas being transferred.

STAFF CONTACTS

Kayla Murray, Environmental Law Division (239-4761)
Heidi Graham, Water Supply Division (239-0844)

CAPTION
CITY OF LONGVIEW
Application No. 36331-C

TCEQ Docket No. 2009-1897-UCR. Consideration of a request for a Commission Order approving 2 contracts designating service areas between the City of Longview, water certificate of convenience and necessity (CCN) No. 10361, and Tryon Road Special utility District (SUD), water CCN No. 10362, in Gregg County, Texas pursuant to sections 13.248 and 13.255(a) of the Texas Water Code. Currently, Tryon Road SUD holds a CCN for the areas in question. The City of Longview and Tryon Road SUD have agreed that the areas would be better served by a single water utility provider. Under the contracts, Tryon Road SUD will transfer approximately 97.1465 acres of its CCN area to Longview and Longview will be the sole retail water service provider in this area. There will be no transfer of facilities under the Agreement. There are no customers in one of the areas being transferred; the remaining two areas contain customers who are currently being served by the City with City infrastructure. (Kayla Murray, Heidi Graham)

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Environmental Law Division **Date:** January 7, 2010
Thru: Heidi Graham/Tammy Benter
From: Dan Smith
Subject: Contract Service Agreement Pursuant to Texas Water Code Section 13.248, from the City of Longview, Certificate of Convenience and Necessity (CCN) No. 10361, to Transfer a Portion of CCN No. 10362 from Tryon Road Special Utility District (SUD) in Gregg County; Application No. 36331-C

CN: 600668842; RN: 101228781 (City of Longview)
CN: 600638225; RN: 102681269 (Tryon Road SUD)

In my opinion, the City of Longview has demonstrated adequate financial, managerial and technical capability to provide service to the area contracted for dual certification.

Signed: *Dan Smith* Date: January 7, 2010

The city of Longview and Tryon Road SUD entered an agreement as of April 24, 2006 to transfer about 90 acres representing the last of 240 total acres being transferred, along with other provisional agreements based on Tryon Road's ability to provide service, for a total compensation from Longview to Tryon Road of \$65,000 in the form of credit to Tryon Road's water account with the city. The owner of the property, which is Quorum Longview 259, L.P., is required to reimburse the city after the credits are applied.

Longview provides service to more than 28,000 connections on 28,140 acres, and is ranked superior. Tryon Road provides service to about 1,900 connections on 12,791 acres.

I have reviewed an unqualified audit for Longview for the fiscal year ended September 30, 2006. The balance sheet showed total city assets of \$300,851,857, long-term debt of \$136,553,596 and net assets (equity) of \$142,566,471, for a ratio of

The City of Longview and Tryon Road Special Utility District
Financial and Managerial Capability Analysis of Contract Service Agreement
Page 2

debt to equity of 0.96:1. Water utility total assets were \$161,619,542, long-term revenue bonds payable were \$87,329,565, and net assets (equity) was \$66,964,426, for a ratio of debt to equity of 1.30:1.

The statement of revenues and expenses for the water utility showed a net income before transfers of \$119,321 after covering depreciation expense of \$8,444,479 and interest expense of \$4,416,226. So cash available for debt service was \$12,980,026 and required debt service on revenue bonds and capital leases for 2009 is \$9,506,656 for a ratio of debt service coverage of 1.37:1.

This information supports a finding of adequate financial and managerial capability to provide service to the area contracted for dual certification.

MATHEWS & FREELAND, L.L.P.

ATTORNEYS AT LAW

JIM MATHEWS
JOE FREELAND

P.O. Box 1568
AUSTIN, TEXAS 78768-1568

(512) 404-7800
FAX: (512) 703-2785

January 18, 2008

Doug Holcomb
Utilities & Districts Section
TCEQ, Mail Code 153
PO Box 13087
Austin, TX 78711-3087

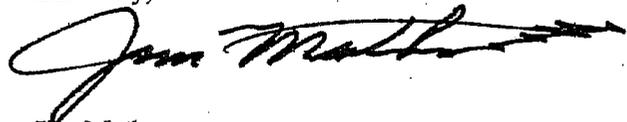
**Re: Contractual Agreements to Transfer Portions of CCN No. 10362 to
CCN No. 10361**

Dear Mr. Holcomb:

Enclosed, please find a letter, with supporting documents, cosigned by representatives of the City of Longview and Tryon Road Special Utility District requesting that the commission approve the transfer of portions of Tryon Road's certificated service area to the City of Longview pursuant to contractual agreements between these two retail public utilities. These requests apply solely to the transfer of CCN area and do not involve any portion of Tryon Road's water utility system.

Please feel free to contact me if you have any questions or concerns.

Sincerely,



Jim Mathews

JM/ndh
Enclosures

cc: Jim Finley (w/o attachments)
Keith Bonds (w/o attachments)
Lee Pigeon (w/o attachments)

September 25, 2007

Doug Holcomb, Manager
Utilities & Districts Section
TCEQ, Mail Code 153
PO Box 13087
Austin, TX 78711-3087

**RE: Contractual Agreements to Transfer Portions of CCN No. 10362 to
CCN No. 10361**

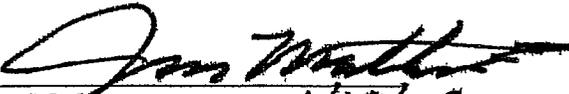
The City of Longview ("City") and Tryon Road Special Utility District ("Tryon Road") have entered into a Water Supply Contract (attached as Exhibit 1) and a Settlement Agreement (attached as Exhibit 2) that provide for the transfer of portions of Tryon Road's CCN area (the "Transfer Areas") to the City. Please see Article XV.b of Exhibit 1 and Article II of Exhibit 2 for the relevant provisions. Pursuant to the terms of these contracts, the City and Tryon Road request that the TCEQ remove the Transfer Areas from Tryon Road's CCN no. 10362 and incorporate them into the City's CCN no. 10361 so that the City will be designated as the sole water service provider for those areas.

The City presently provides retail water service in the Transfer Areas and the Transfer Areas are located either within the City's corporate limits or its ETJ. No water utility facilities, nor any portion of Tryon Road's water utility system, are being conveyed or transferred to the City.

In order to facilitate your processing of this request, we are enclosing the following additional documents and materials:

1. A copy of the City of Longview's check in the amount of \$100.00 that has been forwarded to TCEQ's Revenue Section concurrently with this filing to cover the application fee for this request.
2. A general location map delineating the Transfer Areas with sufficient detail to locate the Transfer Areas within the county.
3. A CD containing projectable digital data and metadata showing the Transfer Areas.
4. City of Longview's comprehensive annual financial report for the fiscal year ended September 30, 2006.

If you need any additional information or have any questions regarding this request, please contact the City's attorney, Jim Mathews.


Jim Mathews
Mathews & Freeland, LLP
Attorneys for the City of Longview

1/29/09


Lee A. Pigion, Sr. 11/5/07
PRESIDENT
Tryon Road Special Utility District

CITY SECRETARY
ORIGINAL

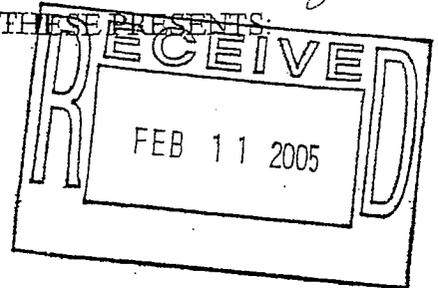
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Emg

STATE OF TEXAS ⊗
 ⊗

COUNTY OF GREGG ⊗

KNOW ALL MEN BY THESE PRESENTS:



WATER SUPPLY CONTRACT

This Water Supply Contract (hereinafter called "this Agreement") is made and entered into this 14th day of October 1999, by and between the City of Longview, Texas (hereinafter called "City"), a municipal corporation, and Tryon Road Water Supply Corporation (hereinafter called "TRWSC"), a nonprofit water supply corporation of Gregg and Harrison Counties, Texas.

WITNESSETH:

WHEREAS, TRWSC is a statutory nonprofit water supply corporation, organized under the laws of the State of Texas for the purpose of furnishing a water supply to individuals residing in the community of Judson, Texas and the surrounding areas; and,

WHEREAS, City owns and operates a water supply and water distribution system with sufficient supplies of water capable of serving the needs of water users within TRWSC's service area up to the maximum quantity and diversion rate specified in this Agreement, provided necessary extensions and expansions of City's distribution system are constructed to accommodate the anticipated demands of TRWSC's system; and,

WHEREAS, City and TRWSC have previously entered into a water purchase contract dated January 14, 1976, and desire to replace said contract with this Agreement to more accurately reflect the current relationship between the parties and their respective current needs and desires; and,



WHEREAS, the execution of this Agreement by City and TRWSC will benefit both Parties by amicably resolving all outstanding issues and claims presently pending between City and TRWSC; and,

WHEREAS, the parties concur that the terms, conditions and considerations stated herein are fair, just and reasonable and will mutually benefit the parties and serve the public interest; and,

WHEREAS, City has agreed to sell TRWSC water for the use of its customers for the consideration and upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises, covenants and considerations set forth herein, the parties hereto agree as follows:

ARTICLE I
SALE TO TRWSC

City agrees to sell to TRWSC and TRWSC agrees to purchase from City at the Points of Delivery specified in Article V hereof, treated water in the quantities and subject to the terms and conditions as set forth in this Agreement.

ARTICLE II
DEFINITIONS

- a. *Agreement.* This Agreement and any amendments thereto.
- b. *Excess Demand Charge.* The cost of capital and operation and maintenance expenses allocable to the excess capacity function attributable to TRWSC.

c. *Maximum Daily Rate of Flow.* The highest daily rate of flow of water delivered to TRWSC by City on any day within the five water years immediately preceding the determination.

d. *Maximum Monthly Quantity.* The maximum quantity of water which City is obligated to deliver to TRWSC under the terms of this Agreement during any calendar month. The Maximum Monthly Quantity is 28 million gallons (28,000,000) per month.

e. *Monthly Direct Costs.* A monthly charge to recover costs which are solely attributable to TRWSC, such as telemetering, meter calibration or repair, additional capital expenditures for facilities chargeable to TRWSC which are not recovered by lump sum payment, and other appropriate direct charges.

f. *Surcharge.* The disputed double charges by City for water consumed by TRWSC in excess of ten million gallons per month prior to the Effective Date of this Agreement, which represent a doubling of the rate described in the January 14, 1976 Contract between the parties, and which currently equals approximately \$602,000.00.

g. *TNRCC.* The Texas Natural Resource Conservation Commission or any successor state agency.

h. *Total Maximum Diversion Rate.* The maximum rate at which City is obligated to deliver water to TRWSC under the terms of this Agreement, expressed in gallons per minute, at all Points of Delivery combined. The Points of Delivery and the maximum diversion rate for each Point of Delivery are identified in Article V.

i. *Transmission System.* The portion of TRWSC's water supply facilities located between the City's meter and TRWSC's ground storage tank, which shall contain no service connections and which shall provide an air gap.

j. *Tryon Road's Equity Interest.* Tryon Road's equitable investment in real and personal property owned by TRWSC and associated with providing retail water utility service to its members. Contributed capital or assets are not part of TRWSC's equity interest.

k. *Tryon Road's water supply facilities or TRWSC's property.* Real and personal property owned by TRWSC and associated with providing retail water utility service to its members. TRWSC's Certificate of Convenience and Necessity is not part of its water supply facilities or property.

l. *Volume Charge.* The rate per 1,000 gallons charged for water.

m. *Water.* Treated water, at the Point of Delivery, meeting the standards of treatment established by the Texas Department of Health, the TNRCC, or any successor or other state agency of appropriate jurisdiction, and meeting the requirements of the federal Safe Drinking Water Act, Title 42 U.S.C.A. § 300F.

n. *Water Year.* The City's Fiscal Year (October 1 of any year through September 30 of the following year).

