

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*

April 2, 2013

Ms. Bridget 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. 2012-2394-UCR; Consideration of a request for a Commission order approving a contract designating service areas between the City of Elgin, CCN No. 10311 and the Aqua WSC, CCN No. 10294

Dear Ms. Bohac:

Transmitted herewith for filing with the Texas Commission on Environmental Quality ("Commission") are the following items to be filed as backup material for the April 10, 2013, agenda on a request for an order approving a contract designating service areas between the City of Elgin and the Aqua WSC:

1. Proposed Order;
2. Agenda Executive Summary;
3. Caption;
4. Staff memo detailing financial, managerial, and technical capabilities of the City of Elgin and Aqua to provide continuous and adequate service to the affected area;
5. Request for Commission order approving a TWC, Section 13.248 agreement filed by the City of Elgin and Aqua on June 26, 2012;
6. Contract between the City of Elgin and Aqua WSC executed April 25, 2012, and addendum executed August 16, 2012;
7. Certificates of Convenience and Necessity (CCN) Nos. 10311 and 10294;
8. Proposed map of the area covered by the contract;
9. Consent forms signed by representatives for both Elgin and Aqua approving the above final maps; and
10. Notices Mailed to Parties.

Please do not hesitate to contact me at (512) 239-6743 if you have any questions regarding this material. Thank you for your attention to this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Christiaan Siano".

Christiaan Siano, Staff Attorney  
Environmental Law Division

Enclosures

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**TCEQ DOCKET NO. 2012-2394-UCR  
APPLICATION NO. 37370-C**

<b>IN THE MATTER OF A REQUEST</b>	<b>§</b>	<b>BEFORE THE</b>
<b>FOR APPROVAL OF THE</b>	<b>§</b>	
<b>CONTRACT DESIGNATING</b>	<b>§</b>	
<b>SERVICE AREAS BETWEEN THE</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>CITY OF ELGIN AND AQUA</b>	<b>§</b>	
<b>WATER SUPPLY CORPORATION</b>	<b>§</b>	
<b>IN BASTROP COUNTY, TEXAS</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

## **ORDER**

On April 10, 2013, the Texas Commission on Environmental Quality considered a request for approval of a contract designating service areas between the City of Elgin ("Elgin"), Certificate of Convenience and Necessity ("CCN") No. 10311, and Aqua Water Supply Corporation ("Aqua"), CCN No. 10294, in Bastrop County, Texas, pursuant to Section 13.248 of the Texas Water Code and Title 30, Section 291.117 of the Texas Administrative Code, and found the request had merit.

On April 25, 2012, Elgin and Aqua executed an agreement ("the Agreement") regarding their water service areas. The areas are marked in yellow and green in the attached map. The parties agreed that the area in yellow, totaling 1,478.87 acres, shall be transferred from Aqua's to Elgin's certificated service area. The parties further agreed the area in green, totaling 117 acres, shall be transferred from Elgin's to Aqua's certificated service area. The Agreement is attached to this Order with the August 16, 2012, Addendum.

Elgin and Aqua are capable of rendering continuous and adequate water service to every customer in their respective areas designated by the Agreement. The transfer of Aqua's authority to provide service in the yellow area to Elgin is necessary for the service, accommodation, convenience, or safety of the public. The transfer of Elgin's

authority to provide service in the green area to Aqua 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:

The Agreement to transfer a portion of Aqua's CCN No. 10294 and designating that Elgin CCN No. 10311 shall provide retail water service in the yellow area, is hereby approved.

The Agreement to transfer a portion of Elgin's CCN No. 10311 and designating that Aqua CCN No. 10294 shall provide retail water service in the green area, is hereby approved.

Certificates of convenience and necessity 10311 (held by Elgin) and 10294 (held by Aqua), in Bastrop County are hereby amended in accordance with the Agreement.

The Executive Director is directed to redraw the respective certificates as provided in the Agreement and as set forth on the map attached to this Order, and to amend the Commission's official water service area map for Bastrop County, Texas. The certificate amendments requested in the application are necessary for the service, accommodation, convenience, and safety of the public.

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

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

Issue Date:

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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For the Commission

# Texas Commission on Environmental Quality

## INTEROFFICE MEMORANDUM

**TO:** Texas Commission on Environmental Quality   **DATE:** April 2, 2013  
**THRU:** Bridget C. Bohac, Chief Clerk  
**FROM:** Christiaan Siano, Environmental Law Division  
**SUBJECT:** Consideration of a request for a Commission Order approving a contract designating service areas between the City of Elgin (Elgin) and the Aqua Water Supply Corporation (Aqua). TCEQ Docket No. 2012-2394-UCR.

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### DESCRIPTION OF APPLICATION

**Applicant:** City of Elgin and the Aqua Water Supply Corporation  
**Regulated Activity:** Retail water utility service  
**Type of Application:** Request for a Commission Order approving a contract  
**Commission Action:** Hearing regarding approval of the contract  
**Authority:** Texas Water Code (TWC) §13.248 and 30 Texas Administrative Code (TAC) § 291.117

### FACTUAL BACKGROUND

City of Elgin, water Certificate of Convenience and Necessity ("CCN") No. 10311, and Aqua WSC, water CCN No. 10294, provide retail water service in Bastrop County, Texas. Elgin and Aqua desire to adjust their CCNs to the agreed transfer areas located in the attached map.

On April 25, 2012, Elgin and Aqua executed an agreement designating their water service areas. The designation provides that Aqua will transfer to Elgin its CCN territory as described in the map equaling 1,478.87 acres, and that Elgin will transfer 117 acres to Aqua. On August 16, 2012, the parties executed an addendum to clarify how they wish the map to look after the transfer is approved. No facilities or customers are being transferred with this application.

## LEGAL AUTHORITY

The Texas Water Code prohibits a utility from rendering retail utility service directly or indirectly to the public without first obtaining a CCN from the Commission. TWC § 13.242(a). A municipality is not required to obtain a CCN to provide retail water service.<sup>1</sup> However, a municipality may not provide service to areas that are within the certificated area of another retail public utility without first obtaining written consent from that retail public utility. TWC § 13.242(b).

Retail public utilities may enter into service area agreements and have the Commission affirm the agreements by amending the entities' respective CCNs. TWC § 13.248; *see also* 30 TAC § 291.117.<sup>2</sup>

The request to approve a §13.248 agreement is not subject to the notice provisions which apply to applications for new or amended CCNs. 30 TAC § 291.106(b)(3)(A). The Commission may approve the service area agreement at an agenda hearing pursuant to §13.248 with the appropriate notice under the Open Meetings Act. The Executive Director has mailed notice of the hearing to the parties.

## BASIS FOR STAFF RECOMMENDATION

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

1. Request for a Commission order approving a §13.248 agreement filed by Elgin and Aqua on June 25, 2012, as clarified by addendum on August 16, 2012, and declared administratively complete on October 8, 2012;
2. Agreement between Elgin and Aqua executed April 25, 2012, and addendum executed on August 16, 2012;
3. Map of service area subject to the §13.248 agreement submitted by Elgin and Aqua; and
4. Financial, managerial, and technical analysis of Elgin and Aqua to operate in the affected area.

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<sup>1</sup> A municipality is a "retail public utility" under Section 13.002(19) of the Texas Water Code, but not a "utility" under Section 13.002(23). Therefore, the § 13.242(a) requirement that a "utility" obtain a CCN before providing retail water utility service does not apply to a municipality.

<sup>2</sup> Section 13.248 of the Texas Water Code provides:

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

Based upon the facts stated in the application and the supporting documentation submitted by Elgin and Aqua, Staff recommends approving the contract transferring CCN territory between Elgin and Aqua. Staff has confirmed that both parties are retail public utilities with active water CCNs. Further, staff is satisfied that both Elgin and Aqua possesses the adequate financial, managerial, and technical capability to provide continuous and adequate service to the areas being transferred.

