



Control Number: 43901



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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

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

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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 certificate consisting of its facilities plus 200 feet from its distribution lines, which area borders Interstate Highway 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. IH45 W. in Corsicana.

(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.

(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: _____

Attest: _____

CITY OF CORSICANA, TEXAS

By: _____
Title: Mayor

Date: _____

Attest: _____
City Secretary

APPROVED AS TO FORM:

Kenneth L. Petersen, Jr.
Attorney for Angus Water
Supply Corporation

Elizabeth Drews
Attorney for City of Corsicana, Texas

APPROVED:

City Manager

Director/Fiscal Services

City Attorney

STATE OF TEXAS §
COUNTY OF NAVARRO §

 This instrument was acknowledged before me on the ____ day of _____,
2005, by _____, on behalf of Angus Water Supply Corporation.

Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF NAVARRO §

 This instrument was acknowledged before me on the ____ day of _____,
2005, by _____, on behalf of the City of Corsicana, Texas.

Notary Public, State of Texas