

Control Number: 43253



Item Number: 9

Addendum StartPage: 0

**PUC DOCKET NO. 43253**

**APPLICATION OF THE CITY OF  
SCHERTZ TO AMEND ITS SEWER  
CERTIFICATE OF CONVENIENCE  
NECESSITY IN BEXAR COUNTY  
(37913-C)**

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**CITY OF SCHERTZ'S RESPONSE TO ORDER NO. 4 AND REQUEST FOR  
EXTENSION FOR APPLICATION DEFICIENCIES**

City of Schertz, Texas (the "City") files this Response to Order No. 4. In support of its Response, the City states the following:

**I. BACKGROUND**

On May 9, 2014, the City filed an application to amend its sewer certificate of convenience and necessity ("CCN") No. 20271 in Bexar County, Texas with the Texas Commission on Environmental Quality ("TCEQ"). The City requests to amend its CCN by obtaining the Retail or Collection portion of the sewer CCN that is currently held by the San Antonio River Authority ("SARA"). SARA, which has the sole CCN for this area, only requires the Wholesale or Treatment CCN and has agreed to allow the City to request the Retail or Collection CCN for this area within the City's corporate limits. The area is currently being served with septic systems.

The economic regulation of water and wastewater utilities was transferred from TCEQ to the Public Utility Commission (the "Commission") effective September 1, 2014. On September 24, 2014, the Commission issued Order No. 2, requiring the Commission Staff to file comments on the administrative completeness of the City's application. On October 8, 2014, the Commission Staff filed its response with the Commission, noting certain deficiencies in the City's application (the "Commission Staff's Response"). On October 9, 2014, the Commission issued Order No. 3 Finding Application Deficient, Establishing Deadlines and Opportunity to Cure ("Order No. 3"). On November 25, 2014, the City filed a Response to Order No. 3, requesting an extension to cure certain deficiencies in the Commission Staff's Response. On December 9, 2014, the Commission issued Order No. 4 extending the City's deadline to cure

deficiencies noted in Order No. 3 to January 31, 2015. The City files this Response to Order No. 4, submitting items 1 and 2 of the Commission's Staff Response and requesting an extension for items 3 and 4 of the Commission's Staff Response.

## **II. APPLICATION DEFICIENCIES, SUBMISSIONS, AND REQUEST FOR EXTENSION**

The Commission Staff's Response requests the City to provide the following items before its application can be deemed complete in accordance with P.U.C. SUBST. R. 24.105:

1. Pursuant to P.U.C. SUBST. R. 24.105(13), a copy of the agreement between the City and SARA for dual certification.
2. A copy of the contract between the City and SARA for SARA to continue to provide the treatment portion of the wastewater, pursuant to P.U.C. SUBST. R. 24.105(15). This rule requires a sewer CCN to provide information that the City is in compliance with P.U.C. SUBST. R. 24.94 relating to the adequacy of sewer service.
3. Pursuant to P.U.C. SUBST. R. 24.105(14)(A), a copy of the approval letter for the plans approved by the TCEQ and specifications for the system or proof that the City has submitted either a preliminary engineering report or plans and specifications for the first phase of the system.
4. Pursuant to P.U.C. SUBST. R. 24.105(15), a copy of SARA's most recent sewer inspection report, and pursuant to P.U.C. SUBST. R. 24.105(14), the City's most recent water inspection report. For each system deficiency listed, if any, attached should be a brief explanation listing the actions taken or being taken to correct the listed deficiencies, including the proposed completion dates. This information would ensure that the City is in compliance with P.U.C. SUBST. R. 24.94, relating to the adequacy of sewer service, and P.U.C. SUBST. R. 24.93, relating to the adequacy of water utility service.
5. The general location map and detailed hard copy map provided by the City do not appear to delineate the same proposed sewer CCN service area with CCN No. 20271. Therefore, the City should resubmit both hard copy maps showing the same proposed sewer service area, or retract the "Overall Location Map." Additionally, the City must submit digital data delineating the same proposed sewer CCN service area displayed on the remaining hard copy map titled, "Amended Sewer CCN 20271 Addition City of Schertz."

