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COMPLAINT OF KER-SEVA LTD.
AGAINST THE CITY OF FRISCO

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§

BEFORE THE STATE OF TEXAS
ADMINISTRATIVE HEARINGS
PUBLIC UTILITY COMMISSION
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**CITY OF FRISCO'S RESPONSE TO MOTION TO COMPEL OF KER-SEVA, LTD.,
ADC WEST RIDGE, L.P., AND CENTER FOR HOUSING RESOURCES, INC.**

COMES NOW, the City of Frisco ("City" or "Frisco") and files this Response to the Motion to Compel Responses of Requests for Information ("RFI") and Requests for Admission ("RFA") of Ker-Seva Ltd., ADC West Ridge, LP and Center for Housing Resources, Inc. In support thereof, the City shows the following:

I. BACKGROUND

On October 18, 2016, Ker-Seva Ltd., ADC West Ridge, LP and Center for Housing Resources, Inc. ("Complainants") jointly served RFIs and RFAs on the City. On October 28, 2016, the City filed objections to certain RFIs. On November 4, 2016, Complainants filed a motion to compel responses to certain RFIs to which the City objected. Pursuant to PUC Proc. R. §§ 22.144(d) and 22.4, this Response to Complainants' Motion to Compel is timely filed.

II. OBJECTIONS

The City objected to the following RFIs:

Request for Information No. 71: Please produce a map identifying the location of the Rowlett Sanitary Sewer Interceptor Line and the location of the City of Frisco metering station and tap as described in the Interlocal Agreement attached as Exhibit "B" hereto.

Request for Information No. 72: Please produce a map identifying the location of the City of Frisco's Point or Points of Delivery as defined in Section 6 of the water supply agreement attached hereto as Exhibit "C."

Request for Information No. 73: [AMENDED AS AGREED] Please produce all documents relating to any agreements currently in effect between Frisco and any other person or entity which relates to the use of a water line not owned by the City of Frisco or provides authorization for use of any water lines.

Request for Information No. 74: Please produce all documents identifying Frisco's existing water lines, whether located within Frisco's CCN or outside. For purposes of this request,

Frisco's "existing water lines" means any lines for which Frisco owns, operates, has authorization to use, or any portion is reserved to serve Frisco's needs, for provision of water service.

Request for Information No. 75: Please produce all documents identifying Frisco's existing sewer lines, whether located within Frisco's CCN or outside. For purposes of this request, Frisco's "existing sewer lines" means any lines for which Frisco owns, operates, has authorization to use, or any portion is reserved to serve Frisco's needs, for provision of sewer service.

OBJECTION: The City objects to RFI Nos. 71-75 on the same grounds. Each request asks Frisco to identify items related to wholesale service it receives. Frisco objects to the request as it is overly broad and burdensome. This instant matter relates to retail water and sewer service. Thus, the location of lines to convey wholesale sewer or received wholesale water service is wholly irrelevant to the retail issues referred to in the PUC's list of issues to be addressed.

It is irrefutable that the instant matter relates solely to allegations regarding the provision of *retail* water and/or sewer service to property owned by ADC West Ridge, L.P. All RFIs identified above relate in whole or in part to requests that relate to the provision of wholesale service. The manner in which Frisco has or does not have wholesale lines and their locations are not relevant and not likely to lead to the discovery of admissible documents in a retail utility service case. The location of wholesale service lines are not relevant to retail service. For instance, there are legitimate engineering reasons for retail distribution (for retail water) or collection (for retail sewer) lines to not directly access a wholesale line. A suggestion that an applicant for service, and not even a qualified applicant at that, can attempt to opine on the manner in which the City operates its wholesale system is beyond the issues presented in this case and contrary to the explicit statutory authority granted to the City to regulate its utility system in a manner that protects the interests of the City.¹ Thus, the request to produce documents related to wholesale service is irrelevant and the need to search for the same are unduly burdensome.

¹ Tex. Local Gov't. Code § 552.001(b).
FRISCO'S RESPONSE TO MOTION TO COMPEL BY COMPLAINANTS

Further, the “all documents” that relate to “any water lines” or “sewer lines” is unduly burdensome. The City has a population of over 100,000 with approximately 62.4 square miles within its corporate limits. The property subject to this proceeding is located on the very outskirts of the City’s CCN. The RFIs related to “all” water and sewer lines located in such an expanse is irrelevant and overly burdensome. “All documents” could potentially include construction drawings, bid sheets, purchase orders, change orders, maps, etc. There is no need to burden the City with such a request for a case like this one. A map of the location of such retail lines would be sufficient, if such map exists.

However, without waiving the arguments above and in the alternative, if the ALJ is inclined to grant the motion to compel, the City requests that the following limitations be placed on the order to compel:

1. The production relates only to the production of retail water and/or sewer related information.
2. Regarding RFI Nos. 71 and 72, production of a retail water and/or sewer map, if such map exists and such line or point of delivery is within 1/2 mile of the subject property.
3. Regarding RFI No. 73, production of only such agreements for which there is a relevant line within 1/2 mile of the subject property.
4. Regarding RFI Nos. 74 and 75, production of a retail water and/or sewer map, if such map exists and such line or point of delivery is within 1/2 mile of the subject property.

III. CONCLUSION AND PRAYER

The City respectfully requests an order:

- (1) Denying the Complainants’ Motion to Compel, or in the alternative, a limitation of the requests as explained in this response.
- (2) Granting the City all other and further relief to which it is justly entitled.

Respectfully submitted,

Russell & Rodriguez, L.L.P.
1633 Williams Drive, Building 2, Suite 200
Georgetown, Texas 78628
(512) 930-1317
(866) 929-1641 (Fax)

Abernathy Roeder Boyd & Hullett, P.C.

Richard Abernathy

State Bar No. 00809500

1700 Redbud Blvd., Suite 300

McKinney, Texas 75069

(214) 544-4000

(214) 544-4040 (Fax)

/s/ Arturo D. Rodriguez, Jr.

ARTURO D. RODRIGUEZ, JR.

State Bar No. 00791551

ATTORNEYS FOR THE CITY OF FRISCO

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of November, 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:

State Office of Administrative Hearings
300 West 15th Street, Suite 502
Austin, Texas 78701
(512) 475-4993
(512) 322-2061 Fax

William G. Newchurch
Administrative Law Judge
State Office of Administrative Hearings 300
West 15th St., Suite 502
Austin, Texas 78701
(512) 475-4993
(512) 322-2061- *Via Facsimile*

Mr. Sam Chang
Public Utility Commission of Texas
1701 N. Congress Avenue
Austin, Texas
(512) 936-7261
Via Electronic Mail

Meitra Farhadi
Administrative Law Judge
State Office of Administrative Hearings 300
West 15th St., Suite 502
Austin, Texas 78701
(512) 475-4993
(512) 322-2061- *Via Facsimile*

Mr. Leonard Dougal
Mr. Ali Abazari
Ms. Mallory Beck
Jackson Walker, LLP
100 Congress Avenue, Suite 1100
Austin, Texas 78701
(512) 236-2000
Via Electronic Mail

/s/ Arturo D. Rodriguez, Jr.
ARTURO D. RODRIGUEZ, JR.