

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

March 22, 2011

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. 2010-1663-UCR. Consideration of a request for a Commission Order approving a contract designating service areas between the City of Lindale and Lindale Rural WSC pursuant to Texas Water Code Section 13.248.

Dear Ms. Castañuela:

Transmitted herewith for filing with the Texas Commission on Environmental Quality ("Commission") are the following items as backup material for the April 6, 2011 agenda regarding the request described above:

1. Proposed Order, with the Texas Water Code Section 13.248 contract attached to it;
2. Interoffice Memorandum containing an Executive Summary;
3. Application for a Commission order approving a Texas Water Code Section 13.248 contract filed on June 24, 2010;
4. Interoffice Memorandum containing analysis of Aqua WSC's financial, managerial, and technical capability;
5. Map of the area covered by the Agreement.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "James Aldredge".

James Aldredge, Staff Attorney
Environmental Law Division

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER APPROVING A CONTRACT DESIGNATING SERVICE AREAS BETWEEN AQUA WATER SUPPLY CORPORATION AND MANVILLE WATER SUPPLY CORPORATION PURSUANT TO TEXAS WATER CODE SECTION 13.248; TCEQ DOCKET NO. 2010-1663-UCR.

A request for a Commission Order approving a contract designating water service areas in Smith County between the City of Lindale (City), Certificate of Convenience and Necessity (CCN) No. 12795, and Lindale Rural Water Supply Corporation (WSC), CCN No. 10758, was presented to the Texas Commission on Environmental Quality (Commission) for approval pursuant to Texas Water Code Section 13.248 and Title 30 of the Texas Administrative Code, Section 291.117.

Effective April 21, 2010, the City and WSC executed an "Agreement to Transfer Retail Water Service Utility Service Area" (Contract) regarding their respective water service areas. The Contract addresses the transfer of Manville's authority to provide water service to approximately 281 acres and provides that the City will be the sole provider of retail water service in that service area. The Contract is attached to this Order as Exhibit 1. This Order effects changes in CCN service areas as designated by the City and the WSC in the Contract.

Contracts between retail public utilities that designate 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 Section 13.248.

The Commission held a hearing on the request at the April 6, 2011 agenda and found that the request had merit.

Aqua is capable of rendering continuous and adequate water service to every customer in the area covered by the Contract. The decertification of Manville's authority to provide service in the affected area, which results in Aqua being the sole service provider remaining in the area, 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:

1. The provisions of the Contract addressing the transfer of a portion of Lindale Rural WSC's CCN No. 10758, and designating that retail water service shall be provided by the City of Lindale, CCN No. 12795, in that area are hereby approved.

2. CCN No. 12795 in Smith County, held by the City of Lindale, is hereby amended in accordance with the Contract.
3. CCN No. 10758 in Smith County, held by the Lindale Rural WSC, is hereby amended in accordance with the Contract.
4. The Executive Director is directed to redraw the maps of the respective CCNs as provided in the Contract and as set forth on the map attached to this Order as Exhibit 2, and to amend the Commission's official water service area map for Smith County, Texas. The certificate amendments requested in this application are necessary for the service, accommodation, convenience, and safety of the public.
5. The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this Order to the parties.
6. 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

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 an area within its boundaries that is certificated to another retail public utility without first obtaining a CCN for that area.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 The request to approve a 13.248 agreement is not subject to the notice provisions of title 30, section 291.106 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 appropriate notice provided 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 agreement filed by the City of Lindale on June 24, 2010 (Application No. 36766-C);
2. Agreement between Lindale Rural WSC, the City, and the Lindale EDC, executed on April 21, 2010;
3. Map of the service area subject to the 13.248 agreement submitted by the City of Lindale; and
4. Financial, managerial, and technical analysis of the City to operate in the affected area.

¹ Tex. Water Code Ann. § 13.242(a).

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 Tex. Water Code Ann. § 13.247(a).

⁴ Tex. Water Code Ann. § 13.248; 30 Tex. Admin. Code § 291.117. 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."

STAFF RECOMMENDATION

Staff has confirmed that both the City of Lindale and Lindale Rural WSC are retail public utilities with active water CCNs and that the area the parties are seeking to transfer abuts the CCN of the entity receiving the CCN. The area is being transferred because the owner of the land to be transferred has requested service from the City and is a party to this agreement. An additional, smaller tract is currently undeveloped and is being transferred by agreement of the City and Lindale Rural WSC. Water Supply Division staff is satisfied that the City possesses the adequate financial, managerial, and technical capability to provide continuous and adequate service to the area being transferred. Therefore, based on the facts stated in the application and the supporting documentation submitted by the City, staff supports the request for a Commission Order approving a contract designating service areas between the City and Lindale Rural WSC.

