

RESOLUTION NO. R-2024-15

AUTHORIZING EXECUTION OF A MASTER AGREEMENT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, AUTHORIZING EXECUTION OF A MASTER AGREEMENT BETWEEN AQUA WATER SUPPLY CORPORATION AND THE CITY OF BASTROP REGARDING CONSENT TO TRANSFER PORTIONS OF ITS CERTIFICATED RETAIL WATER SERVICE AREA TO THE CITY; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Bastrop holds retail water Certificate of Convenience and Necessity ("CCN") No. 11198 regulated by the Public Utility Commission of Texas ("PUC"), or its predecessors or successors in interest ("Bastrop Water CCN"); and

WHEREAS, Bastrop holds retail wastewater Certificate of Convenience and Necessity ("CCN") No. 20466 regulated by the Public Utility Commission of Texas ("PUC"), or its predecessors or successors in interest ("Bastrop Wastewater CCN"); and

WHEREAS, Aqua holds retail water Certificate of Convenience and Necessity ("CCN") No. 10294 regulated by the PUC, or its predecessors or successors in interest ("Aqua Water CCN") which is adjacent to Bastrop Water CCN; and

WHEREAS, a number of new subdivisions are currently being developed and/or are planned to be developed inside the Aqua Water CCN and the Bastrop Wastewater CCN and there could be specific situations where certain subdivisions may be better served by Bastrop in regards to water service based on existing infrastructure currently available to meet all standards for residential and commercial development; and

WHEREAS, some or all of the land under consideration, and subject to potential conveyance is shown in Exhibit "A" to the Master Agreement, located within the Aqua Water CCN and the Bastrop Wastewater CCN ("Subject Territory"); and

WHEREAS, Chapter 13 of the Texas Water Code and the PUC rules allow for the transfer or assignment of CCN service areas from a water supply corporation to a municipally owned utility; and

WHEREAS, it is found to be in the best interests, both operationally and financially, of Aqua and Bastrop to transfer portions of the Aqua Water CCN located within the Subject Territory to Bastrop from time to time, under terms and

conditions stated in this Agreement as well as Amendments to this Agreement that describe the specific portions, certain tracts or parcels; and

WHEREAS, Bastrop and Aqua agree that a determination will be made by Bastrop that Bastrop has sufficient water supply available to provide water service to a specific portion of the Aqua Water CCN located within the Subject Territory and Bastrop will provide written notification of Bastrop's interest in serving the specific portion along with a written determination of Bastrop's ability to serve; and

WHEREAS, after receiving Bastrop's written notification of Bastrop's interest in serving a specific portion of the Aqua Water CCN within the Subject Territory, Aqua will determine if Aqua will agree to transfer that specific portion of the Aqua Water CCN to Bastrop in accordance with the terms and conditions provided in this Agreement; and

WHEREAS, each amendment to this Agreement shall address any issues unique to the specific portion of the Aqua Water CCN subject to transfer to Bastrop, including, but not limited to, issues related to any stranded assets for Aqua, easement acquisition, and existing customers located within the specific portion to be transferred.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, THAT:

Section 1. All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council of the City of Bastrop, Texas, and are hereby approved and incorporated into the body of this Resolution as if copied in their entirety.

Section 2. The City Council authorizes the execution of the Master Agreement (attached and incorporated herein as Exhibit "A").

Section 1: All orders, ordinances, and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 5. Should any portion or part of this Resolution be held for any reason invalid or unenforceable by a court of competent jurisdiction, the same shall not be construed to affect any other valid portion hereof, but all valid portions hereof shall remain in full force and effect.

Section 6. This Resolution shall be in full force and effect from and after its passage.

Section 7. The City Council hereby finds and declares that written notice of the date, hour, place, and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Texas Open Meetings Act, Chapter 551, Texas Government Code, as amended.

RESOLVED this, the 23rd day of January 2024.

APPROVED:



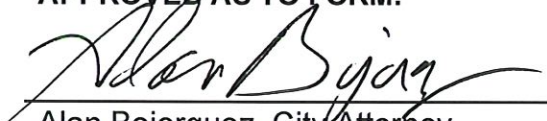
Lyle Nelson, Mayor

ATTEST:



Ann Franklin, City Secretary

APPROVED AS TO FORM:



Alan Bojorquez, City Attorney



**CITY OF
BASTROP
WASTEWATER CCN**

**CITY OF
BASTROP
WATER CCN**

**AQUA WSC
WATER CCN**

**MASTER AGREEMENT FOR TRANSFER OF CERTAIN RETAIL
WATER CCN SERVICE AREA FROM AQUA WSC TO THE CITY OF
BASTROP**

BETWEEN

CITY OF BASTROP, TEXAS

AND

AQUA WATER SUPPLY CORPORATION.

This Master Agreement (“Agreement”) is made and entered into by and between Aqua Water Supply Corporation (hereinafter called “Aqua”), a non-profit water supply corporation in Bastrop, Caldwell, Williamson, Lee, Fayette, and Travis Counties, Texas, and the City of Bastrop, Texas (hereinafter called “Bastrop”), a home rule city, body politic of the State of Texas, and retail public utility. The Agreement establishes basic terms and conditions under which Aqua may consent to transfer portions of its certificated retail water service area to Bastrop.

