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APPLICATION OF CITY OF CIBOLO §  
FOR SINGLE CERTIFICATION IN §  
INCORPORATED AREA AND TO §  
DECERTIFY PORTIONS OF GREEN §  
VALLEY SPECIAL UTILITY DISTRICT'S §  
SEWER CERTIFICATE OF §  
CONVENIENCE AND NECESSITY IN §  
GUADALUPE COUNTY §

PUBLIC UTILITY COMMISSION

OF TEXAS

**CITY OF CIBOLO'S EXCEPTIONS TO  
THE PROPOSAL FOR DECISION OF PHASE 2**

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<b>INCORPORATED AREA AND TO</b>	<b>§</b>	
<b>DECERTIFY PORTIONS OF GREEN</b>	<b>§</b>	
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<b>CONVENIENCE AND NECESSITY IN</b>	<b>§</b>	
<b>GUADALUPE COUNTY</b>	<b>§</b>	

**CITY OF CIBOLO'S EXCEPTIONS TO  
THE PROPOSAL FOR DECISION OF PHASE 2**

TO: THE HONORABLE COMMISSIONERS OF THE PUBLIC UTILITY COMMISSION  
OF TEXAS

The City of Cibolo (the "City") submits the following exceptions to the Proposal for Decision of Phase 2 (the "PFD") issued by the Administrative Law Judge ("ALJ") in the above-referenced matter.

The City fully supports the ALJ's finding that the City has met its burden of proof in this matter, ultimately recommending that (1) the City provided Green Valley Special Utility District ("GVSUD") with the required written notice of intent to serve on August 18, 2015 (the "Notice"), clearly identifying the areas the City intends to serve; (2) the City filed its application on March 8, 2016, seeking to decertify portions of the GVSUD sewer certificate of convenience and necessity ("CCN") No. 20973 (the "Application"), thus waiting the 180 days after providing GVSUD the Notice; and (3) the City's Application is administratively complete. The City also supports the ALJ's findings of fact ("FOFs"), conclusions of law ("COLs"), and Ordering Paragraphs contained in the PFD, which are fully and unquestionably based upon the evidence in the record. However, in an effort to clarify and otherwise comprehensively describe the administrative record with respect to the determinations that have been made during this phase,

the City requests minor edits and additions to the FOFs and COLs and Ordering Paragraphs, as discussed herein.

#### **I. PROCEDURAL HISTORY AND JURISDICTION**

The City agrees with the PFD's description of the procedural history of Phase 2 of the above-referenced matter.

#### **II. SUMMARY OF ALJ'S RECOMMENDATIONS ON PHASE 2 ISSUES**

The City agrees with the ALJ's recommendations on the Phase 2 issues, finding that the City has met its burden of proof on all issues in Phase 2 of this docket.

#### **III. RESOLVED ISSUES 1, 4a, 4b, AND 6-8**

The City agrees with the PFD's description of the issues that have either been resolved by the Public Utility Commission's ("Commission") Interim Order relating to Phase 1 or through stipulations by the parties.

#### **IV. CONTESTED ISSUES NOS. 2-4: SUFFICIENCY OF NOTICE OF INTENT, TIMING OF APPLICATION FILING, AND ADMINISTRATIVE COMPLETENESS**

The City agrees with the PFD's description of the contested Phase 2 issues that were unresolved and addressed through briefing by the parties (the "Contested Issues").

##### **A. Issue 2: Sufficiency of the Notice of Intent**

The City agrees with the PFD's determination that the Notice was provided to GVSUD in accordance with Texas Water Code ("TWC") § 13.255(b) and 16 Texas Administrative Code ("TAC") § 24.120. Further, the City supports the ALJ's finding that the Notice was not confusing or otherwise defective.

**B. Issue 3: 180-Day Waiting Period between Notice of Intent and Filing of Application**

The City agrees with the PFD's determination that the City waited the required 180 days after sending the Notice to file the Application at the Commission, in accordance with TWC § 13.255(b) and 16 TAC § 24.120(b).

**C. Issue 4: Administrative Completeness of the Application under 16 Texas Administrative Code § 24.8.**

The City agrees with the PFD's determination that the City's Application is administratively complete.

**V. CONTESTED ISSUE 5: PUBLIC DRINKING WATER SYSTEM COMPLIANCE**

The City agrees with the PFD's determination that the City demonstrated that its public drinking water system complies with the Texas Commission on Environmental Quality's minimum requirements for public drinking water systems.

**VI. RECOMMENDATION**

The City supports all of the recommendations made by the ALJ regarding the Contested Issues.

**VII. EXCEPTIONS TO FINDINGS OF FACT**

The City offers the following modifications and revisions to further buttress and clarify these ultimate recommendations in the PFD. Specifically, the City requests the following FOFs be revised or added as follows:

"351. On August 24, 2016, Commission Staff filed Commission Staff's Recommendation on Administrative Completeness, recommending that the Application be deemed administratively complete."

The addition of FOF 35I incorporates a necessary filing that was performed by Commission Staff in accordance with TWC § 13.255(g-1). The proposed FOF 35I is supported by the Stipulations, page 3.

“FOF 57. The 1,694-acre area for which Cibolo seeks single certification is within the certificated sewer service area of one retail public utility, Green Valley Special Utility District, under sewer CCN No. 20973.”

The proposed revision is necessary to clarify the name of the entity who holds the CCN of which the City is seeking partial single certification pursuant to TWC § 13.255 and to specify the sewer CCN subject to the City’s Application. The revision is supported by the Stipulations, page 2.

#### **VIII. EXCEPTIONS TO CONCLUSIONS OF LAW**

The City requests the following COL be added as follows:

“19A. Rule 16 TAC § 24.120 concerns single certification in incorporated or annexed areas.”

This revision would clarify the importance of 16 TAC § 24.120 in this proceeding and the subsequent discussion of the applicable version of that rule.

#### **IX. EXCEPTIONS TO PROPOSED ORDERING PARAGRAPHS**

In addition to the ALJ’s recommendation that the current Ordering Paragraphs be replaced with the proposed Ordering Paragraphs in the PFD, the City requests that the following Ordering Paragraphs be added, and the proposed Ordering Paragraphs be renumbered accordingly:

- “1. The Application is administratively complete.
2. GVSUD does not have any property that would be rendered useless or valueless as a result of the decertification in Docket No. 45702.
3. The City does not owe any compensation to GVSUD and may provide sewer service to the property decertified in Docket No. 45702.
4. The City and GVSUD shall each pay half of the non-expedited costs of the transcript.”

**X. CONCLUSION AND PRAYER**

The City of Cibolo respectfully requests that the Administrative Law Judge or Commission make the requested edits and additions to the Findings of Fact, Conclusions of Law, and Ordering Provisions, and grant any other relief to the City of Cibolo to which it may be entitled.

Respectfully submitted,

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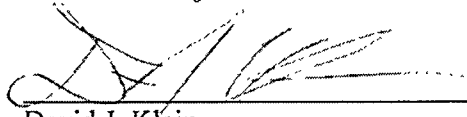
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ATTORNEYS FOR THE CITY OF CIBOLO

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was transmitted by fax, hand-delivery and/or regular, first class mail on this 4th day of December, 2017 to the parties of record in accordance with 16 Tex. Admin. Code § 22.74.

  
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David J. Klein