

Control Number: 43901



Item Number: 36

Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83rd
Legislature, Regular Session, transferred the functions
relating to the economic regulation of water and sewer
utilities from the TCEQ to the PUC effective
September 1, 2014

43901

CARROLL, REEDER & DREWS, L.L.P.

ATTORNEYS AT LAW
A REGISTERED LIMITED LIABILITY PARTNERSHIP
AUSTIN CENTRE, SUITE 970
701 BRAZOS

MARIANNE CARROLL
CHRIS REEDER
ELIZABETH DREWS

AUSTIN, TEXAS 78701
(512) 320-5951
FAX (512) 320-5920

WRITER'S DIRECT DIAL NUMBER IS (512) 320-5954
e-mail address: edrews@carrollreeder.com

RECEIVED
2014 DEC -9 PM 2:55
PUBLIC UTILITY COMMISSION
FILING CLERK

July 20, 2005

JUL 22 2005

Ms. Lisa Mejia
Water Supply Division, MC-153
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Re: Executed Agreement between Angus Water Supply Corporation and the City of Corsicana

Dear Ms. Mejia:

You will recall from your meeting at the Commission with representatives of Angus Water Supply Corporation ("Angus") and the City of Corsicana ("the City") that those parties had reached an agreement resolving disputes relating to their pending certificate amendment applications,¹ and that Angus was in the process of obtaining USDA approval in connection with its federal loan, a prerequisite to execution of the settlement agreement. Those steps have been accomplished, and a copy of the executed "Agreement Designating Areas and Customers to Receive Retail Water Utility Service" is attached.

As Commission Staff instructed, the original of the settlement agreement is being provided directly to you, with a copy to Brian Dickey and Todd Galiga, and no copy is being filed in either docket.

¹ Application of Angus Water Supply Corporation to Amend its Certificate of Convenience and Necessity (CCN) No. 11171, TCEQ Docket No. 2003-0680-UCR, Application No. 33780-C; and Application of the City of Corsicana to Amend its CCN No. 10776, TCEQ Docket No. 2004-0816-UCR, Application No. 34418-C.

RECEIVED
JUL 5

**AGREEMENT DESIGNATING AREAS AND CUSTOMERS TO RECEIVE
RETAIL WATER UTILITY SERVICE**

This AGREEMENT DESIGNATING AREAS AND CUSTOMERS TO RECEIVE RETAIL WATER UTILITY SERVICE (Agreement) is by and between Angus Water Supply Corporation (Water Supply Corporation) and the City of Corsicana, Texas (City) (hereinafter, Water Supply Corporation and City, collectively referred to as Parties):

WHEREAS Water Supply Corporation is a non-profit, member-owned, member-controlled cooperative corporation of the State of Texas operating pursuant to the provisions of Chapter 67, WATER CODE, and is a retail water utility providing retail water utility service as defined by Section 13.002, WATER CODE under the authority of, and within the area described under Texas Commission on Environmental Quality (TCEQ) Certificate of Convenience and Necessity (CCN) No. 11171 in Navarro County, Texas; and

WHEREAS City is a home rule municipality under Article XI, Section 5 of the Texas Constitution and is a retail water utility providing retail water utility service as defined by Section 13.002, WATER CODE under the authority of, and within the area described under TCEQ CCN No. 10776 in Navarro County, Texas; and

WHEREAS City has applied for amendment to its CCN No. 10776 which application was opposed by Water Supply Corporation and is the subject of TCEQ Docket No. 2004-0816-UCR; and

WHEREAS Water Supply Corporation has applied to the TCEQ for amendment to its CCN No. 11171 which application was opposed by City and is the subject of TCEQ Docket No. 2003-0680-UCR; and

WHEREAS portions of the certificated areas requested in the applications of City and Water Supply Corporation overlap; and

WHEREAS Section 13.248 WATER CODE, and 30 Texas Administrative Code (TAC) Section 291.117 provide that contracts between retail public utilities such as Water Supply Corporation and City may designate areas to be served

and customers to be served and that such designations will be valid and enforceable and will be incorporated into their respective CCNs when approved by the TCEQ; and