## STAFF CONTACTS

Christiaan Siano, Environmental Law Division (239-6743)  
Elizabeth Flores, Water Supply Division (239-6846)

**CAPTION**  
**City of Elgin / Aqua WSC**  
**Application No. 37370-C**

**TCEQ Docket No. 2012-2394-UCR.** Consideration of a request for a Commission Order approving a contract designating service areas between the City of Elgin (Elgin), Certificate of Convenience and Necessity (CCN) No. 10311, and the Aqua Water Supply Corporation (Aqua), CCN No. 10294, in Bastrop County, Texas, pursuant to section 13.248 of the Texas Water Code. The contract transfers 1,478.87 acres from Aqua's CCN area to Elgin's and approximately 117 from Elgin's CCN to Aqua's. No facilities or customers will be transferred through this application. (Christiaan Siano, Elizabeth Flores)

## TCEQ Interoffice Memorandum

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To: Elizabeth Flores  
Utilities Technical Review

From: *WJS* Walt Sobczak, C.P.A.  
*11/21/13* Utilities Financial Review

Date: November 19, 2012

Subject: Contract Service Agreement Pursuant to Texas Water Code, Section 13.248, from the City of Elgin, Certificate of Convenience and Necessity (CCN) No. 10311, to Transfer a portion of CCN No. 10294 held by Aqua Water Supply Corporation (WSC), to the City of Elgin, in Bastrop County; Application No. 37370-C

CN: 600336549; RN: 101390193 (City of Elgin)  
CN: 600610828; RN: 102672482 (Aqua WSC)

The City of Elgin (City) and Aqua Water Supply Corporation (Aqua WSC) are filing this application as retail public utilities pursuant to Texas Water Code §13.248 and 30 Texas Administrative Code §291.117 for approval of a contract designating areas to be served and customers to be served by each party, and the amendment of CCN No. 10311 of the City, and CCN No. 10291 of Aqua WSC pursuant to said contract. The agreement identifies xxx acres to be transferred to the City, who is currently providing water utility service in the transfer area.

Aqua WSC serves 16,000+ customers per TCEQ's Water Utility Database located within a 900+ square mile service area in six counties. Extensive well, pump station, and storage facilities provided for gross 2011 production income in excess of \$15 million. I reviewed Aqua WSC's audited financial statements for the period December 31, 2006 to December 30, 2010, including unqualified auditor's opinions for each year from Maxwell Locke & Ritter LLP., that the financial statements present fairly, in all material respects, the financial position of Aqua WSC in conformity with accounting principles generally accepted in the U.S.A.

The water system has sufficient capacity to serve, and the debt to equity ratio is 0.42 to 1.00. TCEQ staff normally considers a ratio of less than 1.0 to 1.0 to be healthy. This transfer will not have a material effect on the water system, nor Aqua WSC's finances, and given all the above factors, additional Financial/Managerial review of Aqua WSC is deemed unnecessary.

The application includes the City of Elgin's audited financial statements for the fiscal year ended 9/30/10. The statements include an unqualified

## **TCEQ Interoffice Memorandum**

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auditor's opinion from George C. Draper III, CPA that the financial statements present fairly, in all material respects, the financial position in conformity with accounting principles generally accepted in the U.S.A. Within its utility funds, the City had total assets of \$20,609,128, total liabilities of \$7,670,588, and net assets of \$12,938,540. Cash and investments totaled \$777,010. The resulting debt to equity ratio is 0.59 to 1, which is substantially lower than the preferred ratio of 1:1. Net operating income prior to interest expense for the utility operations was \$171,230 and depreciation was recorded at \$451,074 resulting in funds available for debt service of \$622,304 for fiscal year ended 9/30/10. Interest and principal payments on debt during the fiscal year totaled \$456,638. The debt service coverage ratio would therefore be \$622,304 divided by \$456,638, or 1.36:1.00. A ratio of at least 1.25 to one is preferred so that the utility can build up a reserve for emergencies in operations and maintenance or revenue deficiencies. This information supports a finding of adequate financial and managerial capability to provide service to the area contracted for transfer.

Ms. Crump's Direct Line: (512) 322-5832  
Email: gcrump@lglawfirm.com

June 25, 2012

**VIA HAND DELIVERY**

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

RE: Submission Pursuant to Texas Water Code § 13.248 and 30 Tex. Admin. Code § 291.117(a-b)

Dear Sir/Madam:

The City of Elgin ("City") and Aqua Water Supply Corporation ("Aqua WSC") file this application (the "Application") pursuant to Texas Water Code ("TWC") § 13.248 and 30 Texas Administrative Code ("TAC") § 291.117 for the Commission's approval of the contract between the City and Aqua WSC designating the areas to be served and customers to be served by each, and requesting amendment of water CCN No. 10311 of the City and water CCN No. 10294 of Aqua WSC, pursuant to such contract. The City and Aqua WSC are both "retail public utilities" as defined by TWC § 13.002(19) and 30 TAC § 291.3(40), and may thus utilize the process described in TWC § 13.248 and 30 TAC § 291.117 for this purpose.

Effective April 25, 2012, the City and Aqua WSC entered into a certain Settlement Agreement Designating Retail Water Service Area Boundaries and Settling Disputes Between City of Elgin, Texas and Aqua Water Supply Corporation (the "Agreement") whereby Aqua WSC agreed in part to transfer a portion of its water CCN No. 10294 to the City. The parties also agreed (in §2.02(c) of the Agreement) to submit the Agreement to the Commission for approval under TWC § 13.248. A copy of the Agreement is enclosed herein as **Attachment 1**. Aqua WSC has obtained the consents of its lenders, USDA-RD and CoBank, for the transfer of the CCN area.

The Agreement specifically identifies the areas to be transferred to the City (referred to in the Agreement as the "Transfer Area"). As noted in the Agreement and shown on Exhibit B to the Agreement, the City is currently providing retail water utility service to the Transfer Area. Although Aqua WSC has some existing facilities within the Transfer Area, these facilities are remaining with Aqua WSC and are not being transferred to the City. Additionally, no customers are being transferred at this time. (Please note that a separate Sale, Transfer, or Merger Application was filed by the City and Aqua WSC on May 24, 2012, to address the transfer from the City to Aqua WSC of a water transmission line that is outside of the Transfer Area and is not impacted by this Application.)

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WATER SUPPLY DIV.  
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In addition to revising their respective CCNs to reflect the change for the Transfer Area, the City and Aqua WSC are also requesting in this Application that the Commission revise the CCNs of both the City and Aqua WSC to more accurately reflect the location of the City's "Facilities Plus 200 Feet CCN" extending east from the City to the Elgin Oaks Subdivision and the City's water plant. This area is shown in **Attachment 1** as "Exhibit C – Aqua and Elgin CCN Areas as Modified by Agreement," thereto. The current location of the City's "Facilities Plus 200 Feet CCN" that is contained in the Commission's maps and records is shown in **Attachment 1** as "Exhibit B – Water CCN Transfer Map." The City is currently providing retail water utility service to customers from this line; no customers or facilities will be transferred as a result of modifying the official maps to indicate the actual location of this water line.

A CD containing the digital mapping information for the map included in **Attachment 1**, "Exhibit C – Aqua and Elgin CCN Areas as Modified by Agreement" is included with this letter as **Attachment 2**.

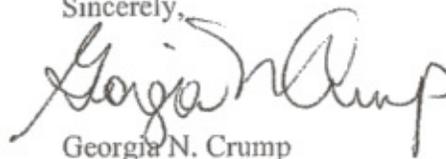
The City will be acquiring additional water CCN area under the Agreement. The City has the financial, managerial, and technical ability to provide service in the Transfer Area. As noted above, the City has been providing retail water utility service within the Transfer Area starting in 2003, and continuing and expanding until the present. As further indication of the City's ability to provide service in the area, please see copies of the City's financial reports for the fiscal years ending September 30, 2009 through September 30, 2011, attached hereto as **Attachment 3**.

The only public water systems affected by the transfer of the water CCN area are the City and Aqua WSC. This transfer of water CCN area will not effect a change of retail water providers to the area.

The City and Aqua WSC are pleased to have reached this Agreement and to have resolved the disputes between them related to their water CCN areas. The Commission is respectfully requested to approve the Settlement Agreement as it relates to the transfer of the CCN area and the amendment of the City's and Aqua WSC's CCNs.

We appreciate your assistance. Please address any questions or concerns to me at (512) 322-5832 or [gcrump@lglawfirm.com](mailto:gcrump@lglawfirm.com), or to Charlie Crossfield, City Attorney for the City of Elgin, at (512) 255-8877 or [charlie@scrllaw.com](mailto:charlie@scrllaw.com).

