

Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 25, 2012

2012 MAY 23 AM 3:51
CHIEF CLERK'S OFFICE
TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Bridget C. Bohac, 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. 2012-0873-UCR. Consideration of a request for a Commission Order approving a contract designating service areas between the City of Royse City and B H P WSC pursuant to Texas Water Code Section 13.248, Application No. 37130-C.

Dear Ms. Bohac:

Transmitted herewith for filing with the Texas Commission on Environmental Quality ("Commission") are the following items as backup material for the June 13, 2012 agenda regarding the request described above:

1. Copy of the letter mailed to the parties regarding the agenda date;
2. Interoffice Memorandum - Executive Summary;
3. Interoffice Memorandum - analysis of the City of Royse City's financial, managerial, and technical capability;
4. Request for a Commission Order approving the parties' Section 13.248 contract, received at the Commission on September 2, 2011;
5. Section 13.248 contract.
6. Map consents signed by the parties;
7. Proposed Order;
8. Map of the area covered by the Agreement.

I have also attached a proposed caption for the item.

Respectfully submitted,

Handwritten signature of Ruth A. Takeda in black ink.

Ruth A. Takeda, Staff Attorney
Environmental Law Division

Caption – agenda

TCEQ Docket No. 2012-0873-UCR. Consideration of a request for a Commission Order approving a contract designating service areas between City of Royse City (City), CCN No. 12827 in Collin, Hunt and Rockwall Counties Texas, and B H P WSC (WSC) , CCN No. 10064 in Collin, Hunt and Rockwall Counties, Texas, pursuant to Texas Water Code Section 13.248. On or about April 5, 2011, the City and WSC executed a contract regarding a tract under the WSC's CCN. Under the contract, the City will provide water service to approximate 8,476 acres in the tract and this area will be transferred to the City's CCN; the WSC will continue to provide water service to approximately 112 acres in the tract and will retain single certification in this area; the WSC's existing distribution lines and facilities will be dually certificated to the WSC and the City; and the WSC will continue to serve its existing customers in the area. No facilities will be transferred under the contract. (Ruth Takeda, Heidi Graham)

Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 25, 2012

David J. Klein
Lloyd Gosselink
816 Congress Avenue, Suite 1900
Austin, Texas 78701

Bill Shipp, City Manager
City of Royse City
100 Main Street
Royse City, Texas 75189

Eddy Daniel
B H P WSC
PO Box 370
Royse City, Texas 75189-0370

Re: TCEQ Docket No. 2012-0873-UCR. Consideration of a request for a Commission Order approving a contract designating service areas between the City of Royse City and B H P WSC pursuant to Texas Water Code Section 13.248, Application No. 37130-C.

Dear Mr. Klein, Mr. Daniel, and Mr. Shipp:

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 (Commission). This agenda will occur on June 13, 2012, 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. One of you will need to attend the agenda to explain the contract and to answer any questions the Commissioners may have. I understand that Mr. Klein will do this.

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, then you may contact Heidi Graham from the Water Supply Division at 512-239-0844 or me at 512-239-6635.

Sincerely,

A handwritten signature in black ink that reads "Ruth A. Takeda".

Ruth A. Takeda
Staff Attorney
Environmental Law Division

Enclosures

Texas Commission on Environmental Quality
INTEROFFICE MEMORANDUM

DATE:	May 25, 2012
TO:	Texas Commission on Environmental Quality
THRU:	Bridget C. Bohac, Chief Clerk
FROM:	Ruth Takeda, Staff Attorney, Environmental Law Division
SUBJECT:	TCEQ Docket No. 2012-0873-UCR. Consideration of a request for a Commission Order approving a contract designating service areas between City of Royse City and B H P WSC pursuant to Texas Water Code Section 13.248, Application No. 37130-C.

DESCRIPTION OF APPLICATION

Applicants:

City of Royse City and B H P WSC.

Regulated Activity:

Retail water service.

Type of Application:

Request for a Commission order approving a contract.

Commission Action:

Hearing regarding approval of the contract.

Authority:

Texas Water Code § 13.248 and 30 Texas Administrative Code § 291.117.

FACTUAL BACKGROUND

The City of Royse City (City), certificate of convenience and necessity (CCN) No. 12827, and B H P WSC (WSC), CCN No. 10064, provide retail water service in Collin, Hunt, and Rockwall Counties, Texas. On April 5, 2011, the City and the WSC entered into a "Settlement Agreement" (Contract) regarding their respective water service areas pursuant to Section 13.248 of the Texas Water Code. Under the Contract, the parties state on page one an intent that the WSC will transfer approximately 8,588 acres from its CCN No. 10064 to the City, thereby incorporating the area into the City's CCN No. 12827. However, because the WSC will retain single certification in approximately 112 acres in the area identified as "Excluded Area From CCN Acquisition" on page 3, paragraph (a) of the Contract, the actual acreage transferred to the City will be

approximately 8,476 acres. According to the Contract, no existing facilities in the area will be transferred. Instead, existing WSC distribution lines and facilities in the area will be dually certificated to the WSC and to the City. Finally, the WSC will retain its existing customers in the area.

Both the City and the WSC have reviewed the CCN map to be issued with the Commission's order and have approved it.

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 contracts and have the Commission affirm the contracts by amending the entities' respective CCNs.⁴ The request to approve a Section 13.248 contract 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 contract 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. Application no. 37130-C filed by the City and the WSC on September 2, 2011 requesting a Commission Order approving the 13.248 contract;

¹ TEX. WATER CODE ANN. § 13.242(a) (Vernon Supp. 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 TEX. WATER CODE ANN. § 13.247(a).

⁴ TEX. WATER CODE ANN. § 13.248 (Vernon 2000); 30 TEX. ADMIN. CODE § 291.117 (West 2008). 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."

2. Agreement between the City and the WSC executed on April 5, 2011;
3. Analysis of the City's financial, managerial, and technical capability to operate in the affected area;
4. Map of the service area subject to the 13.248 agreement.

STAFF RECOMMENDATION

Staff has confirmed that both parties are retail public utilities with active water CCNs and that the area the parties seek to transfer is currently certificated to the WSC. No facilities are being transferred – existing WSC distribution lines and facilities will be dually certificated to the WSC and the City. The WSC will retain single certification in approximately 112 acres in this area. In addition, the WSC will continue to serve its existing customers in the area. Staff's financial and managerial analysis included the full potential effect of the contract and 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. The City already serves approximately 1,300 connections. The City has a debt service coverage ratio of 0.72:1.00. Though the TCEQ preferred ratio is greater than 1.25:1.00, the City has the ability to issue bonds and, according to a letter received by staff from First Southwest Company, the City has a total funding capacity of at least \$2.9 million through the bond market. The First Southwest Company letter also indicated that the City's ability to issue bonds covers the lack of a sufficient debt service coverage ratio.

Therefore, based on the facts stated in the application and the supporting documentation submitted by the applicants, staff supports the request for a Commission Order approving a contract designating service areas between the City and the WSC.

STAFF CONTACTS

Ruth Takeda, Environmental Law Division (512.239.6635)
Heidi Graham, Water Supply Division (512.239.0844)

TCEQ Interoffice Memorandum

To: Environmental Law Division

Thru: Heidi Graham/Lisa Fuentes

From: Debi Loockerman C.P.A. 

Date: May 8, 2012.