ARTICLE III COMPENSATION

TRWSC shall pay to City at the times and in the manner prescribed herein an amount equal to the Volume Charge times the number of thousands of gallons of water actually taken by TRWSC, plus 1/12 of the Excess Demand Charge, and the Monthly Direct Costs.

ARTICLE IV
RATE DETERMINATION

a. The rates for the wholesale purchase of water by TRWSC from City under this Agreement shall be based upon a study of the City's cost of service, which shall be performed each time the rates are to be changed in accordance with the terms of this Agreement. The methodology used in calculating the City's cost of service is the modified Kilgore method, more fully described in Attachment A of this Agreement. The cash method of determining the City's revenue requirement shall be used for the term of this Agreement.

b. The cost of service process shall include allocated reasonable and necessary Operation and Maintenance expenses; debt service requirements; and capital expenditures which are not debt financed. The allocation and distribution of costs to wholesale water users shall be based on at least the following factors: total volume, rate of flow, metering, and customer-related costs such as billing and collecting.

c. City shall maintain and make available for TRWSC's inspection during reasonable business hours, all records and computations concerning the cost of service study to be performed in accordance with this Article.

d. The rates to be charged by City shall consist of the following:

- Volume Charge for each 1,000 gallons of water consumed;
- Monthly Direct Cost; and
- Excess Demand Charge, recalculated annually and billed 1/12th each month.

e. The initial rates under this Agreement, upon the Effective Date, shall be:

- Volume Charge of \$0.87 per 1,000 gallons;
- Monthly Direct Cost of \$60.00 per month; and

- Excess Demand Charge of \$9,688.00 per month.

f. The rates to be charged for water under this Agreement shall be changed no more often than once per year (annually). New rates may become effective on or about October 1 of each year. The Excess Demand Charge shall be redetermined in the event of transfer of any portion of TRWSC's CCN due to the City's annexation of all or any part of TRWSC's service area, as provided in Article XV of this Agreement.

g. A written Analysis describing and explaining any proposed annual water rate changes shall be prepared by the City and provided to TRWSC. Notice of any proposed change in water rates, and the supporting Analysis, shall be provided to TRWSC at least thirty (30) days prior to the effective date of any such new rates.

ARTICLE V POINTS OF DELIVERY AND MAXIMUM DIVERSION RATES

The Points of Delivery and their associated maximum diversion rates for water delivered and taken under this Agreement shall be as follows:

- Point of Delivery No. 1 shall be the existing connection between the City system and the TRWSC system northwest of the intersection of Tryon Road and Loop 281. The maximum diversion rate at Point of Delivery No. 1 shall be 220 gallons per minute (gpm)/0.317 million gallons per day (MGD) until the fifth anniversary of the Effective Date of this Agreement, or the date that the City begins delivering water to TRWSC at Point of Delivery No. 3, whichever occurs first, when the maximum diversion rate shall decrease to 120 gpm/ 0.173 MGD. The City intends to install a 400 gpm booster pump at Tryon Road and Hollybrook. In the interim period of time required to install

the booster pump, City may reduce the rate of diversion at Point of Delivery No. 1 as necessary to maintain the minimum pressure required by law for the City's system.

TRWSC will install a pressure valve before April 1, 2000, to assist the City in accomplishing the maintenance of its required minimum pressures, if requested. The installation of the booster pump and/or the pressure control valve is contingent on TNRCC approval.

- Point of Delivery No. 2 shall be the existing connection between the City and the TRWSC system immediately northeast of the intersection of Tryon Road and Judson Road. The maximum diversion rate at Point of Delivery No. 2 shall be 550 gpm/ 0.792 MGD.
- Point of Delivery No. 3 shall be established by mutual agreement between the City and TRWSC at a location in the vicinity of Judson Road and FM 1844. TRWSC shall bear all costs of connecting to the City's existing system at Point of Delivery No. 3. TRWSC's connection to City's existing system shall be accomplished in accordance with TRWSC's plans and specifications which shall be subject to approval by City, but such approval may not be unreasonably withheld. When Point of Delivery No. 3 is placed in service, and continuing through the end of the term of this Agreement, the maximum diversion rate at Point of Delivery No. 3 shall be 120 gpm/0.173 MGD.

ARTICLE VI
TITLE TO AND RESPONSIBILITY FOR WATER

a. Title to, possession and control of water shall remain in City to the Points of Delivery that are specified in Article V herein, where title to, possession and control shall pass to TRWSC.

b. City shall be in exclusive control and possession of the water deliverable hereunder until the same shall have been delivered to TRWSC at the various Points of Delivery, at which point TRWSC shall be in exclusive control and possession thereof and solely responsible for any damage or injury caused thereby.

ARTICLE VII
METERING FACILITIES

a. City shall furnish and install the metering equipment and all related telemetry and controls that the City determines to be appropriate for the measurements and controls necessary under this Agreement. TRWSC shall pay all costs of acquiring and installing the initial metering equipment, including the necessary telemetry equipment, at Point of Delivery No. 3. The City shall operate, maintain, repair, and calibrate all metering equipment, including telemetry, installed by City at Points of Delivery. All costs of such operation, maintenance, repair, and calibration of metering equipment shall be included in the determination of rates under Article IV hereof.

b. The properly authorized officers, agents and representatives of City shall at all times have free access to the metering equipment for the purpose of shutting off water for the failure to pay the water rates; for the purpose of reading the registration of said meters; to examine, shut off and test the same to ascertain whether or not they are in good condition and repair; and to make such repairs upon the same as may be necessary or requested in writing by City.

c. City shall, at reasonable times, provide TRWSC with access to all metering equipment, including any associated telemetry signals, used in making any measurements under this Agreement. City may test the metering equipment on its own initiative, and shall test such metering equipment for accuracy upon request by TRWSC, which request shall not be made more frequently than once in any twelve-month period for each meter. In the event the percentage of accuracy of such metering equipment is found as the result of any testing, whether requested by TRWSC or performed by City on its own initiative, to be within the tolerance of two percent (2%), such meter shall be deemed to have correctly measured the quantity of water taken hereunder. If, however, upon any test of the percentage of the accuracy tolerance, such tolerance is found to be in excess of two percent (2%), then such meter shall be adjusted at once to register correctly and accurately, and the amount paid by TRWSC to City for the period from the last test on that meter until the current test (but for no more than three months) shall be adjusted by debit or credit in accordance with the percentage of inaccuracy found by such test.

d. In the event such metering equipment is out of service or out of repair and the amount of water taken cannot be ascertained or computed by the reading thereof, the

amount of water taken during this period shall be estimated and agreed upon by TRWSC and City, unless the parties otherwise agree, based upon the amount of water pumped in the corresponding period of the previous year (including any unaccounted for loss of water), as shown in existing records.

ARTICLE VIII
INITIAL DELIVERY

Commencement of the delivery of water by City to TRWSC under the terms of this Agreement shall be immediately upon the Effective Date of this Agreement. Unless agreed to otherwise in writing by the parties hereto, TRWSC shall commence receiving water under this Agreement on October 14, 1999 (herein the Effective Date).

ARTICLE IX
BILLING AND PAYMENT

a. For purposes of billing, City shall read the metering equipment provided for herein on or about the first day of each month (or more frequently if necessary as determined by City) and shall report the total quantity of water taken (or rate of take thereof) for each meter during the preceding month to TRWSC on or before the 10th day of each calendar month.

b. City shall render to TRWSC at the address shown herein (or such other place as designated by TRWSC) on or before the 10th day of each calendar month a statement showing, the following information:

- the date and reading of each meter at the beginning and at the end of the period for which the statement is rendered; the quantity of water diverted at each meter;
- the total amount due for the water consumed;
- the total amount due on or before the due date of the bill.
- the amount of the charge or credit, if any, applicable to past undercharge or overcharge as determined by the true-up process.

c. Such statement shall be due and payable at City's offices in the municipal building, Longview, Texas (or at such other place as designated by City) on or before the twentieth (20th) day after the receipt of such statement.

d. Should TRWSC fail to tender payment of any amount when due, a late charge of five percent (5%) per annum of the total amount due will be added thereto.

ARTICLE X CANCELLATION FOR NONPAYMENT

In the event that TRWSC, without good cause, fails to make any payment to City when due hereunder, City may, in addition to any other remedy available to it by law, cancel this Agreement, by written notice of such nonpayment and statement of City's election to cancel this Agreement by reason thereof delivered to TRWSC no less than thirty (30) days before the date for cancellation specified in such notice, provided that the nonpayment with respect to which notice has been given shall not be cured by the date thus specified in such notice.

ARTICLE XI
REPORT ON SERVICE CONNECTIONS

TRWSC agrees to provide City evidence of the number of service connections installed in any twelve month period within ten (10) days following receipt of a request from City.

ARTICLE XII
INDEMNITY BY TRWSC

a. TRWSC agrees that the use and resale of the treated water provided for in this Agreement shall be at the sole risk of TRWSC and TRWSC agrees to indemnify and hold City harmless from any and all claims for damages to property arising out of or in any way connected with the use of said water by TRWSC or any other person.

b. TRWSC agrees to indemnify and hold City harmless from any and all claims for damages, loss of life, injury or illness to any person or persons or for damages to property arising out of the installation or maintenance of TRWSC's water distribution system, including damages to City's system occasioned by the installation, maintenance, or operation of TRWSC's system.

c. City shall not be responsible in damages for any failure to supply water or for any interruption of the supply, unless caused by the gross negligence of the City.

d. TRWSC agrees to save and keep City harmless from all damage of every kind, nature and description which may arise as a result of the making and performance of this Agreement.

