

**SERVICE AREA AGREEMENT BETWEEN
SAN ANTONIO WATER SYSTEM, CONTINENTAL HOMES OF TEXAS, L.P., TAW
PROPERTIES, LTD. AND SOUTH CENTRAL WATER COMPANY**

THIS SERVICE AREA AGREEMENT (“Agreement”) is made and entered into to be effective on the 22 day of July, 2019 (the “Effective Date”), by and between the San Antonio Water System (“SAWS”), Continental Homes of Texas, L.P., a Texas limited partnership (“Continental Homes”), TAW Properties, Ltd., (a Texas limited partnership (“TAW”) (Continental and TAW collectively, the “Developers”) and the South Central Water Company (“South Central”). SAWS, Continental Homes, TAW, and South Central may be referred to herein individually as a “Party” or collectively as the “Parties.”

I. RECITALS

WHEREAS, SAWS is a municipally owned utility providing potable water, recycled water, and wastewater collection and treatment services in Bexar and surrounding counties and is wholly owned by the City of San Antonio (the “City”);

WHEREAS, Developers, are limited partnerships organized pursuant to the Texas Business Organizations Code;

WHEREAS, South Central is a for-profit corporation organized under the Texas Business Organizations Code, a public utility, and a retail public utility under the Texas Water Code;

WHEREAS, Continental Homes owns an approximately 144.78 acre tract of land in Comal County, Texas being described in Exhibit 1 attached hereto (the “Continental Property”);

WHEREAS, TAW owns an approximately 15.39 acre tract of land in Comal County, Texas being described in Exhibit 1 attached hereto (the “TAW Property”);

WHEREAS, Continental Homes, is developing a new residential development to be known as The Reserve at Copper Canyon in Comal County (“Continental Property”) and TAW intends to develop or sell the TAW Property for commercial development purposes (collectively, the “Development”), and Developers need centralized sewage collection in order to develop at the density desired by the Developers;

WHEREAS, most of the Development is located in the Edwards Aquifer Recharge Zone and a portion of the Development is located outside of the recharge zone and in the Edwards Aquifer Contributing Zone, and all of the Development is located inside the City’s extraterritorial jurisdiction and is subject to the City’s Aquifer Protection Ordinance;

WHEREAS, SAWS is a retail public utility and currently holds the exclusive right to provide retail sewer utility to the Development pursuant to its certificate of convenience and necessity (“CCN No. 20285”), and the extension of sewer service by SAWS into Development in Comal County would be expensive at this time, and these costs would be borne by the Developers.

WHEREAS, South Central is a retail public utility and holds the exclusive right to provide retail sewer utility service to an area immediately north and east of the Development pursuant to

its certificate of convenience and necessity (“CCN No. 20964”) and South Central has the ability to extend service to the Development at a lower cost than extension of service by SAWS with treatment to be provided at the Cibolo Valley Wastewater Treatment Plant authorized by TPDES Permit No. WQ0014988001;

WHEREAS, Developers and South Central approached SAWS seeking SAWS’ agreement to allow South Central to provide retail sewer utility service to the Development, and SAWS is willing to agree to allow South Central to provide retail sewer utility service to the Development, so long as certain conditions are met;

WHEREAS, South Central agrees to obtain the consent of the City of San Antonio pursuant to Texas Water Code § 13.245(b) to provide service to the Development conditioned upon all sewer facilities providing service to the Development being designed and constructed in accordance with SAWS Utility Service Regulations and Construction Specifications;

WHEREAS, SAWS consents, pursuant to the terms of this Agreement, to allowing South Central to provide retail sewer utility service to the Development as dual CCN holder;

WHEREAS, pursuant to Texas Water Code § 13.248, contracts between retail public utilities designating areas to be served, when approved by the Public Utility Commission (“PUC”), are valid and enforceable and are incorporated into the appropriate CCNs;

WHEREAS, SAWS, Developers and South Central mutually desire to enter into this Agreement setting forth terms and conditions pursuant to which they will designate areas to be served and to request the PUC to incorporate such designations into the CCNs held by SAWS and South Central;

NOW, THEREFORE, in consideration of the promises, mutual agreements, and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, SAWS, Developers and South Central hereby contract and agree as follows:

II. TERMS OF AGREEMENT

1. **Recitals.** The Recitals, which the Parties agree are true and correct, and the definitions contained herein are incorporated herein for all purposes.
2. **Definitions.** Terms as used in this Agreement have the following meanings:
 - a. “Aquifer Protection Ordinance” means the City’s ordinances codified in Chapter 34, Article VI, Division 6 of the City Code titled "Aquifer Recharge Zone and Watershed Protection" as approved by the City Council in Ordinance No. 81491, approved Jan. 12, 1995, and amended by Ordinance No. 2006-02-16-0241 approved February 16, 2006, and Ordinance No. 2014-08-14-0581 approved August 14, 2014.
 - b. “Development” means The Reserve at Copper Canyon and the TAW Property.