Subject: Contract Service Agreement Pursuant to Texas Water Code Section 13.248, between the City of Royse City, Certificate of Convenience and Necessity (CCN) No. 12827, to Transfer a Portion of CCN No. 10064 from BHP Water Supply Corporation (WSC); and transfer a Portion of CCN No. 10064 to CCN No. 12827 in Collin, Hunt and Rockwall Counties; Application No. 37130-C

CN: 600656524; RN: 101213817 (City of Royse City)
CN: 600660807; RN: 101218964 (BHP WSC)

In my opinion, the City of Royse City, CCN No. 12827, and BHP WSC, CCN No. 10064 have demonstrated adequate financial and managerial capability to provide service to the areas contracted for release and transfer. The contract proposes various transfers and amendments over a period of time, which may not ever fully be realized, depending on future circumstances. My analysis included the full potential effect of the contract and also the situation in which only a percentage of the potential effect is realized. These conclusions are based on information provided by the applicants prior to this date and may not reflect any changes in the applicants' status subsequent to this date.

Background

City of Royse City and BHP WSC entered an agreement as of April 5, 2011 to decertify approximately 8,588 acres from BHP WSC's CCN inside the corporate limits and extra-territorial jurisdiction of the City. City of Royse City also requests dual certification in the future with BHP for approximately 4,331 acres of land within BHP's CCN, and BHP desires to purchase 1.83 acres from the City to use as a water take-point site. The contract within the application indicates that the City will pay BHP \$1.1 million in compensation for the 8,588 acres conveyed, and BHP will pay \$150 for the 1.83 acres transferred. The area will be transferred over a period of time based on improvements and future development, and, therefore, funding will be spread over the future years. BHP has requested financial assistance from the United States Department of Agriculture-Rural Development for \$3.8

TCEQ Interoffice Memorandum

million to finance improvements to BHP's water system. There are other minor considerations listed in the contract.

City of Royse City provides service to more than 1,300 connections according to the TCEQ Water Utilities Database (WUD). I have reviewed an unqualified auditor's opinion and attached financial statements for Royse City for the fiscal year ended September 30, 2010.

The statement of net assets showed total assets of \$29,087,038, long-term debt of \$21,660,838 and net assets (equity) of \$5,450,293, for a ratio of debt to equity of 3.9:1. A ratio of less than 1:1 is preferred as a standard for determining financial/managerial capability. In this case, the standard is not met; however, the city's financial advisor provided a letter indicating the ability to access the bond market at a 3.62 % interest rate on January 12, 2012. Total funding capacity through the bond market was listed is at least \$2.9 million, according to First Southwest Company. This amount is sufficient, in my opinion, to make any improvements required to provide service to the area being transferred.

The statement of revenues, expenditures and changes in fund balances for governmental funds showed a net operating income before depreciation, capital outlays, debt service, and transfers of \$1,012,676. Debt service for the year is \$1,409,279. Debt service coverage ratio is 0.72:1.00, which is also less than the TCEQ preferred ratio of greater than 1.25:1.00. The letter from First Southwest Company indicating ability to issue bonds covers the lack of a sufficient debt service coverage ratio.

Upon request, BHP WSC provided audited financial statements dated December 31, 2010 containing an unqualified auditor's report issued by Rutherford, Taylor & Company, P.C., Certified Public Accountants. The balance sheet indicates total assets of \$1,071,136; long term liabilities of \$83,149 and equity of \$1,308,117. Therefore, the debt to equity ratio is .06:1.00. The statement of income reflects net income before depreciation and interest of \$55,620. Although the total debt service requirements are \$315,767 in 2011, this number drops to \$24,981 in 2012 due to finalization of debt payments in 2011. For 2012, debt service coverage ratio is \$55,620 to \$24,981, or 2.22:1.00.

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



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Facsimile: (512) 472-0532
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Mr. Klein's Direct Line: (512) 322-5818
E-mail: dklein@lglawfirm.com

September 1, 2011

Ms. Tammy Holguin-Benter, Manager
Utilities and Districts Section
Water Supply Division
Texas Commission on Environmental Quality
12100 Park 35 Circle, Building F, MC-153
Austin, Texas 78753

VIA HAND DELIVERY

RECEIVED
TCEQ
WATER SUPPLY DIV.
2011 SEP 2 9 41

RE: Application under Texas Water Code § 13.248 for Approval of Contract Designating Areas to be Served by BHP Water Supply Corporation and the City of Roysse City Under Water CCNs Nos. 10064 and 12827 (1344-3)

Dear Ms. Holguin-Benter:

Our client, the City of Roysse City (the "City"), files this application (the "Application") under Texas Water Code ("TWC") § 13.248 and 30 Texas Administrative Code ("TAC") § 291.117 for the Commission's approval of the contract between BHP Water Supply Corporation and the City of Roysse City, Texas, designating the areas to be served and customers to be served by each, and requesting amendment of water CCN No. 10064 of BHP Water Supply Corporation ("BHP") and water CCN No. 12827 of the City of Roysse City, pursuant to such contract. BHP and the City are both "retail public utilities" as defined by Texas Water Code § 13.002(19) and 30 TAC § 291.3(39), and may thus utilize the process described in TWC § 13.248 and 30 TAC § 291.117 for this purpose.

On April 5, 2011, the City and BHP entered into a certain Settlement Agreement (the "Agreement"), whereby BHP agreed in part to transfer a portion of its water CCN No. 10064 to the City. Specifically, under Section 2(a) of the Agreement, the parties agreed that the City should be singly certificated for the "Initial CCN Acquisition Area" described therein, save and except for: (i) the area where BHP has existing water customers or infrastructure (in which case the parties shall be dually certificated), and (ii) the "Excluded Area from CCN Acquisition," where BHP shall remain the sole water CCN holder. To effectuate this agreement, Section 2(a) further provides that the City "may file one or more applications with the TCEQ...for approval to transfer and/or decertify the Initial CCN Acquisition Area from BHP's water CCN boundary and amend the City's water CCN boundary to include such area..." While the Agreement contemplates other future CCN transfers, this Application is limited to the Initial CCN Acquisition Area.

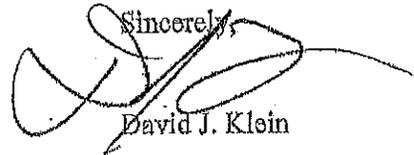
Through this Application, the City requests TCEQ to transfer the Initial CCN Acquisition Area to the City as provided in the Agreement. In accordance with the requirements of 30 TAC

Ms. Tammy Holguin-Benter
September 1, 2011
Page 2

§ 291.117, the City has included a map depicting the specific area to be transferred, attached hereto as **Exhibit 1**. In particular, the purple cross-hatched area on this Exhibit depicts the "Initial CCN Acquisition Area" only; the area identified in the Agreement as the "Excluded Area from CCN Acquisition" has been removed from the map. Additionally, the BHP facilities that are to be dually certificated with the City's water CCN boundary are identified in red on Exhibit 1. The electronic data that was used to create that map is attached hereto as **Exhibit 2**, and a copy of the Agreement is attached hereto as **Exhibit 3**.

