

Control Number: 43832



Item Number: 26

Addendum StartPage: 0

PUC DOCKET NO. 43832
SOAH DOCKET NO. 473-15-4782.WS

2015 SEP 22 PM 3:29
PUBLIC UTILITY COMMISSION
FILING CLERK

APPLICATION OF PALO DURO § BEFORE THE
SERVICE COMPANY, INC. §
TO AMEND ITS CERTIFICATE §
OF CONVENIENCE AND § STATE OFFICE OF
NECESSITY IN PARKER §
AND WISE COUNTIES § ADMINISTRATIVE HEARINGS

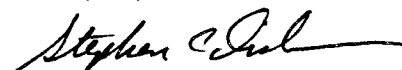
CITY OF FORT WORTH'S NOTICE OF SETTLEMENT AGREEMENT

The City of Fort Worth ("Fort Worth") hereby notifies the Administrative Law Judge and all Parties that on September 15, 2015, the Fort Worth City Council approved the settlement agreement with Palo Duro Service Company, Inc. concerning the Aledo Ridge development at issue in this docket. Attached as Exhibit 1 is a copy of that settlement agreement.

This filing is being made in supplementation of Fort Worth's Notice of Settlement and Withdrawal of Hearing Request filed in this docket on September 21, 2015 (PUC Interchange Item No. 25).

Respectfully submitted,

KELLY HART & HALLMAN LLP
303 Colorado Ave., Suite 2000
Austin, Texas 78701
Telephone: (512) 495-6413
Facsimile: (512) 495-6613

By: 
Stephen C. Dickman
State Bar No. 05836500

**ATTORNEYS FOR
THE CITY OF FORT WORTH**

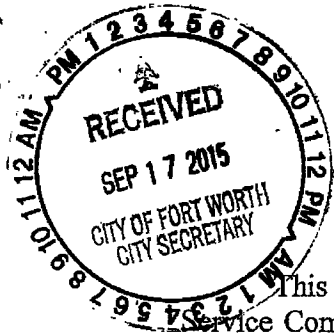
**CERTIFICATE OF SERVICE
PUC DOCKET NO. 43832**

I hereby certify that a true and correct copy of the foregoing document has been served on all Parties record on this 22nd day of September, 2015 in accordance with PUC Rule 22.74.



Stephen C. Dickman

EXHIBIT 1



CITY SECRETARY
CONTRACT NO. 47016

**SETTLEMENT AGREEMENT
FOR ALEDO RIDGE CCN APPLICATION**

This Settlement Agreement is made and entered into by and between Palo Duro Service Company, Inc., a Texas corporation ("Palo Duro") and the City of Fort Worth, Texas ("City"), a home-rule municipal corporation acting by and through its duly authorized Assistant City Manager (Palo Duro and the City each being a "Party", or jointly "Parties").

WHEREAS, on February 9, 2015, Palo Duro filed an application with the Public Utility Commission of Texas ("PUC") to amend its Certificate of Convenience and Necessity ("CCN") No. 12200 in Parker County to add the 33-acre Aledo Ridge subdivision tract ("Aledo Ridge") to its certificated retail water service area ("the Application"); and

WHEREAS, on June 25, 2015 the City timely filed with PUC an objection to, and a request for hearing on, the Application; and

WHEREAS, the City's request for hearing has been docketed as PUC Docket No. 43832 and referred for an administrative hearing to the State Office of Administrative Hearings ("SOAH") under SOAH Docket No. 473-15-4782.WS (which dockets are jointly referred to herein as the "Case"); and

WHEREAS, Palo Duro and the City desire to resolve all disputes and disagreements between them regarding this Case so as to avoid the costs and uncertainty of litigating this Case at SOAH.

NOW, THEREFORE, in consideration of the premises, representations, acknowledgments and agreements contained herein, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by the Parties, Palo Duro and the City agree as follows:

1. Submission of Water Utility Service Plan. Palo Duro shall submit a Water Utility Service Plan ("WUSP") for review and approval by the City Water Department prior to Palo Duro's installation of any Aledo Ridge water infrastructure. The WUSP shall demonstrate compliance with all applicable City water utility standards, adequacy of water supplies, and compatibility of meters, valves, meter boxes, and distribution lines with City water system requirements (except to the extent such standards are expressly waived by the City Water Department Director), provided however, no fire protection flow rates and pressures shall be required. The City Water Department shall review and comment on the Aledo Ridge WUSP within 30 days of Palo Duro's submission of a WUSP. Palo Duro shall fully address any City comments on the WUSP in accordance with normal City practices for approval of otherwise applicable water infrastructure projects within the City.