Sincerely,



Georgia N. Crump

Water Supply Division, TCEQ  
June 25, 2012  
Page 3

Enclosures:

Attachment 1 Settlement Agreement Designating Retail Water Service Area Boundaries and Settling Disputes Between City of Elgin, Texas and Aqua Water Supply Corporation

Attachment 2 CD containing digital mapping data

Attachment 3 Financial Reports for City of Elgin

cc: w/o encl.  
Mr. Charlie Crossfield, City Attorney for City of Elgin  
Mr. Bill Loven, General Manager of Aqua Water Supply Corporation

**SETTLEMENT AGREEMENT  
DESIGNATING RETAIL WATER SERVICE AREA BOUNDARIES  
AND SETTLING DISPUTES BETWEEN  
CITY OF ELGIN, TEXAS  
AND AQUA WATER SUPPLY CORPORATION**

The parties to this Settlement Agreement (collectively, the "Parties") are Aqua Water Supply Corporation ("Aqua") and the City of Elgin, Texas ("Elgin").

**SECTION 1**

**RECITALS**

1.01 Aqua is a nonprofit rural water supply corporation organized under Texas Water Code, Chapter 67, for the purposes stated in Water Code § 67.002. Aqua possesses Certificate of Convenience and Necessity ("CCN") No. 10294 ("Aqua Certificate") issued by the Texas Commission on Environmental Quality ("TCEQ"). The Aqua Certificate authorizes Aqua to furnish retail water utility service to the public and grants to Aqua the exclusive right to furnish retail water service to a defined geographical area in Bastrop, Travis, Lee, and Caldwell Counties ("Aqua Certificated Service Area"). Aqua owns and operates a public water system in the Aqua Certificated Service Area.

1.02 Elgin is a home rule municipal corporation organized and existing under the laws of the State of Texas and located wholly within Bastrop County, Texas. Elgin owns and operates a municipal water supply system and a municipal sanitary sewer system and provides water and sewer utility services to persons located within Elgin's corporate limits and extra-territorial jurisdiction. Elgin possesses water CCN No. 10311 ("Elgin Certificate") issued by the TCEQ, authorizing Elgin to provide such services within the geographical area contained within the CCN ("Elgin Certificated Service Area"). The Parties acknowledge that the current Elgin Certificated Service Area is as shown on Exhibit A hereto, which is the official CCN map as maintained by the TCEQ.

1.03 On September 1, 2011, Austin Community College District Public Facility Corporation ("ACC") filed a petition with the TCEQ for the expedited release of approximately ninety-eight (98) acres owned by ACC (the "ACC Property") from the Aqua Certificated Service Area, under the provisions of Texas Water Code § 13.254(a-5) ("ACC Petition"). On October 26, 2011, the TCEQ entered an order approving the ACC Petition ("Order of Decertification").

1.04 On November 23, 2011, Aqua filed at the TCEQ a Motion to Overturn the Order of Decertification. Also on November 23, 2011, Aqua filed an Original Petition with the Travis County District Court, entitled *Aqua Water Supply Corporation v. Texas Commission on Environmental Quality, Bryan W. Shaw, Buddy Garcia and Carlos Rubinstein, in their official capacity as Commissioners of the Texas Commission on Environmental Quality, an Agency of the State of Texas, Zak Covar, in his official capacity as Deputy Executive Director of the Texas Commission on Environmental Quality, an Agency of the State of Texas, and Austin Community*

*College District Public Facility Corporation, a Texas Public Facility Corporation*, Case No. D-1-GN-11-003617 (“State Lawsuit”). The State Lawsuit is currently pending.

1.05 Aqua and Elgin are parties in Civil Action No. 11-CV-855-LY, styled *Aqua Water Supply Corporation vs. City of Elgin, a Texas Municipality, Austin Community College District Public Facility Corporation, a Texas Public Facility Corporation; Bryan W. Shaw, Buddy Garcia, and Carlos Rubinstein, in the their official capacity as Commissioners of the Texas Commission on Environmental Quality, an Agency of the State of Texas; Zac Covar, in his official Capacity as Deputy Executive Director of the Texas Commission on Environmental Quality, an agency of the State of Texas*, pending in the United States District Court for the Western District of Texas, Austin Division (“Federal Lawsuit”). The following are hereafter referred to collectively as “State Defendants”: Bryan W. Shaw, Buddy Garcia, and Carlos Rubinstein, in the their official capacity as Commissioners of the Texas Commission on Environmental Quality, an Agency of the State of Texas; Zac Covar, in his official Capacity as Deputy Executive Director of the Texas Commission on Environmental Quality, an agency of the State of Texas; and the Texas Commission on Environmental Quality, an agency of the State of Texas.

1.06 Aqua and Elgin are also parties in a related proceeding pending before the TCEQ, Application No. 37151-D, styled *Petition of Aqua Water Supply Corporation Requesting a Cease and Desist Order Against the City of Elgin*, (“Administrative Proceeding”).

1.07 Aqua and Elgin acknowledge that the above-referenced Administrative Proceeding, State Lawsuit, and Federal Lawsuit (collectively, the “Litigation”) reflect bona fide disputes and controversies between them concerning the provision of retail water utility service in the Aqua Certificated Service Area.

1.08 It is the intent of the Parties that this Settlement Agreement provide for the full and final settlement of all claims asserted or that could have been asserted by and between Aqua and Elgin in the Litigation by designating either Aqua or Elgin as the exclusive retail water service provider to certain geographical areas.

1.09 The Parties desire to avoid the further annoyance, cost, delay, and uncertainty associated with the Litigation and to evidence that settlement by executing this formal Settlement Agreement. It is the intent of the Parties that this Settlement Agreement resolves all disputed issues between Elgin and Aqua with regard to the subject matter of the Litigation. To the extent that Aqua has claims against ACC and the State Defendants, such claims are not intended to be resolved by this Settlement Agreement, but rather shall be resolved separately by agreement or by other means, as between Aqua, ACC, and the State Defendants. As used in this Settlement Agreement, the word “shall” means mandatory and not permissive.

1.10 Therefore, in order to fully and finally compromise and settle all claims that have been asserted or that could have been asserted in the Litigation by and between the Parties hereto with regard to the provision of retail water utility service to Aqua Certificated Service Area, as

well as all other matters in controversy between Aqua and Elgin, the Parties hereby enter into this Settlement Agreement.

## SECTION 2

### TERMS OF AGREEMENT

In full consideration of the mutual promises and agreements contained in this Settlement Agreement, including the Recitals set forth in Section 1 above and for the transfer of service area as described in Section 2.02 below, the Parties agree as follows:

2.01 **Intent of Parties to Settle All Litigation.** It is the intent of the Parties that this Settlement Agreement provide for full and final settlement of all claims asserted or that could have been asserted by and between Aqua or Elgin in the Federal Lawsuit, and also provide for full and final settlement of all administrative claims and proceedings pending in the Administrative Proceeding or that could have been asserted by Aqua or Elgin in the Administrative Proceeding. Although Elgin is not a party in the State Lawsuit, Aqua hereby releases and disclaims any causes of action or claims against Elgin that Aqua asserted or could have asserted against Elgin in the State Lawsuit.

#### 2.02 **Transfer of CCN Area.**

(a) As provided herein, Aqua shall seek approval of this Settlement Agreement by USDA-RD and CoBank and Elgin shall fully cooperate in assisting Aqua to obtain USDA-RD and CoBank approval of service area transfers from Aqua to Elgin as described herein. Upon receipt of such approvals, the Parties shall file the appropriate documents with the TCEQ and the Parties shall jointly request approval of same by the TCEQ in order to revise the Parties' CCN areas as provided in this Settlement Agreement. USDA-RD and CoBank approvals of this Settlement Agreement are conditions precedent to the existence, validity and enforceability of the Settlement Agreement. TCEQ approvals of the area and line transfers described herein are also conditions precedent to the existence, validity and enforceability of the Settlement Agreement. If any condition precedent described in this Settlement Agreement is not fully satisfied, then in that event, this Settlement Agreement, and any transfers described in this Settlement Agreement, shall be invalid and void *ab initio*.

(b) As depicted on the attached Water CCN Transfer Map attached as **Exhibit B**, the Transfer Area consists of the areas shown on **Exhibit B** and no other lands.