ARTICLE XIII
RESALE OF WATER

TRWSC shall not permit the use of any of the water covered by the terms of this Agreement for any of the following purposes:

- Industrial use or agricultural crop irrigation;
- Resale to a municipality, public or private water distribution company, water district, or rural water supply corporation without written authorization by City;
- Save and except within TRWSC's certificated area of convenience and necessity, supply water to any customer inside the corporate limits or extraterritorial jurisdiction of City without written authorization by City.

ARTICLE XIV
REMOVAL OF SURCHARGE AND WITHDRAWAL OF TNRCC PETITION

Upon the Effective Date of this Agreement, City shall immediately expunge from TRWSC's water account all charges associated with the Surcharge imposed by City prior to the Effective Date of this Agreement, in the amount of approximately \$602,000.00, whether such Surcharges are listed as past due or presently due, and City shall also immediately provide a letter addressed to TRWSC which states clearly and unequivocally that TRWSC has no outstanding current or past-due obligations to the City for any Surcharges or other doubling of rates associated with TRWSC's consumption of water in excess of 10 million gallons per month prior to the Effective Date of this Agreement and confirming that TRWSC is a customer in good standing with City with no outstanding balances due on TRWSC's water account. Upon the Effective Date of this Agreement, TRWSC shall immediately cease,

withdraw, and dismiss all pending action against the City at the TNRCC, specifically including its Petition for Review of Wholesale Water Rate filed on December 16, 1998 at the TNRCC, SOAH Docket No. 582-99-0562, TNRCC Docket No. 1999-0059-VCR. The City hereby relinquishes, abandons, and fully releases TRWSC from any and all claims for any undercharges for water delivered to TRWSC prior to the Effective Date of this Agreement. TRWSC hereby relinquishes, abandons, and fully releases the City from any and all claims for any overcharges for water delivered to TRWSC prior to the Effective Date of this Agreement.

ARTICLE XV

ANNEXATION OF TRWSC'S CERTIFICATED SERVICE AREA BY CITY

a. If City annexes all or part of TRWSC's service territory, TRWSC shall convey to the City, at the City's request, the right to provide retail water service throughout all or part of the area annexed, shall execute an agreement with the City making this conveyance, shall cooperate with the City in filing such agreement with the TNRCC, and shall support the TNRCC's amendment of the City's and TRWSC's respective Certificates of Convenience and Necessity (CCNs) to incorporate the agreed changes in their respective certificated service areas.

b. If the City requests transfer of TRWSC's right to serve annexed territory in which TRWSC has no customers and no water supply facilities that will be conveyed or rendered useless or valueless, TRWSC shall convey its right to provide water service in that area to the City at no cost. If TRWSC has water supply facilities in such annexed area that will not be conveyed or rendered useless or valueless, the City will not require a franchise for

the continued operation of those facilities. In any event, TRWSC shall immediately convey to the City, at no cost, TRWSC's right to provide water service to the Longview University Center.

c. If the City requests transfer of TRWSC's right to serve annexed territory in which TRWSC has customers and/or water supply facilities that will be rendered useless or valueless, TRWSC shall, if requested in writing by the City, sell and convey to City all or part of TRWSC's property, located within the annexed area to be served by City (hereafter the "requested property"). City shall compensate TRWSC for the requested property as provided herein. City shall also compensate TRWSC as provided herein for any of TRWSC's property which is rendered useless or valueless by the annexation and relinquishment of TRWSC's certificate. City shall also compensate TRWSC as provided herein for damages to TRWSC's property remaining in TRWSC's certificated service area after the relinquishment to City of the annexed area to be served by City (hereafter the "damages to remaining property"). City and TRWSC shall cooperate fully in establishing the value of the requested property, any of TRWSC's property which is rendered useless or valueless, and the damages to remaining property. To that end, within 60 days of the City's written request for the conveyance of all or part of TRWSC's property associated with providing retail water service, TRWSC and City shall exchange estimated valuations of the requested property, any of TRWSC's property which is rendered useless or valueless, and the damages to remaining property and shall attempt in good faith to negotiate a just and adequate value for such property. It is the intent of TRWSC and City that TRWSC be fully compensated for the value of its equity interest in its property based on the factors listed below, but that the application of these factors shall

not result in valuing any property interests more than one time or by more than one method.

The just and adequate value of TRWSC's property shall be determined based on the following factors:

- The value of TRWSC's equity interest in real property which is conveyed or rendered useless or valueless shall be determined by the standards set forth in Chapter 21, TEX. PROP. CODE ANN., governing actions in eminent domain;
- The value of TRWSC's equity interest in any water supply facilities, which are conveyed or rendered useless or valueless, shall be based on replacement costs less depreciation;
- If City annexes TRWSC's service area in which system-wide service facilities exist, TRWSC shall be compensated by City for the reasonable cost of those portions of the facilities which must be relocated or replicated by TRWSC in order to maintain service to the remainder of its members;
- The value of damages to Tryon Road's equity interest in property remaining after CCN transfer shall be determined, after taking into consideration compensation paid for the requested property, property which is rendered useless or valueless, and relocation or replication of TRWSC's facilities in order to maintain service to the remainder of its members, and in a manner to ensure that compensation is paid only one time and by only one method for each property interest identified, by consideration of the extent to which factors set forth below result in demonstrated increased cost to consumers of TRWSC remaining after the relinquishment of TRWSC's certificate to the annexed area to be served by the City. Factors to be considered are: 1) the impact on the existing

indebtedness of TRWSC and its ability to repay that debt; 2) the amount of any of TRWSC's expenditures for planning, design or construction of service facilities outside the annexed area to be served by the City that are allocable to service in the annexed area to be served by the City; and 3) the amount of TRWSC's contractual obligations allocable to the annexed area to be served by the City.

d. If City and TRWSC are unable to agree to a stipulated value of TRWSC's property within forty-five (45) days following the parties' exchange of estimated valuation, then within sixty (60) days following the parties' exchange of estimated valuation the City and TRWSC shall each individually designate an independent appraiser with a thorough background and knowledge of the valuation of property of retail water utilities, and the two appraisers selected by each party shall, within ten (10) days following the designation of the second appraiser, select a similarly qualified third appraiser. The three appraisers so selected shall jointly determine the value of the requested property to be conveyed to City, and the value of TRWSC property which is rendered useless or valueless or which is damaged by the annexation and relinquishment of TRWSC's certificate, based on the factors listed in paragraph "c" above. The value of TRWSC's property shall be determined by the three appraisers within thirty (30) days following the selection of the third appraiser. The value of TRWSC's property established by the appraisers shall thereupon be the amount to be paid TRWSC by the City for the property conveyed, and for property which is rendered useless or valueless or which is damaged by the annexation and relinquishment of TRWSC's certificate. Each party shall bear the cost of its own independent appraiser and divide equally the cost of the third independent appraiser.

e. Following the completion of the annexation and the establishment of the value of the requested property to be conveyed to the City, and the value of TRWSC's property which is rendered useless or valueless or which is damaged by the annexation and relinquishment of TRWSC's certificate, City shall pay the agreed upon value to TRWSC and TRWSC shall sell and convey the property which the City has requested to purchase, if any, to City. Payment by the City for the TRWSC's property and delivery of documents evidencing the sale and conveyance of the property by TRWSC to City shall be made to an authorized escrow agent contingent on receipt of necessary approvals and releases required by paragraph "f" within thirty (30) days of the completion of the annexation or the establishment of the value of said property, whichever occurs last. Both TRWSC and City shall notify the escrow agent when necessary approvals and releases required by paragraph "f" have been obtained.

f. Final consummation of a transfer of TRWSC's Certificate of Convenience and Necessity (CCN) and, if appropriate, the sale and conveyance of all or part of TRWSC's property in the annexed area to be served by City, is contingent on approval by the TNRCC, and on the release of any security interest held by any third party in the transferred portion of TRWSC's CCN and, where appropriate, in the requested property in the annexed area to be conveyed to City. Within twenty (20) days following City's delivery of payment to an authorized escrow agent under subsection "e" above: (1) City and TRWSC shall jointly request the TNRCC to incorporate the requested transfer in the respective CCNs of the parties; and (2) TRWSC shall request any secured party to release any security interest in the transferred portion of TRWSC's water utility CCN and, where appropriate, in the portion of

TRWSC's property conveyed to City.

g. TRWSC shall cooperate fully with City in filing with any state or federal agency of appropriate jurisdiction, and where necessary, any private party, all documents necessary and incident to TRWSC's relinquishment and transfer to City of any certificated service area included within the annexed area to be served by City. All costs of filing said necessary documents and pursuing the relinquishment of said service area shall be paid by City.

h. TRWSC shall in all things cooperate with City in providing any and all existing documents, including detailed drawings, sketches, and maps, necessary to locate and identify all of TRWSC's real and personal property within the annexed area to be served by City. Similarly, TRWSC shall cooperate fully with City in providing customer lists, billing information, current account status information, and all other information necessary for City to assume the responsibility for providing water service in the annexed area to be served by City.

i. If the City chooses not to provide water service in all or part of an annexed area within TRWSC's certificated service area, TRWSC shall continue to provide water service under its CCN and City shall grant any franchises or permits necessary to ensure TRWSC's continued ability to serve in the newly annexed area.

ARTICLE XVI
TRWSC'S OBLIGATIONS

a. TRWSC shall comply with all rules and regulations of the Texas Department of Health and the TNRCC (or their successor agencies) as the same may pertain to the installation and operation of public water distribution systems or disposal facilities.

b. TRWSC shall comply with any and all sanitary regulations, both present and future, of the Texas Department of Health, the TNRCC, or any other State agency of appropriate jurisdiction.

c. TRWSC shall comply with the provisions of any water conservation plan formally adopted by the City Council of Longview by Ordinance for implementation within the City's corporate boundaries for City's residential customers or any water conservation plan adopted by an administrative agency of the State of Texas applicable to TRWSC or TRWSC's service area, including implementation of any necessary rationing plan or program which the City adopts for implementation within the City's corporate boundaries. In lieu of adopting the exact same rationing plan or program as City, TRWSC may implement an alternative rationing plan provided said rationing plan will conserve the same or a greater amount of water as under the plan implemented by City.

d. TRWSC shall notify City as promptly as possible of all emergency and other conditions which may directly or indirectly affect the quality of the water received hereunder.

e. From and after the date of this Agreement, TRWSC shall comply with Article 4477-1, Vernon's Annotated Civil Statutes of the State of Texas, and only those provisions of the City's Plumbing and Fire Codes applicable to water supply and distribution which are presently in effect or which shall hereafter be adopted.

ARTICLE XVII
SUSPENSION OF DELIVERY

City shall have the right to make inspections and require tests of the quality of the water supply within TRWSC's Transmission System. In the event City shall determine that water from TRWSC's system is flowing back into City's pipes or other delivery facilities or that the condition of TRWSC's system or other facilities creates a hazard to the health, safety or welfare of the water consumers of City, City shall have the immediate right to suspend delivery of water as provided herein and to disconnect any connections with TRWSC's system until City is satisfied that such conditions have been corrected.

