

Control Number: 47795



Item Number: 92

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SOAH DOCKET NO. 473-18-2486.WS PUC DOCKET NO. 47795

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APPLICATION OF THE CITY OF HUTTO TO AMEND A SEWER CERTIFICATE OF CONVENIENCE AND NECESSITY IN WILLIAMSON COUNTY PUBLIC UTILITY COMMISSION
FEING CLERK
OF TEXAS

CITY OF HUTTO'S AMENDMENT TO THE APPLICATION

The City of Hutto, Texas ("Hutto") files this Amendment to its pending Application in the above referenced proceeding and would show the Public Utility Commission of Texas (the "Commission") as follows:

I. Background & Amendment

On November 21, 2017, Hutto filed an application with the Commission to amend its sewer certificate of convenience and necessity, number 20122, in Williamson County, Texas (the "Application"). Hutto subsequently amended its Application on February 7, 2018, and again on June 15, 2018, to reduce the area Hutto is requesting be included in its sewer service area ("Requested Area"). Hutto amended its Application in June of 2018, in part, to accommodate the concerns of several landowners who owned land near the Requested Area and had filed motions with the Commission requesting a hearing on the Application, requesting to opt-out of the Requested Area and/or requesting that the Commission grant them status as an intervenor. Many of these landowners grouped together to create the "Boehm Alliance."

On August 23, 2018, the SOAH Administrative Law Judge ("SOAH ALJ") issued Order No. 5 and referred the proceeding to SOAH's Alternative Dispute Resolution Team Leader, Judge Howard S. Seitzman. On August 20, 2018, Judge Seitzman held a mediation that concluded with Hutto, Commission Staff, and the Boehm Alliance reaching an agreement in principle. On February 20, 2019, Hutto and the Boehm Alliance entered into the attached Settlement Agreement. See Exhibit "A."

As part of the Settlement Agreement, Hutto agreed to remove approximately 39.24 acres of land from its currently certificated sewer service area ("Removed Areas"). See Exhibit "B." The Removed Areas are owned by members of the Boehm Alliance, were not subject to the

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Application, and have been in Hutto's service area for some time. See Exhibit "B." Hutto and the Boehm Alliance agreed to remove these particular areas from Hutto's certificated service area because the Removed Areas were included within Hutto's current sewer service area apparently due to mapping differences. The Removed Areas are specifically identified by tax identification number in the Settlement Agreement. See Exhibit "A." The Boehm Alliance members that own the Removed Areas agreed to the terms of the Settlement Agreement and the removal of such property. See Exhibit "A."

II. Conclusion and Prayer

WHEREFORE, PREMISES considered, for all the foregoing reasons, the City of Hutto respectfully requests that the Public Utility Commission of Texas accept this Amendment to the Application and amend Hutto's certified service area by removing the aforementioned 39.24 acres of land as depicted on Exhibit "B." Hutto also respectfully requests for any and all other relief to which it may be entitled.

Respectfully submitted,

Morgan Gulmon

Morgan J. Johnson
State Bar No. 24083264
Philip S. Haag
State Bar No. 08657800
McGinnis Lochridge
600 Congress Ave., Ste. 2100
Austin, Texas 78701
Phone: (512) 495-6030

Phone: (512) 495-6030 Fax: (512) 505-6330

mjohnson@mcginnislaw.com

ATTORNEYS FOR CITY OF HUTTO, TEXAS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all parties of record in this proceeding as required by SOAH Order No. 1 on this 8th day of March, 2019.

Morgan J. Johnson

Morgan Spoknon

Exhibit "A" Settlement Agreement

SOAH DOCKET NO. 473-18-2486.WS PUC DOCKET NO. 47795

APPLICATION OF THE CITY OF	§	PUBLIC UTILITY COMMISSION
HUTTO TO AMEND A SEWER	§	
CERTIFICATE OF CONVENIENCE	Š	OF TEXAS
AND NECESSITY IN WILLIAMSON	§	
COUNTY	§	

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is executed by and between the City of Hutto, Texas ("Hutto") and the following persons, (who shall collectively be referred to as the "Boehm Alliance") for the purposes and consideration set forth herein: Dana R. Boehm, DVM, Emzy Boehm, Troy and Jennifer Boehm, Cynthia D. Krueger, Raymond Naivar, Diane Naivar, Terry Dolan, Katherine Hess, and Wynette Norman Lesser individually and on behalf of Isaac W. Norman and the Norman Family. The Boehm Alliance and Hutto may be referred to collectively as "Parties" or each individually as a "Party."