STAFF CONTACTS

James Aldredge, Environmental Law Division (239-2496)
Elizabeth Flores, Water Supply Division (239-6846)

Bickerstaff Heath Delgado Acosta LLP

3711 S. MoPac Expressway Building One, Suite 300 Austin, Texas 78746 (512) 472-8021 Fax (512) 320-5638 www.bickerstaff.com

June 24, 2010

Via Hand-Delivery

Texas Commission on Environmental Quality
Water Supply Division
Utilities & Districts Section, MC-153
12100 Park 35 Circle
Building F, 3rd Floor
Austin, TX 78753

RECEIVED
TCEQ
WATER SUPPLY DIV.
2010 JUN 24 PM 2 20

Re: City of Lindale CCN Transfer pursuant to Texas Water Code §§ 13.248 and 13.255

Dear Sir/Madam:

The City of Lindale ("City") and the Lindale Rural Water Supply Corporation ("LRWSC") have entered into an Agreement to Transfer Retail Water Utility Service Area ("Agreement") that provides for the transfer of portions of LRWSC's CCN ("Transfer Area") to the City. Portions of the Transfer Area are within the City limits and are being transferred under Texas Water Code § 13.255(a). The areas within the City limits are identified as Smith County Appraisal District Parcel PIN Numbers 031405, 031406, 031407, 031788, 031778, 131951, 131952, 031781, 030270, 112431, 116386, and 031411. Portions of the Transfer Area located outside City limits are transferred under the Agreement pursuant to Texas Water Code § 13.248. The areas outside the City limits are identified as Smith County Appraisal District Parcel PIN Numbers 031782 and 031410.

The Transfer Area within the City limits is owned by Lindale Economic Development Corporation, who is also a party to the Agreement and consents to the transfer. The area outside the City limits is owned by Yellow Rose RV Park, who consents to the transfer. No water utility facilities or any portion of LRWSC's water utility system are being conveyed or transferred to the City.

To facilitate your processing this request, enclosed is the following:

1. \$100.00 filing fee;
2. A copy of the Agreement to Transfer Retail Water Utility Service Area for TCEQ approval and incorporation into CCNs under Water Code § 13.248;
3. An original and four (4) copies of an Application to Obtain or Amend a Water CCN under Water Code § 13.255;

June 24, 2010
Page 2

5. Consent letter from representatives of Yellow Rose RV Park.

If you need any additional information or have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Dugat III".

William D. Dugat III

WDD/dfb
Enclosures

cc: Owen Scott
John Clary
Bobby Praytor
Brad Castleberry

**AGREEMENT TO TRANSFER
RETAIL WATER UTILITY SERVICE AREA**

This Agreement to Transfer Retail Water Utility Service Area ("Agreement") is made and entered into by and between Lindale Rural Water Supply Corporation ("LRWSC"), Lindale Economic Development Corporation ("LEDC") and the City of Lindale, Texas ("City"). LRWSC and the City may collectively be referred to herein as the "Parties" and individually as a "Party." This Agreement becomes effective on the date (the "Effective Date") it has been signed by the Parties.

RECITALS

WHEREAS, LRWSC is a non-profit, member owned water supply corporation, organized and operating pursuant to Chapters 67 of the Texas Water Code and holds water Certificate of Convenience and Necessity ("CCN") No. 10758, owns water facilities, transmission lines, and distribution lines in Smith County, Texas, and provides retail water utility service to customers within its certificated service area;

WHEREAS, LEDC is a Texas Non-profit Corporation incorporated as a Type A economic development corporation and desires to develop certain tracts of land in the City for industrial purposes;

WHEREAS, the City is a general law city which holds water CCN No. 12795;

WHEREAS, within the service area certificated to LRWSC under CCN No. 10758 are various tracts in Smith County consisting of approximately 260 acres owned by the Lindale Economic Development Corporation ("EDC Tracts"), which are more precisely described in the attached drawing as Smith County Appraisal District Parcel PIN numbers 031405, 031406, 031407, 031788, 031778, 131951, 131952, 031781, 030270, 112431, 116386 and 031411. The attached drawing is labeled Exhibit A "Lindale Rural WSC Transfer of Tracts to the City of Lindale General Overview Map";