In conjunction with this Response, the City is submitting an Interlocal Agreement between the City and SARA (the "Interlocal Agreement") to address item 1 and item 2. The Interlocal Agreement has been agreed to by City staff and SARA staff. The City and SARA are scheduled to approve the Interlocal Agreement on February 24, 2015, and on February 18, 2015, respectively. Once the Interlocal Agreement is approved, the City will submit the approved and executed copy to the Commission and the Commission Staff. The form of the Interlocal Agreement, to be approved by the City and SARA, is attached as Exhibit A.

With regard to items 3 and 4, the City has previously indicated that it will be able to provide the requested items when a sewer system and infrastructure is in place. Currently, no sewer system or infrastructure exists. The infrastructure will be planned, designed, and constructed once the City receives the dual certification status. The City will then be in a position to provide the documentation required in items 3 and 4 to the Commission and the Commission Staff. The City will provide a status update to the Commission and Commission Staff regarding the City's progress in planning, designing, and constructing the infrastructure for the sewer system no later than March 3, 2015. The City will also include its timeframe to submit items 3 and 4 in this status update.

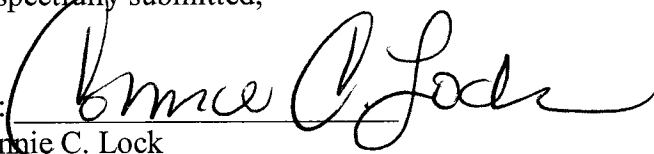
Finally, the City submitted the maps requested in item 5 in both hard copy and electronic format in its Response to Order No. 3.

### **III. CONCLUSION**

The City respectfully requests (1) the Commission to accept the form of Interlocal Agreement with a final, approved copy to be provided to the Commission and the Commission Staff by February 27, 2015; and (2) the Commission to issue an order allowing the City to submit a status update regarding items 3 and 4 of Commission Staff's Response no later than March 3, 2015.

Dated: January 29, 2015

Respectfully submitted,

By: 

Connie C. Lock

State Bar No. 24007191

Denton Navarro Rocha Bernal Hyde & Zech, P.C.

2517 N. Main Avenue

San Antonio, Texas 78212-4685

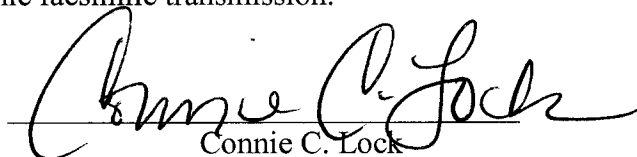
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ATTORNEY FOR CITY OF SCHERTZ, TEXAS

#### CERTIFICATE OF SERVICE

I, Connie C. Lock, Attorney for the City, certify that a copy of this document was served on all parties of record in this proceeding on January 29, 2015, in accordance with P.U.C. Procedural Rule 22.74 in the following manner: electronic facsimile transmission.

  
Connie C. Lock

**EXHIBIT A—ITEM 1 AND ITEM 2  
OF  
COMMISSION STAFF’S RESPONSE**

STATE OF TEXAS           §  
                                     §  
COUNTY OF BEXAR       §

**INTERLOCAL AGREEMENT BETWEEN SAN  
ANTONIO RIVER AUTHORITY AND THE  
CITY OF SCHERTZ, TEXAS FOR SEWAGE  
TRANSPORTATION, TREATMENT AND  
DISPOSAL**

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This Interlocal Agreement (hereinafter referred to as "Agreement") is entered into by and between the San Antonio River Authority, a conservation and reclamation district (hereinafter referred to as "River Authority"), and the City of Schertz, Texas, a Texas municipal corporation (hereinafter referred to as "City"), each of which may also be referred to herein individually as a "Party" or collectively as the "Parties".

