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FORMAL COMPLAINT OF
ADC WEST RIDGE L.P. AND
CENTER FOR HOUSING RESOURCES,
INC. AGAINST THE CITY OF FRISCO

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**CITY OF FRISCO'S RESPONSE TO COMPLAINANTS' REPLY IN SUPPORT OF
MOTION FOR CONTINUANCE**

COMES NOW, the City of Frisco ("City" or "Frisco") and files this Response to *Reply in Support of Motion for Continuance* filed by ADC West Ridge, LP and Center for Housing Resources, Inc. ("Complainants"). It is unfortunate that the City needs to provide this response. However, it feels compelled to do so to clear the disingenuous representations made by Complainants.

I. BACKGROUND

On December 20, 2016, ADC West Ridge, LP and Center for Housing Resources, Inc. ("Complainants") requested a 45-day continuance in the proceedings. Complainants' only justification for the continuance is to allow it "sufficient time to review additional discovery produced by the City of Frisco and to determine whether additional depositions of Frisco's experts are appropriate before completing Complainants' prefiled testimony."¹ The PUC Staff is unopposed to the Motion. The City of Frisco opposes the Motion for the reasons stated in its pleading filed on December 22, 2016 – two days after Complainants sought the 45-day delay.

II. ARGUMENT

Complainants make many disingenuous statements for which Frisco is compelled to respond. Each assertion will be considered in turn.²

¹ Complainants' Motion at 1.⁴

² Unless otherwise noted, each quoted excerpt in this pleading is from Complainants' *Reply in Support of Motion for Continuance* filed December 22, 2016, in this docket.

Complainants' Assertion

“Complainants served requests for information on Frisco and received minimal responses. Upon objection by Frisco to certain requests related to the location of Frisco's infrastructure, Complainants diligently filed a motion to compel, which was granted in part by the Administrative Law Judges after a hearing on December 6, 2016. Frisco's responses are due on January 7, 2017, less than one-week before Complainants' prefiled testimony is due. Frisco's refusal to provide this information at an earlier date - and without the necessity of a motion and hearing - has made it necessary for Complainants to request this continuance.”

RESPONSE:

Complainants' have served on Frisco approximately 90 requests for information (“RFI”) and over thirty requests for admission. The City has worked diligently to provide appropriate responses to the requests. Complainants' copious discovery requests generated document production by the City of over 1,300 pages of documents.

The City and Complainants worked out many objections to discovery before burdening Your Honors with objections and motions to compel. However, the City, in good faith, objected to and asserted objections to five RFIs as reaching beyond the scope of discovery. The ALJs partially agreed with Frisco and limited the overbroad nature of the requests. Further, the City and Complainants worked out a mutually agreeable document production date after the receipt of Order No. 7 in this matter.

The suggestion that Complainants needs an additional 45 days to review five RFI responses, without a good cause demonstration, when it has already received RFI responses, over 1,300 pages of documents, and deposition testimony from Frisco witnesses is wholly without merit. Frankly, if counsel for Frisco had known that Complainants' suggested a later discovery time to respond to Order No. 7 in order to bolster Complainants' Motion, Frisco would not have agreed to such a delay in production time.

Complainants' Assertion

“Complainants have also attempted to obtain discovery, including information regarding Frisco's infrastructure and Frisco's position on key issues, through depositions. Complainants have deposed three expert witnesses and one corporate representative. Not a single one of Frisco's expert witnesses has identified an expert opinion on the key issues in this case, in spite of being designated months ago. In fact, Frisco's outside expert designated to opine regarding CCNs and obligations thereunder had not reviewed anything related to the case, had no knowledge of Frisco's procedures for development, had no opinion on whether Complainants had complied with any procedures, and had no opinion on whether Complainants are "qualified service applicants" under 16 Tex. Admin. Code§ 24.85. And, Frisco's corporate representative who was designated on limited topics related to Frisco's infrastructure could not answer any questions regarding that infrastructure. Given these actions - or lack thereof - by Frisco, Complainants have been unable to discover necessary information regarding Frisco's position or its infrastructure through reasonably diligent efforts.”