WHEREAS, within the service area certificated to LRWSC under CCN No. 10758 are two tracts in Smith County consisting of approximately 21 acres not owned by the Lindale Economic Development Corporation ("Non-EDC Tracts"), which are more precisely described in the attached drawing Exhibit A as Smith County Appraisal District Parcel PIN numbers 031782 and 031410;

WHEREAS, the EDC Tracts have been annexed into the corporate limits of the City and the City desires to be the provider of retail water service to the EDC Tracts;

WHEREAS, the Non-EDC Tracts are outside the corporate limits of the City and the City desires to be the provider of retail water service to the Non-EDC Tracts;

WHEREAS, the EDC Tracts and the Non-EDC Tracts are collectively referred to as the Property or Transfer Area;

WHEREAS, LRWSC and the City are both "retail public utilities" as defined in Section 13.002 of the Texas Water Code and 30 Tex. Admin. Code Chapter 291; and

WHEREAS, LRWSC, the LEDC, and the City wish to enter into a binding agreement governing retail water utility service to the Property described herein, and as allowed by Texas Water Code Section 13.248, which provides that contracts between retail public utilities are valid and enforceable and are incorporated into the appropriate areas of CCNs and Section 13.255(a), which provides for single certification of the EDC Tracts to the City.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises expressed herein and other good and valuable consideration, the sufficiency of which is acknowledged by the Parties, LRWSC and the City hereby agree as follows:

1. Transfer Area and Compensation

1.1 Transfer Area. The Parties agree that the intended result of this Agreement is to transfer only that portion of LRWSC's CCN as described herein. The CCN area to be transferred to the City consists only of the portion of the LRWSC CCN No. 10758 which covers the Property, being approximately 281 acres as shown in the attached drawing labeled Exhibit A "Lindale Rural WSC Transfer of Tracts to the City of Lindale General Overview Map" specifically described as Smith County Appraisal District Parcel PIN numbers 031405, 031406, 031407, 031788, 031778, 131951, 131952, 031781, 030270, 112431, 116386, 031782, 031410, and 031411. No other portion of the LRWSC CCN No. 10758 is affected by, or subject to, this Agreement.

1.2 Compensation to LRWSC. To compensate LRWSC for the service rights in the Transfer Area, the Parties agree that the payment to LRWSC of the following constitutes just, adequate, and reasonable compensation to LRWSC: Payment of \$160,980.00.

1.3 Payment.

a. Within ten (10) business days of the Effective Date, LEDC shall pay to a title company or other Escrow Agent of its choice (Escrow Agent) by certified check or wire, \$160,980.00 (the "Full Payment"). Escrow Agent shall retain possession of the Full Payment until delivery or return thereof is permitted or required under this Agreement. The Full Payment shall be deposited in an interest bearing account by the Escrow Agent with the interest thereon to be dispersed with the Full Payment in accordance with the provisions hereof.

b. LEDC, prior to or at the Service Transfer Date, shall authorize the release of the Full Payment (\$160,980.00.) plus one-half of any accrued interest from the escrow account, and such funds shall be paid to LRWSC. One-half accrued interest shall be paid to the LEDC and one-half paid to LRWSC with the Full Payment.

1.4 Conditions Precedent to Retail Water Service. The City may provide service to the EDC Tracts as permitted under 30 Tex. Admin. Code § 291.103(c) when the conditions precedent described below are satisfied. Unless waived in writing by the Parties, no provision of retail water service by the City shall occur on the EDC Tracts until the satisfaction of all of following conditions precedent have occurred (the date all of these are satisfied shall be designated the "Service Transfer Date"):

a. The United States Department of Agriculture, Rural Utilities Service ("RUS"), a lender to LRWSC, shall have granted its release of the Transfer Area from the lien held by RUS; and,

b. LRWSC shall have received the full amount of the Full Payment (\$160,980.00) plus one-half of accrued interest.

1.5 Filing with RUS and Warranty. Within fifteen (15) business days of the Effective Date, LRWSC shall file with RUS a request that RUS consent to the release of the Transfer Area from the liens held by RUS. LRWSC shall provide the City copies of all correspondence with RUS concerning the requested release. LRWSC warrants that there are no liens on the transfer area other than that held by RUS.

1.6 Filing with TCEQ. The Parties agree that, at any time after the Service Transfer Date, the City shall be authorized to submit, on behalf of the Parties, an executed copy of this Agreement to the Texas Commission on Environmental Quality ("TCEQ") with a request that the terms of this Agreement be incorporated into the respective CCNs of LRWSC and the City. After the Service Transfer Date, LRWSC agrees to execute a bill of sale, consent or other documents as necessary to confirm to the TCEQ that the conditions precedent to retail water service by the City have been satisfied.

