

AGREEMENT DESIGNATING RETAIL WATER AND SEWER SERVICE TERRITORY

THIS AGREEMENT DESIGNATING RETAIL WATER AND SEWER SERVICE TERRITORY (“Agreement”) is made and executed by and between **Aqua Texas, Inc.** (“Aqua”), an investor owned utility, and the **City of Tomball, Texas** (the “City”), a home rule municipality organized and existing under the laws of the State of Texas, to be effective as of the date this Agreement is fully executed (“Effective Date”). Aqua and the City may be individually referred to herein as a “Party” or collectively referred to herein as the “Parties.”

I. RECITALS

WHEREAS, Aqua is the holder of water and sewer Certificate of Convenience and Necessity (“CCN”) Nos. 13203 and 21065 (“Aqua CCNs”), a portion of the boundaries of which are within Harris County, Texas;

WHEREAS, the City is the holder water and sewer CCN Nos. 13257 and 21103 (the “City CCNs”), the boundaries of which are within Harris County, Texas;

WHEREAS, Texas Water Code (“TWC”) § 13.248 authorizes contracts between retail public utilities designating areas and customers to be served by those retail public utilities, when approved by the Public Utility Commission of Texas (“PUC”);

WHEREAS, Aqua and the City are “retail public utilities” as defined by TWC § 13.002(19), and their water and sewer CCN service area boundaries are adjacent to each other in certain locations in Harris County, Texas;

WHEREAS, FLS Development, LLC (“Developer”) owns an approximately 31.99-acre tract of land in Harris County, Texas (the “Property”), more specifically depicted in the maps attached hereto as Exhibit A;

WHEREAS, the Property is located within the service areas boundaries of Aqua’s CCNs;

WHEREAS, Developer intends that the City will be the retail water and sewer service provider to future customers located within the Property under the City CCNs;

WHEREAS, the Parties have reached a mutual agreement that the portion of the Aqua CCNs service areas which overlap with the Property will be transferred to the City CCNs service areas in accordance with the terms of this Agreement;

WHEREAS, by apportioning service areas, the Parties will enhance the planning and development of capital improvement programs, and water and sewer services to be provided within the respective CCN service areas;

WHEREAS, this Agreement will accomplish legitimate public purposes of the Parties and will permit more dependable water and sewer service planning that will benefit the public health,

safety and welfare of their respective present and future customers within each Parties' service areas.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained in this Agreement, including the recitals set forth above, and other good and valuable consideration, the receipt of which is hereby acknowledged, by their representatives affixing signatures below, Aqua and the City agree as follows:

II. TERMS OF AGREEMENT

2.1 Purpose of Agreement. The Parties intend for this Agreement to be a "contract" designating areas and customers to be served by the Parties in accordance with Texas Water Code Section 13.248, as more specifically described in Section 2.2 of this Agreement with the intent of the Parties to fully remove the Property from the Aqua CCNs service areas and transfer to the City CCNs service areas.

2.2 Transfer to the City. Aqua transfers and conveys to the City, and the City accepts from Aqua, the portion of the Aqua CCNs which overlap the Property ("Transfer Area"); and the Parties agree to the modification of each of the CCN service area boundaries of their respective CCNs, accordingly. The City shall be the sole retail water and sewer service provider to the Transfer Area. The Parties further agree to the modifications of the boundaries of their respective water and sewer CCNs accordingly. Aqua and the City agree that on and after the date of approval by the Public Utility Commission of the Section 13.248 Petition (as defined in Section 2.4), the City shall have the sole right and obligation to provide retail water and sewer service within the Transfer Area, and Aqua will have no further obligation or right to provide retail water or sewer service to any customers in the Transfer Area.

2.3 No Customers and No Facilities in the Transfer Area. As of the Effective Date of this Agreement, Aqua serves no customer connections in the Transfer Area and owns no facilities in the Transfer Area. Therefore, no customers or facilities will be transferred from Aqua to the City by this Agreement or the Section 13.248 Petition.

2.4 Amendment of CCNs. Within sixty (60) days after the Effective Date of this Agreement, a joint petition by Aqua and the City shall be prepared, filed, and prosecuted with the Public Utility Commission of Texas ("PUC") pursuant to Texas Water Code § 13.248 requesting that the PUC designate areas and customers to be served consistent with this Agreement and incorporate this Agreement into the respective CCNs of the Parties ("Section 13.248 Petition"). The City authorizes Developer to prepare, file, and prosecute the Section 13.248 Petition on the City's behalf, with approval by Aqua. PUC approval of the CCN transfer contemplated herein shall be obtained in an expeditious manner, and Aqua and the City will reasonably cooperate in a timely manner with Developer by providing any existing information in Aqua of the City's possession needed to complete, file, or prosecute the Section 13.248 Petition. Notwithstanding the foregoing, Aqua and the City shall not be required to incur any costs or expenses to create new information needed by Developer for the Section 13.248 Petition but agree to request that their consultants prepare any such information so long as Developer pays all costs and expenses associated therewith. The Parties agree that the Section 13.248 Petition shall be limited to the Transfer Area only and shall not seek to transfer any other service territory into the City's CCNs. Developer

agrees to furnish a copy of the Section 13.248 Petition to Aqua and the City for approval prior to filing the application with PUC. If the PUC denies the Section 13.248 Petition in whole or in part, or is unwilling to process the Section 13.248 Petition, the Parties agree to implement an alternative approach in a reasonable amount of time that is substantially similar to and accomplishes the purposes of this Agreement.