2. Prequalified Contractors. Palo Duro shall use one or more City prequalified construction contractors for the installation of Aledo Ridge water lines, meter

connections and other infrastructure, except that the water wells and other associated water plant facilities and equipment shall be installed by a qualified licensed water well driller.

3. Access. Palo Duro shall allow the City and its duly authorized employees, inspectors and representatives reasonable access to view and inspect any Aledo Ridge water infrastructure during and after construction. Palo Duro may utilize third party water infrastructure inspectors with the advance written approval by the City.

4. Option to Purchase Water Infrastructure. Palo Duro hereby grants the City an option to purchase whatever Aledo Ridge water lines and other water infrastructure as may be requested by the City. Such option shall be exercisable by the City any time after the earlier to occur of (i) the City's annexation of Aledo Ridge, or (ii) 17 years after the date of the first Aledo Ridge water meter installation. Palo Duro shall donate to the City any water line easements within thirty (30) days following the City's exercise of its option to purchase. Palo Duro acknowledges that the City has paid \$100 to Palo Duro as separate and additional consideration for the granting of the option to purchase Aledo Ridge water infrastructure. The City shall bear all costs imposed by any governmental entity associated with annexation of Aledo Ridge and any costs of exercising its option to purchase Aledo Ridge water infrastructure. The City shall give at least six months advance written notice by certified mail to Palo Duro of the City's intention to exercise its option to purchase Aledo Ridge water infrastructure.

5. Acquisition Price. Upon exercise of the City's option to purchase as described in Section 4, Palo Duro agrees to sell the Aledo Ridge water lines and any other water infrastructure as requested by the City "as is" for the then-existing net depreciated book value; provided however, Palo Duro has the right to take and remove any or all of the storage tanks and booster pumps at its sole cost within 60 days after the City exercises its option. The net depreciated book value of water infrastructure purchased by the City shall be based on Palo Duro's use of straight-line depreciation over the useful life of the water infrastructure. By way of example, if the useful life (as specified by the manufacturer) of the water lines to be acquired by the City is 30 years and the City acquires the water lines 20 years after installation, the City would pay Palo Duro for 33.3% of the installed cost of water lines.

6. Due Diligence. The City shall have the right to perform a due diligence review of all Aledo Ridge water infrastructure prior to acquisition, including pressure and chlorine testing of water lines at no cost to Palo Duro.

7. Dual or Single Certification. Following the City's exercise of its option to purchase as described in Section 4, the City may elect to file an application at the PUC for single or dual certification of Aledo Ridge. Palo Duro agrees to support any such application at no expense to Palo Duro.

8. Equipment and Infrastructure Removal Costs. The costs of properly plugging and abandoning the Palo Duro water wells serving Aledo Ridge, as well as the costs of decommissioning and removing any water well equipment, will be paid by the City.

9. Customer Notices. Palo Duro shall provide annual water bill inserts notifying all customers that at some point in the future Aledo Ridge may be annexed by the City, and that the City may become the retail water provider for Aledo Ridge.

10. Plat Approval. The City agrees that a CCN plat note will not be required to be included in an Aledo Ridge preliminary plat or final plat provided that the plats conform to the City's Subdivision Ordinance and all other applicable regulations. The City will not provide water or sewer service to Aledo Ridge unless and until a final plat is approved for Aledo Ridge.

11. Withdrawal as a Party. Within three (3) days of the Parties' execution of this Agreement, the City shall submit a written request to the PUC and SOAH to withdraw its hearing request in this case. The City will support any request by Palo Duro or the PUC staff that this case be remanded by SOAH to the PUC for administrative processing as an uncontested matter.