1.7 Termination. If the Service Transfer Date does not occur prior to twelve (12) months after the Effective Date then this Agreement shall automatically terminate unless extended in writing by agreement of all Parties. If so terminated, the Full Payment plus interest shall be returned to the LEDC, LRWSC shall have no obligation to transfer the Transfer Area to the City, and the certificated service rights shall remain with LRWSC.

1.8 Easement and water line relocation along CR 472.

a. Within fifteen (15) business days after the Transfer Date, the LEDC agrees, at its cost, to grant LRWSC and the City a joint utility easement for treated water lines. No other utilities may be included within the easement. The easement will be 20-foot wide and begin where CR 433 intersects and extends north of CR 472 at the

corner of Smith County Appraisal District Parcel PIN Numbers 131951 and 131952. The easement is along and within LEDC property and is intended to include a LRWSC existing water line which runs northwesterly paralleling CR 472 within LEDC tracts described as Smith County Appraisal District Parcel PIN Numbers -, 131951, and 031788. A copy of the form of the easement is attached hereto as Exhibit "B", which LEDC agrees to file in the County records after the easement is completed.

b. If in the future CR 472 is expanded adjacent to the tracts owned by LEDC identified as Smith County Appraisal District Parcel PIN Numbers 131952, 131951, and 031788 ("LEDC CR 472 Property") and LRWSC water lines must be moved to accommodate the expansion, LEDC agrees to grant to LRWSC and the City at the commencement of the expansion, at LEDC's cost, a 20-foot joint utility easement on LEDC CR 472 Property in a form substantially similar to that as provided in Exhibit "B." The easement will be located outside the public right of way. The easement is for treated water lines and no other utilities may be included within the easement. In addition, at the commencement of expansion along LEDC CR 472 Property, LEDC agrees to bear the expense of relocating LRWSC water lines into the joint utility easement. "Bear the expense" means installing or paying for the cost of installing (including materials and labor) a comparable replacement water line that meets City Code.

1.9. Easement and water line relocation along CR 433. If in the future CR 433 is expanded in the area beginning at its intersection with I-20 and running north to its southern intersection with CR 472 and adjacent to the tracts owned by LEDC identified as Smith County Appraisal District Parcel PIN Numbers 031405, 031406, 031407, and 131952 ("LEDC CR 433 Property") and LRWSC water lines must be moved to accommodate the expansion, then LEDC agrees to grant to LRWSC and the City at the commencement of the expansion, at LEDC's cost, a 20-foot joint utility easement in a form substantially similar to that as provided in Exhibit "B." The location of the easement will be outside the public right of way either on private property east of CR 433 or on LEDC CR 433 Property, as mutually determined by the Parties. The easement is for treated water lines and no other utilities may be included within the easement. In addition, at the commencement of expansion along LEDC CR 433 Property, LEDC agrees to bear the expense of relocating LRWSC water lines into the joint utility easement. "Bear the expense" means installing or paying for the cost of installing (including materials and labor) a comparable replacement water line that meets City Code.

2. Transfer of CCN

2.1 Transfer to City and Cooperation. After the Service Transfer Date, LRWSC agrees to fully cooperate with the City in any applications, filings, or notices by the City to TCEQ related to the transfer of the certificated service rights for the Transfer Area to the City ("Applications") and for the provision of retail water service to the Property by the City. All costs associated with preparing and filing the Applications and the pursuit of regulatory approvals shall be borne by the City. The Parties anticipate the need for two filings with the TCEQ: an application to transfer the EDC Tracts filed under Water Code section 13.255(a) and

a filing under Water Code section 13.248 for the TCEQ to incorporate the transfer of the Non-EDC Tracts into the respective CCNs of the City and LRWSC. After the Service Transfer Date, and except for any action necessary to collect the Full Payment, LRWSC agrees that it shall not take any action against the City intended to impede the provision of retail water service to the Property or to impede the transfer of the CCN for the Transfer Area to the City. To the extent the City is required to give notice of intent to provide service to the Property under TEX. WATER CODE § 13.242(c) and 30 Tex. Admin. Code § 291.103(c) ("Notice"), this Agreement constitutes Notice.

2.2 Customers in Transfer Area. After the Service Transfer Date, all retail water customers, if any, whose place of use of water is located within the Transfer Area will become customers of the City. LRWSC has reviewed its customer records for the Transfer Area and believes the only customer therein is the LRWSC customer connection to a single-family residence on a 4.999 acre-tract owned by LEDC identified as Smith County Appraisal District Parcel PIN number 031411. LRWSC agrees to continue to serve the single-family residence for a period of twelve months from the Service Transfer Date or until the City is able to serve, whichever is sooner.