- c. "Recharge Zone Portion" means the portion of the Development located inside the Edwards Aquifer Recharge Zone as shown on Exhibit 1.
- d. "Non-Recharge Zone Portion" means the portion of the Development located outside of the Edwards Aquifer Recharge Zone as shown on Exhibit 1.
- e. "PUC" means the Public Utility Commission of Texas, and any agency that succeeds to all or part of the regulatory authority of the PUC.
- f. "TCEQ" means the Texas Commission on Environmental Quality, and any agency that succeeds to all or part of the regulatory authority of the TCEQ.

3. Aquifer Protection.

- a. Continental Homes will develop the Recharge Zone Portion of the Continental Property in accordance with the requirements of the Aquifer Protection Ordinance (except as otherwise provided in this Agreement), including the requirement to obtain a Letter of Certification as required by Subdivision C of the Aquifer Protection Ordinance.
- b. Continental Homes will develop the Recharge Zone Portion only of the Continental Property for residential land use with a maximum 15% impervious cover, which may not be prorated with the Non-Recharge Zone Portion of the Continental Homes Property or the TAW Property. Continental Homes will not allow any multi-family or commercial land use within the Recharge Zone Portion of the Continental Property. The restrictions regarding multi-family and commercial land use shall not apply to the TAW Property.
- c. Continental Homes will maintain a 100-year floodplain buffer as specified in Section 34-913 of the Aquifer Quality Ordinance for the Continental Homes Property.
- d. Continental Homes will develop a water pollution abatement plan and an organized sewage collection system plan pursuant to 30 Texas Administrative Code Chapter 213.5 (utilizing the TCEQ Technical Guidance on Best Management Practices RG-348) for the entire Continental Homes Property, as if the entire Continental Homes Property was inside the Recharge Zone. Continental Homes will submit plans to TCEQ and SAWS for review, and Continental Homes must receive SAWS approval prior to proceeding with construction on the Continental Homes Property which approval shall not be unreasonably withheld.
- e. For the Non-Recharge Zone Portion of the Continental Homes Property, the WPAP will include information sufficient to meet the requirements of the Aquifer Protection Ordinance Section 34-911, except as otherwise provided in this Agreement.
- f. South Central will not amend TPDES Permit No. WQ0014988001 to seek less restrictive permit conditions, nor will South Central divert flows from the Development to another wastewater treatment plant, without SAWS' written consent.

4. Infrastructure Construction Requirements.

a. South Central and Developers (as to their respective tracts in the Development) will design and construct all sewer facilities providing service to the Development in accordance with SAWS Utility Service Regulations and Construction Specifications. Any future expansion of the existing wastewater treatment plant is to be permitted in accordance with TCEQ standards and is not subject to SAWS review.

5. CCN Proceedings.

a. SAWS consents to allowing South Central to provide retail sewer utility service to the Development as a dual certificate holder. SAWS will retain its certificate and its ability to provide retail sewer utility service to the area. If SAWS provides service to the area, SAWS will do so without using the facilities owned by South Central, unless South Central provides its consent.

b. Within 30 days after the effective date of this Agreement, South Central will seek consent from the City of San Antonio (the "City"), pursuant to Texas Water Code §13.245(b), to add the Development to its CCN located inside the City's extraterritorial jurisdiction.

c. Within 30 days after the effective date of the City's consent under subsection 5.b., SAWS and South Central will file an application pursuant to Texas Water Code § 13.248, or equivalent method of obtaining approval. If the PUC fails to approve the application for any reason, SAWS and South Central shall work in good faith to implement a reasonable alternative administrative approach for providing South Central with the necessary authority to serve the Development, while retaining SAWS' authority to serve the area.

d. The application for approval under subsection 5.c. will request that the amendment to South Central's CCN be granted with the following condition - that all sewer facilities providing service to the Development will be designed and constructed in accordance with SAWS Utility Service Regulations and Construction Specifications.