(c) In accordance with the procedures set forth herein, Aqua agrees to transfer the Transfer Area from the Aqua Certificated Service Area, to Elgin's CCN, upon receipt of all the required approvals, judgments entered, dismissals entered, and satisfaction of conditions precedent, all as set forth herein. Aqua shall fully cooperate in assisting Elgin to obtain approval of the service area transfers from Aqua to Elgin. This Agreement may be considered and approved pursuant to Texas Water Code § 13.248.

2.03 **Consideration.** No monetary consideration is being paid by either of the Parties to the other. Aqua and Elgin stipulate and agree that the mutual promises contained herein, transfer of territory, transfer of physical assets (*i.e.*, water service infrastructure), exchange of releases referenced herein, and dismissals to be filed in the Federal Lawsuit, State Lawsuit, and Administrative Proceeding constitute sufficient and satisfactory consideration for this Settlement Agreement.

2.04 **30-Year Moratorium.**

(a) For a period of thirty (30) years beginning on and from the Effective Date of this Settlement Agreement, Elgin shall not provide water utility service outside the retail water service boundaries of Elgin depicted in **Exhibit C** regardless of any future decertifications of any part of the Aqua Certificated Service Area, regardless of the Order of Decertification (whether it is vacated/reversed/nullified or not), and regardless of whether Aqua remains indebted to the USDA-RD during said thirty (30) year period.

(b) For a period of thirty (30) years beginning on and from the Effective Date of this Settlement Agreement, Aqua shall not provide water utility service inside the retail water service boundaries of Elgin depicted in **Exhibit C** regardless of any future decertification of any part of the area inside the retail water service boundaries of Elgin depicted in **Exhibit C**.

(c) For purposes of this Settlement Agreement, Aqua and Elgin agree and stipulate that the ACC Property is deemed to be outside of and beyond the retail water service boundaries of Elgin depicted in **Exhibit C**.

(d) Elgin agrees to a thirty (30) year moratorium, beginning on and from the Effective Date of this Settlement Agreement, against Elgin taking any action, directly or indirectly, to amend its CCN, amend Aqua's CCN, or to provide retail water service to any person or property in any area outside the retail water service boundaries of Elgin depicted in **Exhibit C**, including areas outside the retail water service boundaries of Elgin depicted in **Exhibit C** currently certificated to Aqua or that may hereafter be removed from the Aqua CCN by action of the TCEQ, by petition of any property owner or others, or other action by any public entity or private entity/person. The prohibition against amending the Elgin Certificate includes any form of application requesting the TCEQ to decertify or dually certify the Aqua Certificated Service Area (situated outside the retail water service boundaries of Elgin depicted in **Exhibit C**), in whole or in part, whether filed by Elgin, or on Elgin's behalf.

(e) Aqua agrees to a thirty (30) year moratorium, beginning on and from the Effective Date of this Settlement Agreement, against Aqua taking any action, directly or indirectly, to amend Elgin's CCN, amend Aqua's CCN relative to any land situated inside the retail water service boundaries of Elgin depicted in **Exhibit C**, or to provide retail water service to any person or property in any area inside the retail water service boundaries of Elgin depicted in **Exhibit C**, including areas that may hereafter be removed from the Elgin CCN by action of the TCEQ, by petition of any property owner or others, or other action by any public entity or private entity/person. The prohibition against amending the Aqua Certificate relative to land

situated inside of the retail water service boundaries of Elgin depicted in **Exhibit C** includes any form of application requesting the TCEQ to decertify or dually certify any land situated inside the retail water service boundaries of Elgin depicted in **Exhibit C**, in whole or in part, whether filed by Aqua, or on Aqua's behalf.

(f) The prohibition against Elgin's provision of retail water service outside of and beyond the retail water service boundaries of Elgin depicted in **Exhibit C** also precludes Elgin from:

- (1) accepting the dedication of water system infrastructure situated outside of and beyond the retail water service boundaries of Elgin as depicted in **Exhibit C** from any third-party unless the point of use of water produced or conveyed by such infrastructure is within the water service boundaries of Elgin, as depicted on **Exhibit C**; and
- (2) constructing any retail water service infrastructure situated outside of and beyond the retail water service boundaries of Elgin depicted in **Exhibit C** unless the point of use of water produced or conveyed by such infrastructure is within the water service boundaries of Elgin, as depicted in **Exhibit C**; and
- (3) selling retail water that may be consumed or used within any part of any land situated outside of and beyond the retail water service boundaries of Elgin depicted in **Exhibit C**.

(g) The prohibition against Aqua's provision of retail water service inside of the retail water service boundaries of Elgin depicted in **Exhibit C** also precludes Aqua from accepting the dedication of water system infrastructure situated inside the retail water service boundaries of Elgin as depicted in **Exhibit C** from any third-party and further precludes Aqua from constructing any retail water service infrastructure inside of the retail water service boundaries of Elgin depicted in **Exhibit C** or selling retail water that may be consumed or used within any part of any land situated inside of the retail water service boundaries of Elgin depicted in **Exhibit C**.

#### 2.05 Transfer of Customers and Facilities and Special Conditions.

(a) Aqua and Elgin have agreed upon certain special conditions applicable to the property commonly referred to as the Highway 290 LLC property that are reflected below. Elgin and Aqua have investigated and determined that certain customers or facilities will be transferred between them as reflected below.

(b) As a condition precedent to the transfer of the CCN Transfer Area as set forth in Section 2.02, Elgin shall transfer to Aqua a twelve (12) inch water line located on the south side of U.S. Highway 290, as more fully described herein. Immediately after the Effective Date hereof, Elgin shall commence the process to accomplish a complete defeasance of all outstanding bonds related to the twelve (12) inch water line. Elgin agrees to use its best efforts to obtain such defeasance without undue delay. All indebtedness held by Elgin associated with the twelve (12) inch line shall be defeased by Elgin prior to the transfer to Aqua. Aqua and Elgin shall

cooperatively submit paperwork with the TCEQ for the transfer of the twelve (12) inch water line within thirty (30) days after the Effective Date. Service on the line will remain with Elgin until TCEQ approves the transfer. Upon approval by TCEQ of the transfer of the twelve (12) inch water line (and transfer of any associated customers contemplated to be transferred as provided for herein), and approval by USDA-RD and CoBank of this Settlement Agreement, Aqua shall ensure connection of its system to the twelve (12) inch water line within sixty (60) days after the last of such approvals have been obtained. If the TCEQ fails to approve the transfer, or the USDA-RD or CoBank fails to approve this Settlement Agreement, this Settlement Agreement and the transfer of any part of the Aqua Certificated Service Area between the Parties is invalid and void *ab initio*.

(c) The extent of the line to be transferred runs from County Line Road east to a point of intersection with the existing U.S. Highway 290 crossing east of the western property pin of a property commonly known as Highway 290 LLC. A map showing the location of the transferred twelve (12) inch water line is as shown on **Exhibit D**, attached hereto.

(d) Current Elgin customers connected to this line shall be transferred to Aqua, including Prosperity Bank ("Elgin Transferred Customers") when Aqua connects the twelve (12) inch line to its water system. Elgin Transferred Customers shall not incur any additional costs, deposits, membership fee, charges, or other fees for the transfer to Aqua. Prior to the date of transfer, additional customers located within the Aqua Certificated Service Area may be connected to this line only under the following conditions:

- (1) If Elgin receives a request from any person located within the Aqua Certificated Service Area to receive retail water utility service from the twelve (12) inch line, Elgin shall inform the requesting person that the line will be transferred to Aqua and direct the person to contact Aqua.
- (2) Upon receipt by Aqua of written information from the prospective water customer regarding the prospective water customer's needs, and upon receipt by Aqua of its tariffed connection fees and charges, Aqua shall make arrangements with Elgin whereby Elgin will establish a water service account in Aqua's name. Aqua shall purchase water from Elgin at a connection point on the twelve (12) inch line as specified by Aqua, for sale by Aqua to the prospective water customer.
- (3) If Aqua receives a request for service from any person located within the Aqua Certificated Service Area to receive retail water utility service from the twelve (12) inch line, Aqua shall make arrangements with Elgin as set forth in subsection (2) above.
- (4) Upon the transfer of the twelve (12) inch line to Aqua, any accounts set up by Elgin in Aqua's name under the provisions of this section will be closed.