2.3 Facilities and Waterlines. No facilities, water lines, equipment, or other property or property rights of LRWSC are transferred to the City by this Agreement.

2.4 No Impairment of Other Customers. Nothing in this Agreement shall in any way impair, or adversely affect, LRWSC's right to provide water to any customers located outside of the Transfer Area. LRWSC shall continue to have the right to use, repair, replace, and upgrade all of its water transmission and distribution lines and facilities, including those that are located within the Transfer Area, provided however, that LRWSC shall not provide retail water service to any customer in the Transfer Area except as provided under paragraph 2.2 or unless so requested by the City in writing.

3. Miscellaneous

3.1 This Agreement is not assignable without the written consent of all Parties

3.2 This Agreement contains the entire agreement of the Parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the Parties hereto.

3.3 This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Smith County, Texas.

3.4 This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective permitted and approved successors and assigns.

3.5 The individuals executing this Agreement on behalf of the respective Parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of

the Party for which his or her signature appears, that there are no other Parties or entities required to execute this Agreement in order for the same to be an authorized agreement on the Party for whom the individual is signing this Agreement, and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

3.6 This Agreement is executed by the Parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed. Each signatory represents that this Agreement has been read by the Party for which this Agreement is executed, and that such Party has had an opportunity to confer with its counsel.

3.7 Any notice provided for under the terms of this Agreement by any Party to the other shall be in writing and may be effected by registered or certified mail, return receipt requested, addressed and delivered to the following:

to the City: Mr. Owen Scott, City Manager
City of Lindale
PO Box 130
Lindale, TX 75771-0130
Telephone: (903)-882-3422
Facsimile: (903)-882-5305
owenscott@lindaletx.gov

to LEDC: Mr. John W. Clary, President
Lindale Economic Development Corporation
PO Box 127
Lindale, TX 75771
Telephone: (903)-882-5332
Facsimile: (903)-882-5362
jclary@lindaleedc.com

with copies to: William D. Dugat III
Bickerstaff Heath Delgado Acosta LLP
3711 S. MoPac Expwy.
Building One, Suite 300
Austin, TX 78746
Telephone: (512) 472-8021
Facsimile: (512) 320-5638
bdugat@bickerstaff.com

to LRWSC: Bobby Praytor, President
Lindale Rural Water Supply Corporation
P.O. Box 756
Lindale, TX 75771
Telephone: (903)-882-3335

with a copy to: Brad B. Castleberry
Lloyd Gosselink Rochelle and Townsend, P.C.
816 Congress, Ste. 1900
Austin, Texas 78701
Telephone: (512) 322-5856
Facsimile: (512) 472-0532
bcastleberry@lglawfirm.com

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

3.8 This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

3.9 This Agreement is indivisible and non-severable. If any provision of this Agreement fails to receive any required regulatory approval or is held invalid, illegal, or unenforceable by a court or other tribunal of confident jurisdiction, the Parties shall resume negotiations in an effort to reach a new agreement.

3.10 This Agreement shall be deemed drafted equally by all Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply. Headings in this Agreement are for the convenience of the Parties and are not intended to be used in construing this document.

3.11 LEDC or the City will be responsible for all fees and expenses that are directly related to the transfer of the LRWSC certificated service rights for the Transfer Area to the City including attorney fees in connection with preparation of this Agreement and preparing and filing applications with TCEQ, escrow fees charged by the Escrow Agent, recording fees, and TCEQ filing fees. LEDC will provide LRWSC, or its designated representative, with sufficient time and the ability to review and comment on all documents submitted to TCEQ prior to filing same, including all correspondence from the TCEQ related to same. LRWSC shall be responsible for its own attorney fees, if any.

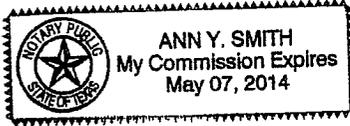
IN WITNESS WHEREOF, the Parties have executed this Agreement and caused this Agreement to be effective as of the Effective Date, as reflected by the signatures below.

LINDALE RURAL WATER
SUPPLY CORPORATION

By: [Signature]
Name: BOBBY PRAYTOR
Title: PRESIDENT
Date: 4-20-10

STATE OF TEXAS §
 §
COUNTY OF Smith §

This instrument was acknowledged before me on the 20 day of APRIL,
2010, by Bobby PRAYTOR, PRESIDENT of Lindale Rural Water Supply Corporation,
on behalf of said Corporation.