WHEREAS Water Supply Corporation and City agree that this Agreement is a contract designating areas and customers to be served by Water Supply Corporation and City respectively; and

WHEREAS Water Supply Corporation and City have, subject to approval by the TCEQ, through good faith negotiations, resolved issues concerning the boundaries of their respective CCNs in areas of potential overlap, and have entered into this Agreement to allocate the areas to be served with retail water service by each Party pursuant to Texas Water Code § 13.248 and 30 TAC § 291.117; and

WHEREAS Water Supply Corporation and City agree and stipulate that this Agreement, upon approval by the TCEQ and incorporation into their respective CCNs, will resolve all contests by the Water Supply Corporation to the City's application for amendment to City's CCN No. 10776, and by the City to the Water Supply Corporation's application for amendment to Water Supply Corporation's CCN No. 11171;

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained, including but not limited to the recitals set forth hereinabove, the Parties agree as follows:

(1) The Parties request that TCEQ amend their respective CCNs as set forth in Exhibit 1 to this Agreement, which is incorporated herein by reference for all purposes to and as a part of this Agreement.

(2) The Parties acknowledge and desire that certain areas not previously certificated to any retail public utility, including neither City nor Water Supply Corporation, will be exclusively certificated to City and Water Supply Corporation, respectively, as depicted in Exhibit 1;

(3) The Parties acknowledge and desire that the following area that is certificated to Water Supply Corporation under Water Supply Corporation's CCN No. 11171 will be exclusively certificated to City under City's CCN No. 10776, as

depicted in Exhibit 1. This area, to which Water Supply Corporation will be decertificated, is the area to which Water Supply Corporation has a CCN consisting of its facilities plus 200 feet from its distribution lines, which area borders Interstate Highway (IH) 45 beginning at City's current municipal boundaries and extending in a northward direction within City's current municipal boundaries. In addition, Water Supply Corporation has one customer it is currently serving outside of its certificated area that in accordance with this Agreement will be served by City. This customer is Sid McKissack, who resides at 4750 S. IH 45 W. in City. The facilities currently owned by Water Supply Corporation to which Water Supply Corporation will transfer all of its rights to City under Paragraph (4) of this Agreement include the following:

BEGINNING at the southernmost City Limits line located along the eastern right of way of IH 45 and being south of the Town Center;

THENCE in a northerly direction parallel to and approximately 5 feet from the east right of way line of IH 45, 1.8 miles and including the 4" water line at this location;

In Addition:

BEGINNING at the southernmost City Limits line located on IH 45 south of the Town Center:

THENCE in a northerly direction, 0.25 miles to the beginning of a 2" water line;

THENCE in a westerly direction, under IH 45, to include an encased road bore;

THENCE in a northerly direction, 0.50 miles, parallel to and approximately 5 feet from the west right of way line of IH 45, to include the 2" water line at this location.

(4) Water Supply Corporation agrees to transfer to City all of its rights to all of its facilities and easements to provide retail water utility service as described in Paragraph (3) for no consideration beyond that stated in this Agreement.

(5) As consideration for Water Supply Corporation's promises and agreements in this Agreement, in addition to City's other promises and agreements in this Agreement, City agrees to compensate Water Supply Corporation by a total of thirty-six thousand dollars (\$36,000.00), through a credit of one thousand dollars (\$1,000.00) each month for a total of thirty-six (36) consecutive months on the bill for water sold by City to Water Supply Corporation. The credits will begin on the first bill that City issues to Water Supply Corporation after the TCEQ has approved the Agreement and has incorporated into the Parties' respective CCNs the designation of areas and customers to be served as depicted in Exhibit 1.

(6) City agrees to begin providing service to the area described in paragraph (3) and as depicted in Exhibit 1 within 60 days after the TCEQ has approved the Agreement and amended the Parties' CCNs. City and Water Supply Corporation agree to coordinate regarding the exact date of the service transition from Water Supply Corporation to City.