RECITALS

WHEREAS, Hutto is a home-rule city organized in accordance with the laws of the State of Texas; and

WHEREAS, Hutto has been issued Certificate of Convenience and Necessity ("CCN") No. 20122 by the Public Utility Commission of Texas (the "PUC" or "Commission") to provide sewer service to certain areas within Williamson and Travis Counties, Texas; and

WHEREAS, on November 21, 2017, Hutto filed with the Commission an Application to Obtain or Amend a Water or Sewer CCN, and on June 15, 2018, Hutto filed an amendment to that application (collectively, the "Application"), which Application is currently pending before the Commission in Docket No. 47795;

WHEREAS, Dana R. Boehm, DVM, Emzy Boehm, ¹ Troy and Jennifer Boehm, Cynthia D. Krueger, Raymond Naivar, Diane Naivar, Terry Dolan, and Wynette Norman Lesser, individually, and on behalf of Isaac W. Norman and the Norman Family, each filed responses to the Application, claiming to be affected parties with a justiciable interest in the Application; and

¹ Emzy Boehm was the owner of a potentially affected property located in Williamson County (Tax ID R020563) (the "Emzy Property"). But, on October 15, 2018, after the Application was filed with the Commission, Mr. Boehm conveyed his interest in the Emzy Property to Judy Boehm Limmer. See Warranty Deed, attached hereto as Exhibit B. Pursuant to conversations with Mrs. Limmer's attorney, Mrs. Limmer does not want the Emzy Property to be included in this Agreement. Thus, all the signatories to this agreement, including Emzy Boehm, have agreed to exclude the Emzy Property in this Agreement.

WHEREAS, Hutto and the Boehm Alliance desire that certain properties owned by members of the Boehm Alliance shall not be included in Hutto's certificated sewer service area and shall be amended as depicted on **Exhibit A**; and

WHEREAS, Hutto and the Boehm Alliance have, subject to subsequent approval by the Commission, resolved issues concerning the scope of Hutto's certificated sewer service area.

AGREEMENT

NOW, THEREFORE, Hutto and the Boehm Alliance enter into this Agreement for the purposes and considerations set forth herein as follows:

I. PARTIES

1.1 This Agreement is entered into by and between the City of Hutto, Texas and the Boehm Alliance.

II. TERM OF AGREEMENT

2.1 This Agreement shall remain valid and enforceable until superseded by subsequent agreement signed by the Parties.

III. EXCLUDED PROPERTIES

3.1 The Parties agree that Hutto will file an amendment to the Application (the "Amendment") to exclude the following properties from Hutto's certificated sewer service area:

Property Tax ID Number ²	Owner
R020561 (W)	Norman, Lisa
R563802 (W)	Norman, Leigh
R432614 (W)	Hess, Katherine & Ryan
R523999 (W)	Hess, Katherine & Ryan
R330330 (W)	Lessner, Wynette
R361669 (W)	Lessner, Wynette
R381649 (W)	Lessner, Wynette
R020648 (W)	Lessner, Wynette
281948 (T)	Lessner, Wynette
R020553 (W)	Lessner, Wynette
R319345 (W)	Norman, Isaac & Frances

3.2 If the Commission determines that the Amendment requires Hutto to provide additional notice in Docket No. 47795:

² These ID numbers were obtained from the Williamson or Travis Central Appraisal District (as indicated by a "W" or "T" next to the ID number).