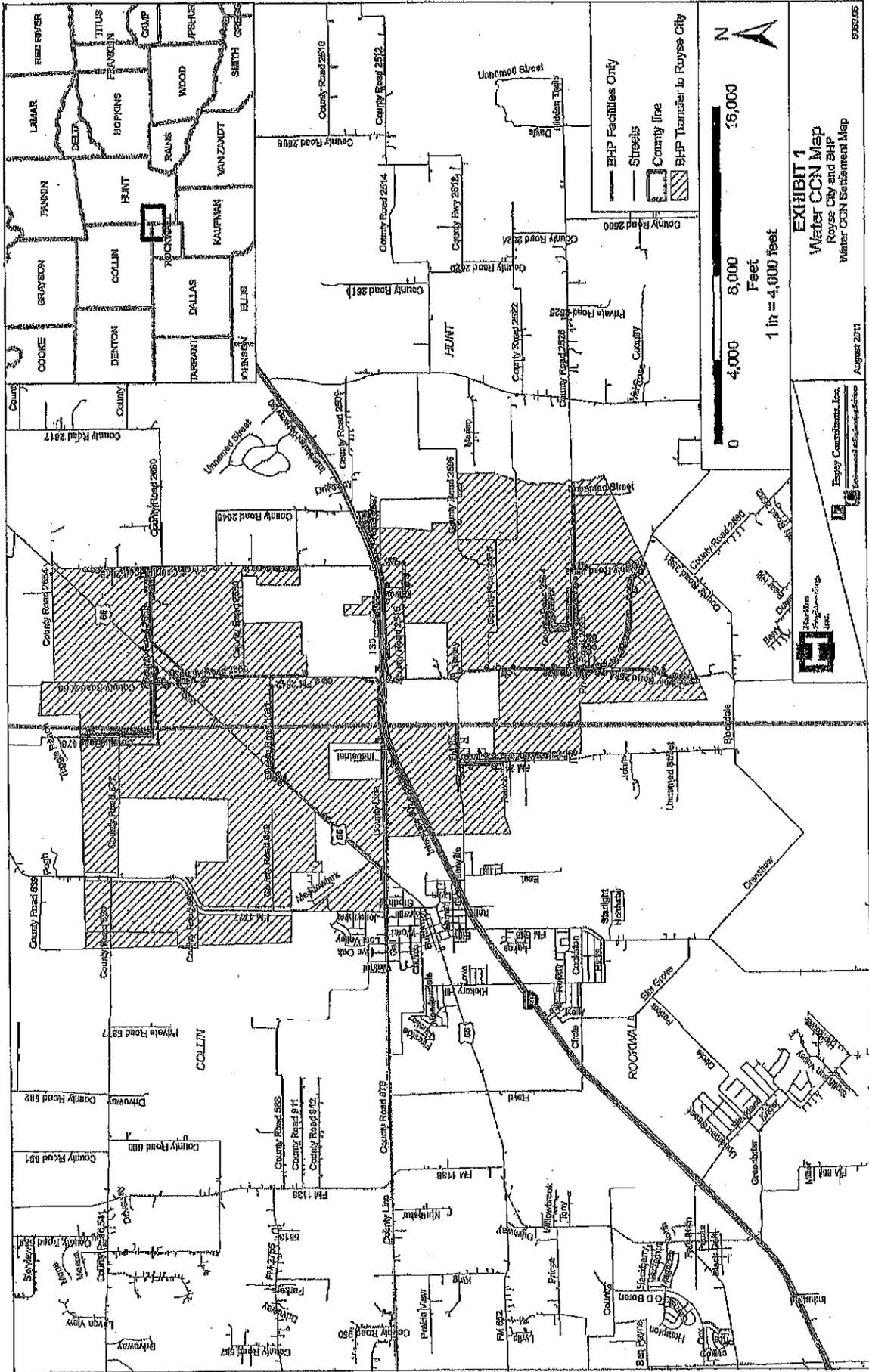
The transaction described in the Agreement does not contemplate the transfer of customers or facilities, therefore the provisions of TWC § 13.301 (and thus also 30 TAC § 291.117(b)(3)) do not apply to this Application. In accordance with 30 TAC § 291.117(b)(4), enclosed herein is a check payable to the TCEQ in the amount of \$100.00 for the applicable filing fee.

Thank you for your time and attention to this matter. If you have questions concerning this matter, please do not hesitate to contact me at (512) 322-5818 or Georgia Crump at (512) 322-5832.

Sincerely,

David J. Klein

DJK:mab
1289075v3
ENCLOSURES

cc: Mr. Bill Shipp, City Manager
Mr. Eddy Daniel, for BHP WSC
Ms. Georgia Crump
Ms. Victoria Harkins



SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (the "Agreement") is made and entered into by and between the City of Roysé City (the "City"), a Texas home rule city, and B H P Water Supply Corporation ("BHP"), a Texas non-profit water supply corporation in good standing (the City and BHP are collectively referred to as the "Parties"), each acting by and through its undersigned, duly authorized representative.

RECITALS

WHEREAS, the City is the holder of water certificate of convenience and necessity ("CCN") No. 12827, issued by the Texas Commission on Environmental Quality ("TCEQ"), and BHP is the holder of water CCN No. 10064;

WHEREAS, a portion of BHP's water CCN area is contained within the corporate limits and extra-territorial jurisdiction of the City;

WHEREAS, the City desires to (i) decertify approximately 8,588 acres of land within BHP's water CCN boundary (the "Initial CCN Acquisition Area"), as more particularly shown on Exhibit A, attached hereto and incorporated herein for all purposes, and (ii) include such land within the City's water CCN area, pursuant to the terms of this Agreement;

WHEREAS, the City also desires to be dually certificated with BHP for the approximately 4,331 acres of land within BHP's water CCN boundary (the "Subsequent CCN Acquisition Area"), as more particularly shown on Exhibit A, in order to provide retail water service to that area as provided in this Agreement;

WHEREAS, BHP desires to remove the Initial CCN Acquisition Area from its water CCN, as provided in this Agreement, and to be dually certificated with the City in the Subsequent CCN Acquisition Area, as provided in this Agreement;

WHEREAS, BHP has requested financial assistance from the United States Department of Agriculture - Rural Development ("USDA-RD") in the approximate amount of three million eight hundred thousand dollars (\$3,800,000.00) (the "Loan") to finance certain improvements to BHP's water system and operations;

WHEREAS, while the City does not oppose BHP's efforts to secure the Loan to finance such improvements and operation enhancements, the City has expressed to BHP and North Central Texas Council of Governments ("NCTCOG") its concerns regarding USDA-RD's general requirement that a debtor provide a security interest in all of its assets, including its CCN, as collateral for loans issued by the USDA-RD;

WHEREAS, BHP desires to purchase a certain approximately 1.83 acre tract from the City to use as a water take-point site, which is more specifically described in Exhibit B, attached hereto and incorporated herein for all purposes (the "Take-point Tract"); and

WHEREAS, the City and BHP have conducted negotiations, and they desire to enter into this Agreement to resolve all outstanding issues regarding water CCN service areas, BHP's Loan application with USDA-RD, and the conveyance of the Take-point Tract from the City to BHP.

NOW THEREFORE, in consideration of the mutual promises, covenants, obligations, and benefits set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties hereto, the City and BHP contract, covenant and agree as follows:

AGREEMENT

1. BHP's Loan Application.

(a) So long as BHP fulfills its obligations under this Agreement, the City will not attempt to enjoin USDA-RD from entering into a Loan agreement with BHP.