RECITALS

WHEREAS, Bastrop holds retail water Certificate of Convenience and Necessity (“CCN”) No. 11198 regulated by the Public Utility Commission of Texas (“PUC”), or its predecessors or successors in interest (“Bastrop Water CCN”); and

WHEREAS, Bastrop holds retail wastewater Certificate of Convenience and Necessity (“CCN”) No. 20466 regulated by the Public Utility Commission of Texas (“PUC”), or its predecessors or successors in interest (“Bastrop Wastewater CCN”); and

WHEREAS, Aqua holds retail water Certificate of Convenience and Necessity (“CCN”) No. 10294 regulated by the PUC, or its predecessors or successors in interest (“Aqua Water CCN”) which is adjacent to Bastrop Water CCN; and

WHEREAS, a number of new subdivisions are currently being developed and/or are planned to be developed inside the Aqua Water CCN and the Bastrop Wastewater CCN and there could be specific situations where certain subdivisions may be better served by Bastrop in regards to water service based on existing infrastructure currently available to meet all standards for residential and commercial development; and

WHEREAS, some or all of the land under consideration, and subject to potential conveyance is shown in **EXHIBIT A**, located within the Aqua Water CCN and the Bastrop Wastewater CCN (“Subject Territory”): and

WHEREAS, Chapter 13 of the Texas Water Code and the PUC rules allow for the transfer or assignment of CCN service areas from a water supply corporation to a municipally owned utility; and

WHEREAS, it is found to be in the best interests, both operationally and financially, of Aqua and Bastrop to transfer portions of the Aqua Water CCN located within the Subject Territory to Bastrop from time to time, under terms and conditions stated in this Agreement as well as Amendments to this Agreement that describe the specific portions, certain tracts or parcels; and

WHEREAS, Bastrop and Aqua agree that a determination will be made by Bastrop that Bastrop has sufficient water supply available to provide water service to a specific portion of the Aqua Water CCN located within the Subject Territory and Bastrop will provide written notification of Bastrop's interest in serving the specific portion along with a written determination of Bastrop's ability to serve; and

WHEREAS, after receiving Bastrop's written notification of Bastrop's interest in serving a specific portion of the Aqua Water CCN within the Subject Territory, Aqua will determine if Aqua will agree to transfer that specific portion of the Aqua Water CCN to Bastrop in accordance with the terms and conditions provided in this Agreement; and

WHEREAS, each amendment to this Agreement shall address any issues unique to the specific portion of the Aqua Water CCN subject to transfer to Bastrop, including, but not limited to, issues related to any stranded assets for Aqua, easement acquisition, and existing customers located within the specific portion to be transferred.

NOW THEREFORE, in consideration of the foregoing and the mutual agreements hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of

which is hereby acknowledged, Aqua agrees to transfer portions of its CCN to Bastrop on the terms and conditions and for the consideration set forth herein.

**ARTICLE I.
DEFINITIONS AND CONSTRUCTION OF AGREEMENT**

1.1 **Defined Terms.** Capitalized terms used in this Agreement and in any exhibit, attachment, or amendment that is made a part of this Agreement have the meanings set forth in this Agreement, including in this Section 1.1. The following terms shall have the meanings set forth below:

(a) “Agreement” means this contract or agreement between the Parties, otherwise known as the Master Agreement For Transfer of Certain Retail Water CCN Service Area from Aqua WSC to the City of Bastrop and any written amendments thereto.

(b) “Business Day” means any Day other than Saturdays, Sundays, and days on which banks in the Bastrop area are required or permitted to be closed for all or part of their customary hours of operation.

(c) “CCN” means a retail water certificate of convenience and necessity granted by the Public Utility Commission or its predecessor or successor agency under the provisions of the Texas Water Code.

(d) “Claim” means any claim, action, cause of action, suit or proceeding before any Governmental Authority or arbitral tribunal.

(e) “Concept Plan” means a generalized plan that indicates the boundaries of a tract or tracts under common ownership, general lot or parcel layout, community use or public areas, and street alignments in accordance with the City of Bastrop’s Subdivision Code.

(f) “Effective Date” means the date on which this Agreement becomes effective.

(g) “Event of Default” means an event by which a Party is in default of this Agreement.

(h) “Fiscal Year” means Bastrop’s fiscal year, which extends from October 1 through September 31 of each year.

(i) “Governmental Authority” means and includes any federal, state, local or other governmental body, including but not limited to the Lost Pines Groundwater Conservation District, any governmental or quasi-governmental, regulatory or administrative agency, commission, body, or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or other governmental tribunal.

(j) “Impact Fees” means those fees charged to developers per LUE by Bastrop for connecting to the Bastrop’s utility system.

(k) “Landowner,” “owner of a tract of land,” and “owners of each tract of land” include multiple owners of a single deeded tract of land as shown on the appraisal roll of the appraisal district established for each county in which the property is located.

(l) “Loss(es)” means and includes any loss, cost, expense, claim, demand, damage, fine, liability, obligation or penalty (including court costs and reasonable attorney’s fees and expenses).

(m) “Municipality” means cities existing, created, or organized under the general, home-rule, or special laws of this state.

(n) “Municipally owned utility” means any utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

(o) “Municipal utility district” means a political subdivision of this state operating under Chapter 49 and 54 of the Water Code.

(p) “Party” refers to either Aqua and its respective successors or assigns or Bastrop and its respective successors or assigns, and “Parties” refers to Aqua and Bastrop and their respective successors or assigns.

(q) “Payment Due Date” means a date not to exceed 30 days from the date Bastrop receives payment from a developer for the City’s water impact fee.