ARTICLE XVIII
WATER QUALITY

City makes no warranty, express or implied, as to the suitability or quality of the water to be taken under the terms hereof. City agrees that the quality of the water delivered by it to TRWSC will meet or exceed the standards established by the regulations of the Texas Department of Health, the TNRCC, and the provisions of the Safe Drinking Water Act, Title 42 U.S.C.A., Section 300F, as administered by the United States Environmental Protection Agency. City shall take such steps as shall be required to bring all water delivered to TRWSC under the terms of this Agreement into compliance with such regulations and laws.

ARTICLE XIX
PRIORITY

In the event City finds the necessity to reduce water supply to its own users, the same pro rata reduction may be effected to TRWSC. The City agrees to give TRWSC verbal

notice of such reduction and the terms of such reduction as soon as practical, but no later than twenty-four (24) hours after such reduction, followed by written notice within five (5) working days.

ARTICLE XX
FORCE MAJEURE

In the event either party is rendered unable wholly or in part by force majeure to carry out its obligations under this Agreement, other than the obligation to make payments of amounts accrued and due hereunder at the time thereof, it is agreed that upon such party=s giving notice in full particulars of such force majeure in writing to the other party within a reasonable time after the occurrence of the cause relied upon, then the obligations of the party giving such notice, so far as they are affected by such cause, shall be suspended during the continuance of any inability so caused, but for no longer period, and such cause shall so far as possible be remedied with all responsible dispatch. The term "force majeure" as employed herein shall mean interferences not reasonably within the control of the party claiming force majeure, arising out of acts of God, governmental action, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, and restraints of government and people, civil disturbances, explosions, major breakage or accidents to machinery, conduits and/or pipelines, partial or entire failure of the supply of water, extreme and unforeseeable delays in transportation and any other causes, whether of the kind enumerated or otherwise, not reasonably within the control of the party claiming suspension.

ARTICLE XXI
TERM

a. This Agreement shall be a binding obligation on the parties hereto from and after the execution hereof and shall extend for an initial term of ten (10) years from the Effective Date hereof, unless sooner terminated in accordance with the provisions hereof.

b. This Agreement may be extended for an additional ten year term upon the mutual agreement of the City and TRWSC evidenced by a letter agreement executed no later than the fifth anniversary of the Effective Date of this Agreement.

ARTICLE XXII
ASSIGNMENT

This Agreement shall be binding upon and inure to the benefit of the respective parties hereto and their legal successors but the same shall not be otherwise assignable in whole or in part by either party without first obtaining the written consent of the other, provided, however, that assignment may be made by TRWSC to the United States of America acting by and through the Farmers Home Administration or the successor agency, as security for a loan to be made by the Farmers Home Administration to the TRWSC.

ARTICLE XXIII
APPLICABLE LAW

The Constitution and the laws of the State of Texas and the decisions of its Courts shall govern with respect to any question or controversy which may arise hereunder.

Venue for any actions arising under this Agreement in state courts shall lie exclusively in

the courts of Gregg County, Texas. Venue for any actions arising under this Agreement in federal courts shall lie exclusively in the Eastern District of Texas, Tyler Division.

ARTICLE XXIV
NOTICES

Any notice, request or other communication under this Agreement shall be given in writing and shall be deemed to have been given by any party to the other party upon either of the following dates:

- The date of the mailing thereof, as shown by a post office receipt, if mailed to the party hereto by registered or certified mail at the latest address specified for such other party in writing; or
- The date of the receipt thereof by such other party if not so mailed by registered or certified mail.

ARTICLE XXV
MISCELLANEOUS

a. All headings of the Articles and particular sections of this Agreement have been inserted for the convenience of reference only and are not to be considered as part of this Agreement and in no way shall they affect the interpretation of any provision of this Agreement.

b. A waiver by either party of any default by the other hereunder shall not be deemed a waiver by such party of default of the other which may thereafter occur.

c. In case any one or more of the Articles, sections, provisions, clauses or words of this Agreement shall for any reason be held to be invalid or unconstitutional, such invalidity

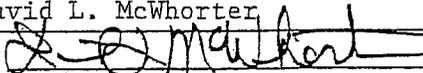
or unconstitutionality shall not affect any other Articles, sections, provisions, clauses or words of this Agreement and it is intended that this Agreement shall be severable and shall be construed and applied as if such invalid or unconstitutional Article, section, provision, clause or word had not been included herein.

d. City may, at its sole discretion, alter or modify the beginning and ending dates of its Fiscal Year which applies for purposes of this Agreement. City shall provide TRWSC written notice of any change in City's Fiscal Year.

e. This Agreement contains all of the agreements between the parties. As of the Effective Date of this Agreement this Agreement shall supersede any and all prior agreements between the parties, both oral and written, with regard to the subject matter hereof, including the Water Purchase Contract dated January 14, 1976.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate originals on this 14 day of October 1999.

CITY OF LONGVIEW

David L. McWhorter
By 
Title Mayor

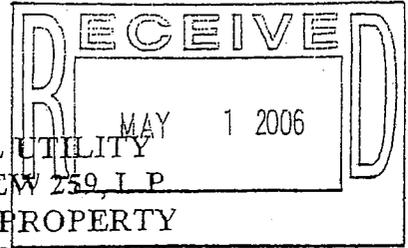
ATTEST:



City Secretary

APPROVED AS TO FORM:


City Attorney



SETTLEMENT AGREEMENT OF TRYON ROAD SPECIAL UTILITY DISTRICT, CITY OF LONGVIEW AND QUORUM LONGVIEW 259, L.P. CONCERNING THE PROVISION OF WATER SERVICE TO PROPERTY WITHIN THE CERTIFICATED SERVICE AREA OF TRYON ROAD SPECIAL UTILITY DISTRICT AND DISMISSAL OF PENDING LITIGATION

This Agreement is made and entered into by and between Tryon Road Special Utility District ("TRSUD"), whose office is located at 360 Skinner Lane, Longview, Texas, 75605, the City of Longview ("City"), whose office is located at 300 West Cotton St., Longview, Texas 75601, and Quorum Longview 259, L.P., ("Quorum") whose office is located at 16475 Dallas Parkway, Suite 220, Addison, Texas 75001. TRSUD, City and Quorum are referred to herein collectively as the "Parties" and separately as the "Party".

WHEREAS, TRSUD is a special utility district created under Chapter 65 of the TEXAS WATER CODE and Article XVI, Section 59 of the Texas Constitution, that supplies water to its customers within a service area pursuant to a Certificate of Convenience and Necessity ("CCN") No. 10362 issued by the Texas Commission on Environmental Quality ("TCEQ"); and

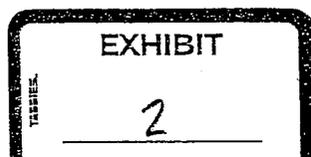
WHEREAS, City is a home-rule municipality, organized pursuant to the constitution and laws of the State of Texas, located and doing business in Gregg and Harrison Counties, Texas, that supplies water to its customers both within and without a service area pursuant to CCN No. 10361 issued by TCEQ; and

WHEREAS, Quorum has purchased approximately 240 acres of real property ("Quorum Property"), most of which lies within TRSUD's CCN, and is developing or has plans to develop said property and therefore requires water service to be provided to the property; and

WHEREAS, City has annexed some of the Quorum Property; and

WHEREAS, TRSUD and City are parties to a Water Supply Contract (the "1999 Water Supply Contract") dated October 14, 1999, with a term of 10 years, under which TRSUD buys water from City for the use of TRSUD's customers and which requires the transfer of TRSUD's CCN to City for areas annexed by City, if requested, pursuant to the terms of the contract; and

WHEREAS, several lawsuits have been filed by the Parties in Gregg County concerning whether compensation is due to TRSUD from City for the transfer of TRSUD's CCN for a portion of the Quorum Property, and the validity of an easement held by TRSUD on the Quorum Property, including Cause No. 2005-1255-A, *The City of Longview, Texas vs. Tryon Road Special Utility District*, with respect to which three interlocutory appeals are pending in the 12th District Court of Appeals in Tyler, and



Cause No. 2006-35-A, *Tryon Road Special Utility District v. Quorum Longview 259, L.P.* (collectively, the "Lawsuits"); and

WHEREAS, the Parties participated in a mediation as suggested by the 188th Judicial District Court of Gregg County, Texas on March 7, 2006 with Mediator James Knowles in Tyler, Texas; and

WHEREAS, as a result of the Mediation, the Parties have reached an agreement to settle the Lawsuits concerning the property identified in Article I below;

NOW, THEREFORE, in consideration of the covenants, conditions, and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I

IDENTIFICATION OF PROPERTY SUBJECT TO THIS AGREEMENT

- A. Quorum has purchased approximately 240 acres of real property (the "Quorum Property") that lies mostly within TRSUD's CCN which is depicted on the map attached to this Settlement Agreement, marked as Exhibit A.
- B. City annexed 15.69 acres of the Quorum Property on or about March 24, 2005. The 15.69 acres is labeled as Phase I and South Commercial on Exhibit A. A movie theatre and other improvements were constructed on Phase I. Following issuance of a Temporary Injunction issued by the 188th District Court of Gregg County, Texas, prohibiting TRSUD from interfering with the City providing water service, City began providing such water service to the improvements on or about December 14, 2005.
- C. City annexed 77 Acres of the Quorum Property on or about December 8, 2005. The portion of the Quorum Property annexed by City on December 8, 2005 consists of parcel(s) labeled as "55 Acre Commercial," a portion of Phase II Residential, and a portion of the "Multi-Family" tract on Exhibit A.
- D. City annexed, at Quorum's request, the remainder of that part of Quorum's Property that is labeled on Exhibit A as "Phase II Residential, Phase III Residential, and Phase IV Residential" and "Multi-Family" on or about April 13, 2006. The three parcels labeled on Exhibit A as Phase II Residential, Phase III Residential, and Phase IV Residential are referred to collectively as the "Residential Tracts."
- E. The Quorum Property also includes approximately 55 acres east of Tryon Road, which is labeled as "Estates" on Exhibit A. Quorum does not intend to request annexation by City of the Quorum Property labeled as "Estates" on Exhibit A, and City does not intend to annex the Quorum Property labeled as "Estates" on Exhibit A at this time. Quorum intends to develop the "Estates" for residential use and anticipates there will be a minimum of approximately eleven (11) water service connections to that parcel.
- F. City intends to annex the portion of another tract of real estate (the "Gore Property") containing approximately 44 acres, more or less, which is not within

City's corporate limits at this time and which is depicted on Exhibit B. Most of the Gore Property is within the CCN area of TRSUD. The Gore Property is not owned by Quorum.