(e) All contracts, option rights, permits, certificates, licenses, reimbursement rights, service agreements, deposits, warranties, records, regulatory correspondence, and other intangible assets of Elgin that are related to the ongoing operation and ownership of the twelve (12) inch water line transferred to Aqua hereunder ("Elgin Intangible Assets") shall also be transferred to Aqua in accordance with the provisions of this Settlement Agreement. All land and interests therein, including without limitation easements, licenses and rights-of-way owned or held by Elgin for the installation, use and maintenance of, or otherwise associated with the transferred water line, together with all and singular the rights, privileges, and appurtenances pertaining to said land and interests therein, including any right, title, and interest of Elgin in and to adjacent streets, alleys, or rights-of-way, together with any improvements, fixtures, and personal property of Elgin situated on and attached to said land and interests therein associated with the transferred water line (Elgin Transferred Property"), shall also be transferred to Aqua.

(f) Upon the transfer of twelve (12) inch water line, Elgin Intangible Assets, and Elgin Transferred Property from Elgin to Aqua, Elgin shall deliver to Aqua each of the following items:

- (i) A Bill of Sale and Assignment ("Bill of Sale") duly executed by Elgin, transferring and assigning to Aqua all of Elgin's rights, title, and interest in the transferred water line, warranting that all bonds associated with said water line have been completely defeased.
- (ii) An instrument duly executed by Elgin, in the form as reflected in **Exhibit G**, assigning to Aqua all of Elgin's interests in any easements, licenses, or rights-of-way included in the transferred twelve (12) inch water line, to the extent they are assignable.
- (iii) A signature on a letter to be jointly drafted by Aqua and Elgin to be sent to the Elgin Transferred Customers informing them of the change in ownership of the Elgin Transferred Facilities, change in water rates, if applicable, and any other information Aqua and Elgin determine is necessary or useful to the Elgin Transferred Customers.
- (iv) Closing instructions to enable a title company to deliver the documents provided in this section to Aqua on the Transfer Date.
- (v) Any other additional documents and instruments as in the mutual opinion of Aqua's counsel and Elgin's counsel are reasonably necessary to the proper consummation of this transaction.

(g) Relative to retail water service to be provided by Aqua to the Highway 290 LLC property (as that property currently exists as of the date of this Settlement Agreement), Aqua will cap its capacity reservation fee at \$600 per living unit equivalent ("LUE") and its system development fee at \$3,900 per LUE, both caps to be in effect for a period of ten (10) years from the Effective Date of this Settlement Agreement. All retail water customers at such property will be responsible for paying Aqua's tariffed water rates then in effect, plus a meter set fee, a membership fee in the amount of one hundred dollars (\$100), and a deposit in the amount of one thousand dollars (\$1,000) for legal review of the capacity reservation agreement.

(h) Except for the Elgin Transferred Customers described in Section 2.05(d) above, all water customers which Elgin currently serves within Aqua's Certificated Service Area shown on **Exhibit C** and which are situated outside of and beyond the boundaries of **Exhibit C**, shall continue to receive service from Elgin until such time as Aqua serves on Elgin its notice that Aqua intends to transfer service for said customers to Aqua. A list of the addresses at which these connections are located is attached hereto as **Exhibit E**. Aqua, at its sole discretion, may transfer such customers served by Elgin one at a time or in groups of customers from time to time, as Aqua determines and specifies. All customers transferred to Aqua pursuant to this section shall not incur any additional costs, deposits, membership fee, charges, or other fees for the transfer to Aqua. Any conflict between the **Exhibit C** map and the **Exhibit E** address list shall be resolved in favor of the **Exhibit C** map.

(i) To the extent Aqua is serving any water customers situated in the Transfer Area, such customers shall continue to receive service from Aqua until such time as Elgin serves on Aqua its notice that Elgin intends to transfer service for said customers to Elgin. A list of the addresses at which these connections are located is attached hereto as **Exhibit F**. Elgin, at its sole discretion, may transfer such customers served by Aqua one at a time or in groups of customers from time to time, as Elgin determines and specifies. All customers transferred to Elgin pursuant to this section shall not incur any additional costs, deposits, membership fee, charges, or other fees for the transfer to Elgin. Any conflict between the **Exhibit C** map and the **Exhibit F** address list shall be resolved in favor of the **Exhibit C** map.

**2.06 Abatement of Administrative Proceeding Pending Approval of Settlement.** Immediately after the Effective Date of this Settlement Agreement, Aqua will file a request with the TCEQ that the Administrative Proceeding be abated pending receipt by the Parties of the approvals required herein. If the Administrative Proceeding has been forwarded by the TCEQ to the State Office of Administrative Hearings ("SOAH") prior to the Effective Date, or prior to the TCEQ's receipt of Aqua's request for abatement, then both parties will file an agreed motion with the SOAH Administrative Law Judge to abate the proceeding pending receipt by the Parties of the approvals required herein.

**2.07 Abatement of Federal Lawsuit Pending Approval of Settlement.** Immediately after the Effective Date of this Settlement Agreement, Aqua and Elgin will file an agreed motion with the Court to abate the Federal Lawsuit relative to the claims pending between them, pending receipt of the USDA-RD, CoBank, and TCEQ approvals of the Settlement Agreement and of the service area transfer. While the claims by and between Aqua and Elgin in the Federal Lawsuit are abated and the Parties are working to obtain the approvals of the TCEQ, USDA-RD, and CoBank of this Settlement Agreement, each Party may continue furnishing water utility service to existing customers located in Transfer Area and any existing customers located within the land described in **Exhibit C**.

**2.08 Requesting USDA-RD Approval.** This Settlement Agreement and the release or transfer of any part of the Aqua Certificated Service Area between the Parties is invalid and void *ab initio* unless approved in advance by the USDA-RD in accordance with the Consolidated Farm and Rural Development Act of 1961. Aqua will submit this Settlement Agreement and the

service area transfer to the USDA-RD together with a request for approval. Aqua agrees to use its best efforts to obtain USDA-RD approval of this Settlement Agreement without undue delay. Aqua agrees to send copies of the approval request and USDA-RD response to Elgin.

2.09 **Requesting CoBank Approval.** This Settlement Agreement and the release or transfer of any part of the Aqua Certificated Service Area between the Parties is invalid and void *ab initio* unless approved in advance by CoBank in accordance with the terms of the loan agreement between Aqua and CoBank. Aqua will submit this Settlement Agreement and the service area transfer to CoBank together with a request for approval. Aqua agrees to use its best efforts to obtain CoBank approval of this Settlement Agreement without undue delay. Aqua agrees to send copies of the approval request and CoBank response to Elgin.

2.10 **State Lawsuit.** Aqua has sought to reverse/vacate/nullify the TCEQ Order of Decertification, all as more particularly described in the State Lawsuit. Elgin agrees that it will not take any action directly or indirectly to oppose or object to Aqua's efforts in the State Lawsuit or in any other proceeding (TCEQ, etc.) initiated by Aqua to vacate, reverse or nullify by other means, the Order of Decertification referenced in the State Lawsuit or otherwise cause the ACC Property to be a part of Aqua's CCN if Aqua deems such action necessary. For purposes of this Settlement Agreement, Aqua and Elgin agree and stipulate that the ACC Property is deemed to be outside of and beyond the retail water service boundaries of Elgin depicted in Exhibit C, regardless of the final resolution of the State Lawsuit or any other proceeding Aqua may initiate relative to the ACC Property, and regardless of whether the Order of Decertification is vacated/reversed/nullified, or not.

2.11 **Requesting TCEQ Approval.** The Parties acknowledge that this Settlement Agreement designates areas to be served and customers to be served by Aqua and Elgin, and therefore must be approved by the TCEQ. At the earliest opportunity following approval of the terms of this Settlement Agreement by USDA-RD and CoBank, the Parties will submit this Settlement Agreement to the TCEQ and request approval of same, and revisions to their respective CCN boundaries. The Parties shall use their best efforts to obtain TCEQ approval of this Settlement Agreement and/or CCN boundary revisions without undue delay.