(b) Prior to entering into any Loan agreement with USDA-RD, BHP shall request and recommend to USDA-RD that BHP should not be required to grant a security interest to USDA-RD in the Initial CCN Acquisition Area or Subsequent CCN Acquisition Area as collateral for the Loan. BHP shall support the condition that USDA-RD exclude the Initial CCN Acquisition Area and Subsequent CCN Acquisition Area of BHP's water CCN from the collateral for the Loan. BHP recognizes that its agreement to make such request and recommendation and to offer such support provides the City with significant inducement to enter into this Agreement.

(c) Within seven (7) days after the Effective Date of this Agreement, BHP shall amend its Loan application by (i) removing the Initial CCN Acquisition Area and Subsequent CCN Acquisition Area from the assets of BHP and (ii) submitting an executed copy of this Agreement. Regardless of any other provision herein to the contrary, if BHP grants USDA-RD a security interest in the Initial CCN Acquisition Area or Subsequent CCN Acquisition Area as collateral for any Loan, then the City shall have the right, but not the obligation, to terminate this Agreement, effective immediately. If the City terminates the Agreement under this provision, then all amounts placed into the Escrow Account shall be refunded to the City.

(d) The term "Loan" shall have the meaning provided in the Recitals of this Agreement; and this term shall also mean any subsequent loan agreements entered into between BHP and USDA-RD where BHP is required to provide collateral.

2. Designating CCNs for the Initial and Subsequent CCN Acquisition Areas.

(a) Initial CCN Acquisition Area. It is the Parties' intent that the City shall be singly certificated for the Initial CCN Acquisition Area; provided, however, that BHP shall maintain and be dually certificated with the City for the portion of its water CCN area within the Initial CCN Acquisition Area that overlaps with the locations of BHP's existing customers and existing water distribution lines and existing facilities, as of the Effective Date (defined herein) of this Agreement; and provided further, that BHP shall remain singly certificated to the land within the Initial CCN Acquisition Area designated as "Excluded Area from CCN Acquisition", more specifically shown on Exhibit A. The City may file one or more applications with the TCEQ or any successor agencies that regulate and administer the water CCN program for the State, for approval to transfer and/or decertify the Initial CCN Acquisition Area from BHP's water CCN boundary and amend the City's water CCN boundary to include such area in accordance with this Agreement; and BHP shall not protest any of these applications. The City shall pay BHP ONE MILLION ONE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$1,100,000.00) (the "Full Payment") for conveying the Initial CCN Acquisition Area to the City, according to the following requirements:

(i) No later than sixty (60) calendar days after the Effective Date of this Agreement, the City shall establish an escrow account (the "Escrow Account") to hold the Initial Payment (defined herein) and Balance Payment (defined herein) in accordance with this Agreement. The Escrow Account shall be governed by an escrow agreement mutually agreeable to counsel for the City and BHP. The escrow agent shall be selected by the City, subject to approval by BHP; provided, however, that such approval shall not be unreasonably withheld or delayed.

(ii) After reducing the amount of the Full Payment by the amount of the Take-point Tract Payment (defined herein) required under Section 4 of this Agreement, the City shall pay BHP NINE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$900,000.00) through the process provided below:

(A) No later than seven (7) calendar days after the Escrow Account has been created, the City shall deposit ONE HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$150,000.00) (the "Initial Payment") into such Account.

(B) No later than six (6) months after the Escrow Account has been created, the City shall deposit the remaining SEVEN HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$750,000.00) into such Account (the "Balance Payment"); provided, however, that the City has the right, but not the obligation, to make this payment through one or more transactions, so long as the City has deposited the entire Balance Payment amount into the Escrow Account on or before the deadline established herein.

(iii) In the event that the City fails to meet its escrow payment obligations under this Section, the City shall not be in breach of this Agreement; rather, the City shall (A) reduce the acreage of the Initial CCN Acquisition Area by an amount that

corresponds with the shortfall in the Escrow Account at the time when the Balance Payment is due, and (B) amend its pending CCN application to reflect the revised Initial CCN Acquisition Boundary. Such reduction in acreage shall be based upon the factor of ONE HUNDRED FIFTY DOLLARS AND NO CENTS (\$150.00) per acre (for example, a shortfall of \$150,000 would require the City to reduce the acreage of the Initial CCN Acquisition Area by 1,000 acres, because $\$150,000/\$150 \text{ per acre} = 1,000 \text{ acres}$). In the event that the City is required to make such a modification, it shall only be due to a lack of funding from a third party associated with the developments identified on Exhibit C, attached hereto and incorporated herein for all purposes, then the City shall remove such development and, to the extent necessary, area contiguous to that development that is outside the corporate limits of the City, from the pending CCN application. Accordingly, with such modification the USDA-RD shall not be required to release from collateral of the Loan the area removed from transfer of the CCN.

(iv) Funds shall be released from the Escrow Account to BHP only upon the later of (A) issuance of a final and non-appealable order from the TCEQ decertifying the Initial CCN Acquisition Area, as may be reduced under this Section, from BHP's water CCN boundary and including such area into the City's water CCN boundary, and (B) BHP's receipt of written consent from USDA-RD to the release of the Initial CCN Acquisition Area from the collateral of the Loan, if applicable. In the event that the TCEQ or USDA-RD issues a final and non-appealable order denying any CCN application or request for Lienholder Consent (as defined herein), respectively, all money deposited in the Escrow Account shall be refunded to the City, and the certificated service rights for the Initial CCN Acquisition Area shall remain with BHP.

(v) In the event that the City reduces the Initial CCN Acquisition Area as provided in Section 2(a)(iii) above, and subsequently files additional application(s) to transfer and/or decertify any remaining portion of the Initial CCN Acquisition Area (which includes any reductions to the Initial CCN Acquisition Area under subsection 2(a)(iii) above) from BHP's water CCN boundary and to amend the City's water CCN boundary to include such area, other than those areas located in a municipal utility district, the City shall deposit funds into the Escrow Account prior to filing any application, based upon the factor of ONE HUNDRED FIFTY DOLLARS AND NO CENTS (\$150.00) per acre. Funds shall be released from the Escrow Account to BHP only upon the later of (A) issuance of a final and non-appealable order from the TCEQ decertifying the requested portion of the remaining Initial CCN Acquisition Area from BHP's water CCN boundary and including such area into the City's water CCN boundary, and (B) BHP's receipt of written consent from USDA-RD to the release of such additional area from the collateral of the Loan, if applicable.

(vi) BHP shall first utilize the Initial Payment and Balance Payment for the pay-off of BHP's existing debt, and BHP shall then utilize the remaining balance to offset the USDA-RD Loan amount or to pay down the principal on the existing Loan balance.

(b) Subsequent CCN Acquisition Area. It is the Parties' intent that the City and BHP shall be dually certificated for the Subsequent CCN Acquisition Area; provided, however, that BHP shall remain singly certificated to the Excluded Area from CCN Acquisition within the Subsequent CCN Acquisition Area, more specifically shown on Exhibit A. Dual certification shall be sought by the City upon execution of this agreement. BHP acknowledges and agrees that the City will seek dual water certification to the Subsequent CCN Acquisition Area. BHP shall not protest such application. The City shall pay BHP ONE HUNDRED FIFTY DOLLARS AND NO CENTS (\$150.00) (the "Subsequent Payment") for each acre within the Subsequent CCN Acquisition Area that the TCEQ grants the City dual water CCN certification with BHP that receives retail water utility service from the City as provided in Section 3(b) below. The City shall make each Subsequent Payment to BHP prior to construction of facilities and/or provision of service.