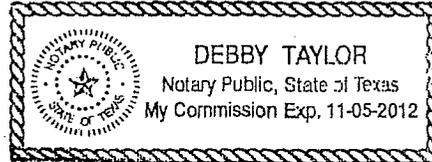


[Signature]
Notary Public, State of Texas

CITY OF LINDALE, TX

By: Jim Mallory
Name: Jim Mallory
Title: Mayor
Date: 4/21/10

STATE OF TEXAS §
 §
COUNTY OF Smith §



2010 This instrument was acknowledged before me on the 21 day of April,
2009, by Debby Taylor, _____ of the City of Lindale.

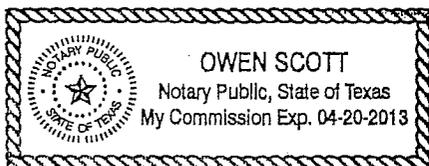
Debby Taylor
Notary Public, State of Texas

LINDALE ECONOMIC DEVELOPMENT CORPORATION

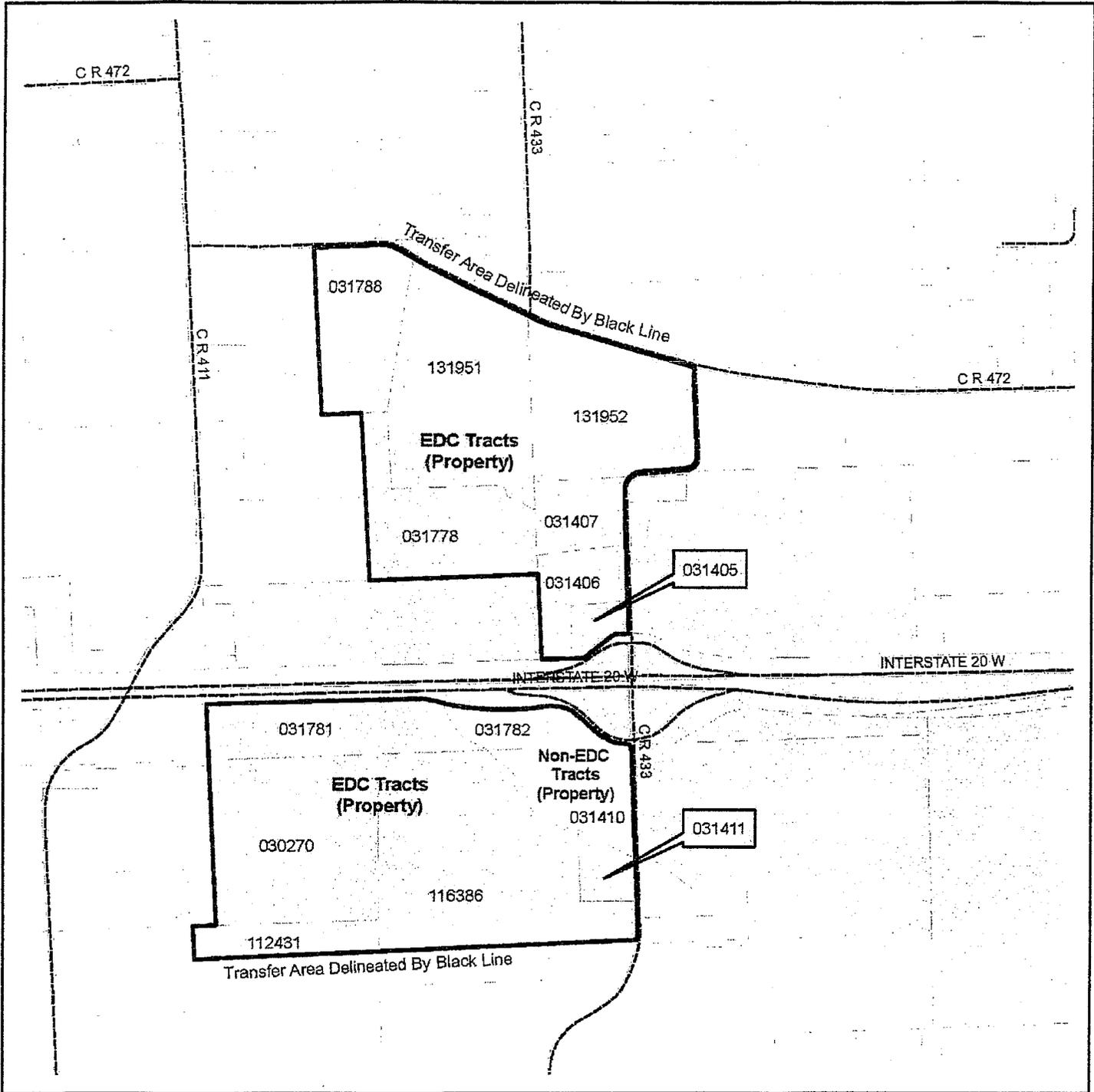
By: Don Hives
Name: Don Hives
Title: Chairman
Date: 4-20-10

