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PETITION OF MONTERREY OAKS, LTD TO AMEND THE CITY OF SPLENDORA'S CERTIFICATE OF CONVENIENCE AND NECESSITY IN MONTGOMERY COUNTY BY EXPEDITED RELEASE

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CITY OF SPLENDORA'S EXCEPTIONS TO THE PROPOSED ORDER

TO THE HONORABLE COMMISSIONERS:

The City of Splendor, (the "City") submits the following Exceptions to the proposed order issued by the Administrative Law Judge ("ALJ") in the above-referenced matter (the "Proposed Order") and respectfully shows the following:

I. OVERVIEW

The City disagrees that the petition of Monterrey Oaks, Ltd ("Monterrey Oaks") for expedited release of its land ("Tract") from the City's water certificate of convenience and necessity ("CCN") No. 11727 in Montgomery County should be granted. Simply put, the City is providing water service to the petitioned property under Texas law; and, thus, Monterrey Oaks does not qualify for expedited release under Texas Water Code § 13.254(a-5).

As thoroughly demonstrated by the City and acknowledged by the ALJ in the Proposed Order, a 2-inch water line abuts the Monterrey Oaks property at two separate locations on the northern boundary. These lines terminate immediately adjacent to the petitioned property. Another 2-inch water line parallels the eastern portion of the Tract that connects to a larger 4-inch water line located at the southern end of the property.

The locations of the end points of these waterlines are unique and critical in this matter because they extend up to the Monterrey Oaks Tract. Further, it is undisputed that capacity remains in these lines to serve the Monterrey Oaks Tract. As asserted in the City's filings in this

matter, the lines end on lots immediately adjacent to the petitioned property, and they run through the entirety of those properties so that they can reach this petitioned property. Aside from the property to which these lines already provide service, the only other property these lines could possibly service is the Monterrey Oaks Tract. As such, laying water lines in such a way indicates a commitment to extend the lines and actual service beyond those tracts through which the lines are currently laid, in accordance with the precedent set in *Tex. Gen. Land Office v. Crystal Clear Water Supply Corporation*, 449 S.W. 3d 130, Tex. App. (Austin, 2014, pet. denied), as cited in the Proposed Order. There is no other purpose for the waterlines to extend this far.

Contrary to Monterrey Oaks' assertion, the interaction with the prospective purchaser of the petitioned property two years ago is relevant for purposes of this matter. Confirming the ability to serve the Monterrey Oaks Tract informs the City's commitment to providing service to the petitioned property. The property currently is – as it was two years ago – undeveloped. The prospective purchaser seeking confirmation of the capacity to serve the property made the City aware of the likelihood that the property would be developed and, consequently, would need service from the City as the CCN holder in that area. Correspondingly, the City has maintained the option of using the existing infrastructure to provide service to the petitioned property. Under prevailing law, the City must show a commitment to providing service to that property, and maintaining capacity in existing infrastructure that could serve the property demonstrates a clear and economic means to that end.

As urged before, the City stands ready, willing, and able to provide water service within its water CCN to the Monterrey Oaks Tract. A practicality that seems to have been overlooked throughout this proceeding is that the City has done as much as any City could reasonably do to commit service to this property. Given the realities of operating a municipal utility system, laying lines across or building other facilities on the petitioned property – a wholly undeveloped tract for which a developer has not specifically requested service – would not only be

unreasonable, but would also be fiscally irresponsible. Thus, the City's laying lines that reach the petitioned property in contemplation of future service to that property, evaluating capacity in those lines that would adequately serve the petitioned property, and maintaining capacity despite the prospective purchaser not ultimately buying the property demonstrates a commitment to provide service.

In this context, the City thus submits the following exceptions to the Proposed Order:

II. EXCEPTION NO. 1

The City excepts Finding of Fact No. 16. As previously described, the water lines that touch and surround the petitioned property were laid such that the property could be served. Moreover, those lines have the capacity to serve, and service will be provided upon request by a developer of the petitioned property.

III. EXCEPTION NO. 2

The City excepts Finding of Fact No. 17. The City's waterlines that terminate at the Monterrey Oaks Tract demonstrate an act to supply retail water to such land.

IV. EXCEPTION NO. 3

The City excepts Finding of Fact No. 18. As Monterrey Oaks is seeking decertification from the City's water CCN for the Tract, any reference to sewer service to the petitioned property is irrelevant for purposes of this proceeding. To the extent this finding of fact was intended to reference water service, the City is providing water service as that term has been defined in *Tex. Gen. Land Office v. Crystal Clear Water Supply Corporation*, as explained in detail above.

V. EXCEPTION NO. 4

The City excepts Finding of Fact No. 19. As Monterrey Oaks is seeking decertification from the City's water CCN, any reference to sewer service to the petitioned property is irrelevant

for purposes of this proceeding. To the extent this finding of fact was intended to reference water service, the City requests this finding of fact be revised accordingly.

VI. EXCEPTION NO. 5

The City excepts Conclusion of Law No. 4. The presence of waterlines terminating at the Monterrey Oaks Tract, the fact that no other property could be served by this portion of these lines, and the available capacity in such waterlines provide sufficient proof that the petitioned property is “receiving water service” under Tex. Water Code § 13.254(a-5).

VII. EXCEPTION NO. 6

The City excepts Conclusion of Law No. 5. For the foregoing reasons, the Monterrey Oaks Tract is “receiving water service” under Tex. Water Code § 13.254(a-5).

VIII. EXCEPTION NO. 7

The City excepts Conclusion of Law Nos. 6 and 7. For the foregoing reasons, Monterrey Oaks is not entitled to expedited release from the City’s water CCN and its petition should accordingly be denied. Accordingly, Splendora should not be required to record a certified copy of the approved CCN and map in the real property records of Montgomery County, or to submit evidence to the Commission of such recording.

IX. EXCEPTION NO. 8

The City excepts Ordering Paragraphs Nos. 1-5. Given the foregoing reasons, the City is providing water service to the petitioned property, which makes it ineligible for expedited release under Texas Water Code § 13.254(a-5). As such, the petition by Monterrey Oaks for expedited release from the City’s water CCN should accordingly be denied.

X. CONCLUSION

The evidence submitted in this proceeding demonstrates that the City has provided water service to the petitioned property as defined by Texas courts, which renders it ineligible for release from the City’s water CCN. Bare assertions to the contrary that do nothing to negate the

steps the City has taken to ensure that service could actually be provided upon request are insufficient to support the release of the petitioned property. Accordingly, for all of the reasons set forth above, the City respectfully requests that the Commissioner's adopt these exceptions to the ALJ's Proposed Order and thus deny Monterrey Oaks' petition for expedited release.

Respectfully submitted,

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ATTORNEYS FOR CITY OF SPLENDORA

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was transmitted by e-mail, fax, hand-delivery and/or regular, first class mail on this 29th day of September, 2016, to the parties of record.



DAVID J. KLEIN