(7) This Agreement shall be submitted to the TCEQ pursuant to Section 13.248, WATER CODE, and 30 TAC Section 291.117 of the TCEQ rules following execution by the Parties. This Agreement shall be considered binding and effective as of the date on which the TCEQ has approved the Agreement and incorporates into the Parties' respective CCNs the designation of areas and customers to be served as depicted in Exhibit 1.

(8) This Agreement contains the entire agreement between the Parties and supersedes any and all prior agreements, arrangements, or understandings between the Parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of the Agreement exist. This Agreement cannot be changed or terminated orally, or in the absence of approval by the TCEQ as provided at Section 13.248, WATER CODE and 30 TAC Section 291.117.

(9) City and Water Supply Corporation agree that they are aware of no impediment to their performance of this Agreement. City and Water Supply

Corporation agree to support approval of this Agreement and to cooperate in its implementation.

(10) This Agreement shall be governed by, construed and enforced in accordance with, and subject to, the laws of the State of Texas and the rules of the TCEQ.

(11) By their signatures below, the individuals signing represent and warrant that they have full authority to bind and otherwise compromise the interests of the Party they represent.

(12) Any action at law or in equity brought to enforce or interpret any provision of this Agreement shall be brought in a state court of competent jurisdiction with venue in Navarro County, Texas.

(13) If any provision contained in this Agreement shall for any reason be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. In that event, the Parties or their successors, if any, will promptly negotiate in good faith in an effort to agree on amendments preserving the bargain reflected in this Agreement in a manner that is valid, legal and enforceable, and seek and support all necessary approvals of such agreed amendments.

(14) This Agreement may not be assigned in whole or in part without the express written consent of the non-assigning Party.

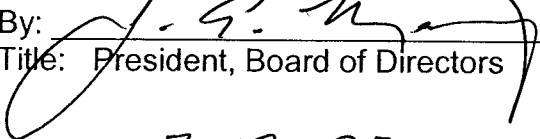
(15) Either Party to this Agreement who is the prevailing party in any legal proceeding against the other party, brought in relation to this Agreement, shall be entitled to recover court costs and reasonable attorneys' fees from the non-prevailing party.

(16) The Parties hereto covenant and agree that they shall execute and deliver such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the intent of this Agreement.

(17) This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective the date of the last signature.

ANGUS WATER SUPPLY CORPORATION

By: 
Title: President, Board of Directors
Date: 7-12-05

Attest: Cathy McMullan

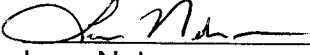
CITY OF CORSICANA, TEXAS


By: 
Title: Mayor

Date: June 22, 2005

Attest: Cathy McMullan
City Secretary

APPROVED AS TO FORM:

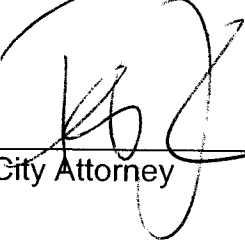

Lara Nehman
Attorney for Angus Water
Supply Corporation


Elizabeth Drews
Attorney for City of Corsicana, Texas

APPROVED:

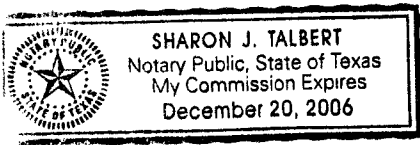

City Manager

Cathy McMullan
Director/Fiscal Services


City Attorney

STATE OF TEXAS §
COUNTY OF NAVARRO §

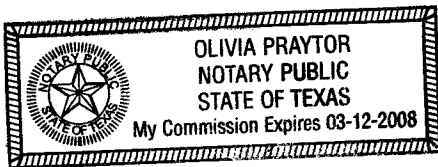
This instrument was acknowledged before me on the 19th day of July, 2005, by J. A. Mertz, on behalf of Angus Water Supply Corporation.



Sharon J. Talbert
Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF NAVARRO §

This instrument was acknowledged before me on the 22nd day of June, 2005, by Olivia Praytor, on behalf of the City of Corsicana, Texas.



Olivia Praytor
Notary Public, State of Texas