- G. Hereinafter, the following tracts are collectively referred to as the "Commercial Tracts:" as depicted on Exhibit A - Phase I, South Commercial, and 55 Acre Commercial; and as depicted on Exhibit B - Gore Property. The following tracts as depicted on Exhibit A are collectively referred to as the "Residential Tracts:" Phase II Residential, Phase III Residential, and Phase IV Residential.

ARTICLE II TRSUD'S OBLIGATIONS

- A. TRSUD agrees to immediately transfer its right and obligation to provide water service to the Commercial Tracts to City for and in consideration of this Settlement Agreement. To effect the transfer of the CCN described in this Article II. A., within 30 days of the execution of this Agreement by all Parties, TRSUD and City shall jointly file this Agreement with the TCEQ and request that TRSUD's CCN for the Commercial Tracts be transferred to City and that the transfer of the CCN be incorporated into the respective CCNs of City (CCN No. 10361) and TRSUD (CCN No. 10362) pursuant to TEXAS WATER CODE §13.255(a) as to Phase I, South Commercial and 55 Acre Commercial, and pursuant to TEXAS WATER CODE 13.248 as to the Gore Property. The City, with cooperation from TRSUD, shall prepare the documents necessary for filing with TCEQ concerning such transfer and pay the filing fee, if any. Each Party shall support the request for transfer and bear its own cost for doing so.
- B. Notwithstanding City's annexation or planned annexation of any of the property that is the subject of this Agreement, the Parties agree that TRSUD will continue to maintain its right and obligation to provide water service to the Residential Tracts, the Multi-Family parcel, and the Estates, pursuant to TRSUD's CCN and consistent with this Agreement, and City will not seek to obtain the right to serve such tracts or the transfer of TRSUD's CCN to any portion of that property, except as provided for herein or as otherwise agreed to by both City and TRSUD in a written document executed subsequent to the date of this Agreement or as required and authorized by state law.
- C. The Parties also agree that TRSUD shall have the right of first refusal to serve the Residential Tracts. Within 30 days of a complete application being submitted to TRSUD by Quorum, its successors or assigns, or the then property owner for water service to the Residential Tracts, TRSUD will provide written notice to Quorum, its successors or assigns, or the then property owner and City that TRSUD can, cannot or will not provide water service to Phase II Residential, Phase III Residential, and/or Phase IV Residential Tracts for which service was

requested. If TRSUD decides it cannot or will not provide water service to Phase II Residential, Phase III Residential, and/or Phase IV Residential Tracts for which service was requested, TRSUD shall provide written notice of its decision to not serve Phase II Residential, Phase III Residential, and/or Phase IV Residential Tracts for which service was requested to both Quorum, or its successors or assigns or the then property owner and City. In such event, City shall provide water service to Phase II Residential, Phase III Residential, and/or Phase IV Residential Tracts for which service was requested with no compensation or damages being owed by City to TRSUD. Within 30 days of issuance of TRSUD's notice that it will not serve Phase II Residential, Phase III Residential, and/or Phase IV Residential Tracts for which service was requested, TRSUD and City shall jointly file with the TCEQ a request that TRSUD's CCN for Phase II Residential, Phase III Residential, and/or Phase IV Residential Tracts for which service was requested be transferred to City and that the transfer of the CCN be incorporated into the respective CCNs of City (CCN No. 10361) and TRSUD (CCN No. 10362) pursuant to TEXAS WATER CODE §13.255(a). The City, with cooperation from TRSUD, shall prepare the documents necessary for filing with TCEQ concerning such transfer and pay the filing fee, if any. Each Party shall support the request for transfer and bear its own cost for doing so.

- D. If TRSUD is unable to provide adequate and sufficient water service to the Phase II Residential, Phase III Residential, or Phase IV Residential Tracts by September 1, 2006, TRSUD shall purchase additional water from City, on an interim basis and under the terms of the 1999 Water Supply Contract, at a temporary point of connection to be established by City if requested by TRSUD at or near the Theater which is in Phase I depicted on Exhibit A. TRSUD shall be responsible for the cost of a tap, valve and meter at the temporary point of connection and that cost will not be charged or assessed to Quorum, its successors or assigns, or the then property owner. TRSUD shall pay City for the water purchased from that point of delivery at the then-current rate established by City pursuant to the 1999 Water Supply Contract. This Agreement calls for service to be provided to the Residential Tracts by September 1, 2006. TRSUD's ability to provide water service to the Residential Tracts by that date is dependent on Quorum's timely granting of easements along Tryon Road, TRSUD's timely submittal of plans to City for a water main along Tryon Road, City's timely approval of TRSUD's plans, TRSUD's construction of the water main and Quorum's construction of the distribution lines within the Residential Tracts. Notwithstanding any term or provision herein or in the 1999 Water Supply Contract to the contrary, any volume of water to be purchased by TRSUD pursuant to this paragraph D, Article II, shall be in addition to the quantity of water that TRSUD would otherwise be entitled to purchase pursuant to the 1999 Water Supply Contract.
- E. TRSUD shall be responsible for the costs associated with installing the water mains located within the 15 foot exclusive easements along Tryon Road which are necessary to provide water service to the Residential Tracts and for the cost of installing looped connections between the water distribution system located on the

Quorum Property and TRSUD's water system. Quorum, its successors or assigns, or the then property owner will not be required to extend lines beyond the bounds of the exterior property lines of the Residential Tracts in order to make the looped connections into TRSUD's water system.

- F. As part of the water service to be provided by TRSUD to the Residential Tracts, TRSUD shall provide flow and pressure sufficient to satisfy City's Code for fire flows as of the date of this Agreement. As of the date of this Agreement, City Code requires, for residential subdivisions, fire flow equal to 1,000 gallons per minute at peak demand measured at the fire hydrant. For the Multi-Family tract, TRSUD shall provide fire flow up to 2,500 gallons per minute at peak demand measured at the fire hydrant.
- G. TRSUD agrees that the distribution lines for the Residential Tracts shall be located to one side or the other of the Residential Tract roadways within the unpaved portion of Quorum's dedicated roadway right-of-way located outside the curb of the paved roadway referred to as the Parkway. The parties acknowledge and agree that TRSUD's agreement set forth in this paragraph G, Article II is based upon Quorum's agreement that Quorum, prior to filing one or more plats reflecting the easements in the "Parkway," shall record interim easements reflecting the easements to be located within the Parkway, and shall eventually record one or more plats, restricting any other utility lines or cables situated within the Parkway from being located closer than three feet horizontally and one foot vertically from the distribution lines. If TRSUD places any lines within the Residential Tracts it will use its best-efforts to conserve space within the Parkway to allow other utilities to utilize the remaining space in the Parkway by placing TRSUD's lines to one side of the easement.
- H. TRSUD shall utilize a separate modified Non-Standard Service Contract in the form attached hereto as Exhibit C for service to each Phase of Quorum's Residential Tracts.
- I. If, at the time a complete application for water service to the Multi-Family parcel is submitted to TRSUD, the development remains a multi-family residential housing development, then: within 30 days of Quorum's or its successors' or assigns' or the then property owner's application for water service to the Multi-Family parcel, TRSUD will provide written notice to City, Quorum, or its successors, or assigns, or the then property owner that it will, or will not, provide water service to the Multi-Family parcel. If TRSUD chooses not to provide water service to the Multi-Family parcel, City shall have 30 days from receipt of TRSUD's notice to decide and provide written notice to TRSUD, and Quorum, its successors or assigns, or the then owner of the Multi-Family parcel that it will, or will not, provide water service to the Multi-Family parcel. If City decides not to provide water service to the Multi-Family parcel, City shall provide written notice of that decision to TRSUD and Quorum or its successors or assigns or the then property owner and TRSUD shall have the obligation to provide water service to

the Multi-Family parcel. If City decides it will provide water service to the Multi-Family parcel, and provides written notice of that decision as provided above to TRSUD and Quorum or its successors or assigns, or the then property owner, City shall provide water service to the Multi-Family parcel with no compensation or damages being owed by City to TRSUD. Within 30 days of City's decision, City and TRSUD shall jointly file at the TCEQ a request that the CCN for the Multi-Family parcel be transferred from TRSUD to City and that the transfer be incorporated into the respective CCNs of City (CCN No. 10361) and TRSUD (CCN No. 10362) pursuant to TEXAS WATER CODE §13.255(a). The City, with cooperation from TRSUD, shall prepare the documents necessary for filing with TCEQ concerning such transfer and pay the filing fee, if any. Each Party shall support the request for transfer and bear its own cost for doing so.

J. If the zoning or intended use of the Multi-Family parcel changes to commercial or retail (hereafter, the "re-zoned Multi-Family parcel"), City shall have the right of first refusal to provide water service to the re-zoned Multi-Family parcel. If within 30 days of Quorum's, its successors' or assigns', or the then property owner's application to City for water service to the re-zoned Multi-Family parcel, City provides written notice to TRSUD, Quorum, or its successors or assigns, or the then property owner that it chooses not to provide water service to the re-zoned Multi-Family parcel, TRSUD shall provide water service to the re-zoned Multi-Family parcel. If City elects to provide water service to the re-zoned Multi-Family parcel, it shall provide written notice of that decision to TRSUD and Quorum, or its successors or assigns, or the then property owner, the City shall provide water service to the re-zoned Multi-Family parcel, and within 30 days of the City's notice, City and TRSUD shall jointly file at the TCEQ a request that TRSUD's CCN for the re-zoned Multi-Family parcel be transferred from TRSUD to City and that the transfer be incorporated into the respective CCNs of City (CCN No. 10361) and TRSUD (CCN No. 10362) pursuant to TEXAS WATER CODE §13.255(a). The City, with cooperation from TRSUD, shall prepare the documents necessary for filing with TCEQ concerning such transfer and pay the filing fee, if any. Each Party shall support the request for transfer and bear its own cost for doing so.

K. Upon application by Quorum, its successors or assigns, or the then property owner, TRSUD shall provide water service to the residential connections within the area referred to as the "Estates" on Exhibit A in accordance with the Non-Standard Service Contract in the form attached hereto as Exhibit F.

ARTICLE III CITY'S OBLIGATIONS

A. City shall provide water service to the Commercial Tracts in accordance with the terms herein. City shall continue providing water service to Phase I under the terms and conditions already existing. Upon request from Quorum, its successors or assigns, or the then property owner, City shall establish and provide water

service to the remaining Commercial Tracts in accordance with City's standard procedure for establishing a new water service. Within 30 days of the execution of this Agreement by all Parties, City and TRSUD shall jointly file this Agreement with the TCEQ and request that TRSUD's CCN to the Commercial Tracts be transferred to City and that the transfer be incorporated into the respective CCNs of City (CCN No. 10361) and TRSUD (CCN No. 10362) pursuant to TEXAS WATER CODE §13.255(a) as to Phase I, South Commercial and 55 Acre Commercial, and pursuant to TEXAS WATER CODE 13.248 as to the Gore Property. The City, with cooperation from TRSUD, shall prepare the documents necessary for filing with TCEQ concerning such transfer and pay the filing fee, if any. Each Party shall support the request for transfer and bear its own cost for doing so.