III. TERM; TERMINATION; DEFAULT AND REMEDIES

1. **Default.** "Event of Default" shall mean the failure of a Party to comply with an obligation of the Party stated in this Agreement. If an Event of Default occurs under this Agreement, the Defaulting Party must be given notice of the default and 30 days from the date the notice is delivered in which to cure the default before the Non-Defaulting Party may exercise any of the remedies set forth in this Section.

If an Event of Default is not remedied within the cure period, then each Non-Defaulting Party, whose rights under this Agreement are directly affected by the default, shall have the following rights and remedies:

a. to seek specific performance or injunctive relief, without the necessity of having to prove the inadequacy of legal remedies or irreparable harm;

b. to terminate its obligations under this Agreement with respect to the Defaulting Party and its respective Property; and/or

c. to pursue any and all rights and remedies available at law or at equity against the Defaulting Party, including, but not limited to, the right to pursue claims before PUC, TCEQ or any successor agency with jurisdiction.

IV. NOTICE

1. **Written Notice.** All notices required to be given must be in writing. Any notice or communication required or permitted hereunder shall be deemed to be delivered, whether actually received or not, when deposited in the United States mail, postage fully prepaid, registered or certified mail, and addressed to the intended recipient at the address set forth below, with a copy sent concurrently by facsimile, or on the date hand-delivered by a national courier service, as evidenced by written acknowledgment of receipt for such hand-delivery. Notice given in any other manner will be deemed delivered only if and when actually received. Notice may not be given exclusively by e-mail. Any address for notice may be changed by written notice delivered as provided herein.

2. **Addresses for Notice.**

SAWS:

San Antonio Water System
Attn: Andrea Beymer, Vice President of Engineering and Construction
2800 U.S. Hwy 281 North
San Antonio, TX 78212

South Central:

South Central Water Company
Attn: Doug Bailey
5818 Beverly Hill Street
Houston, TX 77057

With copy to:

Developers and Developers Representatives

Continental Homes of Texas, L.P.
Attn: Leslie Ostrander, P.E., Vice-President of Land
211 North Loop 1604 East, Suite 130
San Antonio, Texas 78232

TAW Properties, Ltd.
Tom Wirth
PO Box 1388

Spring Branch, Texas, 78070

Barton Benson Jones PLLC
Attn: Buck Benson
745 E. Mulberry Suite 550
San Antonio, Texas 78212

Pape-Dawson Engineers, Inc.
Attn: Trey Dawson, P.E.
2000 NW Loop 410
San Antonio, Texas 78213

3. **Obligations Several.** Notwithstanding anything contained herein to the contrary, it is expressly understood and agreed that the obligations of Continental Homes and TAW hereunder are several (and not joint and several) as to their respective Properties, and a default by one of them in the performance of its obligations under this Agreement as to its Property shall not constitute a default by the other under this Agreement as to its Property.

V. MISCELLANEOUS

1. **Governing Laws.** This Agreement shall be governed by and construed and enforced under the laws of the State of Texas.

2. **Venue.** The obligations and undertakings of each of the Parties to this Agreement shall be performed in Bexar County, Texas. Except for matters within the jurisdiction of the PUC, TCEQ or another state or federal agency, the parties expressly agree that all judicial proceedings to enforce any of the provisions of this Agreement shall take place in Bexar County, Texas.

3. **Third Party Beneficiaries.** The Parties agree that there are no third party beneficiaries to this Agreement.

4. **Attorneys' Fees.** Each Party shall bear its own attorneys' fees and costs related to this Agreement or the enforcement of this Agreement.

5. **No Admission.** The Parties agree that nothing in this Agreement shall be used as an admission of any sort in any litigation or other contested matter, except to enforce the terms of this Agreement.

6. **Entire Agreement.** This Agreement contains the entire agreement of the Parties with respect to the subject matter of the Agreement. No agreement, statement, or promise made by any Party or to any employee, agent, or officer of any Party that is not contained in this Agreement shall be valid, binding, or of any force or effect.

7. **Amendment.** Any amendments to this Agreement must be in writing and signed by all the Party or Parties to be charged.

8. **Successors and Assigns.** This Agreement shall be binding upon the parties hereto and their respective successors, heirs, representatives, and assigns. Notwithstanding the foregoing, no Party to this Agreement may assign their rights or obligations under this Agreement without the written consent of the other Parties and such consent will not be unreasonably withheld.