RESPONSE:

Complainants' diatribe ignores one fact: Complainants bear the burden of proof in this proceeding. It is true that Frisco expert witnesses have not formed professional opinions as this matter is still too early for such an exercise. The attempt by Complainants to require Frisco experts to provide professional opinions before they have formed such opinions is clearly outside the bounds of the Texas Rules of Civil Procedure (“TRCP”) and Orders that govern this case.

Order No. 3 in this matter provided that Frisco identify its experts on October 4, 2017, and provide documents identified in TRCP § 194.2(f)(4)(A). While the City supplemented with resumes for each declared witness at a later date, Frisco complied with Order No. 3. There is no requirement in Order No. 3 or TRCP to provide documents for experts to review by a particular date. This appears to be the point of contention with Complainants.

Because Frisco's expert witnesses have not formed their opinions, Complainants cry foul. However, there is no legal basis for such a complaint. Frisco complied with Order No. 3 and TRCP § 194.2. There were no expert reports ordered pursuant to TRCP 195.5 in this case. Further, it is without question that Complainants are the party seeking affirmative relief in this case. As such,

Frisco's obligation is to merely make its experts "available for deposition reasonably promptly after the expert is designated."³ The City made its experts available. There is nothing in TRCP § 195.3 or other rule that requires that Frisco's experts have fully formed opinions or any opinion two months before their pre-filed testimony is due or five months before they actually provide the opinion at the hearing on the merits. The suggestion that Frisco has not complied with its obligations is spurious and not supported by the facts or law that govern this case.

Further, the City has provided maps that show Frisco infrastructure in and around the subject property. The City even produced a map at the request of Complainants during the deposition of one of the City's witnesses in late November. Complainants' statements are just plain wrong.

Complainants' Assertion

"Finally, Frisco scheduled depositions of three non-party witnesses in the week before Complainants' prefiled testimony is due. The information which will be obtained from these depositions underscores the need for the requested continuance."

RESPONSE:

The non-party witnesses that Complainants reference are all contractors for Complainants. They were each listed by Complainants as persons of knowledge of relevant facts. As contractors for Complainants and the fact that Complainants know that they have knowledge of relevant facts suggests that Complainants know the substance of the witnesses' knowledge. There is no evidence that Complainants will suffer any "surprise" from the depositions of its own contractors. Further, contemporaneously with this pleading, Frisco is notifying the parties that it will not be deposing John David Cross. Thus, the City is currently only seeking the deposition of two non-party witnesses – all of whom are or were employed by Complainants. There is simply no good cause shown for the delay when seeking the deposition of witnesses within some control of Complainants within the discovery period ordered in this case.

³ TRCP 195.3(b).

Complainants' Assertion

“Complainants have not had the opportunity to obtain discovery from Frisco, specifically as it relates to the items to which the Administrative Law Judges compelled Frisco to respond, because Frisco has refused to provide such discovery. Moreover, Frisco's "experts" and "corporate representative" have demonstrated through their depositions that additional discovery will likely be needed. And, Frisco's choice to schedule non-party witness depositions in the days and week before Complainants' prefiled testimony is due highlights the need for the continuance. Thus, it is Frisco's actions in the discovery process that have created the need for Complainants' requested continuance.”

RESPONSE:

The City incorporates its arguments stated above. There has not been any good cause shown for the requested continuance in light of PUC R. § 22.79 that provides in relevant part that “continuances will not be granted based on the need for discovery if the party seeking the continuance previously had the opportunity to obtain discovery from the person from whom discovery is sought, except when necessary due to surprise or discovery of facts or evidence which could not have been discovered previously through reasonably diligent effort by the moving party.” Complainants have not made sufficient demonstration of surprise or the discovery of evidence which could not have been previously obtained.

III. CONCLUSION AND PRAYER

The City respectfully requests an order:

- (1) Denying the Complainants' Motion to for Continuance.
- (2) Granting the City all other and further relief to which it is justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of December, 2016, a true and correct copy of the foregoing document has been sent via facsimile, first class mail, or hand-delivered to the following counsel of record:

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