- a. Hutto will withdraw the Amendment and proceed with the Application as filed on June 15, 2018; and
- b. Within sixty (60) calendar days of the Commission's determination, Hutto will file with the Commission a separate application to amend CCN No. 20122 which will seek to exclude the properties listed in Paragraph 3.1 from Hutto's certificated sewer service area.
- 3.3 Simultaneous with the execution of this Agreement, the Boehm Alliance members will withdraw all filings, motions to intervene, and requests for a formal hearing currently pending in Docket No. 47795, and will not further participate or otherwise interfere with the approval of the Application in Docket No. 47795 or a subsequent filing pursuant to Paragraph 3.2(b).

IV. BREACH OF AGREEMENT & REMEDIES

4.1 If either Party breaches any term or condition of this Agreement, the non-breaching Party may, at its sole option, provide the breaching Party with written notice of the breach within thirty (30) calendar days of discovery of the breach. Upon receipt of the notice of breach, the breaching Party shall have ten (10) calendar days to remedy the breach. The non-breaching Party shall have the right to enforce the specific performance of this Agreement by the breaching Party. The rights and remedies of the Parties provided in this Agreement are not exclusive and are in addition to any other rights and remedies provided by law and under this Agreement.

V. MISCELLANEOUS

- 5.1 This Agreement supersedes any and all prior agreements between Hutto and the Boehm Alliance concerning the subject matter of this Agreement.
- 5.2 This Agreement shall be binding on Hutto, the Boehm Alliance, and their respective successors and assigns.
- 5.3 This Agreement is the entire agreement between the Parties with respect to the subject matter hereof. No modification of this Agreement shall be of any force and effect whatsoever, except as by subsequent modification in writing signed by the Parties.
- 5.4 Hutto designates Ashley Lumpkin as the primary point of contact within Hutto's Planning Department for landowners residing within the Norman's Crossing Development. The Norman's Crossing Development shall be defined as the area designated by the U.S. Department of Agriculture as a Heritage Farm that lies on the northern and southern sides of Farm-to-Market Road 1660, the parcels defined in Paragraph 3.1, and the properties

owned by members of the Boehm Alliance that are located near the area subject to the Application. Ashley Lumpkin shall be responsible for addressing any questions or comments from those landowners within the Norman's Crossing Development.

Ashley Lumpkin, AICP Executive Director Business & Development Services (512) 759-5961 Ashley.lumpkin@huttotx.gov

The Boehm Alliance designates Wynette Lessner as the representative and primary point of contact for all landowners residing within the Norman's Crossing Development. Any and all communications from Hutto to the Norman's Crossing Development landowners shall be directed to Wynette Lessner attention the following address:

12621 FM 1660 Taylor, TX 76574 (512) 657-7439 wynette.lessner@gmail.com

From time to time, either Party may update their primary point of contact or that person's contact information by providing the other Party's primary point of contact not less than ten (10) business days written notice of such change.

Any notice required or permitted to be given under this Agreement by one Party to the other shall be in writing and the same shall be deemed to have been served and given if (i) delivered in person to the address set forth below for the Party to whom the notice is given or (ii) placed in the United States mail by certified mail, postage prepaid and return receipt requested, addressed to the Party to whom the notice is given at the address set forth below. Notice (i) shall be effective when received and (ii) shall be effective three (3) calendar days after deposit into the custody of the United States mail. The address for Hutto for all purposes under this Agreement and for all notices herein shall be:

Phil Haag
McGINNIS LOCHRIDGE LLP
600 Congress Ave., Suite 2100
Austin, Texas 78701
phaag@mcginnislaw.com
(512) 495-60008 (direct)
(512) 505-6330 (fax)

The address for the Boehm Alliance for all purposes under this Agreement and for all notices herein shall be:

Patrick L. Reznik BRAUN & GRESHAM, P.L.L.C. PO Box 1148 Dripping Springs, TX 78620 preznik@braungresham.com (512) 894-5426 (office) (512) 894-3405 (fax)

From time to time either Party may designate another address within the United States for all purposes of this Agreement by giving the other Party not less than ten (10) calendar days advance written notice of such change of address in accordance with the provisions hereof.