- B. City shall credit to TRSUD's water account over the remaining life of the 1999 Water Supply Contract the total sum of \$65,000.00. City shall apply four equal credits of \$16,250 to TRSUD's water account with City on June 1, 2006, June 1, 2007, June 1, 2008 and June 1, 2009.
- C. Notwithstanding City's annexation or planned annexation of any of the property that is the subject of this Agreement, City agrees that TRSUD shall be entitled to maintain its right and obligation to provide water service to the Residential Tracts, Multi-Family parcel and Estates as described herein pursuant to TRSUD's CCN and consistent with this Agreement, and City will not seek to obtain the right to serve such tracts or the transfer of TRSUD's CCN to any portion of that property except as provided for herein or as otherwise agreed to by both City and TRSUD in a written document executed subsequent to the date of this Agreement or as required and authorized by state law. City further agrees that it shall not require TRSUD to obtain a franchise or pay a franchise fee or any other fee associated with TRSUD's provision of water service within its CCN areas for the property that is the subject of this Agreement that has been or may be annexed by City.
- D. If TRSUD is unable to provide adequate and sufficient water service to the Residential Tracts by September 1, 2006, City shall, on an interim basis and under the terms of the 1999 Water Supply Contract, sell water to TRSUD at a temporary point of connection to be established by City if requested by TRSUD at or near the Theater located in Phase I depicted on Exhibit A. TRSUD shall be responsible for the cost of a tap, valve and meter at the temporary point of connection and said cost will not be charged or assessed to Quorum, its successors or assigns, or the then property owner. City shall charge TRSUD for that water the then-current rate established by City pursuant to the 1999 Water Supply Contract for the water purchased from that temporary point of delivery on an interim basis. This Agreement calls for service to be provided to the Residential Tracts by September 1, 2006. TRSUD's ability to provide water service to the Residential Tracts by that date is dependent on Quorum's timely granting of easements along Tryon Road, TRSUD's timely submittal of plans to City for water mains along Tryon Road, City's timely approval of TRSUD's plans, TRSUD's construction of the water mains and Quorum's construction of the

distribution lines within the Residential Tracts. Notwithstanding any term or provision herein or in the 1999 Water Supply Contract to the contrary, any volume of water to be sold by City to TRSUD pursuant to this paragraph D, Article III, shall be in addition to the quantity of water that TRSUD would otherwise be entitled to purchase pursuant to the 1999 Water Supply Contract.

- E. If, within 30 days of Quorum's, its successors' or assigns', or the then property owner's application for water service to the Residential Tracts, TRSUD provides written notice to City and Quorum, its successors or assigns, or the then property owner that it cannot or will not provide water service to the Residential Tracts for which service was requested (such notice being provided pursuant to Article II, paragraph C above), City shall provide water service to the Residential Tracts for which service was requested. Within 30 days of TRSUD's issuance of the notice under this provision, City and TRSUD shall jointly file at the TCEQ a request that TRSUD's CCN for the Residential Tracts for which service was requested be transferred to City and that the transfer be incorporated into the respective CCNs of City (CCN No. 10361) and TRSUD (CCN No. 10362) pursuant to TEXAS WATER CODE §13.255(a). The City, with cooperation from TRSUD, shall prepare the documents necessary for filing with TCEQ concerning such transfer and pay the filing fee, if any. Each Party shall support the request for transfer and bear its own cost for doing so.
- F. If at the time an application for water service to the Multi-Family parcel is submitted to TRSUD, the development remains a multi-family residential housing development, then: if, within 30 days of Quorum's, its successors' or assigns' or the then property owner's application for water service to the Multi-Family parcel, TRSUD provides written notice to City and Quorum, its successors or assigns or the then property owner that it chooses not to provide water service to the Multi-Family parcel, City shall have 30 days from receipt of TRSUD's notice to decide and provide written notice to TRSUD, Quorum, its successors or assigns, or the then property owner that it will, or will not, provide water service to the Multi-Family parcel. If City decides not to provide water service to the Multi-Family parcel, TRSUD shall have the obligation to provide water service to the Multi-Family parcel. If City decides it will provide water service to the Multi-Family parcel, City shall provide water service to the Multi-Family parcel with no compensation or damages being owed by City to TRSUD and City and TRSUD shall jointly file at the TCEQ a request that the CCN for the Multi-Family parcel be transferred from TRSUD to City and that the transfer be incorporated into the respective CCNs of City (CCN No. 10361) and TRSUD (CCN No. 10362) pursuant to TEXAS WATER CODE §13.255(a). The City, with cooperation from TRSUD, shall prepare the documents necessary for filing with TCEQ concerning such transfer and pay the filing fee, if any. Each Party shall support the request for transfer and bear its own cost for doing so.
- G. If the zoning or intended use of the Multi-Family parcel changes to commercial or retail, City shall have the right of first refusal to provide water service to the re-

zoned Multi-Family parcel. If, within 30 days of Quorum's, or its successors' or assigns', or the then property owner's application to City for water service to the re-zoned Multi-Family parcel, City provides written notice to TRSUD and Quorum, or its successors, or assigns, or the then property owner that it chooses not to provide water service to the re-zoned Multi-Family parcel, TRSUD shall provide water service to the re-zoned Multi-Family parcel. If City elects to provide water service to the re-zoned Multi-Family parcel, City shall provide written notice of that decision to TRSUD and Quorum, or its successors or assigns, or the then property owner, and then within 30 days of City's notice, City and TRSUD shall jointly file at the TCEQ a request that TRSUD's CCN for the re-zoned Multi-Family parcel be transferred from TRSUD to City and that the transfer be incorporated into the respective CCNs of City (CCN No. 10361) and TRSUD (CCN No. 10362) pursuant to TEXAS WATER CODE §13.255(a). Contemporaneously with the filing of the CCN transfer request at TCEQ, City shall pay to TRSUD a sum equal to one thousand five hundred dollars (\$1,500) per acre or portion of acre plus the actual damages to any TRSUD water facilities located on the Multi-Family parcel that are damaged or rendered valueless or useless as a result of the transfer of the CCN or as a result of City's provision of water service to the Multi-Family parcel. The City, with cooperation from TRSUD, shall prepare the documents necessary for filing with TCEQ concerning such transfer and pay the filing fee, if any. Each Party shall support the request for transfer and bear its own cost for doing so.

- H. City shall timely review any and all TRSUD plans and specifications for water facilities to be constructed within TRSUD's CCN and City's extra-territorial jurisdiction ("ETJ") in accordance with City's standard review procedures. The City shall not withhold approval of TRSUD's plans on arbitrary grounds.

ARTICLE IV QUORUM'S OBLIGATIONS

- A. Quorum, its successors or assigns shall reimburse City for the credits applied by City to TRSUD's water account, the total sum of \$65,000. Quorum's, its successors' or assigns', reimbursement shall be in the form of four equal payments of \$16,250 to City, due and payable on June 1, 2006, June 1, 2007, June 1, 2008 and June 1, 2009.
- B. Quorum, its successors or assigns, or the then property owner shall apply for water service from City for the Commercial Tracts and the Multi-Family parcel if the zoning or proposed use of the Multi-Family parcel is changed to commercial or retail (as described in Article III, paragraph G) or if TRSUD chooses not to provide water service to the Multi-Family parcel which is zoned for residential and the City decides to provide water service (as described in Article III, paragraph F) which Quorum, its successors or assigns or the then property owner owns pursuant to City's standard procedure for applying for water service and at

such time as Quorum, its successors or assigns or the then property owner plans to proceed with development of same. The Parties acknowledge and agree that Quorum's, its successors' or assigns' or the then property owner's applications may be presented at different times for different tracts.

- C. Quorum, its successors or assigns or the then property owner shall apply for water service from TRSUD for the Residential Tracts, Multi-Family parcel if the zoning and intended use remains residential (as described in Article II, paragraph I) or if the zoning or intended use is changed to commercial or retail and the City chooses not to provide water service (as described in Article II, paragraph J) and Estates pursuant to TRSUD's standard procedure for applying for water service and at such time as Quorum, its successors or assigns, or the then property owner plans to proceed with development of same. The Parties acknowledge and agree that Quorum's, its successors' or assigns', or the then property owner's applications may be presented at different times for different tracts or parcels.
- D. This Agreement calls for service to be provided to the Residential Tracts by September 1, 2006. TRSUD's ability to provide water service to the Residential Tracts by that date is dependent on Quorum's timely granting of easements along Tryon Road, TRSUD's timely submittal of plans to City for water mains along Tryon Road, City's timely approval of TRSUD's plans, TRSUD's construction of the water mains and Quorum's construction of the distribution lines within the Residential Tracts.
- E. Quorum or its successors or assigns or the then property owner shall be responsible for the cost associated with distribution lines within and necessary to provide water service to the Residential Tracts in accordance with the modified Non-Standard Service Contract in the form attached hereto as Exhibit C, to the Multi-Family parcel in accordance with the modified Non-Standard Service Contract in the form attached hereto as Exhibit "G", and to the Estates in accordance with the Non-Standard Service Contract in the form attached hereto as Exhibit F.
- F. Within 15 days from the date of this Agreement, Quorum, its successors or assigns, or the then property owner shall provide to TRSUD on Quorum's Property fifteen (15) feet wide exclusive easements, parallel with and adjacent to, the east and west sides of, Tryon Road, which easements shall be in a form acceptable to all Parties. Within 15 days from the date of this Agreement, Quorum, its successors or assigns, or the then property owner, shall also provide a fifteen (15) feet exclusive easement to TRSUD on the north side of Quorum's Property in the vicinity of the Farrell development in a form acceptable to all Parties. Quorum shall provide a utility easement within the Residential Tracts as part of the "Parkway" of dedicated easements for streets extending to 12 feet out from the back of the street curbs and running parallel to the street curbs. Prior to filing one or more plats reflecting the easements in the "Parkway," Quorum shall record interim easements reflecting the easements to be located within the

Parkway, and shall eventually record one or more plats, restricting any other utility lines or cables situated within the Parkway from being located closer than three feet horizontally and one foot vertically from the distribution lines. If TRSUD places any lines within the Residential Tracts, it will use its best efforts to conserve space within the Parkway to allow other utilities to utilize the remaining space in the Parkway by placing TRSUD's lines to one side of the easement.

- G. If, within 30 days of Quorum's, its successors' or assigns', or the then property owner's application for water service to the Residential Tracts, TRSUD provides written notice to City and Quorum, its successors or assigns, or the then property owner that it cannot or will not provide water service to the Residential Tracts, Quorum, its successors or assigns, or the then property owner shall apply to City for water service to the Residential Tracts and City shall provide water service to the Residential Tracts with no costs or damages being owed by City to TRSUD.