9. **Construction.** 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 either Party shall not apply. When required by context, the gender of words in this Agreement includes the masculine, feminine, and neuter genders and the singular includes the plural (and vice-versa). The headings in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.


10. **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.

11. **Authority.** The respective signatories to this Agreement represent that they are authorized to sign this Agreement on behalf of their respective Party, and that such signatory has received the necessary approval of its governing body to execute this Agreement on the Party's behalf.

12. **Execution.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which counterparts, when taken together, shall constitute one and the same Agreement. The Parties agree that delivery of a signed counterpart, or the signed Agreement or amendment by facsimile or electronic mail, shall be deemed the same as the delivery of an original document.

[Signature Pages Follow]

TAW PROPERTIES, LTD.

BY: 
Tom Wirth

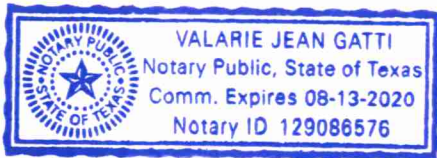
Date: 6/10/19


THE STATE OF TEXAS §

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COUNTY OF BEXAR §

The instrument was acknowledged before me on the 10th day of June, 2019.




Notary Public, State of Texas
My Commission Expires: 08/13/2020

CONTINENTAL HOMES OF TEXAS, LP

BY: Leslie Ostrander
Leslie Ostrander

Date: 7-12-19

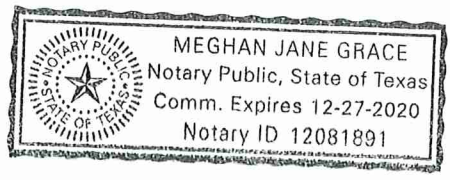
THE STATE OF TEXAS §

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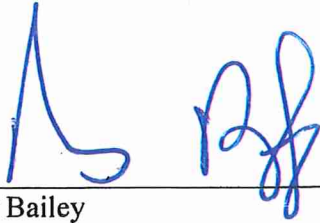
COUNTY OF BEXAR §

The instrument was acknowledged before me on the 12 day of July, 2019.

Meghan J. Grace
Notary Public, State of Texas
My Commission Expires: 12/27/20



SOUTH CENTRAL WATER COMPANY

BY: 
Doug Bailey

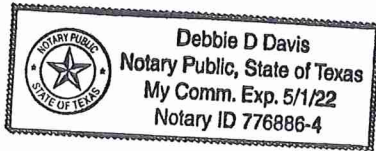
Date: 6-5-19


THE STATE OF TEXAS §

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COUNTY OF BEXAR §

The instrument was acknowledged before me on the 5th day of June, 2019.