2.12 **Agreed Judgment in Federal Lawsuit.** Within ten (10) days of the last to occur of: (i) the TCEQ issuing a final order approving this Settlement Agreement and issuing new and amended water CCNs to Elgin and Aqua respectively consistent with its terms; and (ii) the USDA-RD and CoBank giving notice of their approval of this Settlement Agreement and the transfer under Section 2.02; and (iii) satisfaction of all other conditions (which include certain conditions precedent) all as described in this Settlement Agreement, Aqua and Elgin will file a joint request for the Court to enter an Agreed Judgment in the Federal Lawsuit relative to the claims by and between Aqua and Elgin adopting the terms and conditions of this Settlement Agreement as the Court's own, dismissing all claims by and among Aqua and Elgin with prejudice, and ordering taxable court costs to be paid by the party incurring same. The Parties will also request the Court to retain jurisdiction relative to this Settlement Agreement and retain the power to resolve any dispute that may arise from or under this Settlement Agreement. It is expressly understood that Aqua's claims associated with all other defendants in the Federal

Lawsuit shall remain as Aqua elects. Aqua reserves the right under this Settlement Agreement to continue to pursue any claims or issues it may have relative to all remaining defendants (other than Elgin) in the Federal Lawsuit, including but not limited to litigating and obtaining judgment on issues associated with whether certain sections of the Texas Water Code are preempted by federal law.

2.13 **Mutual Release of Liability.** The Parties hereby forever release, acquit, and discharge each other and their respective officers, agents, attorneys, employees, successors, assigns, and representatives from any and all claims, demands, charges, costs of court, attorney's fees, causes of action, liability, or damages of whatever nature, on any legal theory, known or unknown, past, present, or future, that have been or could have been asserted in the Federal Lawsuit, other than claims related to the breach of any provisions of this Settlement Agreement or to enforce the terms of this Settlement Agreement.

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

### SECTION 3

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

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

3.02 This agreement may be recorded in the official or land records of Bastrop and Travis Counties, Texas.

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

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

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

3.06 This Settlement Agreement is to comply with the laws of the State of Texas and the laws of the United States. The Parties agree that this Settlement Agreement is governed by, and will be construed and enforced in accordance with Texas law and United States law where

applicable. Exclusive venue for any lawsuit related to this Settlement Agreement shall be in Bastrop County, Texas, except that:

(a) to the extent required or permitted by law, venue is in Travis County, Texas, for any lawsuit related to TCEQ enforcement of CCN holder obligations required by the water CCNs issued to Aqua or Elgin to effect the terms of this Settlement Agreement;

(b) to the extent required or permitted by law, venue shall be in the federal court for any lawsuit related to the adjudication of any claims under 7 U.S.C. §1926(b) or 42 U.S.C. § 1983; and

(c) any motions or actions filed in the Federal Lawsuit related to enforcement of the Agreed Judgment to be entered pursuant to Section 2.12 above.

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

3.08 This Settlement Agreement contains the entire agreement between the Parties and it supersedes any and all prior agreements, arrangements or understandings between the Parties on all subjects in any way related to the transactions or occurrences described in the Federal Lawsuit, the Administrative Proceeding or in this Settlement Agreement. No oral understandings, statements, promises or inducements contrary to or inconsistent with the terms of this Settlement Agreement exist. This Settlement Agreement is not subject to any oral modification, waiver, addition or deletion, and any modification, waiver, addition or deletion of any provision in this Settlement Agreement must be made in writing and signed by the Parties affected by the modification, waiver, addition or deletion.

3.09 For purposes of notice, the addresses, telephone numbers and fax numbers of the Parties are as follows:

**Aqua Water Supply Corporation**

Aqua WSC  
Attn: General Manager  
415 Old Bastrop Highway  
Drawer P  
Bastrop, Texas 78602  
Telephone: (512) 303-3943  
Fax: (512) 303-4881

**City of Elgin**

City of Elgin  
Attn: City Manager  
310 N. Main  
Elgin, Texas 78621-2623  
Telephone: (512) 285-6721  
Fax: (512) 285-5962

With copy to:

Robert H. Lloyd  
Lloyd Gosselink Rochelle &  
Townsend, P.C.  
816 Congress Avenue, Suite 1900  
Austin, Texas 78701  
Telephone: (512) 322-5800  
Fax: (512) 472-0532

With copy to:

Charles Crossfield  
Crossfield & Sheets, PC  
309 E. Main St.  
Round Rock, Texas 78664  
Telephone: (512) 255-8877

For purposes of notice under this Settlement Agreement, any Party that changes its address, email address or fax number must give the other Party at least seven (7) days' notice of the change.

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

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

3.12 If any provision of this Settlement Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Settlement Agreement, such provision(s) shall be fully severable.

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

3.14 This Settlement Agreement contains the entire agreement by and between the Parties with respect to the Litigation and any disputes between the Parties related to the subject matter of the Litigation.

3.15 Each of the Parties shall be responsible for paying its own legal costs and expenses including, without limitation, attorney's fees, expert witness fees, professional services fees, engineering costs, court costs and related expenses incurred in connection with the Litigation, with this Settlement Agreement, and with the transfer of the Transfer Area and of the twelve (12) inch water line, as described herein.

3.16 This Settlement Agreement must be approved by the Elgin City Council and by the Board of Directors of Aqua to become effective.

3.17 The attached Exhibits A through G are incorporated herein by reference for all purposes as if set forth verbatim.

3.18 **Default:** In the event that either party shall fail to comply with any of its obligations under this agreement, and shall fail to remedy its default/failure to comply within thirty (30) calendar days following a written notice of default served by the non-defaulting party upon the defaulting party that specifies with particularity what the default/failure to comply comprises, then in that event, the non-defaulting party shall be entitled to the following remedies which shall be *cumulative* and non-exclusive:

1. In the event the non-defaulting party engages legal counsel to enforce the provisions of this Settlement Agreement, the non-prevailing party in such enforcement action/proceeding shall pay all of the prevailing party's reasonable legal expense plus all reasonable litigation expense (including expert witness fees, costs, and the like).

3. At their sole and exclusive option the non-defaulting party shall be entitled to declare this Settlement Agreement terminated. Should termination be a chosen remedy, the non-defaulting party shall be entitled to:

(a) retain all physical assets received from the defaulting party prior to the default; *and*

(b) have any territory transferred by the non-defaulting party to the defaulting party under the terms of this Settlement Agreement returned to the non-defaulting party; *and*

(c) the non-defaulting party shall be entitled to be the sole and exclusive retail water service provider within the area returned as specified in (b) immediately above under applicable law; *and*

(d) fully pursue and enforce all state and federal law claims and remedies to which the non-defaulting party is entitled.

[Remainder of page purposefully left blank.]

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

DATE: 4-25-2012

CITY OF ELGIN, TEXAS

By: Mar Holm  
Mayor

ATTEST:

Shirley David  
City Secretary

[Seal]

DATE: 4-09-12

AQUA WATER SUPPLY CORPORATION

By: Cliff Leake  
President, Board of Directors

ATTEST:

William F. Lam  
Secretary

ADDENDUM TO SETTLEMENT AGREEMENT  
DESIGNATING RETAIL WATER SERVICE AREA BOUNDARIES  
AND SETTLING DISPUTES BETWEEN  
CITY OF ELGIN, TEXAS  
AND AQUA WATER SUPPLY CORPORATION

Aqua Water Supply Corporation ("Aqua") and the City of Elgin, Texas ("Elgin"), being the only Parties to the Settlement Agreement Designating Retail Water Service Area Boundaries and Settling Disputes Between City of Elgin, Texas, and Aqua Water Supply Corporation ("Settlement Agreement"), with an Effective Date of April 25, 2012, do hereby enter into this Addendum to the Settlement Agreement. The Parties agree as follows:

1. Aqua is a nonprofit rural water supply corporation organized under Texas Water Code, Chapter 67, for the purposes stated in Water Code § 67.002. Aqua possesses Certificate of Convenience and Necessity ("CCN") No. 10294 ("Aqua Certificate") issued by the Texas Commission on Environmental Quality ("TCEQ").

2. Elgin is a home rule municipal corporation organized and existing under the laws of the State of Texas and located wholly within Bastrop County, Texas. Elgin possesses water CCN No. 10311 ("Elgin Certificate") issued by the TCEQ, authorizing Elgin to provide such services within the geographical area contained within the CCN ("Elgin Certificated Service Area").

3. On or about April 25, 2012, Aqua and Elgin entered into the Settlement Agreement. The purpose of the Settlement Agreement was to settle litigation related to each Party's respective service territory. As part of that Settlement Agreement, the Parties agreed to transfer respective territories and facilities in full and final settlement of all outstanding claims related to said litigation. The Parties jointly submitted the Settlement Agreement to the TCEQ for approval by the Commission under the provisions of Texas Water Code §13.248, on June 24, 2012 ("§13.248 Submission").