- 5.6 Captions are included solely for the convenience of reference and if there is any conflict between captions and the text of the Agreement, the text shall control.
- 5.7 Whenever the context requires, the gender of all words herein shall include the masculine, feminine, and neuter, and the number of all words shall include the singular and the plural.
- 5.8 This Agreement was prepared and drafted jointly by legal counsel representing Hutto and the Boehm Alliance, and by those persons not represented by legal counsel.
- 5.9 Any exhibits attached to this Agreement are incorporated herein by reference for all purposes.
- 5.10 This Agreement shall be construed under and in accordance with the laws of the State of Texas.
- 5.11 Any action at law or equity brought to enforce any provision of this Agreement shall be brought in a State court of competent jurisdiction with venue in Williamson County, Texas.
- 5.12 If any provision 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 and in lieu thereof shall be substituted with a new provision that is as near to the intent of the Parties without being invalid, illegal, or unenforceable.
- 5.13 The Parties agree to attempt informal resolution of any disputes regarding this Agreement.

- 5.14 The Parties 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.
- 5.15 This Agreement may be executed in multiple originals, either copy of which shall be considered to be an original.
- 5.16 This Agreement shall be effective on the date of execution below.
- 5.17 The signatories hereto represent and affirm that they have the authority to execute and bind the Party on whose behalf they are signing.

[REST OF THIS PAGE INTENTIONALLY LEFT BLANK]

EXECUTED AND AGREED TO by the parties hereto this 20 day of 2019.

February.

CITY OF HUTTO, TEXAS

Odis Jones, City Manager

Phil Hang

Phil Haag MCGINNIS LOCHRIDGE LLP 600 Congress Ave., Suite 2100 Austin, Texas 78701 phagga_meganislaw_com Attorney of Record

THE BOEHM ALLIANCE

By its attorney with permission of the

Boehm Alliance members

Patrick L. Reznik

BRAUN & GRESHAM, P.L.L.C.

preznik@braungresham.com

Attorney of Record

EXHIBIT A

MAP DEPICTING CITY OF HUTTO'S REVISED CERTIFICATED SEWER SERVICE AREA



EXHIBIT B

WARRANTY DEED

Notice of confidentiality rights: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.

WARRANTY DEED

THE STATE OF TEXAS	§ §	KNOW ALL PERSONS BY THESE PRESENTS
COUNTY OF WILLIAMSON	§	

That Emzy Boehm ("Grantor"), for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to the undersigned paid by Grantee, the receipt and sufficiency of which are hereby acknowledged, has GRANTED, SOLD and CONVEYED, and by these presents does GRANT, SELL and CONVEY unto Judy Boehm Limmer ("Grantee"), all of Grantor's right, title and interest in and to that certain 461.37 acre tract of land, more or less, in Williamson County, Texas more particularly described on Exhibit A attached hereto and incorporated herein, together with all improvements located thereon (the "Property");

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in anywise belonging, unto Grantee, her heirs, executors, administrators and assigns forever, and Grantor does hereby bind himself, his heirs, executors, administrators and assigns to WARRANT AND FOREVER DEFEND all and singular the Property unto Grantee, her heirs, executors, administrators and assigns, against every person whomsoever claiming or to claim the same or any part thereof.

This conveyance is made by Grantor and accepted by Grantee subject to all easements, encroachments, boundary line conflicts, covenants, liens, leases, rights-of-way, conditions, restrictions, outstanding mineral interests and royalty interests, if any, relating to the Property, to the extent, and only to the extent, that the same may be in full force and effect and shown of record in the office of the County Clerk of Williamson County, Texas, or that may be apparent on the Property, or that would be apparent on a current and accurate survey of the Property.

Grantee assumes payment of all ad valorem taxes on the Property.

EXECUTED this the 15 day of October, 2018.

Emzy Boekin

Address for Grantee:

12506 FM 1660 Taylor, Texas 76574

STATE OF TEXAS

COUNTY OF Williamson

This instrument was acknowledged before me on the 15 day of October 2018, by Emzy Boehm.

Notary Public, State of Texas

After Recording Return To:

Ms. Judy Boehm Limmer 12506 FM 1660 Taylor, Texas 76574

County:

Williamson

Project:

Limmer - 461.37 Ac.