Notary Public, State of Texas
My Commission Expires: 5-1-22

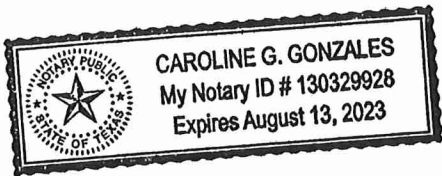
SAN ANTONIO WATER SYSTEM

BY: RRP
Robert R. Puente
President/Chief Executive Officer

Date: 8-6-19

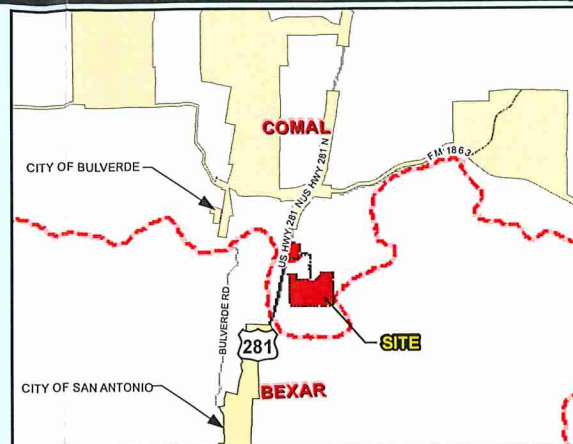
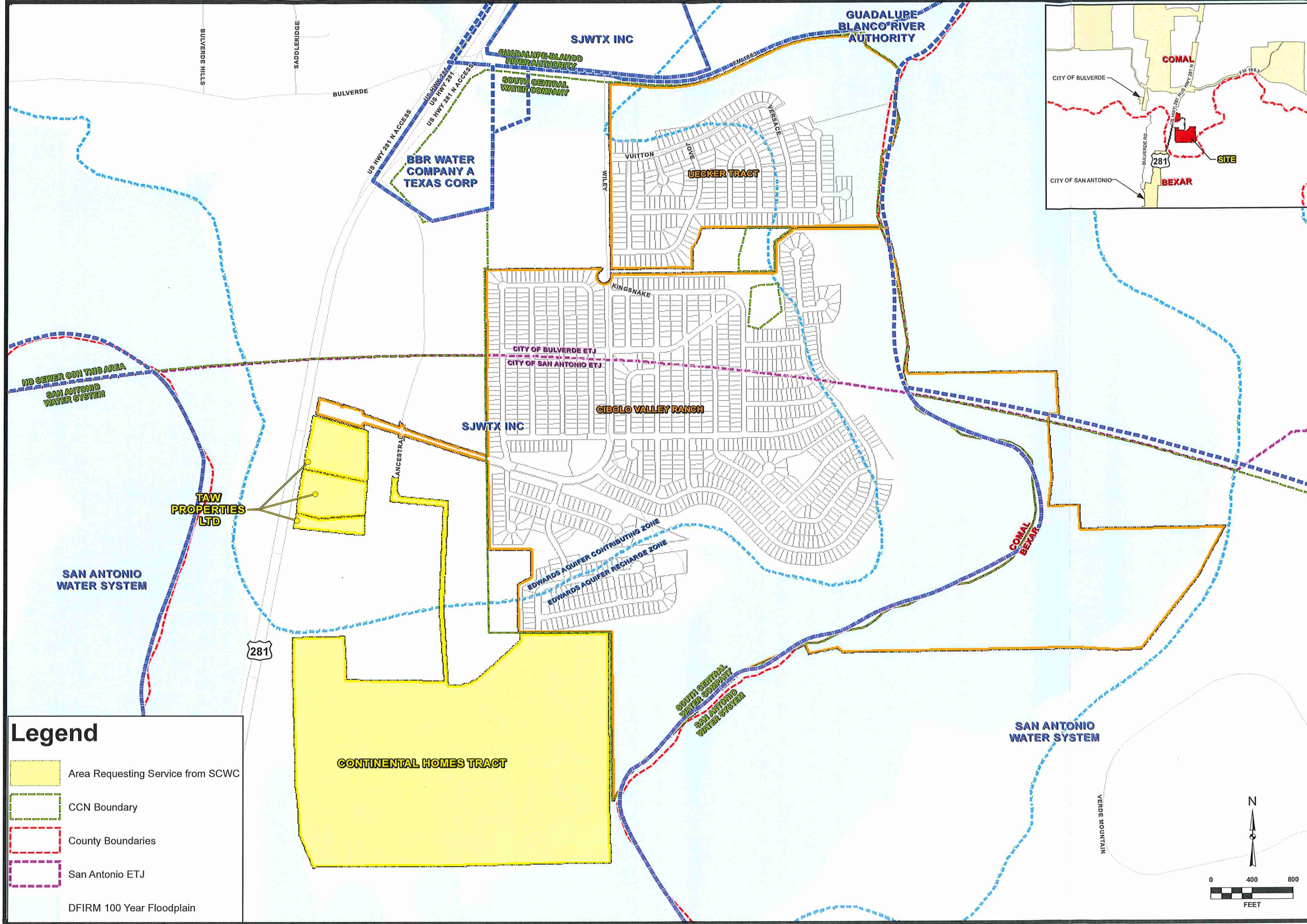
THE STATE OF TEXAS §
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COUNTY OF BEXAR §

The instrument was acknowledged before me on the 6 day of August, 2019.



Caroli Gonzales
Notary Public, State of Texas
My Commission Expires: Aug 13, 2019

EXHIBIT 1



Legend

- Area Requesting Service from SCWC
- CCN Boundary
- County Boundaries
- San Antonio ETJ
- DFIRM 100 Year Floodplain

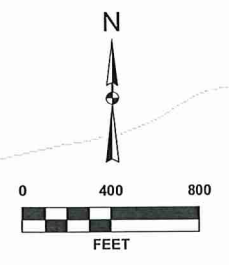
NO.	REVISION	DATE

PAPE-DAWSON ENGINEERS

SAN ANTONIO | AUSTIN | HOUSTON | FORT WORTH | DALLAS
 2000 NW LOOP 410 | SAN ANTONIO, TX 78213 | 210.375.9000
 TBP# FIRM REGISTRATION #470 | TBP#S FIRM REGISTRATION #10028800