4. Among the areas of dispute intended by the Parties to be resolved by the Settlement Agreement is the portion of Elgin's CCN that is a facilities plus 200' CCN, and which extends from the eastern edge of Elgin's service territory out to the City's water plant. The TCEQ's depiction of Elgin's facilities plus 200' CCN on Elgin's official CCN map (as depicted on Exhibit B to the Settlement Agreement) incorrectly locates the placement of the subject water line. The Parties intended to correct this error as part of their § 13.248 Submission to the TCEQ, as authorized by the Settlement Agreement, by submitting a revised CCN map (specifically Exhibit C to the Settlement Agreement) that correctly depicts the actual location of the line in question, and thus, Elgin's corresponding facilities plus 200' service territory area.

5. This Addendum to the Settlement Agreement memorializes and confirms that it is the Parties' intent that Elgin's revised CCN map, as depicted by Exhibit C to the Settlement Agreement, which depicts the actual location of the line in question, be Elgin's official CCN map on file with the TCEQ.

6. Further, it is the Parties' intent that the CCN boundaries depicted by **Exhibit C** to the Settlement Agreement, including the facilities plus 200' CCN, and thus, Elgin's corresponding facilities plus 200' service territory area, are intended to be, and are, the correct implementation of the Settlement Agreement, and part of the full and final settlement of all claims related to the outstanding litigation.

7. It is also the Parties' intent that Elgin releases to Aqua the CCN territory encompassed within the location of Elgin's facilities plus 200' CCN as depicted on **Exhibit B** to the Settlement Agreement, and that such released territory is intended to be, and is, transferred from Elgin to Aqua as part of the full and final settlement of all claims related to the outstanding litigation.

8. It is also the Parties' intent that no other service territory was intended to be, or was, transferred as part of the Settlement Agreement, other than as stated herein and as shown on **Exhibit C** to the Settlement Agreement. For purposes of clarity, **Exhibit C** to the Settlement Agreement is also attached to this Addendum.

9. The purpose of this Addendum to the Settlement Agreement is not to alter the terms of the Settlement Agreement in any way, or to transfer any more or any less service territory from Aqua to Elgin beyond what was contemplated by the Parties in the original Settlement Agreement. Rather, the sole purpose of this Addendum to the Settlement Agreement is to clarify the Parties' intent with respect to the area intended to be transferred and the correction of the location of Elgin's facilities plus 200' CCN, as depicted in **Exhibit C** to the Settlement Agreement.

10. Further, the purpose of this Addendum to the Settlement Agreement is to clarify that Aqua has consented to Elgin serving the territory depicted in **Exhibit C**, including the location of the facilities plus 200' CCN, and that it shall not be considered a breach of the Settlement Agreement if Elgin serves retail customers located within its CCN, including the facilities plus 200' portion of the CCN that is depicted in **Exhibit C** to the Settlement Agreement.

11. The Parties shall submit this Addendum to the Settlement Agreement to the TCEQ to address the Notice of Deficiency issued by the TCEQ on July 16, 2012, related to the §13.248 Submission.

12. The Parties have each authorized their respective representatives to execute this Addendum on behalf of the respective Party.

DATE: 15 August 12

CITY OF ELGIN, TEXAS

By: Mayor Marc Helm

ATTEST:

Shirley Garvel  
City Secretary

[SEAL]



DATE: AUGUST 16, 2012

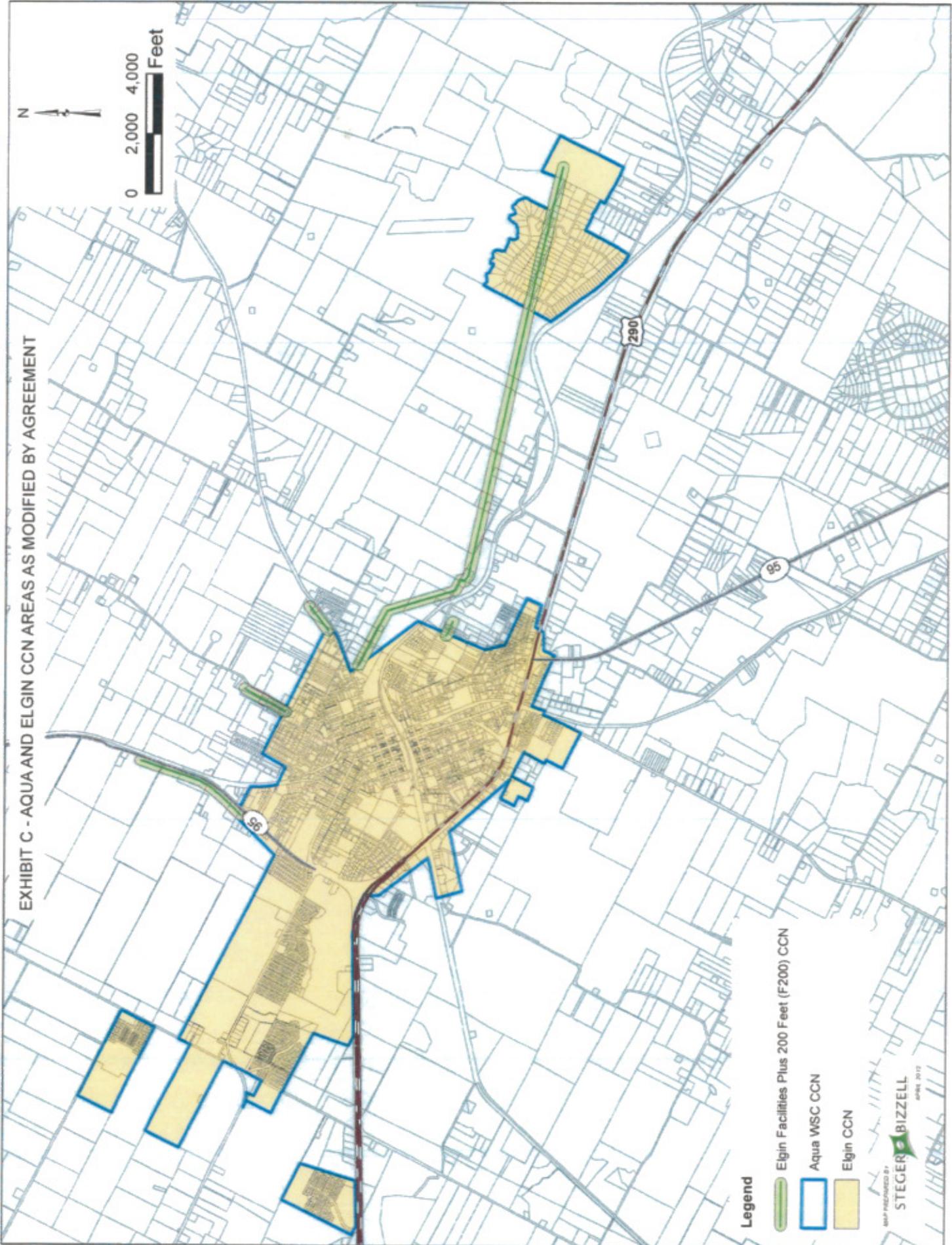
AQUA WATER SUPPLY CORPORATION

By: Earl Steinbach  
Vice-President, Board of Directors

ATTEST:

William F. Jan  
Secretary

EXHIBIT C - AQUA AND ELGIN CCN AREAS AS MODIFIED BY AGREEMENT



- Legend**
- Elgin Facilities Plus 200 Feet (F200) CCN
  - Aqua WSC CCN
  - Elgin CCN



# Texas Commission On Environmental Quality

**By These Presents Be It Known To All That**  
**Aqua Water Supply Corporation**

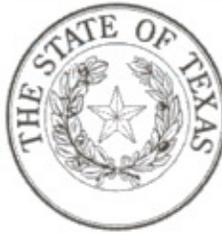
having duly applied for certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service by this Applicant, is entitled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

## **Certificate of Convenience and Necessity No. 10294**

to provide continuous and adequate water utility service to that service area or those service areas in Bastrop, Caldwell, Lee and Travis Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Application No. 37370-C are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the Aqua Water Supply Corporation to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this \_\_\_\_\_