Project No. 070208

FIELD NOTES FOR 461.37 ACRE TRACT

BEING A 461.37 ACRE TRACT OF LAND SITUATED IN THE JOHN KUYKENDALL SURVEY, ABSTRACT 378, THE R.S. NEIGHBORS SURVEY, ABSTRACT 483, THE CHARLES GERLACK SURVEY, ABSTRACT 260, AND THE WILLIAM MULLEN SURVEY, ABSTRACT 446 IN WILLIAMSON COUNTY, TEXAS, AND BEING COMPRISED OF ALL OF THAT CERTAIN 454.41 ACRE TRACT OF LAND RECORDED IN THE NAMES OF EMZY BOEHM, BARI BODDEN, AND JUDY LIMMER IN DOCUMENT NUMBER 9607756 OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY (O.P.R.W.C.), AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS: (Bearings are based on the westerly line of the remainder portion of a called 92.278 acre tract recorded in the name of Walnut Corner, LLC in Document Number 2003043723 of the O.P.R.W.C., being North 07 degrees 23 minutes 13 seconds East);

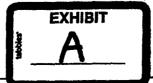
BEGINNING at an iron pipe found for the northwesterly comer of said 454.41 acre tract, said iron pipe being the southwesterly corner of a called 150.69 acre tract of land recorded in the names of Morris Wayne Kruger and Michael Ray Kruger in Volume 1066, Page 457 of the Williamson County Deed Records (W.C.D.R.), said iron pipe also being on the easterly line of a called 50.00 acre tract of land recorded in the names of William S. and Flora Thompson in Document Number 2006032228 of the O.P.R.W.C.:

Thence, with the northerly line of said 454.41 acre tract and the southerly line of said 150.69 acre tract, South 82 degrees 49 minutes 10 seconds East, a distance of 2192.29 feet to a 1/2-inch iron rod found for an angle point on the northerly line of said 454.41 acre tract, said iron rod being the southeasterly corner of said 150.69 acre tract and the southwesterly corner of aforesaid 92.278 acre remainder tract:

Thence, with the northerly line of said 454.41 acre tract and the southerly line of said 92.278 acre remainder tract, South 82 degrees 40 minutes 05 seconds East, a distance of 567.92 feet to a 1/2-inch iron rod found for the northeasterly corner of said 454.41 acre tract, said iron rod being an ell corner on the southerly line of said 92.278 acre remainder tract;

Thence, with the easterly line of said 454.41 acre tract and the westerly line of said 92.278 acre remainder tract, South 08 degrees 34 minutes 55 seconds West, a distance of 14.49 feet to a 1/2-inch iron rod found for an angle point on the easterly line of said 454.41 acre tract, said iron rod being an ell corner of said 92.278 acre remainder tract, also being the northwesterly corner of a called 72.25 acre tract of land recorded in the name of Herbert Reasz in Volume 1019, Page 352 of the Williamson County Deed Records (W.C.D.R.);

Thence, with the easterly line of said 454.41 acre tract and the westerly line of said 72.35 acre tract, South 07 degrees 28 minutes 18 seconds West, passing at a distance of 2692.68 feet a calculated point for the southwesterly comer of said 72.25 acre tract, said point being the northwesterly comer of a called 96.287 acre tract of land recorded in the name of ima Lee Sorenson in Document Number 9607756 of the O.P.R.W.C. (Tract One), in all, a distance of



6055.37 feet to an axle found for an angle point on the easterly line of said 454.41 acre tract, said axle being the southwesterly corner of said 96.287 acre tract and the northwesterly corner of a called 80.3304 acre tract of land recorded in the name of Dan Cervenka in Document Number 2002001709 of the O.P.R.W.C.:

Thence, with the easterly line of said 454.41 acre tract and the westerly line of said 80.3304 acre tract, South 07 degrees 41 minutes 45 seconds West, a distance of 2369.34 feet to a 5/8-inch iron rod set for the most easterly southeast corner of said 454.41 acre tract, said iron rod being the northeasterly corner of a called 1.0 acre tract of land recorded in the names of Roy and Wynette Lessner in Volume 1863, Page 100 of the W.C.D.R.;