(r) “Permit” means any permit, order, license, declaration, consent, waiver, approval, registration, or filing with or other requirement of any Governmental Authority.

(s) “Platting”

(i) *Preliminary Plat* means a map of a proposed land subdivision in accordance with the City of Bastrop’s Subdivision Code that shows the character and proposed layout of the property in sufficient detail to indicate the suitability of the proposed subdivision of land. A preliminary plat is required for all subdivisions of land that consist of five (5) or more lots and the parent tract and/or the proposed lots are less than ten (10) acres in size.

(ii) *Re-plat* means a map of a formal land subdivision prepared in a form suitable for filing of record showing the alteration of any part or all of any lot, block or tract of a previously platted subdivision in accordance with the City of Bastrop’s Subdivision Code.

(iii) *Short Form Plat* means a map of a proposed land subdivision in accordance with the City of Bastrop’s Subdivision Code creating four (4) or fewer lots, with said lot(s) fronting on an existing street, and not requiring the creation of any new streets, public improvements, or the extension of infrastructure facilities.

(t) “PUC” or “Commission” means the Public Utility Commission of Texas, and its successor agencies.

(u) “Regulatory authority” means, in accordance with the context in which it is found, the commission, the utility commission, or the governing body of a municipality.

(v) “Requirement of Law” means any statute, ordinance, code, rule or regulation, tariff or policy, and judicial or administrative order, request or judgment, any common law doctrine or

theory, any provision or condition of any Permit, or any other binding determination of any Governmental Authority.

(w) “Retail public utility” means any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.

(x) “Subject Territory” means the area located within both the Aqua Water CCN and the Bastrop Wastewater CCN.

(y) “Transfer Fee” or “Transfer Fees” means the price to be paid by Bastrop to Aqua for the transfer of a portion of the Aqua Water CCN under this Agreement, which Transfer Fee shall be based on a per acre charge in an amount defined and in the manner specified in Article III of this Agreement.

1.2 **Rules of Construction.**

- (a) Unless the context otherwise clearly requires:
- (i) references to the plural include the singular, and references to the singular include the plural;
 - (ii) references to the masculine, feminine or neuter include all such forms;
 - (iii) the words “include,” “includes,” and “including” do not limit the preceding terms or words and shall be deemed to be followed by the words “without limitation”;
 - (iv) the terms “hereof,” “herein,” “hereunder,” “hereto,” and similar terms refer to the entire agreement in which they appear and not to any particular provision of such agreement; and
 - (v) “or” is used in the inclusive sense of “and/or.”

(b) Unless otherwise specified, any reference to any document, instrument or agreement:

(i) includes and incorporates all exhibits, schedules and other attachments thereto;

(ii) includes and incorporates all documents, instruments or agreements issued or executed in connection therewith or in replacement thereof; and

(iii) means such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified or supplemented from time to time in accordance with its terms and in effect at any given time.

(c) Unless otherwise specified, all references to articles, sections, schedules and exhibits are references to the Articles, Sections, Schedules and Exhibits of this Agreement.

1.3 **Recitals.** All recitals are incorporated and made a part of this Agreement.

1.4 **Captions.** All titles of sections of this Agreement have been inserted for reference only and shall in no way affect the interpretation of this Agreement.

ARTICLE II. PROVISIONS FOR TRANSFER OF CCN

2.1 **Agreement to Transfer Specific Portions of the Aqua's Water CCN to Bastrop.**

(a) Subject to terms and conditions set forth in this Agreement and any amendments thereto, Aqua agrees to transfer to Bastrop certain portions of the Aqua Water CCN located within the Subject Territory as defined in Section 2.2 and identified in the amendments to this Agreement, under conditions agreed to by both parties.

(b) Transfer of said portions of the Aqua Water CCN will only be made in strict accordance with provisions of this Agreement as well as all specific provisions contained in any amendments to this Agreement.

2.2 Definition of Geographical Area Covered Under this Agreement. – The map shown in EXHIBIT A defines the boundaries of the geographical area covered under this Agreement. The geographical area covered by this Agreement is defined as the Subject Territory.

2.3 Procedures for Initiating Amendment to the Agreement – Within 30 days after a developer submits to Bastrop a Concept Plan, Preliminary Plat, Short Form Plat, or Re-Plat that is intended for use in the development of a tract (or tracts) of land within the Subject Territory, Bastrop may submit a request to Aqua seeking the release of the portion of the Aqua Water CCN within the area identified in the Concept Plan, Preliminary Plat, Short Form Plat, or Re-Plat to Bastrop under the terms and conditions defined in this Agreement. Said request will be in the form of an amendment to this Agreement approved by the City Council of Bastrop and stipulates the location and amount of acreage requested as well as additional terms or conditions of the transfer if needed. A *pro forma* copy of the requisite amendment is shown in EXHIBIT B.

2.4 Addressing Unique Circumstances in Each Amendment. Each amendment to this Agreement shall be subject to negotiation and shall address any issues unique to the specific portion of the Aqua Water CCN subject to transfer to Bastrop, including, but not limited to, issues related to any stranded assets for Aqua, easement acquisition, and existing customers located within the specific portion to be transferred, and any payments due from Bastrop to Aqua over and above the payments made by Bastrop to Aqua pursuant to Section 3.1 of this Agreement.

2.5 Review and Agreement to Requests for Release of CCN - Upon receipt of the request by Bastrop for release of a specific portion of the Aqua Water CCN, the Aqua staff shall seek approval

by the Aqua Board of Directors (“Aqua Board”) of the amendment approved by the City Council of Bastrop that defines the boundaries of the specific portion of the Aqua Water CCN to be transferred. Approval by the Aqua Board will not be unreasonably withheld.