STATE OF TEXAS §
 §
COUNTY OF Smith §

2010 This instrument was acknowledged before me on the 20 day of April,
2009, by Don Hives, President of Lindale Economic Development Corporation, on behalf of said Corporation.



Owen Scott
Notary Public, State of Texas



Legend

- Smith County Appraisal District Parcel PIN Numbers for EDC Tracts (Property)

- Smith County Appraisal District Parcel PIN Numbers for Non-EDC Tracts (Property)

City Limits

LINDALE CITY LIMITS

□ Smith County Parcels

— Centerline

□ Transfer Area (Property) to City of Lindale From Lindale Rural WSC

Exhibit A

Lindale Rural WSC Transfer of Tracts to City of Lindale General Overview Map

Prepared By:
Bickerstaff Heath Delgado Acosta LLP

Data Sources:
All EDC Tracts drawing files (CAD) obtained from Adams Engineering.
City limits, parcels, Non-EDC Tracts and centerlines obtained from City of Tyler GIS Department.

December 3, 2009

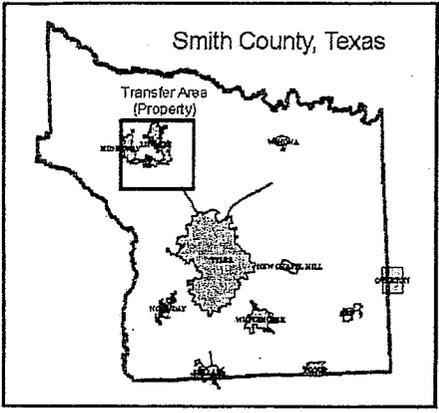


EXHIBIT B

NOTICE OF CONFIDENTIALITY RIGHTS. IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

WATER LINE EASEMENT

THE STATE OF TEXAS)
)
COUNTY OF SMITH) KNOW ALL BY THESE PRESENTS:

THAT LINDALE ECONOMIC DEVELOPMENT CORPORATION, a Type A Texas non-profit economic development corporation ("*Grantor*") for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, to Grantor, the receipt and sufficiency of which is hereby acknowledged and confessed and for which no lien, express or implied, is retained, in hand paid by the (i) LINDALE RURAL WATER SUPPLY CORPORATION ("*LRWSC*"), a water supply corporation, organized and operating pursuant to Chapters 67 of the Texas Water Code, situated in the County of Smith, State of Texas, and whose address is P.O. Box 756, Lindale, Texas 75771, ATTN: Bobby Praytor, its successors and assigns; and (ii) the CITY OF LINDALE, TEXAS ("*City*") whose address is P.O. Box 130, Lindale, Smith County, Texas 75771, ATTN: Owen Scott, its successors and assigns (LRWSC and City collectively, the "*Grantee*") has this day GRANTED, SOLD, AND CONVEYED unto Grantee, an exclusive water line easement (the "*Water Line Easement*") in a location as described in Exhibit A attached hereto (the "*Water Line Easement Tract*") for the location of one or more water lines and for the operation, maintenance, repair, replacement, upgrade, decommissioning and removal of such water lines and making connections therewith in, upon and across the property of Grantor (the "*Subject Property*") as described in Exhibit B attached hereto together with a non-exclusive vehicular and pedestrian access easement (the "*Access Easement*") over any property owned by Grantor that is located between the Waterline Easement Tract and County Road 472 that Grantee is required to cross to access the Waterline Easement Tract (the "*Access Easement Tract*").