WHEREAS River Authority owns and operates the San Antonio River Authority Wastewater Treatment System (the "System"), which provides sewage transportation, treatment and disposal; and

WHEREAS, City is located within River Authority's certificate of convenience and necessity and owns and operates its sewage collection system; and

WHEREAS City desires to contract with River Authority to provide sewage transportation, treatment and disposal for City; and

WHEREAS the Parties in the interest of public convenience and pursuant to the provisions of Chapter 791, as amended, Texas Government Code ("Chapter 791"), have determined that the public interest would best be served by River Authority providing sewage transportation, treatment and disposal for City to promote efficiency and effectiveness and to protect the environment, public health, safety and welfare;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the undersigned Parties agree to the terms and conditions outlined below.

### **I. AUTHORITY**

This Agreement is entered into by the Parties pursuant to the authority granted each of them by the applicable general and special laws of the State of Texas, and in compliance with the provisions of Chapter 791. This Agreement is intended to further the purpose of Chapter 791, which is to increase the efficiency and effectiveness of local governments.

### **II. CITY'S OBLIGATIONS**

City agrees that it shall (i) timely pay to River Authority the full amount it is required to pay under the provisions of this Agreement, (ii) plan, construct, maintain and finance the local sewage facilities owned, operated and maintained by City, (iii) set retail rates to its individual customers for sewage service adequate to meet its obligations, including those hereunder, (iv) bill and collect for its local sewer services, (v) set and enforce construction standards (plumbing codes and building ordinances) for its system based on appropriate regional standards, and (vi) if applicable, establish an industrial cost recovery charge consistent with guidelines of the Environmental Protection Agency. City agrees that it will cooperate with and assist the River Authority in the performance of the obligations assigned to the River Authority in this Agreement.

### **III. RIVER AUTHORITY'S OBLIGATIONS**

River Authority agrees that it shall (i) transport, treat and dispose of sewage of the City, in compliance with its currently permitted operations; currently all flow from this service area is treated at the Martinez III Wastewater Treatment Plant which is permitted for 150,000 gallons



per day; the current permitted capacity of the Graytown Wastewater Treatment Plant is 2,000,000 gallons per day; the projected build out of the Graytown Wastewater Treatment Plant for the entire watershed is estimated to be permitted for up to 18,000,000 gallons per day, (ii) cooperate with and assist City in the performance of the obligations assigned to the City under this Agreement, and (iii) operate the System efficiently and prudently in accordance with the accepted standards of its governmental function.

#### **IV. PROCEDURES TO ENSURE QUALITY**

Sewage will be accepted into the System at points of entry mutually agreed upon by City and River Authority. The current points of entry are shown in the attached Exhibit "A".

City agrees to limit its discharges into the System to those that are defined as admissible discharges under River Authority's industrial waste control ordinance No. O-805 passed and approved May 15, 1985 and to curtail the discharge of any wastes that have the characteristics of prohibited discharges under said ordinance, and all future amendments to said ordinance. A copy of said ordinance is attached as Exhibit "B".

City shall have full responsibility in connection with all wastes handled by its local sewage facilities. River Authority shall have full responsibility in connection with all wastes handled by the System, including City sewage accepted by the System at mutually agreed upon entry points.

#### **V. CHARGES**

City shall make payments to River Authority for (i) sewage transportation, treatment and disposal, (ii) fees included in the River Authority's industrial waste control ordinance, including extra strength sewage treatment, (iii) industrial cost recovery, (iv) connection fees and (v) for

any other expenditures which are the responsibility of City under this Agreement. The wholesale charges to City for sewage transportation, treatment and disposal; the charges for extra strength wastes; the industrial cost recovery charges; and the connection fees to be charged to City shall be as shown in the attached Exhibit "C".

Within thirty days of the close of each calendar month, a statement of account and the payments called for in this Agreement shall be forwarded to River Authority by City. By June 1 of each calendar year, City shall provide a listing of connections served by address to River Authority. Delinquent payments to River Authority shall incur a penalty of ten percent per annum.