(c) To the extent necessary, BHP shall prepare, execute, submit, and prosecute any and all applicable USDA-RD forms, including, but not limited to, Form RD-465-1 (Application for Partial Release, Subordination, or Consent) (the "Lienholder Consent"), requesting USDA-RD to release the Initial CCN Acquisition Area and Subsequent CCN Acquisition Area from BHP's collateral in the Loan. Specifically, BHP shall prepare, execute, and submit such forms with USDA-RD no later than thirty (30) calendar days after the TCEQ issues a final and non-appealable order granting any City CCN application filed in accordance with this Agreement.

(d) BHP shall cooperate with the City regarding any applications filed with the TCEQ in accordance with this Agreement. If (i) the TCEQ does not approve one or more of the Parties' filings hereunder or (ii) a third party protests any applications filed in accordance with this Agreement, then the Parties shall work together to determine and implement a solution that is consistent with the intent of this Agreement.

(e) Where applicable herein, this Agreement shall be a "contract" (i) designating areas and customers to be served by the Parties in accordance with Texas Water Code Section 13.248, (ii) demonstrating an agreement for dual certification in accordance with Chapter 13 of the Texas Water Code, and (iii), agreeing to single certification under Texas Water Code Section 13.255.

3. Provisions for New and Existing Customers.

(a) Generally. To the extent that the City and BHP are dually certificated in the Initial CCN Acquisition Area, BHP shall only provide retail water utility service to all of its existing customers as of the Effective Date of this Agreement. To the extent that the City and BHP are dually certificated in the Subsequent CCN Acquisition Area, BHP shall only provide retail water utility service to (i) all of its existing customers as of the Effective Date of this Agreement and (ii) each new single family residential development that is not considered a High Density Development (defined herein) or other new single request for residential water service that is not within a High Density Development. For the purposes of this Agreement, a "High Density Development" means a development with a proposed density of more than two (2) lots per acre or with more than a total of sixty-five (65) lots. The City shall serve all other customers in these dually certificated areas,

including, but not limited to, High Density Developments, institutional, commercial, and industrial customers; provided, however, that BHP shall serve such requests for water service if the City provides its prior written consent to BHP.

(b) Changes in Service by Existing BHP Customers. The Parties acknowledge that BHP currently serves customers within the Initial CCN Acquisition Area, the Subsequent CCN Acquisition Area, and the Excluded Area from CCN Acquisition (each customer being a "BHP Existing Customer"). A list of the BHP Existing Customers is attached hereto as Exhibit D, incorporated herein for all purposes. However, if (i) any single family residential development containing BHP Existing Customers converts into a High Density Development, or (ii) any BHP Existing Customer converts into an institutional, commercial, or industrial customer, then the City shall thereafter render retail water service to such BHP Existing Customers unless the City provides prior written notice to BHP stating that the City does not desire to extend retail water service to those customers. BHP and the City shall work together in good faith to effectuate the transfer of such BHP Existing Customers to the City.

(c) Additional Compensation for Transfer of Customers.

(i) If the converted BHP Existing Customer is located within the Initial CCN Acquisition Area or Subsequent CCN Acquisition Area which shall be certificated to the City under this Agreement, then BHP shall not be entitled to any compensation from the City for the transfer of such BHP Existing Customer or property identified herein, other than the compensation identified in Section 2 of this Agreement.

(ii) If the converted BHP Existing Customer is located within the Excluded Area from CCN Acquisition, then the City shall compensate BHP for decertifying that customer and property from BHP's water CCN boundary and adding that area to the City's water CCN boundary, in the amount of (A) ONE HUNDRED FIFTY DOLLARS AND NO CENTS (\$150.00) per acre transferred, plus (B) an agreed value based upon the compensation factors contained in Texas Water Code § 13.254(g)(Vernon 2010). The City shall not make any payment to BHP under this Section 3(c)(ii) until: (A) the TCEQ issues a final and non-appealable order granting single CCN certification to the City to the requested area, and (B) BHP receives written consent from USDA-RD to the release of such area from BHP's CCN boundary, if applicable. BHP shall not protest any such CCN application.

(d) In the event a BHP Existing Customer converts into a customer that the City is entitled to serve under this Agreement, but refuses to transfer service to the City, BHP agrees to file an application at the TCEQ to decertify the portion of its water CCN that overlaps with that customer's property. Such application costs shall be paid by the City.

4. Conveyance of Real Property.

(a) The City agrees to sell, grant, and convey to BHP, and BHP hereby agrees to purchase from the City, all of the City's right, title, and interest in the Take-point Tract. The City

also agrees to grant BHP an easement to cross the City's remaining property to facilitate the connection to North Texas Municipal Water District and BHP's existing facilities; provided, however, that the City shall have the sole discretion to determine the location of such easement.

(b) In partial consideration for the sale of such Take-point Tract, BHP shall pay the City TWO HUNDRED THOUSAND DOLLARS AND NO CENTS (\$200,000.00) ("**Take-point Tract Payment**"), and this amount shall be used to reduce the Full Payment amount payable by the City to BHP hereunder.

(c) The transfer of ownership of the Take-point Tract ("**Closing Date**") shall occur no later than the later of: (i) thirty (30) calendar days after the TCEQ's order granting single certification to the City for the Initial CCN Acquisition Area becomes final and nonappealable, or (ii) BHP's receipt of written consent from USDA-RD to the release of the Initial CCN Acquisition Area from the collateral of the Loan, if applicable.

(d) BHP shall pay all closing costs, except that each Party shall be responsible for the payment of its own attorney's fees, copying expenses, and other costs incurred in connection with this transaction.

5. Plans and Specifications. Prior to BHP constructing any water utility facilities on the Take-point Tract or transporting water to or from the Take-point Tract, BHP shall provide the City with BHP's proposed plans and specifications for such facilities for approval. The City's scope of approval shall be limited to the geographical and topographical locations of such facilities. The City and BHP shall work together to ensure that such facilities do not interfere with the City's existing utility infrastructure or future utility infrastructure proposed in the City's current capital improvements plan. Within thirty (30) days of having received such proposed plans and specifications, the City shall conduct its review and either approve the plans and specifications or provide comments to BHP explaining why its approval has been withheld. BHP shall construct such water utility facilities in accordance with the scope of the City's review as identified above. It is BHP's obligation to provide the City with such plans and specifications. When BHP has completed constructing such water infrastructure, BHP shall make the final "as built" plans and specifications available to the City upon request.

6. Default. A non-breaching Party shall have the right, but not the obligation, to terminate this Agreement in the event that the non-breaching Party provides the breaching Party with written notice of a breach and such breach is not cured within thirty (30) days of delivery of such notice.

7. Termination. This Agreement shall terminate when: (i) the Initial CCN Acquisition Area is removed from BHP's water CCN boundaries and added to the City's water CCN boundaries; (ii) the City and BHP are dually certificated to all of the Subsequent CCN Acquisition Area; (iii) USDA-RD has approved all applications, if any, requesting approval to release the Initial CCN Acquisition Area and Subsequent CCN Acquisition Area from the collateral of the Loan; (iv) the Take-point Tract has been conveyed by the City to BHP; and (v) when BHP no longer has any retail water customers within the Initial CCN Acquisition Area or Subsequent CCN Acquisition Area.