TO HAVE AND TO HOLD the same perpetually to Grantee and its successors and assigns together with the right and privilege at any and all times to enter the Access Easement Tract and the Water Line Easement Tract, or any part thereof, for the purposes heretofore mentioned, provided, however, that Grantor reserves the right to (i) enter upon and use the Access Easement Tract and the Water Line Easement Tract but in no event shall Grantor use either tract in any manner that interferes in any material way or is inconsistent with the rights granted hereunder; and (ii) subject to the reasonable prior written approval of LRWSC and the City, grant easements to third-party utility providers to access, construct, install, repair and maintain utilities ("*Utility Easements*") which may cross, but in no event shall run parallel within the Water Line Easement Tract. Grantor may not grant any Utility Easements which in any material way interfere with Grantee's rights hereunder. LRWSC or City shall be obligated to restore the surface of the Water Line Easement Tract and Access Easement Tract at the respective party's sole cost and expense, including the restoration of any sidewalks, driveways or similar surface improvements located upon the Access Easement Tract or Water Line Easement Tract which have been removed, relocated, altered, damaged or destroyed as a result of that party's use of the Access Easement or Water Line Easement granted hereunder

provided, however, that neither Grantee party shall be obligated to restore or replace irrigation systems or other improvements installed by Grantor in violation of the provisions of this Easement.

Grantor does hereby covenant and agree to WARRANT AND FOREVER DEFEND title to the Access Easement and Water Line Easement herein granted unto the Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through or under Grantor, but not otherwise.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed on this ____ day of _____, 20__

GRANTOR:

LINDALE ECONOMIC DEVELOPMENT CORPORATION,
a Texas non-profit corporation

By: _____
Name: _____
Title: _____

ACKNOWLEDGEMENT

THE STATE OF TEXAS)
)
COUNTY OF SMITH)

THIS INSTRUMENT was acknowledged before me on this ____ day of _____, 20____, by _____, in the capacity of _____ of Lindale Economic Development Corporation, on behalf of said corporation.

NOTARY PUBLIC, STATE OF TEXAS

PRINTED/TYPED NAME OF NOTARY

MY COMMISSION EXPIRES: _____

EXHIBIT A

WATER LINE EASEMENT TRACT

EXHIBIT B

SUBJECT PROPERTY

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Environmental Law Division Date: January 10, 2011

Thru: Lisa Fuentes/Elizabeth Flores

From: *DLL* Debi Loockerman, C.P.A.

Subject: Service Agreement Application Under Texas Water Code (TWC) §13.248 & Application to Transfer service area under TWC §13.255(a) by the City of Lindale, Certificate of Convenience and Necessity (CCN) No. 12795, to Transfer a Portion of CCN No. 10758 from Lindale Rural Water Supply Corporation (WSC) in Smith County; Application Nos. 36766-C and 36748-S

CN: 600661086; RN: 101388783 (City of Lindale)
CN: 600647051; RN: 101455137 (Lindale Rural WSC)

In my opinion, the City of Lindale (the City) has demonstrated adequate financial, managerial and technical capability to provide service to the area subject to this application. These conclusions are based on information provided by the applicant prior to this date and may not reflect any changes in the applicant's status subsequent to this date. Additional staff review of the requirements in TWC §13.255 and §13.248 is required to approve or deny the application.

Review

The City has filed an application under TWC §13.255(a) with the TCEQ to obtain single certification for approximately 260 acres which has been annexed into the City's corporate limits. The City has filed a Service agreement application under TWC §13.248 to serve approximately 21 acres outside the corporate limits of the City. The contract represents that a payment of \$160,980 will be made by the City to Lindale Rural WSC for compensation within 10 days of the effective date of the contract.

I have reviewed available records of the City of Lindale, including a copy of the Texas Municipal Report and the City's September 30, 2009 audited financial statements, which were available on the MacTexas website. I also reviewed information in the TCEQ Water Utilities Database (WUD). The City provides service to over 2,239 water connections and its water system is ranked superior. Lindale Rural WSC provides water service to about 3,194 water connections, according to WUD. Neither system has an active notice of violation. The application indicates that one customer and no facilities are located in the area to be transferred. The bonds are unrated by Moody's and Fitch, but the S & P rating system upgraded the City's bonds from BBB+ to A in 2009. Although revenues from the water and wastewater system are insufficient to pay debt service, the bonds are payable also by tax revenues. In 2009, overall net assets for the City increased by \$1,326,994. It is appropriate to look to the change in net assets for debt service payments which includes net utility revenues. Debt service for 2011 will be \$1,379,148. The City had in excess of \$7.6 million in cash and investments as of 9/30/09. The ability to increase taxes and the sound cash position enhance the City's ability to cover its debt service. This information provides support for a determination of adequate financial capability to provide service to the requested area. Projections were not required.

City of Lindale / Lindale Rural WSC
Water Service Area
Application No. 36766-C (13.248 Contract Service Agreement
from City of Lindale, CCN No. 12795
to Transfer a Portion of Lindale Rural WSC, CCN No. 10758 in Smith County)