2.5 Effective Date. This Agreement is effective as of the date this Agreement is fully executed by the Parties and this date is referred to herein as the “Effective Date.”

2.6 Interim Service. Aqua agrees that in its sole discretion and at its sole risk, the City may make available or furnish retail water and sewer service to the Property after the Effective Date and prior to PUC approval of the Section 13.248 Petition. Prior to the PUC rendering a final decision on the Section 13.248 Petition, Aqua shall not furnish or make available retail water and sewer service to existing or new customers within the Property except as otherwise required by PUC or by applicable law.

2.7 Termination. Unless the Parties agree in writing to extend this Agreement, this Agreement shall terminate upon the date of a final order by PUC approving the Section 13.248 Petition.

III. MISCELLANEOUS

3.1 Section 13.248. This Agreement shall be construed and interpreted in accordance with Section 13.248 of the Texas Water Code.

3.2 Applicable Texas Law. This Agreement shall be governed by and construed and enforced under the laws of the State of Texas.

3.3 Performance. The obligations and undertakings of each of the Parties to this Agreement shall be performed in Harris County, Texas. Except for matters within the jurisdiction of the PUC (or its successor), the Parties expressly agree that all judicial proceedings to enforce any of the provisions of this Agreement shall take place in Harris County, Texas.

3.4 Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the subject matter of the Agreement, with the exception of a separate compensation agreement to be executed between Aqua and Developer by which Developer will compensate Aqua for the transfer of a portion of its CCN service areas to the City. No Agreement, statement, or promise made by any Party or to any employee, agent, or officer of any Party, which is not contained in this Agreement, except for the aforementioned compensation agreement, shall be valid, binding, or of any force or effect. Any amendments to this Agreement must be in writing and signed by the Parties.

3.5 Successors and Assigns. This Agreement shall be binding upon the Parties hereto and their respective successors, heirs, representatives, and assigns. This Agreement shall not be assigned by any Party without the prior written consent of the other Parties

3.6 Agreement Drafted Equally. This Agreement shall be deemed drafted equally by the Parties hereto. The language of all parts of this Agreement shall be construed as a whole according

to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply.

3.7 Severability. Should any provision of this Agreement be declared void by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect.

3.8 Attorneys' Fees. In the event of any suit or other adjudication between the Parties to enforce any claim arising out of this Agreement, or to interpret the terms of this Agreement, the prevailing Party shall be entitled to recover its fees, damages, costs, attorneys' fees, and such other and further relief from the non-prevailing Party, general or special, at law or in equity, to which the prevailing Party may show itself justly entitled.

3.9 Covenant of Authority. The respective signatories to this Agreement covenant that they are fully authorized to sign this Agreement on behalf of their respective Party.

3.10 Notice. Any notice required or permitted hereunder shall be in writing and shall be deemed to be delivered: (1) on the date received if delivered by hand to the address shown hereinafter for Aqua or the City, as appropriate; or (2) such notice shall, if deposited in the mail, be deemed to be delivered, whether actually received or not, on the first business day after having been deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to Aqua, FLS Development or the City, as appropriate, at the address shown hereinafter. The addresses for Aqua or the City for all purposes under this Agreement shall be the following:

If to Aqua:
Aqua Texas, Inc.
ATTN: Daniel Ramirez-Cisneros, President
1106 Clayton Lane, Suite 400W
Austin, Texas 78723

If to the City:
City of Tomball
ATTN: City Manager
401 Market Street
Tomball, Texas 77375

If to FLS Development:
FLS Development, LLC
ATTN: Shawn Speer, Shona Speer
17119 Lakeway Drive
Tomball, Texas 77375

The Parties hereto shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by at least five (5) days' written notice to the other party.

3.11 Multiple Originals. This Agreement may be executed in any 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.

3.12 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.

3.13 Exhibits. All exhibits attached to this Agreement are hereby incorporated in this Agreement as if the same were set forth in the full body of this Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties on the date appearing by each Parties signature.

AQUA TEXAS, INC.

BY: _____

NAME: Daniel Ramirez-Cisneros

TITLE: President

Date: _____

CITY OF TOMBALL

BY: _____

NAME: _____

TITLE: _____

Date: _____

EXHIBIT “A”

Transfer Area