River Authority will adjust its charges to the City annually, on July 1 of each calendar year. On or before May 1 of each year, River Authority will give written notice to City of the charges for the following year.

#### **VI. TERM**

The term of this Agreement shall be for 40 years from \_\_\_\_\_, 2015. The obligation of City to promptly pay all prescribed charges shall commence upon the execution of this Agreement and shall continue for the balance of the term remaining on this Agreement provided that the River Authority performs in accordance with the terms of this Agreement. At the end of such term, the Parties agree that each Party shall have the right to an extension of the term of this Agreement beyond such initial period for an additional term of 40 years under identical terms and conditions, provided each Party agrees.

## **VII. TITLE TO WATER AND SEWAGE**

Title to all water and sewage put into the System under this Agreement shall pass to the River Authority at the points of entry.

## **VIII. EASEMENTS**

City agrees to the extent physically feasible, reasonably practicable, as determined by City, and legally authorized that the River Authority may use without compensation the easements, rights-of-way or property held by City, and described on the attached Exhibit D, so that the River Authority's facilities and required equipment may be appropriately provided.

## **IX. FORCE MAJEURE**

If for any reason of "force majeure" either of the Parties hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, other than the obligation of the City to make the payments required under the terms of Article IV hereof, then if such Party shall give notice and full particulars of such reasons in writing to the other Party within a reasonable time after the occurrence of the event, or cause relied on, the obligation of the Party giving such notice, so far as it is affected by such "force majeure" shall be suspended during the continuance of the inability then claimed, but for no longer period; and such Party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "force majeure" as employed herein shall mean acts of god, strikes, lock-outs or other industrial disturbances, acts of public enemy, orders or actions of any kind of the Government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, hurricanes, storms, floods, washouts,

droughts, arrests, restraints of Government and people, civil disturbances, explosions, breakage or accident to dams, machinery, pipelines, or canals or structures, or on account of any other cause not reasonably within the control of the Party claiming such inability. It is understood and agreed that the settlement of strikes and lock-outs shall be entirely within the discretion of the Party having the difficulty, and that the above requirement that any "force majeure" shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lock-outs by acceding to the demands of the opposing parties when such settlement is unfavorable to it in the judgment of the Party having difficulty. No damages shall be recoverable from the River Authority by reason of the causes above mentioned.

#### **X. ASSIGNMENT**

No Party may assign or transfer its interest in this Agreement or any portion thereof without the written consent of the governing body of the other Party. Any attempt to transfer, pledge or otherwise assign shall be void *ab initio* and shall confer no rights upon any third person or party.

#### **XI. NOTICE**

For purposes of this Agreement, all notices among the Parties shall be deemed sufficient if in writing and mailed certified mail, return receipt requested, postage prepaid, to the addresses set forth below:

**CITY:**

City Manager  
City of Schertz  
1400 Schertz Parkway

**RIVER AUTHORITY:**

General Manager  
San Antonio River Authority  
P. O. Box 839980

Notices of changes of address must be made in writing delivered to the last known address of each other Party within five (5) business days of the change.

## **XII. GOVERNING LAW AND VENUE**

The Parties agree that this Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Any action or proceeding brought to enforce the terms of this Agreement or adjudicate any dispute arising out of this Agreement shall be brought in a court of competent jurisdiction in Bexar County, Texas.

## **XIII. GENDER AND TENSE**

Words of either gender used in this Agreement shall be held and construed to include the other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

## **XIV. AUTHORITY**

The signers of this Agreement represent that they have full authority to execute this Agreement on behalf of City and River Authority, respectively, and that the respective governing bodies of City and River Authority, have authorized the execution of this Agreement.

## **XV. INDEPENDENT CONTRACTOR**

It is expressly agreed and understood that each Party is and shall be deemed to be an independent contractor, responsible for its respective acts or omissions and that the other Party shall be in no way responsible therefore, and that no Party hereto has authority to bind the other Party nor to hold out to third parties that it has the authority to bind the other Party.