8. Continuing Obligation. BHP shall not request TCEQ approval to decertify any portion of the Initial CCN Acquisition Boundary Area or Subsequent CCN Acquisition Boundary Area from the City's water CCN boundary without mutual consent of both Parties or as otherwise provided by law. The City shall not request TCEQ approval to decertify any portion of the remaining BHP CCN located to the east of the Subsequent CCN Acquisition Boundary without mutual consent of both parties or as otherwise provided by law.

9. Severability. The provisions of this Agreement are severable and, if any provision or part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons or circumstances shall not be affected thereby.

10. Amendment. Except as otherwise provided in this Agreement, this Agreement may be amended, modified or terminated only by written instrument executed by duly authorized representatives of the Parties.

11. Applicable Law. This Agreement shall be governed by, and construed in accordance with, the Constitution and law of the State of Texas, except as to matters exclusively controlled by the Constitution and Statutes of the United States of America.

12. Third Party Beneficiaries. This Agreement shall be for the sole and exclusive benefit of the Parties hereto and shall never be construed to confer any benefit to any third party.

13. Entire Agreement. This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter hereof.

14. Waiver. Each Party may specifically, but only in writing, waive any breach of this Agreement by the other Party, but no such waiver shall be deemed to constitute a waiver of similar or other breaches by such other Party.

14. Notices. All notices by the City to BHP shall be in writing and mailed by Certified Mail, Return Receipt Requested, addressed to:

BHP Water Supply Corporation
Attn: General Manager
PO Box 370
Royse City, Texas 75189

cc: Jackson Walker L.L.P.
Attn: Ali Abazari
100 Congress Ave., Ste. 1100
Austin, Texas 78701

All notices by BHP to the City shall be in writing and mailed by Certified Mail, Return Receipt Requested, addressed to:

City of Royse City
Attn: City Manager
100 Main Street
Royse City, Texas 75189

cc: Lloyd Gosselink Rochelle & Townsend, P.C.
Attn: Georgia N. Crump
816 Congress Ave., Ste. 1900
Austin, Texas 78701

Any notice or other communication required or permitted under this Agreement shall be deemed to be delivered when delivered by United States mail, registered or certified, with return receipt requested and postage prepaid, on the date of receipt, refusal or non-delivery as indicated on the return receipt. Notice in any other manner shall be considered delivered if and when received by the other Party to be notified and acknowledged in writing by the Party to be notified. Either Party may change its address by giving written notice of such change to the other Party.

15. Successors and Assigns. This Agreement shall bind the Parties and their legal successors, but shall otherwise not be assignable by any Party without prior written consent of the other Party, which consent shall not be unreasonably withheld. All of the respective obligations of each of the Parties shall bind that Party and shall apply to and bind any successors or assigns of that Party.

16. Venue. Actions taken by either Party in connection with this Agreement shall be deemed to have occurred in Rockwall County, Texas.

17. Multiple Originals. This Agreement shall be executed in a number of counterparts, each of which shall be for all purposes deemed to be an original, and all such counterparts shall together constitute and be one and the same instrument.

18. Attorney's Fees. Each Party to this Agreement shall be responsible for its own costs, including attorney's fees.

19. Effective Date. The Effective Date of this Agreement shall be the date that the last Party executes this Agreement, as set forth below by their signature.

20. Recitals. The above Recitals are true and correct and are incorporated into this Agreement for all purposes.

21. Authority. The Parties represent that the individuals named below are duly authorized to execute this Agreement on behalf of their respective Party.

22. Enforceability. The Parties agree that this Agreement constitutes the legal, valid and binding obligation of each Party hereto, enforceable in accordance with its terms, and that each Party is entering into this Agreement in reliance upon the enforceability of this Agreement.

[remainder of page intentionally left blank]

Executed in multiple copies, each of which shall constitute an original, on the dates set forth below:

DATE: 4-5-2011

CITY OF ROYSE CITY, TEXAS

By: Bill Sligo
City Manager

ATTEST:

Branda Craft
City Secretary

[Seal]



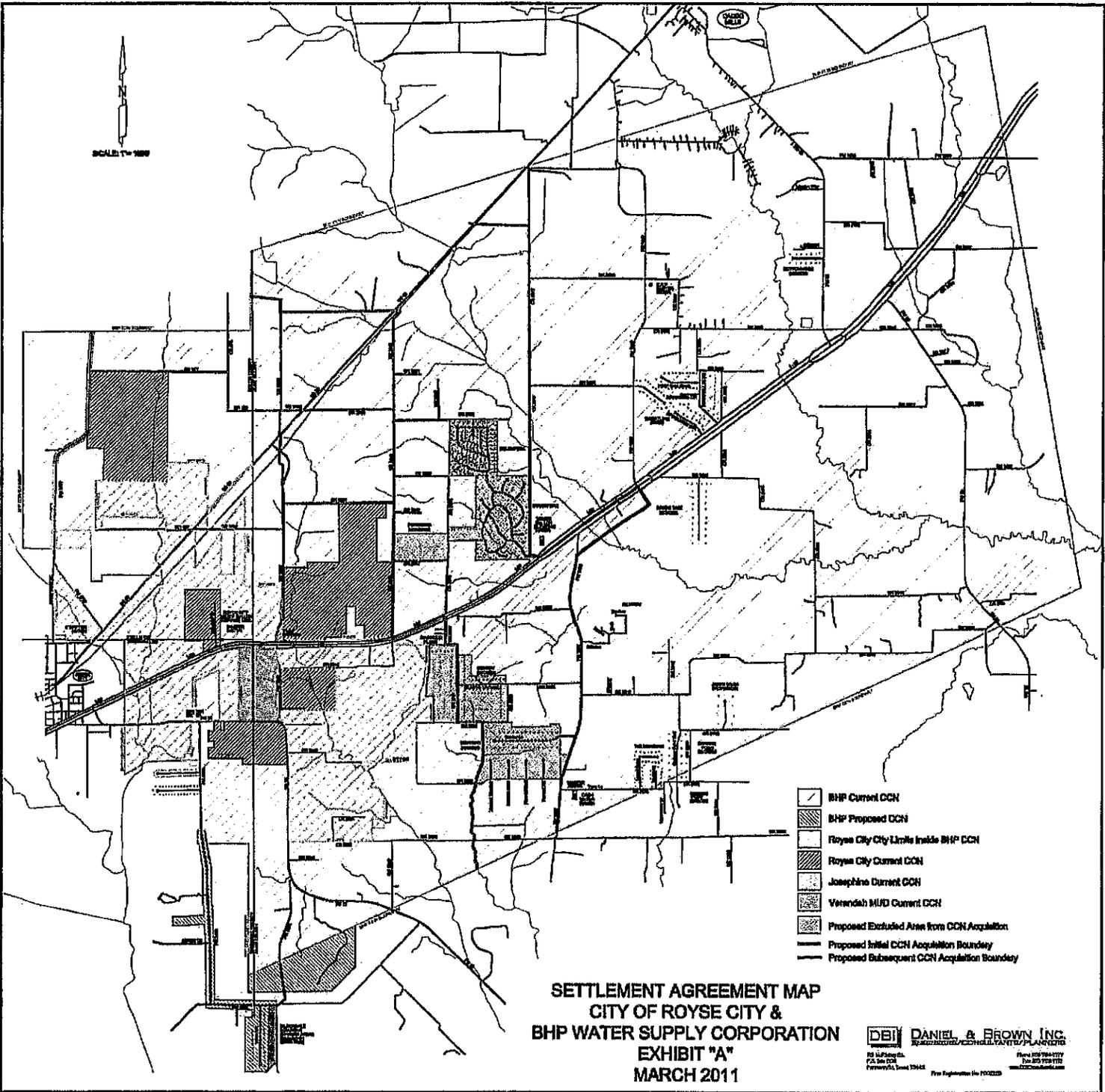
DATE: 4-5-11

BHP WATER SUPPLY CORPORATION

By: Bill Peoples
President, Board of Directors

ATTEST:

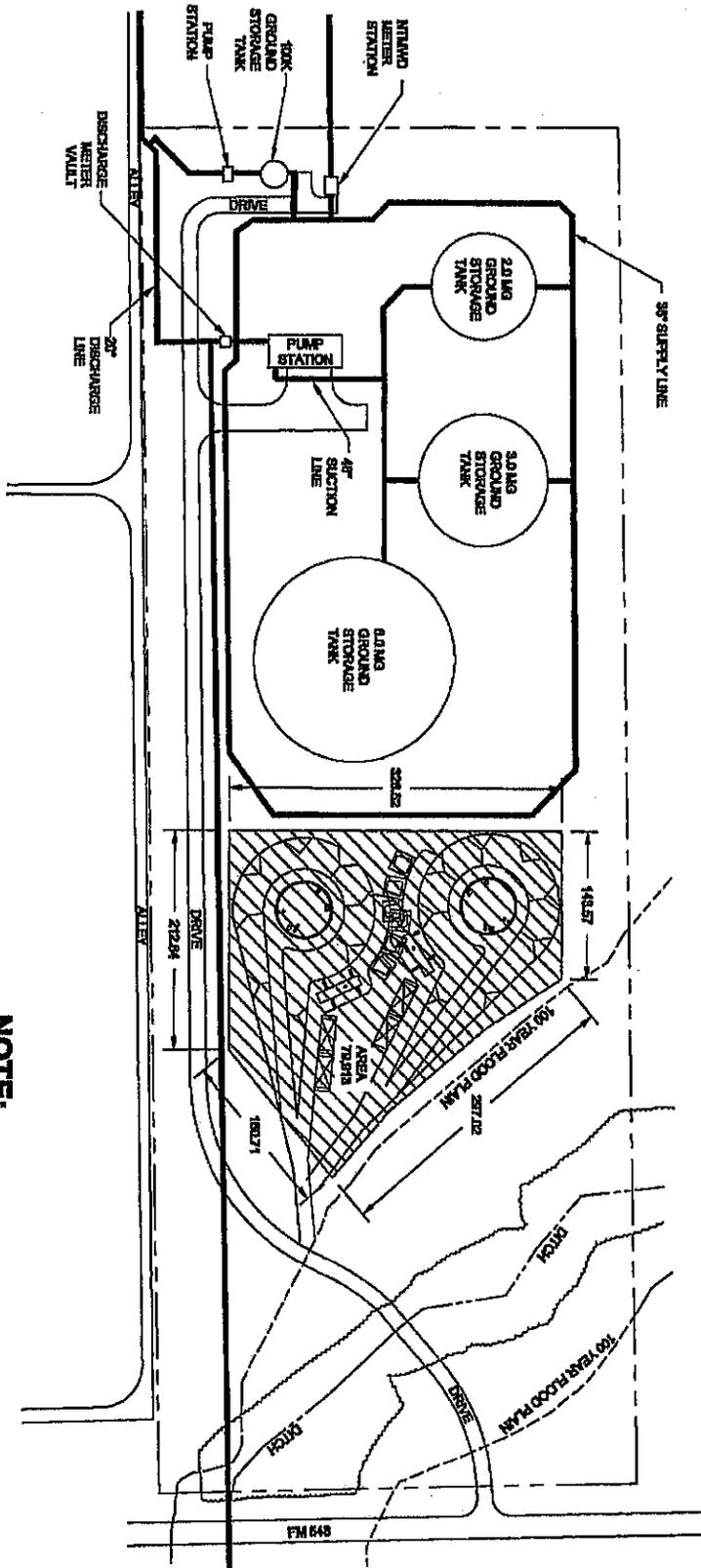
[Signature]
Secretary:



SETTLEMENT AGREEMENT MAP
CITY OF ROYSE CITY &
BHP WATER SUPPLY CORPORATION
EXHIBIT "A"
MARCH 2011

DBI DANIEL & BROWN INC.
REGISTERED PROFESSIONAL ENGINEERS
2000 UNIVERSITY
P.O. BOX 1001
HOUSTON, TEXAS 77255
Phone: 281.462.1111
Fax: 281.462.1112
www.danielandbrown.com
File Registration No. 110-2225

NOTE:
TRANSFER AREA SHOWN IS APPROXIMATE.
EXACT BOUNDARY LOCATION TO BE DETERMINED.



SHEET 1 OF 1

PROPOSED TAKE-POINT SITE
 FOR
 BHP WATER SUPPLY CORPORATION
 COLLIN & HUNT COUNTIES, TEXAS

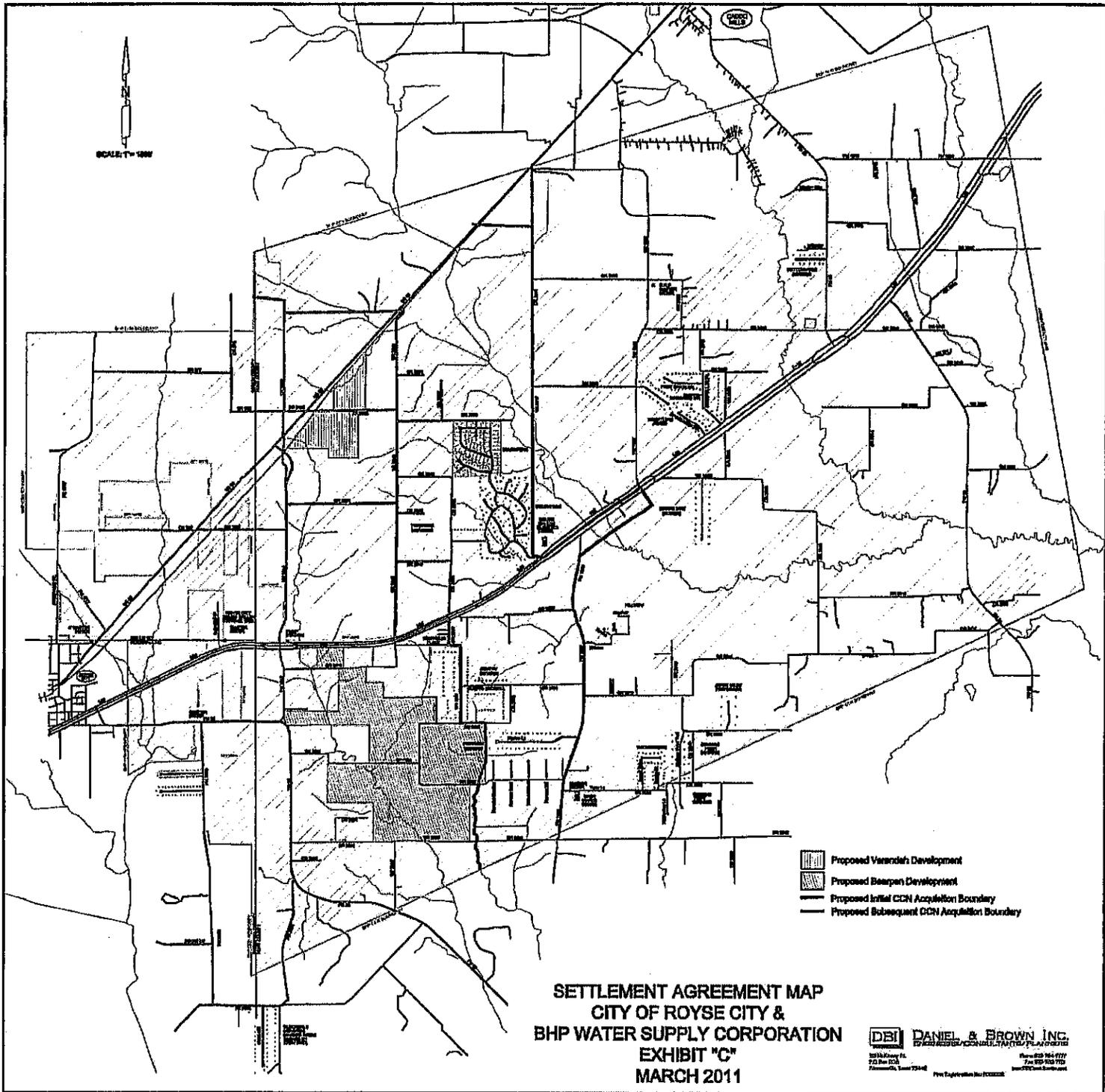
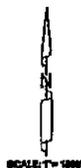
EXHIBIT "B"