2.6 Application at PUC to Transfer Specific Portion of CCN – Upon execution of this Agreement, Bastrop shall address all regulatory matters at the PUC related to this Agreement, including preparing, filing, and pursuing approval of any applications to transfer water certification for the Property from Aqua WSC’s retail water CCN service area as demonstrated in Exhibit A to Bastrop’s retail water CCN, and Aqua WSC shall consent to the transfer of the Property and cooperate with Bastrop in connection therewith. Bastrop shall pay the full costs for all regulatory matters related to this Agreement, including the preparation, filing, and pursuing the approval of the application to transfer the service territory at the PUC, including any costs incurred by Aqua as part of the application process. Aqua agrees that the transfer may be completed by service territory agreement entered into pursuant to Section 13.248 of the Texas Water Code, and Aqua agrees to execute any such agreement upon request by Bastrop provided the service territory agreement is limited to the Property only.

ARTICLE III. COMPENSATION AND PAYMENT

3.1 Compensation. The initial Transfer Fee used to calculate total compensation paid to Aqua by Bastrop for the transfer of the specified portions of the Aqua Water CCN under this Agreement is Eight Thousand Two Hundred and No/ 100 Dollars (\$8,200) per acre.

3.2 Reasonableness of Rates. Bastrop agrees that the Transfer Fees charged by Aqua and policies defined in this Agreement are just and reasonable, and do not adversely affect the public interest. The Transfer Fees charged by Aqua are subject to modification as provided herein.

3.3 Modification of Transfer Fees. The Transfer Fees charged to Bastrop will increase each calendar year by the same percentage that Aqua increases its fees (water rates or System Development Fees) imposed on its customers/members. Aqua, at its sole discretion and from time to time, may forgo increases in the Transfer Fees charged to Bastrop.

3.4 Payment Process. The total amount owed to Aqua will be established in each amendment to the Agreement that specifies the specific portion of the Aqua Water CCN to be transferred to Bastrop. The total amount owed by Bastrop to Aqua under each amendment will consist of the Transfer Fee established in Section 3.1 of this Agreement multiplied by the amount of acreage plus the additional costs determined by Bastrop and Aqua in accordance with Section 2.4 of this Agreement. This total amount will be paid by Bastrop to Aqua within thirty (30) days of the collection by Bastrop of the Impact Fees assessed on the development located on the specific portion of the Aqua Water CCN subject to transfer to Bastrop.

3.5 Breach for Failure to Timely Pay. Should Bastrop fail to tender payment to Aqua by the Payment Due Date, the bill shall be considered delinquent, unless contested in good faith as provided herein. In the event a bill becomes overdue, Aqua shall notify Bastrop of such delinquency in writing. If Bastrop fails to make payment of the delinquent billing within thirty (30) days from the Payment Due Date, then Aqua may, at its discretion, hold Bastrop in breach of a material term and/or condition of this Agreement and any amendments thereto and Aqua may terminate this Agreement as provided herein.

3.6 Disputed Bills. If Aqua in good faith disputes the amount of the quarterly payment due, Aqua shall submit such dispute in writing to Bastrop no later than thirty (30) days after receipt of the payment. If it is subsequently determined by agreement or court decision that the disputed

amount paid by Bastrop should have been less, or more, Bastrop shall promptly revise the quarterly payment on the next quarterly payment.

**ARTICLE IV.
OWNERSHIP OF FACILITIES**

4.1 **Transfer of Ownership.** As between the Parties and unless otherwise agreed to between the Parties, Bastrop shall be deemed to have exclusive ownership of all infrastructure contained within the geographical area defined in each amendment to the Agreement and easements as needed to provide water to said developments after approval by the PUC of the transfer of such ownership and after the date of closing.

4.2 **Ownership of Facilities.**

(a) Bastrop obtains no ownership, leasing, or management interest in any of Aqua's System not conveyed to Bastrop through this Agreement or an amendment thereto.

(b) Bastrop obtains ownership, leasing, and management interest in the portions of Aqua's System conveyed to Bastrop by or through this Agreement or any amendment thereto upon approval of the PUC and payment for such assets as set forth herein at closing.

(c) Aqua obtains no ownership, leasing, or management interest in any of Bastrop's System by or through this Agreement or any amendment thereto or payment of any Transfer Fee set forth herein.

**ARTICLE V.
DEFAULT AND TERMINATION**

5.1 **Event of Default.** It shall be an Event of Default by either Party if such Party shall breach any material covenant, obligation, representation, or warranty of such Party under this Agreement, which breach remains uncured for a period of thirty (30) days after written notice from the non-breaching Party of the existence of such breach; provided, that the non-breaching Party shall extend the cure period for any such breach (and thus no Event of Default shall occur) if the nature

of the default is such that it cannot reasonably be remedied within such thirty (30) Day period, and the breaching Party has diligently commenced corrective action within such thirty (30) Day period and is diligently pursuing such correction thereafter.

5.2 Remedies. If an Event of Default has occurred and is continuing, the non-defaulting Party shall be entitled to the following remedies, which shall be cumulative injunctive relief;

- (ii) specific performance;
- (iii) the right to cure the other Party's default;
- (iv) termination of this Agreement;
- (v) any of the remedies afforded in this Agreement; and
- (vi) any other remedies permitted at law or in equity, including damages.