\_\_\_\_\_  
For the Commission



# Texas Commission On Environmental Quality

**By These Presents Be It Known To All That**

## **City of Elgin**

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

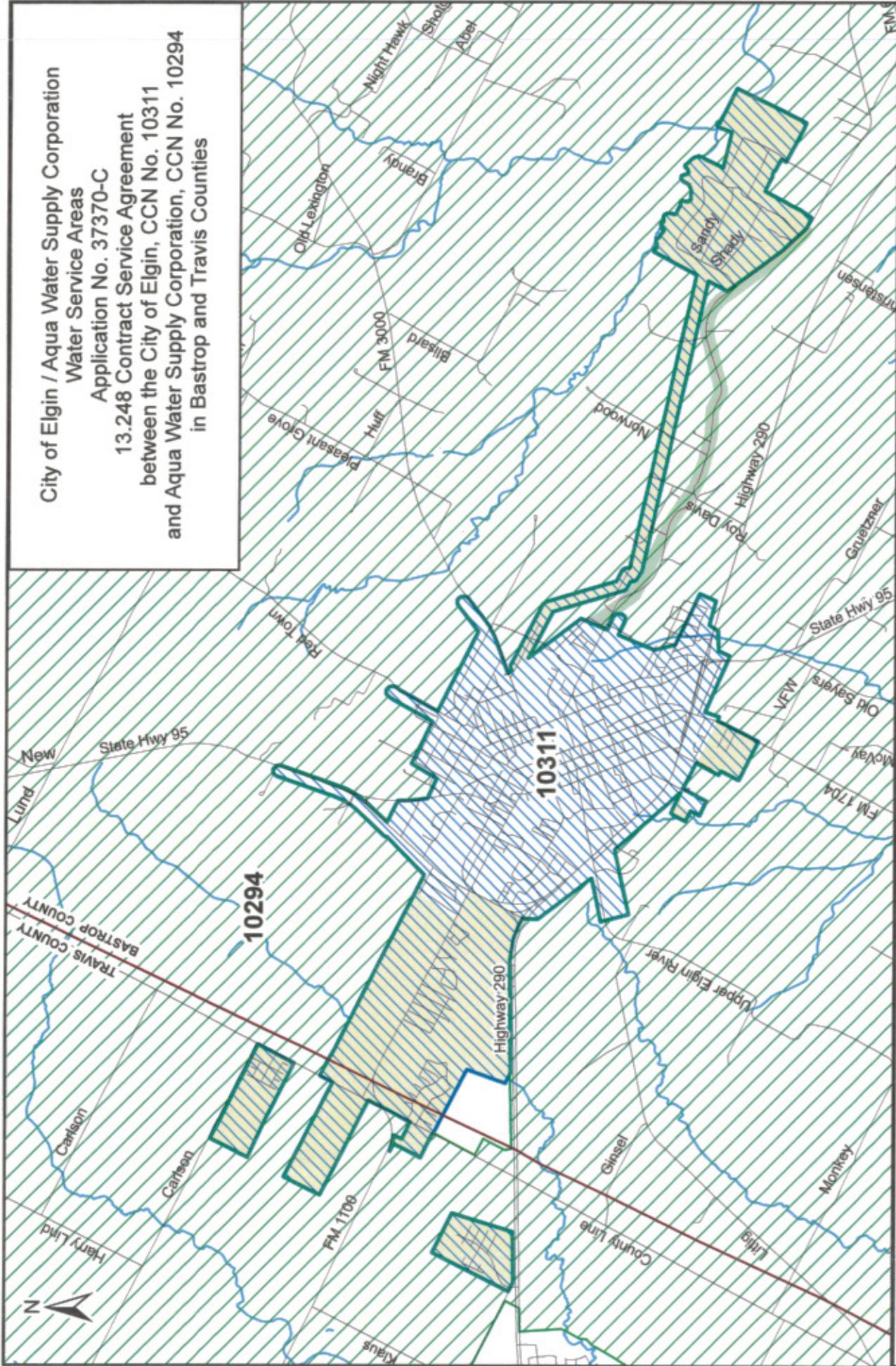
### **Certificate of Convenience and Necessity No. 10311**

to provide continuous and adequate water utility service to that service area or those service areas in Bastrop County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Application No. 37370-C are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the City of Elgin to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this \_\_\_\_\_

\_\_\_\_\_  
For the Commission

City of Elgin / Aqua Water Supply Corporation  
 Water Service Areas  
 Application No. 37370-C  
 13.248 Contract Service Agreement  
 between the City of Elgin, CCN No. 10311  
 and Aqua Water Supply Corporation, CCN No. 10294  
 in Bastrop and Travis Counties



**Water CCN Service Areas**

- 10311 - City of Elgin
- 10294 - Aqua WSC

**Agreement Areas**

- Transferred to City of Elgin
- Transferred to Aqua WSC

**COUNTY LINES**



Map by: Suzanne Jester  
 Date Created: January 16, 2013  
 Project Path: c:\gis\projects\applications\37370-c.mxd

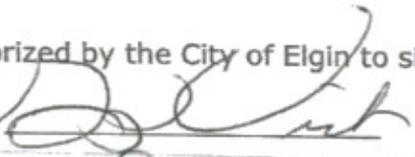
**CONSENT FORM**

Applicant's Name: City of Elgin, TWC 13.248  
Application Nos.: 37370-C

- I concur with the map and certificate transmitted by letter dated February 21, 2013.
- I do not concur with the map and certificate transmitted by letter dated February 21, 2013.

I understand that I have 14 days from the date of this letter to provide my response.

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

Signature: 

Printed Name: Greg Vick

Relationship to Applicant: City Manager

Date signed: 3-7-2013

Mail, fax or email to:  
Elizabeth Flores  
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  
elizabeth.flores@tceq.texas.gov

**CONSENT FORM**

Applicant's Name: Aqua WSC, TWC 13.248  
Application Nos.: 37370-C

- I concur with the map and certificate transmitted by letter dated February 21, 2013.
- I do not concur with map and certificate transmitted by letter dated February 21, 2013.

I understand that I have 14 days from the date of this letter to provide my response.

I am authorized by Aqua WSC to sign this form.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Relationship to Applicant: \_\_\_\_\_

Date signed: \_\_\_\_\_

Mail, fax or email to:  
Elizabeth Flores  
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  
elizabeth.flores@tceq.texas.gov

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 29, 2013

Aqua WSC  
Attn: General Manager  
415 Old Bastrop Highway  
Drawer P  
Bastrop, Texas 78602  
Ph: (512) 303-3943  
F: (512) 303-4881

City of Elgin  
Attn: City Manager  
310 N. Main  
Elgin, Texas 78621-2623  
Ph: (512) 285-6721  
F: (512) 285-5962

Re: TCEQ Docket No. 2012-2394-UCR; Consideration of a request for a Commission order approving a contract designating service areas between the City of Elgin, Certificate of Convenience and Necessity (CCN) No. 10311, and the Aqua WSC, CCN No. 10294.

Dear Parties:

This letter is to inform you that the above-referenced application has been set on the Agenda for consideration by the Texas Commission on Environmental Quality (TCEQ). This Agenda will occur on April 10, 2013, beginning at 9:30 a.m. in Building E, Room 201S, 12100 Park 35 Circle, Austin, Texas. Included with this letter are the Agenda backup materials to be considered by the Commission. **At least one of you will need to attend the Agenda to explain the agreement and to answer any questions the Commissioners may have.**

Persons with disabilities who plan to attend this hearing and who need special accommodations at the Agenda should call the TCEQ Office of Public Assistance at 1-800-687-4040 or 1-800-RELAY-TX (TDD) at least one week prior to the hearing. If you have any questions about this matter, you may contact Elizabeth Flores from the Water Supply Division at 1-512-239-6846 or me at 1-512-239-6743.

Sincerely,

A handwritten signature in black ink, appearing to read "Christiaan Siano", written over a horizontal dashed line.

Christiaan Siano  
Staff Attorney, Environmental Law Division

Cc: Elizabeth Flores, Water Supply Division MC-153  
Mail list

MAIL LIST

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*Attorney for Aqua Water Supply Corporation*

Charles Crossfield  
Crossfield & Sheets, PC  
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Round Rock, TX 78664  
Tel: (512) 255-8877  
*Attorney for the City of Elgin*