ARTICLE V DISMISSAL OF LAWSUITS

- A. Within five (5) business days of the execution of this Agreement by all Parties, the Parties shall work cooperatively to dismiss the following lawsuits:
- (1) Cause No. 2005-1255-A, *The City of Longview, Texas vs. Tryon Road Special Utility District*, District Court of Gregg County, Texas and the appeals filed in connection therewith in the 12th Court of Appeals in Tyler, Texas.
 - (2) Cause No. 2006-35-A, *Tryon Road Special Utility District vs. Quorum Longview 259, L.P.*, District Court of Gregg County, Texas.
- B. TRSUD shall, within five (5) business days of the execution of this Agreement by all parties file a release of the claimed blanket easement from Elsie Killingsworth to TRSUD dated January 27, 1965 and recorded at Vol. 664, Page 200 of the Deed Records of Gregg County, Texas, so as to release the Quorum Property from such easement, and TRSUD shall, within five (5) business days of the execution of this Agreement, file a release of the Notice of Lis Pendens filed by Mitch Motley, as attorney for TRSUD on January 6, 2006, with File No. GCC 200600339, concerning the Quorum property which is the subject of the settlement set forth in this Agreement.
- C. TRSUD shall, within 5 business days of the execution of this Agreement, file with City a request to withdraw construction plans for the Tryon Road SUD Plant Number 1 Service Area Water Main Improvements – Phase I.

ARTICLE VI MISCELLANEOUS PROVISIONS

terminate this Agreement. The Parties hereby declare that they would have accepted and agreed to each section, subsection, sentence, clause, or phrase hereof, other than those material provisions related to the right and/or duty to provide water service or the transfer of CCNs, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases, be declared unconstitutional, invalid, illegal or unenforceable. In the event that any material provision concerning the right and/or duty to provide water service or the transfer of CCN is held to be invalid, illegal, unenforceable, or can not be implemented in any respect by reason of judicial, governmental, governmental subdivision, or regulatory agency determination, action, or inaction, any Party may terminate this Agreement without liability by providing thirty (30) days notice of such termination to the other Parties.

- D. This Agreement is subject to all applicable federal, state and local laws and regulations.
- E. This Agreement constitutes the entire Agreement between the Parties hereto and supersedes all prior Agreements, understandings and arrangements, oral or written, between the Parties hereto with respect to providing water service to the property that is the subject of this Agreement. Notwithstanding any term or provision of this Agreement to the contrary, with respect to that part of the Residential Tracts, the Commercial Tracts, the Multi-Family parcel, and the Estates that have been (or will be) annexed by City, City shall provide normal City services (other than the provision of water service) to such tracts. The provision of water service to the property that is the subject of this Agreement shall be controlled by other provisions of this Agreement.
- F. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Texas. This Agreement is entered into and fully performable in Gregg County, Texas. Accordingly, venue for any cause of action arising pursuant to this Agreement shall be proper only in Gregg County, Texas.
- G. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. This Agreement is effective upon the date it has been executed by all of the Parties.
- H. This Agreement may not be modified or amended except by an instrument or instruments in writing signed by the authorized representative of the Party against whom enforcement of any such modification or amendment is sought. The waiver by any Party hereto of a breach of any term or provision of this Agreement shall not be construed as a waiver of any subsequent breach.
- I. TRSUD is a duly formed and validly existing Special Utility District created under the laws of the State of Texas. TRSUD has all requisite power and authority to enter into this Agreement. The execution and delivery of this

Agreement by TRSUD and the performance of the transactions contemplated hereby by TRSUD have been duly and validly approved and adopted by resolution of its Board of Directors. A copy of said resolution is attached hereto as Exhibit D and incorporated herein by reference for all purposes.

- J. City is a duly formed and validly existing home-rule municipality created under the laws of the State of Texas. City has all requisite power and authority to provide retail water service and to carry on its business as presently conducted. City has all requisite power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement. The execution and delivery of this Agreement by City and the performance of the transactions contemplated hereby by City have been duly and validly approved and adopted by resolution of its City Council. A copy of said resolution is attached hereto as Exhibit E and incorporated herein by reference for all purposes.
- K. Quorum is a Texas Limited Partnership formed under the laws of the State of Texas.
- L. Each Party shall bear all of its own costs and legal fees incurred in prosecuting or defending the lawsuits and appeals which are to be dismissed hereunder. Each Party shall bear all of its own costs and legal fees incurred in reaching this Agreement and in implementing same.
- M. Any Party shall be authorized to file in the Gregg County Real Property Records a copy of this Agreement or a memorandum of general terms of this Agreement in a form acceptable to all Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate originals on the dates reflected in the signature blocks below.

TRYON ROAD SPECIAL UTILITY DISTRICT

BY: Lee B. Pigeon, Sr. 4/24/06
Lee B. Pigeon, Sr., President Date

CITY OF LONGVIEW

BY: Jay Dean 4/24/06
Jay Dean, Mayor Date

ATTEST:

Lois McCaleb
Lois McCaleb, City Clerk

APPROVED AS TO FORM:

Jim Finley
FOR Jim FINLEY, City Attorney

QUORUM LONGVIEW 259, L.P.

BY: QUORUM LONGVIEW 259, G.P., L.L.C.
Its General Partner

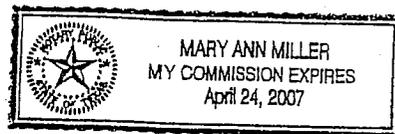
By: Jeff Johnston / /06
Jeff Johnston, President Date

STATE OF TEXAS
COUNTY OF GREGG

This instrument was acknowledged before me on 4-24-06 by Lee B. Pigeon, Sr.,
President of Tryon Road Special Utility District.

Mary Ann Miller

Signature of Notary



Mary Ann Miller

Printed Name

My commission expires: 4-24-07

STATE OF TEXAS

COUNTY OF GREGG

This instrument was acknowledged before me on 4-24-06 by Jay Dean, Mayor of
the City of Longview, Texas.

Mary Ann Miller

Signature of Notary



Mary Ann Miller

Printed Name

My commission expires: 4-24-07

STATE OF TEXAS

COUNTY OF GREGG

This instrument was acknowledged before me on _____ by Jeff Johnston,
President of Quorum-Longview 259, G.P., L.L.C., a corporation, on behalf of said
corporation.

Signature of Notary

Printed Name

My commission expires: _____

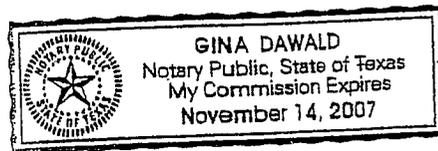
STATE OF TEXAS

COUNTY OF GREGG

This instrument was acknowledged before me on 4-24-06 by Jeff Johnston,
President of Quorum-Longview 259, G.P., L.L.C., a corporation, on behalf of said
corporation.

Gina Dawald

Signature of Notary



GINA DAWALD

Printed Name

My commission expires: 11-14-07

EXHIBITS

Exhibit A – map of Quorum Property

Exhibit B – map depicting Gore Property

Exhibit C – modified TRSUD Non-Standard Service Contract (Residential Tracts)

Exhibit D – TRSUD Board Resolution Approving Agreement

Exhibit E – City Council Resolution Authorizing Agreement

Exhibit F – TRSUD Non-Standard Service Contract (Estates)

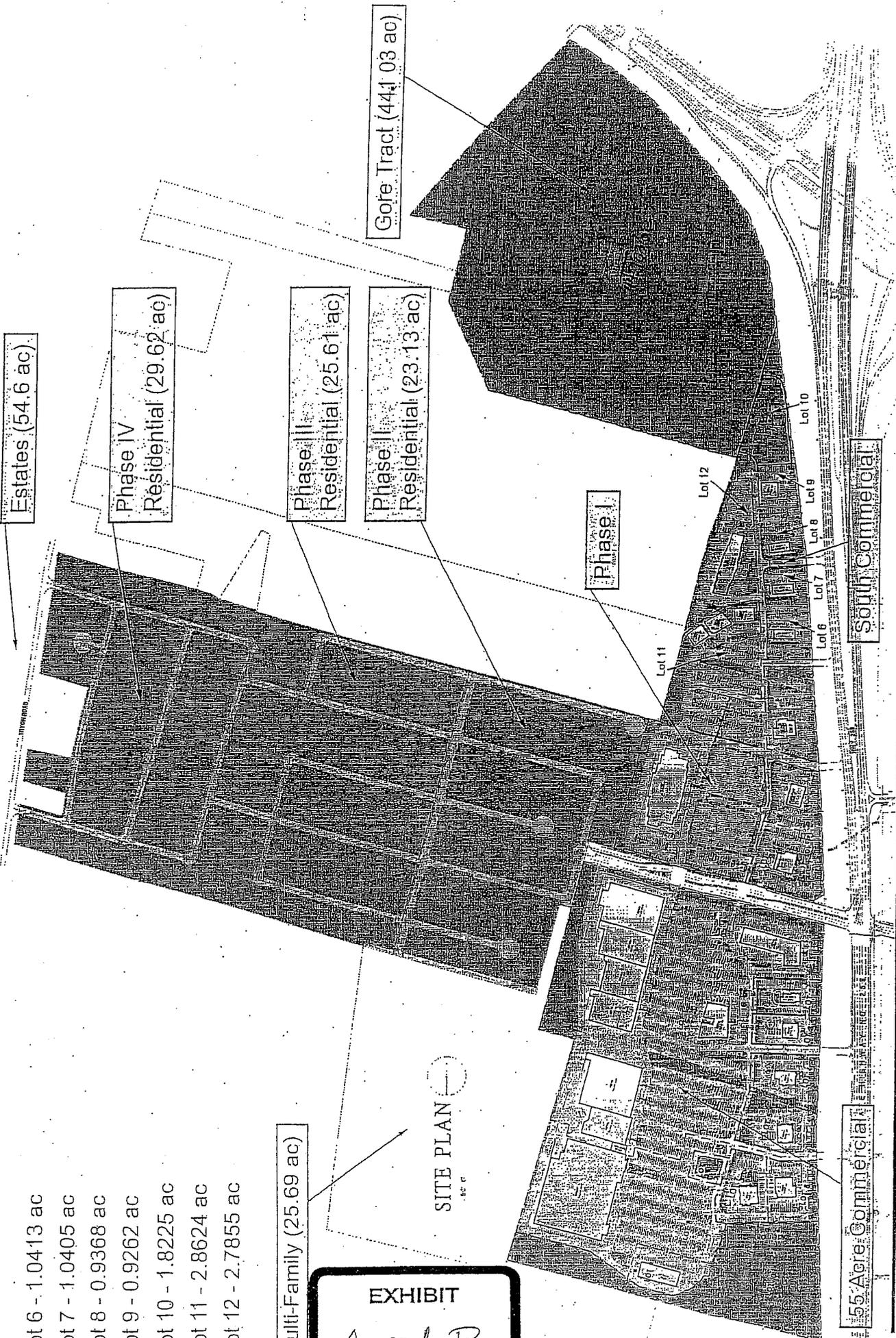
Exhibit G – modified TRSUD Non-Standard Service Contract (Multi-Family parcel)