12. Notices. Any notices or other communications required to be given by one Party to another under this Agreement (a "Notice") shall be given in writing addressed to the Party to be notified at the address set forth below and shall be deemed given: (a) when the Notice is delivered in person to the person to whose attention the Notice is addressed; (b) when received if the Notice is deposited in the United States Mail, certified or registered mail, return receipt requested, postage prepaid; (c) when the Notice is delivered by Federal Express, UPS, or another nationally recognized courier service with evidence of delivery signed by any person at the delivery address; or (d) five business days after the Notice is sent by FAX (with electronic confirmation by the sending FAX machine) with a confirming copy sent by United States mail within 48 hours after the FAX is sent. If any date or period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the Notice shall be extended to the first business day following the Saturday, Sunday, or legal holiday. For the purpose of giving any Notice, the addresses of the Parties are set forth below. The Parties may change the information set forth below by sending Notice of such changes to the other Party as provided in this section.

To the City:

City of Fort Worth, Texas
Attn: Water Director
1000 Throckmorton Street
Fort Worth, Texas 76102
Fax: (817) 392-2398

To Palo Duro:

Palo Duro Service Company
Attn: Richard Micheletti
3505 Williams Road
Fort Worth, Texas 76116
Tel: 817-244-2248

13. City Consent and Approval. In any provision of this Agreement that provides for the consent or approval of the City, such consent or approval may be withheld or conditioned by the City staff or City Council at its sole discretion.

14. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives, corporate affiliates, successors and assigns.

15. Construction of Agreement. The Parties acknowledge that each Party and its counsel have reviewed and revised this Agreement and that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or exhibits hereto.

16. No Prior Agreements. This Agreement constitutes the sole agreement of the Parties with respect to the subject matters hereof and supersedes any prior understandings or written or oral agreements among the Parties concerning the subject matter hereof. This Agreement may be modified only by a written instrument executed by the Parties hereto.

17. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the state of Texas, as they apply to contracts performed within the state of Texas and without regard to any choice of law rules or principles to the contrary. The Parties acknowledge that this Agreement is performable in Tarrant County, Texas and hereby submit to the jurisdiction of the courts of Tarrant County, and hereby agree that any such court shall be a proper forum for the determination of any dispute arising hereunder.

18. No Third Party Beneficiary. This Agreement is solely for the benefit of the Parties, and their permitted successors and assigns, and neither the City nor Palo Duro intends by any provision of this Agreement to create any rights in any third-party beneficiaries or to confer any benefit upon or enforceable rights under this Agreement or otherwise upon anyone other than the City and Palo Duro.

19. No Waiver. Any failure by a Party to insist upon strict performance by the other Party of any material provision of this Agreement shall not be deemed a waiver thereof, and the Party shall have the right at any time thereafter to insist upon strict performance of any and all provisions of this Agreement. No provision of this Agreement may be waived except by writing signed by the Party waiving such provision. Any waiver shall be limited to the specific purposes for which it is given. No waiver by

any Party hereto of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

20. Section 13.248 Agreement. The Parties agree that the designation under this Agreement of areas and customers to be served by water and wastewater utility providers is valid and enforceable and may be submitted to the PUC for approval at the appropriate time pursuant to Section 13.248 of the Texas Water Code regarding contracts designating areas to be served by retail public utilities.

21. No Joint Venture or Partnership. No provision of this Agreement shall be construed to create any type of joint or equity ownership of any property or any partnership or joint venture.

22. Counterpart Originals. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original.

Wherefore, premises considered, the Parties hereto have executed this Settlement Agreement on the dates shown beside the signature of the Party.

Palo Duro Service Company, Inc.

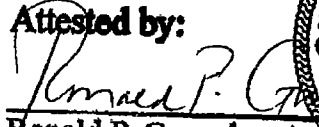
By:


Richard Micheletti
President

Date:

7-31-2015

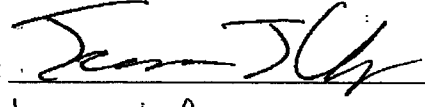
Attested by:


Ronald P. Gonzales, Assistant City Attorney



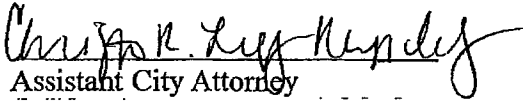
CITY OF FORT WORTH

By:


Jesus J. Chapa (printed)

Title: Assistant City Manager

APPROVED AS TO FORM AND
LEGALITY:


Assistant City Attorney

Date:

9-16-15