COMAL COUNTY CCN
 COMAL COUNTY, TEXAS
 CCN EXHIBIT

PLAT NO.	---
JOB NO.	11613-01
DATE	Mar 2019
DESIGNER	TD
CHECKED	TD, DRAWN, EP
SHEET	1



Date: Mar 28, 2019 2:46:03 PM User: EPhosky
 File: P:\11613\01\Design\11613-01-CCN-Exhibit.mxd

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RESOLUTION NO. 19-080

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES APPROVING A SERVICE AREA AGREEMENT BETWEEN THE SAN ANTONIO WATER SYSTEM, CONTINENTAL HOMES OF TEXAS, L.P., TAW PROPERTIES, LTD., AND SOUTH CENTRAL WATER COMPANY REGARDING AREAS TO BE SERVED BY THE SAN ANTONIO WATER SYSTEM AND SOUTH CENTRAL WATER COMPANY; APPROVING THE FILING OF A PETITION WITH THE PUBLIC UTILITIES COMMISSION OF TEXAS FOR APPROVAL OF THE SERVICE AREA AGREEMENT; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, Continental Property and TAW Property (the "Development"), specified in the table below, has requested the San Antonio Water System (the "System") to allow South Central Water Company (SCWC) to provide retail sewer utility service to the area bounded by the Continental Property and the TAW Property within Comal County as a dual certificate holder with the System; and

Tract Name	Developer	Acres	W EDUs	WW EDUs	CoSA / CoSA ETJ / Outside	EARZ/ CZ	W CCN	WW CCN
Continental Property / TAW Property	Continental Homes of Texas, L.P. / TAW Properties Ltd.	160.17	0	190	CoSA ETJ	INSIDE	OUT	IN

WHEREAS, capital expenditures estimated at \$11,030,400.00 will be deferred, which would have been required to construct infrastructure to provide wastewater service to the Continental Property and the TAW Property; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to allow South Central Water Company to provide retail sewer service to the Continental Property and the TAW Property as a dual certificate holder; now, therefore:

BE IT RESOLVED BY THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES:

1. That the System hereby approves the Service Area Agreement with Continental Homes of Texas, L.P., TAW Properties Ltd., and South Central Water Company with following conditions: 1) Continental Property is limited to residential land use with impervious cover not to exceed 15 percent; 2) Continental Homes will not allow any multi-family or commercial land use within the Recharge Zone of the Continental Property, and the restrictions regarding multi-family and commercial land use shall not apply to the TAW Property; 3) that Texas Commission on Environmental Quality Edwards Aquifer Recharge Zone Best Management Practices will be

applied to the entirety of the Continental Property and the TAW Property; 4) South Central Water Company will not amend its wastewater treatment facility permit to less restrictive conditions; and 5) the wastewater collection system will meet or exceed the System's infrastructure standards within the Continental Property and the TAW Property.

2. That the System hereby approves filing a petition with the PUC for approval of the Service Area Agreement, including dual certification for service to the properties.

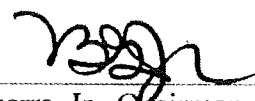
3. The System recommends to the City of San Antonio that the City Consent to the amendment of SCWC's sewer CCN consistent with the Agreement.

4. It is officially found, determined and declared that the meeting at which this resolution is adopted was open to the public, and that public notice of the time, place and subject matter of the public business to be conducted at such meeting, including this resolution, was given to all as required by the Texas Codes Annotated, as amended, Title 5, Chapter 551, Government Code.

5. If any part, section, paragraph, sentence, phrase or word of this resolution is for any reason held to be unconstitutional, illegal, inoperative or invalid, or if any exception to or limitation upon any general provision herein contained is held to be unconstitutional, illegal, invalid or ineffective, the remainder of this resolution shall nevertheless stand effective and valid as if it had been enacted without the portion held to be unconstitutional, illegal, invalid or ineffective.

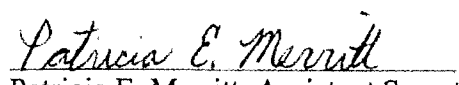
6. This resolution shall take effect immediately from and after its passage.

PASSED AND APPROVED this 12th day of March, 2019.



Berto Guerra, Jr., Chairman

ATTEST:



Patricia E. Merritt, Assistant Secretary