5.3 Right to Suspend or Terminate. Both Parties shall have the right, for their sole convenience and without cause, to terminate or suspend, in whole or in part, the respective Party's performance of any of their duties or obligations under this Agreement or any amendment thereto, upon twelve (12) months prior written notice to Aqua

- (i) Bastrop loses any Permit or other authorization from a Governmental Authority that is required by Bastrop to perform its obligations under this Agreement;
- (ii) Bastrop is unable to obtain any necessary Permit, Permit amendment, or other necessary authorization from a Governmental Authority to perform its respective duties under this Agreement; or
- (iii) Bastrop loses its ability to transport water to customers within the acquired CCN.

5.4 Termination for Continued or Multiple Force Majeure. Either Party shall have the right (but not the obligation) to terminate this Agreement upon seven (7) Days prior written notice to the other Party in the event that one or more events of Force Majeure renders a Party unable to satisfy a material obligation under this Agreement and such inability continues for a period of more than three (3) consecutive months or for a period of more than three (3) months in the aggregate during a one (1) year period; provided that the Party unable to satisfy its material obligation will only be entitled to terminate this Agreement under this Section 5.4 if it has otherwise met its obligations under this Agreement. The Parties may, by mutual written agreement, extend either such period as they deem appropriate if the Party unable to satisfy its material obligation is exercising due diligence in its efforts to cure the Force Majeure event.

5.5 Termination by One Party. Either Aqua or Bastrop can terminate this Agreement and any amendment thereto by written notice no later than twelve (12) months in advance of the expiration of the Agreement.

5.6 **Effective Date of Termination.** Upon receipt of any notice of termination delivered pursuant to this Article V, this Agreement and any amendment thereto shall terminate, effective immediately, and will be of no further force or effect, except with respect to: (i) rights and obligations of the Parties arising during or relating to any period prior to termination, including, in the case of termination for any Event of Default, all of the damages incurred by the non-defaulting Party in connection with such Event of Default; and (ii) the covenants and obligations of the Parties set forth in this Agreement and any amendments thereto that survive the expiration or termination of this Agreement and any amendments thereto as expressly provided in this Agreement or any amendments thereto.

ARTICLE VI. DISPUTE RESOLUTION

6.1 **Attempt to Resolve.** The Parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this Agreement, the Parties will first attempt to resolve the dispute by taking the following steps) A written notice substantially describing the nature of the dispute shall be delivered by the dissatisfied Party to the other Party, which notice shall request a written response to be delivered to the dissatisfied Party not less than five (5) days after receipt of the notice of dispute.

(ii) If the response does not reasonably resolve the dispute, in the opinion of the dissatisfied Party, the dissatisfied Party shall give notice to that effect to the other Party whereupon each Party shall appoint a person having authority over the activities of the respective Parties who shall promptly meet, in person, in an effort to resolve the dispute.

(iii) If those persons cannot or do not resolve the dispute, then the Parties shall each appoint a person from the highest tier of managerial responsibility within each respective Party, who shall then promptly meet, in person, to resolve the dispute.

6.2 **Non-Binding Mediation.** In the event the measures provided for in Section 6.1 are not successful in resolving the dispute, Bastrop and Aqua shall enter non-binding mediation in an attempt to resolve the dispute prior to commencing litigation. Bastrop and Aqua shall mutually select an impartial individual to serve as mediator. In the event the Parties are unable to agree on an individual to serve as the mediator, either Party may apply to a State District Judge for Bastrop County who shall be empowered to designate an individual to serve as the mediator.

6.3 **Costs of Mediation.** Each Party shall bear its own costs and expenses associated with any mediation or appeal of any provision of this Agreement.

ARTICLE VII. REPRESENTATIONS, WARRANTIES AND COVENANTS

7.1 **Bastrop Representations and Warranties.** Bastrop hereby represents and warrants to Aqua, as of the date hereof, as following) Bastrop has all requisite power and authority to enter and to perform its obligations hereunder, and to carry out the terms hereof and the transactions contemplated hereby.

(ii) This Agreement has been duly executed and delivered on behalf of Bastrop by the appropriate officials of Bastrop, and constitutes the legal, valid and binding obligation of Bastrop, enforceable against Bastrop in accordance with its terms.

(iii) The execution, delivery, and performance of this Agreement by Bastrop have been duly authorized under the bylaws and all applicable law for Bastrop and will not contravene any provision of or constitute a default under any other agreement or instrument to which Bastrop is a party or by which Bastrop or its property may be bound, and do not conflict with any requirement of law currently in force and applicable to Bastrop.

(iv) There is no legislation, litigation, action, suit, proceeding, or investigation pending or (to the best of Bastrop's knowledge) threatened against Bastrop, whether related

to the operation of any facility that will supply water under this Agreement or otherwise, that: (A) could adversely affect the performance by Bastrop of its obligations hereunder; (B) could have a material adverse effect on the condition (financial or otherwise), business or operations of Bastrop; or (C) questions the validity, binding effect or enforceability thereof or of this Agreement, any action taken or to be taken pursuant hereto or any of the transactions contemplated hereby.

7.2 **Aqua Representations and Warranties.** Aqua represents and warrants to Bastrop, as of the date of this Agreement, as follows) Aqua is a retail public utility holding a CCN, and has all requisite power and authority to enter into and to perform its obligations hereunder, and to carry out the terms hereof and the transactions contemplated hereby.