Nothing herein contained shall be deemed or construed to create the relationship of employer-employee, principal-agent, an association, joint venture, partners, or partnership or impose a partnership duty, obligation or liability among the Parties. No third party beneficiaries are created by this Agreement. This Agreement is not intended to and shall not create any rights in or confer any benefits upon any other person other than the Parties.

#### **XVI. SEVERABILITY**

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, then and in that event it is the intention of the Parties that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal or unenforceable, thereby added as a part of this Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provisions as may be possible, to be legal, valid and enforceable.

#### **XVII. DISPUTE RESOLUTION**

If a dispute arises with respect to this Agreement, the Parties shall first negotiate in good faith to resolve the dispute with an appeal to higher internal management, and failing resolution by such means, shall then submit the dispute to a mutually agreeable, non-binding dispute resolution process, before resorting to litigation.

#### **XVII. AMENDMENTS AND MODIFICATIONS**

This Agreement shall be binding upon the Parties and their respective successors and legal representatives and shall inure solely to the benefit of the Parties and their respective successors and legal representatives. Furthermore, no alteration, amendment, or modification of any provision of this Agreement shall be effective unless (1) prior written consent of such alteration, amendment, or modification shall have been obtained from the Parties hereto, and (2) such alteration, amendment, or modification is in writing and signed by the Parties hereto. The Parties may amend this Agreement upon compliance with applicable law.

#### **XIX. WAIVER**

The failure on the part of either Party herein at any time to require the performance by the other Party, of any way portion of this Agreement, shall not be deemed a waiver of, or in any way affect that Party's rights to enforce such provision, or any other provision. Any waiver by any Party herein of any provision hereof, shall not be taken or held to be a waiver of any other provision hereof, or any other breach hereof.

#### **XX. NO THIRD PARTY BENEFICIARY**

The Parties are entering into this Agreement solely for the benefit of their own entities and agree that nothing herein shall be construed to confer any right, privilege or benefit on any person or entity other than the Parties hereto.

#### **XXI. INCORPORATION OF PROVISIONS REQUIRED BY LAW**

Each provision and clause required by law to be inserted into this Agreement shall be deemed to be included herein, and the Agreement shall be read and enforced as though each were included herein. If through mistake, or otherwise, any such provision is not inserted, or is not correctly inserted, the Agreement shall be mutually amended to make such proper insertion, on application by either Party.

#### **XXII. CAPTIONS**

The section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection hereof.

#### **XXIII. INCORPORATION OF RECITALS**

The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Agreement for all purposes and are adopted as a part of the judgment and findings of the governing boards of the Parties.

#### **XXIV. INCONSISTENT PROVISIONS**

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

#### **XXV. COMPLIANCE WITH TEXAS OPEN MEETINGS ACT**



It is officially found, determined, and declared that the meeting of the River Authority at which this Agreement is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Agreement, was given, all as required by Chapter 551, as amended, Texas Government Code.

#### **XXVI. ENTIRE AGREEMENT**

This Agreement contains the entire agreement between the parties pertaining to the subject matter hereof and fully supersedes all prior agreements and understandings between the parties pertaining to such subject matter.

EXECUTED IN DUPLICATE ORIGINALS, EACH OF WHICH SHALL  
HAVE THE FULL FORCE AND EFFECT OF AN ORIGINAL, the \_\_\_\_ day of  
\_\_\_\_\_, 2015.

**CITY**

**RIVER AUTHORITY**

**CITY OF SCHERTZ**  
a Texas Municipal  
Corporation

**SAN ANTONIO RIVER  
AUTHORITY**

\_\_\_\_\_  
Michael Carpenter  
Mayor

\_\_\_\_\_  
Suzanne B. Scott  
General Manager

ATTEST:

ATTEST:

\_\_\_\_\_  
Brenda Dennis  
City Secretary

\_\_\_\_\_  
Stephen T. Graham  
Assistant Secretary

APPROVED AS TO LEGAL  
FORM:

APPROVED AS TO LEGAL  
FORM:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
David W. Ross  
General Counsel