DBI DANIEL & BROWN INC.
 ENGINEERS/CONSULTANTS/PLANNERS

118 McKinney St.
 P.O. Box 808
 Farmersville, Texas 75442

Phone 972-784-7771
 Fax 972-782-7721
 www.DBIConsultants.com

DESIGNER: E.W.D. DATE: 10-7-10 REGISTRATION NO: F20225
 DRAWN: M.K.W. REVISION: NO
 FILE: WSHWP-WB-City water city pump station 2/10



-  Proposed Vander's Development
-  Proposed Bearpen Development
-  Proposed Initial GCN Acquisition Boundary
-  Proposed Subsequent GCN Acquisition Boundary

**SETTLEMENT AGREEMENT MAP
CITY OF ROYSE CITY &
BHP WATER SUPPLY CORPORATION
EXHIBIT "C"
MARCH 2011**

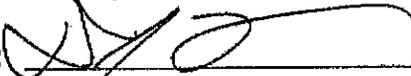
DBI DANIEL & BROWN INC.
REGISTERED PROFESSIONAL ENGINEERS AND ARCHITECTS
223 West 10th Street
Arlington, Texas 79201
Phone: 817.942.9171
Fax: 817.942.9172
www.danielandbrown.com
Professional Seal #000000000

CONSENT FORM

Applicant's Name: City of Royse City/BHP WSC 13.248 Agreement
Application No.: 37130-C

- I concur with the map created 3/20/2012 as a result of the above mentioned application.
- I do not concur with the map created 3/20/2012 and intend to respond by letter dated _____.

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

Signature: 

Printed Name: David Klein

Relationship to Applicant: Attorney for Applicant

Date signed: April 16, 2012

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

CONSENT FORM

Applicant=s Name: City of Roysse City/BHP WSC 13.248 Agreement
Application No.: 37130-C

- I concur with the map created 3/20/2012 as a result of the above mentioned application.
- I do not concur with the map created 3/20/2012 and intend to respond by letter dated _____.

I am authorized by the BHP WSC, to sign this form.

Signature: Kenneth Houser

Printed Name: Kenneth Houser

Relationship to Applicant: BHP Water Supply Corp., President

Date signed: 4-18-2012

Mall 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

CONSENT FORM

Applicant's Name: City of Royse City/BHP WSC 13.248 Agreement
Application No.: 37130-C

- I concur with the map created 3/20/2012 as a result of the above mentioned application.
- I do not concur with the map created 3/20/2012 and intend to respond by letter dated _____.

I am authorized by the BHP WSC, to sign this form.

Signature: Eddy Daniel, P.E.

Printed Name: Eddy W. Daniel, P.E.

Relationship to Applicant: Corporations Engineer

Date signed: 4/10/2012

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER APPROVING A CONTRACT DESIGNATING SERVICE
AREAS BETWEEN THE CITY OF ROYSE CITY AND B H P
WSC PURSUANT TO TEXAS WATER CODE SECTION
13.248; TCEQ DOCKET NO. 2012-0873-UCR.

A request for a Commission Order approving a contract designating service areas in Collin, Hunt, and Rockwall Counties between the City of Royse City (City), Certificate of Convenience and Necessity (CCN) No. 12827, and B H P WSC (WSC), CCN No. 10064, 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.

On April 5, 2011, the City and the WSC executed a "Settlement Agreement" (Contract) regarding their respective water service areas. The Contract addresses the transfer of the WSC's authority to provide water and sewer service to approximately 8,476 acres and provides that the City will be the sole provider of retail water service in that service area, except that the WSC will retain its existing customers in the area. The WSC will retain single certification in approximately 112 acres in the area, identified as "Excluded Area From CCN Acquisition" under the Contract. Existing WSC distribution lines and facilities in the area will be dually certificated to the WSC and the City. This Order effects changes in CCN service areas as designated by the City and the WSC in the Contract regarding the Initial CCN Acquisition Area. This Order does not address the parties' Subsequent CCN Acquisition Area.

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 June 13, 2012 agenda and found that the request had merit.

The City is capable of rendering continuous and adequate water service to every customer in the areas covered by the Contract. The decertification of the WSCs authority to provide service in the area consisting of approximately 8,476 acres results in the City being the sole service provider in the area, except to existing WSC customers who will continue to be served by the WSC pursuant to the terms of the Contract. The WSC will retain single certification in approximately 112 acres in this area. The dual certification of existing WSC distribution lines and facilities to the WSC and to the City within the service area results in the City and the WSC both being service providers in the area, and 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 Initial CCN Acquisition Area provisions of the Contract to transfer of a portion of the WSC's CCN No. 10064, and designating that retail water service shall be provided solely by the City, CCN No. 12827, in that area except to the WSC's existing customers which the WSC will continue to serve under the terms of the Contract, are hereby approved.
2. The Initial CCN Acquisition Area provisions of the Contract addressing the single certification retained by the WSC, CCN No. 10064, in the "Excluded Area From CCN Acquisition" in this area, are hereby approved.
3. The Initial CCN Acquisition Area provisions of the Contract addressing the dual certification of existing WSC distribution lines and facilities under CCN No. 10064, and designating that retail water service shall be provided via these facilities by both the City, CCN No. 12827, and the WSC, CCN No. 10064, are hereby approved.
4. CCN No. 12827 in Collin, Hunt, and Rockwall Counties, held by the City, is hereby amended in accordance with the Contract.

5. CCN No. 10064 in Collin, Hunt, and Rockwall Counties, held by the WSC, is hereby amended in accordance with the Contract.
6. 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 1, and to amend the Commission's official water service area map for Collin, Hunt, and Rockwall Counties, Texas. The certificate amendments requested in this application are necessary for the service, accommodation, convenience, and safety of the public.
7. The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this Order to the parties.
7. 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