- Lot 6 - 1.0413 ac
- Lot 7 - 1.0405 ac
- Lot 8 - 0.9368 ac
- Lot 9 - 0.9262 ac
- Lot 10 - 1.8225 ac
- Lot 11 - 2.8624 ac
- Lot 12 - 2.7855 ac

Multi-Family (25.69 ac)

SITE PLAN

EXHIBIT
A and B



O'BRIEN & ASSOCIATES, INC.
ARCHITECTURE • INTERIORS • PLANNING
570 HARVEST HILL ROAD • SUITE 201 • DALLAS, TEXAS 75228 • (214) 734-3400 • FAX (214) 734-3402

HIGHWAY 259 & HAWKINS PARKWAY
LONGVIEW, TEXAS
QUORUM EQUITIES GROUP

SP-26

SCALE: 1"=500' • JOHN • 1987 • ISSUE DATE: 05/20/88
APPROVED BY: _____ DATE: _____



Texas Commission On Environmental Quality

By These Presents Be It Known To All That

City of Longview

having duly applied for certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this commission that the public convenience and necessity would in fact be advanced by the provision of such service by this Applicant, is entitled to and is hereby granted this

Certificate of Convenience and Necessity No. 10361

to provide continuous and adequate water utility service to that service area or those service areas in Gregg County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Application No. 36331-C are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of City of Longview to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this _____

For the Commission



Texas Commission On Environmental Quality

By These Presents Be It Known To All That
Tryon Road Special Utility District (SUD)

having duly applied for certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this commission that the public convenience and necessity would in fact be advanced by the provision of such service by this Applicant, is entitled to and is hereby granted this

Certificate of Convenience and Necessity No. 10362

to provide continuous and adequate water utility service to that service area or those service areas in Gregg County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Application No. 36331-C are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of Tryon Road SUD to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this _____

For the Commission

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

January 7, 2010

Jim Mathews
Mathews & Freeland, LLP
Attorneys for the City of Longview
P.O. Box 1568
Austin, Texas 78768-1568

Lee B. Pigeon
Tryon Road Special Utility District
P.O. Box 190
Judson, Texas 75660

Jeff Johnston
Quorum Longview 259, L.P.
16475 Dallas Parkway, Suite 220
Addison, Texas 75001

Re: TCEQ Docket No. 2009-1897-UCR; Consideration of a request for a Commission Order approving contracts designating service areas between the City of Longview (City) and Tryon Road Special Utility District (SUD).

Dear Mr. Mathews, Mr. Pigeon, and Mr. Johnston:

This letter is to inform you that the above-referenced application has been set on the Agenda for consideration by the Texas Commission on Environmental Quality (TCEQ). This Agenda will occur on January 27, 2010, beginning at 9:30 a.m. in Building E, Room 201S, 12100 Park 35 Circle, Austin, Texas. Included with this letter are the Agenda backup materials to be considered by the Commission. At least one of you will need to attend the Agenda to explain the agreement and to answer any questions the Commissioners may have.

Persons with disabilities who plan to attend this hearing and who need special accommodations at the Agenda should call the TCEQ Office of Public Assistance at 1-800-687-4040 or 1-800-RELAY-TX (TDD) at least one week prior to the hearing. If you have any questions about this matter, you may contact Heidi Graham from the Water Supply Division at 1-512-239-0844 or me at 1-512-239-4761.

Sincerely,

A handwritten signature in cursive script that reads "Kayla Murray".

Kayla Murray

Staff Attorney
Environmental Law Division

Enclosure

CONSENT FORM

Applicant=s Name: City of Longview/Tryon Road SUD 13.248 Agreement
Application No.: 36331-C

- I concur with the map created 7/10/2009 as a result of the above mentioned application.
- I do not concur with the map created 7/10/2009 and intend to respond by letter dated _____.

I am authorized by the Tryon Road SUD, to sign this form.

Signature: Lee B. Pigeon, Sr.

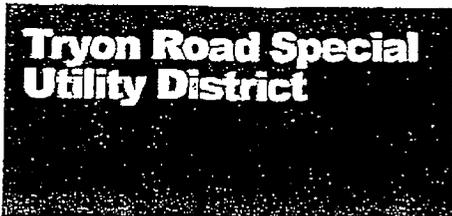
Printed Name: LEE B. PIGEON, Sr.

Relationship to Applicant: PRESIDENT, BOARD OF DIRECTORS

Date signed: 8/20/2009

Mail to or fax to:
 Heidi Graham
 Utilities & Districts Section, MC 153
 Water Supply Division
 Texas Commission on Environmental Quality
 P.O. Box 13087
 Austin, TX 78711-3087
 Fax (512) 239-6972

360 Skinner Lane
Longview, Tx 75605
(903) 663-1447 Office
(903) 663-5875 Fax



FAX

To: <u>Heidi Graham</u>	From: <u>Glenn Hobbs</u>
Fax: <u>(512) 239-6972</u>	Pages: <u>2</u>
Phone: _____	Date: <u>8/24/09</u>
_____	CC: _____

Urgent For Review Please Comment Please Reply Please
Recycle

Comments

Heidi:

I did not send the map
if you need it let me know

Glenn

CONSENT FORM

Applicant's Name: City of Longview/Tryon Road SUD 13.248 Agreement
Application No.: 36331-C

- I concur with the map created 7/10/2009 as a result of the above mentioned application.
- I do not concur with the map created 7/10/2009 and intend to respond by letter dated _____.

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

Signature: David Willard

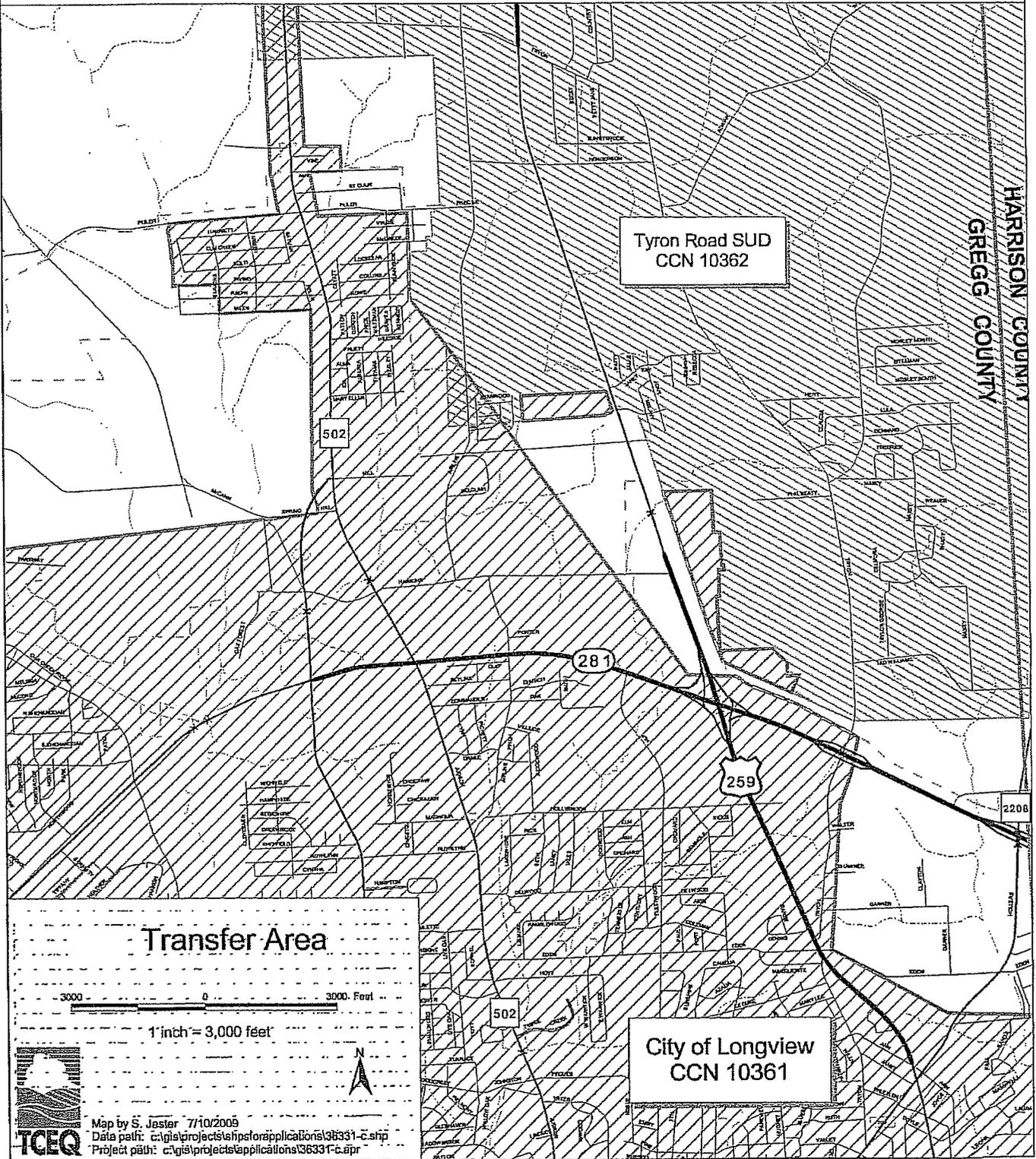
Printed Name: David Willard

Relationship to Applicant: City Manager

Date signed: 8.21.09

Mail to or fax to:
Heidi Graham
Utilities & Districts Section, MC 153
Water Supply Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087
Fax (512) 239-6972

City of Longview / Tyron Road SUD
Portion of Water Service Areas
Application No. 36331-C (13.248 Contract Service Agreement
from the City of Longview, CCN 10361
to Transfer a Portion of CCN No. 10362 from Tyron Road SUD in Gregg County)



CERTIFICATE OF SERVICE

I certify that on January 7, 2010, a copy of the foregoing document was sent by first class, agency electronic mail, and/or facsimile to the persons on the attached Mailing List.



Kayla Murray, Staff Attorney
Environmental Law Division

MAILING LIST
City of Longview / Tryon Road SUD 13.248 & 13.255(a) Agreement
TCEQ Docket No. 2009-1897-UCR

Ms. LaDonna Castañuela, Chief Clerk
Office of the Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC-105
Austin, Texas 78711-3087

Jim Mathews
Mathews & Freeland, LLP
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Austin, Texas 78768-1568

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