(ii) This Agreement has been duly executed and delivered on behalf of Aqua, and constitutes the legal, valid, and binding obligation of Aqua, enforceable against Aqua in accordance with its terms.

(iii) There is no legislation, litigation, action, suit, proceeding or investigation pending or (to the best of Aqua's knowledge) threatened, against Aqua or related to Aqua's activities by any court, administrative agency, arbitrator or governmental authority, body or agency that: (A) could adversely affect the performance by Aqua of its obligations hereunder; (B) could have a material adverse effect on the condition (financial or otherwise), business or operations of Aqua; or (C) questions the validity, binding effect or enforceability thereof or of this Agreement, any action taken or to be taken pursuant hereto or any of the transactions contemplated hereby.

(iv) No officer or employee of Bastrop has been or will be compensated in any manner with respect to directly or indirectly bringing the Parties together, agreement

negotiations, or the entering into this Agreement. In no event will Aqua pay a fee to or in any other manner compensate any of Bastrop's board members, officers, or employees in connection with the acceptance of this Agreement. A breach of this Subsection (iv) shall result in automatic and immediate termination of this Agreement and shall be an Event of Default.

ARTICLE VIII. TERM

This Agreement shall be effective as of the latest date of execution evidenced below (the "Effective Date") and shall remain in force and effect for a period of ten (10) years from the Effective Date.

ARTICLE IX. MISCELLANEOUS

9.1 Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their legal successors, but the Agreement shall not be otherwise assignable in whole or in part by either Bastrop or Aqua without first obtaining the written consent of the other.

9.2 Governing Law and Venue. The Constitution and the laws of the State of Texas and the decisions of its courts shall govern with respect to any question or controversy that may arise hereunder. All amounts due under this Agreement, including but not limited to payments due under this Agreement or damages for breach of this Agreement, shall be paid and be due in Bastrop County, Texas, which is the county in which the principal administrative offices of Bastrop are located. It is specifically agreed that Bastrop County, Texas, is a principal place of performance of this Agreement. Venue for any actions arising under this Agreement shall lie exclusively in the courts of Bastrop County, Texas.

9.3 Notices. Unless the context requires immediate notice, which may be provided by telephone, any notice, request or other communication required by this Agreement between the Parties regarding the Agreement shall be given in writing and shall be deemed to have been given to the other Party upon either of the following date The date of the mailing thereof, as shown by a post office receipt, if mailed to the Party by certified mail at the latest address specified for such other Party in writing; or

(ii) The date of the receipt thereof by such other Party if not so mailed by certified mail. Notice to Aqua and Bastrop shall be made as provided on EXHIBIT C hereto.

(iii) The Parties shall have the right from time to time to change their respective addresses by giving written notice to the other Party.

9.4 No Waiver of Rights.

(a) No waiver by either Party of any default or defaults by the other Party in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default or defaults whether of a like or different character or shall be effective unless in writing, duly executed by a duly authorized representative of the Party waiving any such default.

(b) Neither the failure by a Party to insist on any occasion upon the strict performance of the terms, conditions, and provisions of this Agreement, nor time or other indulgence granted by one Party to the other, shall act as a waiver of such breach.

9.5 Severability. In case any one or more of the Articles, Sections, provisions, clauses or words of this Agreement shall for any reason be held to be invalid, unenforceable, or unconstitutional, such invalidity, unenforceability or unconstitutionality shall not affect any other Articles, Sections, provisions, clauses or words of this Agreement, and it is intended that this

Agreement shall be severable and shall be construed and applied as if such invalid or unconstitutional Article, Section, provision, clause or word had not been included herein.

9.6 Entire Agreement. This Agreement contains all the agreements between the Parties on the subjects contained herein. As of the Effective Date of this Agreement, this Agreement shall replace any and all prior agreements between the Parties, both verbal and written, with regard to the subject matter.

9.7 Amendments. This Agreement may be changed or modified at any time by a written instrument signed by both Parties and only after having obtained approval from the governing bodies of Bastrop and Aqua. This Agreement is designed to allow Amendments to be made to it that define specific developments that qualify under the general provisions of this Agreement as well as the terms and conditions defined in an Amendment for the specific development. Such developments that call for a transfer of a specific portion of the Aqua Water CCN to Bastrop must be in the form and content of the Pro Forma Amendment shown in **EXHIBIT B**. The foregoing notwithstanding, the Parties hereto agree to use their best efforts to modify this Agreement and any amendments thereto if the Internal Revenue Service determines that a failure to do so would adversely affect the tax-exempt status of any outstanding tax-exempt obligations issued by Bastrop or Aqua.

9.8 Cooperative Drafting. This Agreement is the product of a cooperative drafting effort by the Parties and shall not be construed or interpreted against either Party solely on the basis that one Party or its attorney drafted this Agreement or any portion of it.

9.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The Parties may execute this Agreement and all other agreements, certificates, instruments, and other documents

contemplated by this Agreement and exchange the counterparts of such documents by means of facsimile transmission, and the Parties agree that the receipt of such executed counterparts shall be binding on such Parties and shall be construed as originals. Thereafter, the Parties shall promptly exchange original versions of this Agreement and all other agreements, certificates, instruments, and other documents contemplated by this Agreement that were executed and exchanged by facsimile transmission.

9.10 Third Party Beneficiaries. Nothing in this Agreement is intended or shall be construed to confer upon, or to give to, any legal Person other than the parties, any right, remedy, or Claim under or by reason of this Agreement. Any covenants, terms, conditions, and provisions in this Agreement by and on behalf of the Parties shall be for the sole and exclusive benefit of the Parties. Nothing in this Agreement is intended to interfere with any agreement of any Party with a third party.

9.11 Deadlines. To the extent that the date for any payment or notice due hereunder by either Party shall fall on a Day that is not a Business Day, such deadline for payment or notice, as the case may be, shall be automatically extended to the next following Business Day.

IN WITNESS WHEREOF, the parties have executed this Agreement as indicated below.

AQUA WATER SUPPLY
CORPORATION

By: *[Signature]*

Title: President

Date: 2/6/2024

ATTEST:

By: *[Signature]*
Secretary, Board of Directors

Date: 2-6-24

CITY OF BASTROP

By: *[Signature]*

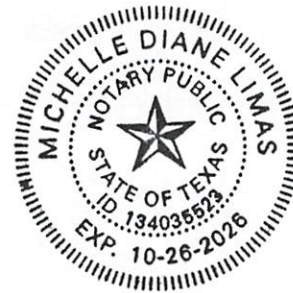
Title: City Manager

Date: 2/23/2024

ATTEST:

By: *[Signature]*
Secretary

Date: 2/23/2024



EXHIBITS

EXHIBIT "A"

Map Delineating Area Subject to Provisions of the Agreement

**Insert Map of Bastrop's Wastewater CCN overlaid on the Bastrop Water CCN and the
Aqua Water CCN**

EXHIBIT "B"

**Sample Amendment to Master Agreement for each
Residential/Commercial Development Subject to Transfer to
Bastrop from the Aqua Water CCN**

Title of Development: _____

Concept Plan

Preliminary Plat

Replat

Short Form Plat

Date of Approved Concept Plan or Plat _____

Name and Contact (Developer) _____

**AMENDMENT TO MASTER AGREEMENT FOR TRANSFER OF CERTAIN
WATER CCN SERVICE AREA FROM AQUA WSC TO
THE CITY OF BASTROP**

A Master Agreement (the "Agreement") for establishing basic terms and conditions under which AQUA WATER SUPPLY CORPORATION may consent to transfer specific portions of its retail water CCN to the City of Bastrop was made and entered into by and between Aqua Water Supply Corporation ("Aqua") and the City of Bastrop, Texas ("Bastrop"), on the ___ day of _____, 20___. This instrument (the "Amendment") amends and supplements the Agreement as follows.

RECITALS

WHEREAS, the Agreement established the terms and conditions under which Aqua agreed to transfer specific portions of its retail water Certificate of Convenience and Necessity ("CCN") No. 10294 ("Aqua Water CCN") to Bastrop; and

WHEREAS, the planned development of _____ (NAME OF DEVELOPMENT) _____, currently in the Aqua Water CCN has submitted a Concept Plan / Preliminary Plat / Replat / Short Form Plat

consisting of _____ acres, which has been approved by the Planning and Zoning Commission for the City of Bastrop; and

WHEREAS, the (NAME OF DEVELOPMENT) development meets the requirements of the conditions stipulated in the Agreement to be considered for transfer from the Aqua Water CCN to Bastrop; and

WHEREAS, the land under consideration and subject to conveyance is shown in **ATTACHMENT A** to this instrument, and said land is located within the Aqua Water CCN and the Bastrop Wastewater CCN: and

WHEREAS, Chapter 13 of the Texas Water Code and the rules of the Public Utility Commission of Texas (“PUC”) allow for the transfer or assignment of CCN service areas from a water supply corporation to a municipally owned utility; and

WHEREAS, Bastrop has determined that it has sufficient water supplies available to provide water services to specific portion of the Aqua Water CCN proposed to be served by Bastrop and agrees that such availability will be a condition precedent before any CCN may be transferred from the Aqua Water CCN to Bastrop; and

WHEREAS, the transfer of the specific portion of the Aqua Water CCN to Bastrop will further the public purpose of rationalizing the distribution of water services in the region taking into account existing and future needs for additional infrastructure to serve all of Bastrop and its urbanizing areas.

NOW THEREFORE, in consideration of the foregoing and the mutual agreements hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Aqua agrees to transfer specific portions of the Aqua Water CCN to Bastrop on the terms and conditions and for the consideration set forth below:

TERMS OF AMENDMENT

SPECIFIC PORTION OF THE AQUA WATER CCN TO BE RELEASED TO BASTROP

A. Definition of Specific Portion of the Aqua Water CCN to be conveyed to Bastrop

ATTACHMENT A to this Amendment shows a map of the (NAME OF DEVELOPMENT) Development that is covered by this Amendment. The map shows the location of the development in relation to the City limits of Bastrop, the current Water CCN of Bastrop, the parcels included in the development as well as the number of acres that comprise the development.

B. Calculation of compensation

Bastrop and Aqua agree that calculation of the compensation to be paid to Aqua by Bastrop for transfer of the specific portion of the Aqua Water CCN is as follows:

$$\text{Number of acres under development X \$ } \underline{\hspace{2cm}} \text{ = Total Compensation}$$

For the subject development, the actual calculation is as follows:

$$\underline{\hspace{2cm}} \text{ acres X \$8,200 = \$ } \underline{\hspace{2cm}}$$

C. Additional Amounts Owed to Aqua

Bastrop shall pay Aqua the amount of \$ (for stranded assets, easement acquisition, existing customers, etc.).

D. Payment

Payment of the amounts calculated in Sections B and C above shall be paid in accordance with terms and conditions of the Agreement as specified in Section 3.4.

E. Litigation

The terms and conditions of this Amendment shall be construed under and in accordance with the laws of the State of Texas. All obligations of the parties created under these terms and conditions shall be performable in Bastrop County, Texas. All payments required to be made to Aqua under this Amendment shall be made at Aqua's offices in Bastrop County, Texas. Bastrop County, Texas shall be the exclusive place of venue for any disputes arising under this Agreement.

F. Miscellaneous

Bastrop and Aqua expressly agree that this Amendment is subject to all terms, conditions, covenants, and obligations set forth in the Agreement unless otherwise stated in this Amendment. Bastrop and

Aqua agree that the Recitals set forth above are true and correct and incorporated into the terms of this Amendment.

IN WITNESS WHEREOF, the parties have executed this Amendment as indicated below.

AQUA

BASTROP

By: _____

By: _____

Date: _____

Date: _____

ATTEST:

ATTEST:

By: _____
Secretary, Board of Directors

By: _____
Secretary

Date: _____

Date: _____

EXHIBIT "C"

Name and Address for Notice to Aqua

Dacy Cameron
General Manager
Aqua Water Supply Corporation
415 Old Austin Highway
Drawer P
Bastrop, Texas 78602

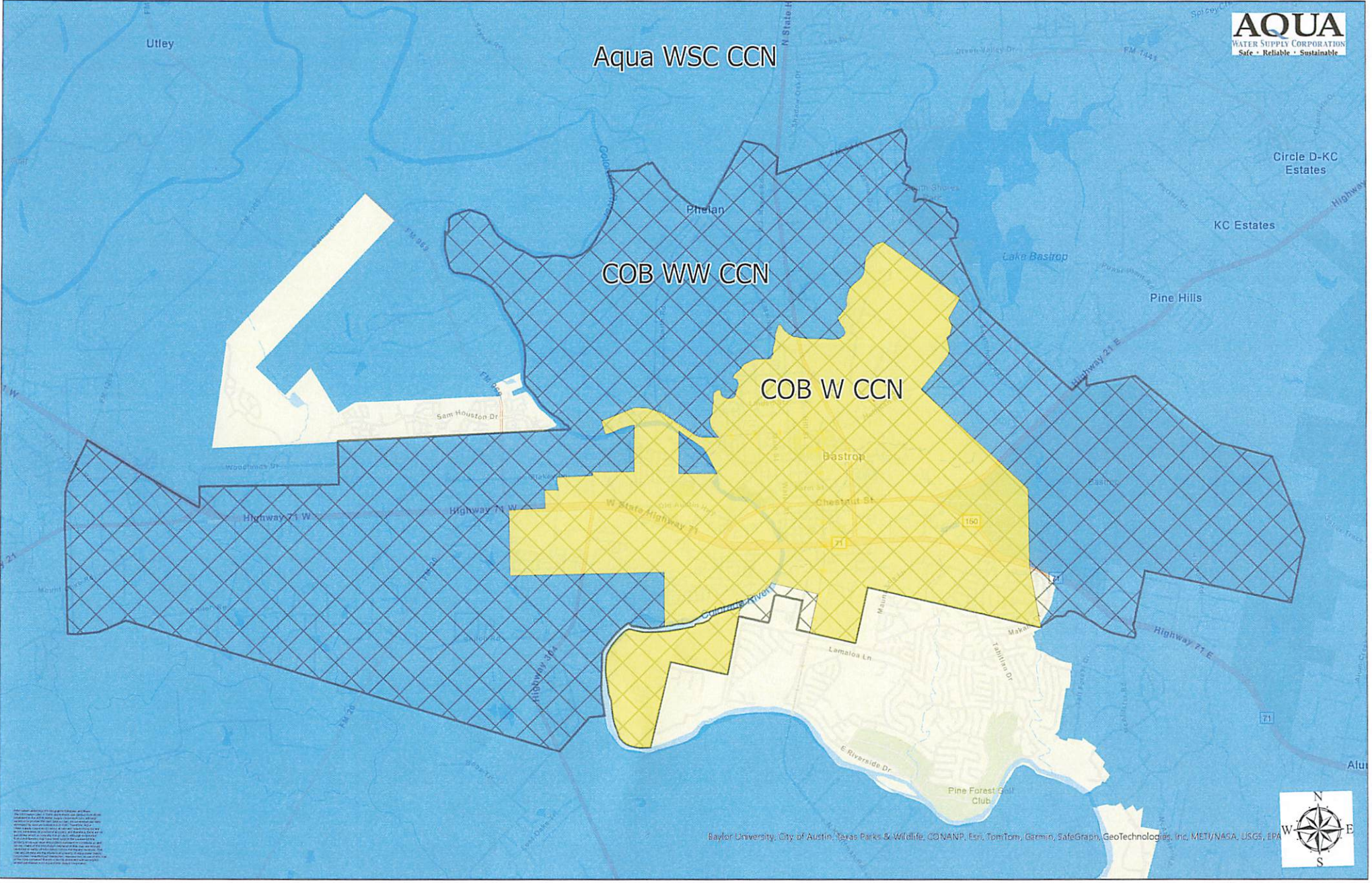
Name and Address for Notice to Bastrop

Sylvia Carrilo
City Manager
City of Bastrop
1311 Chestnut Street
Bastrop, Texas 78602

Aqua WSC CCN

COB WW CCN

COB W CCN



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