Thence, with the southerly line of said 454.41 acre tract and the northerly line of said 1.0 acre tract, North 80 degrees 00 minutes 00 seconds West, a distance of 126.00 feet to a 5/8-inch iron rod set for an ell corner of said 454.41 acre tract, said iron rod being the northwesterly corner of said 1.0 acre tract;

Thence, with the easterly line of said 454.41 acre tract and the westerly line of said 1.0 acre tract, South 11 degrees 01 minutes 20 seconds West, a distance of 177.55 feet to a 5/8-inch iron rod set for an ell corner of said 454.41 acre tract, said iron rod being the northeasterly corner of a called 0.40 acre tract of land recorded in the name of Wynette Lessner in Document Number 2004003404 of the O.P.R.W.C.:

Thence, with the southerly line of said 454.41 acre tract and the northerly line of said 0.40 acre tract, North 80 degrees 03 minutes 30 seconds West, a distance of 113.49 feet to a 5/8-inch iron rod set for an ell corner of said 454.41 acre tract, said iron rod being the northeasterly corner of said 0.40 acre tract:

Thence, with the easterly line of said 454.41 acre tract and the westerly line of said 0.40 acre tract, South 07 degrees 31 minutes 47 seconds West, a distance of 151.95 feet to a 1/2-inch iron rod found for the most southerly southeast corner of said 454.41 acre tract, said iron rod being the southwesterly corner of said 0.40 acre tract, said iron rod also being on the northerly R.O.W. line of FM 1660 (80' R.O.W.);

Thence, with the southerly line of said 454.41 acre tract and the northerly R.O.W. line of said FM 1660, North 70 degrees 06 minutes 59 seconds West, a distance of 371.82 feet to a 5/8-inch iron rod set for the most southerly southwest corner of said 454.41 acre tract, said iron rod being the southeasterly corner of a called 13.731 acre tract of land in the name of Isaac Norman according to the Williamson County Appraisal District (W.C.A.D.) taxation maps (no deed records found for this tract):

Thence, with the westerly line of said 454.41 acre tract and the easterly line of said 13.731 acre tract, North 07 degrees 10 minutes 56 seconds East, a distance of 1362.55 feet to an iron pipe found for an ell comer of said 454.41 acre tract, said iron pipe being the northeasterly corner of said 13.731 acre tract;

Thence, with the southerly line of said 454.41 acre tract and the northerly line of said 13.731 acre tract, North 58 degrees 20 minutes 57 seconds West; passing at a distance of 469.07 feet a calculated point for the northwesterly corner of said 13.731 acre tract, said point being the northeasterly corner of a called 55.847 acre tract of land recorded in the name of Isaac W.

Norman in Volume 2052, Page 828 of the W.C.D.R., in all, a distance of 2379.00 feet to an iron pipe found for the most westerly southwest corner of said 454.41 acre tract, said iron pipe being the northwesterly corner of said 55.847 acre tract, also being on the easterly line of a called 120.87 acre tract of land recorded in the name of Wynette Norman Lessner in Document Number 9902037 of the O.P.R.W.C.;

Thence, with the westerly line of said 454.41 acre tract and the easterly line of said 120.87 acre tract, North 07 degrees 50 minutes 04 seconds East, passing at a distance of 3053.36 feet a calculated point for the northeasterly corner of said 120.87 acre tract, said point being the southeasterly corner of a called 63.6 acre tract recorded in the name of Mark S. Kruger in Volume 583, Page 562 of the W.C.D.R., passing at a distance of 5728.63 feet a calculated point for the northeasterly corner of said 63.6 acre tract, said point being the southeasterly corner of aforesaid 50.00 acre tract, in all, a distance of 6328.63 feet to the POINT OF BEGINNING and containing 461.37 acres of land, more or less.



VARA LAND SURVEYING, INC. Ph: (512) 836-2622 May 3, 2007 461:37-acres.wpd

ELECTRONICALLY RECORDED OFFICIAL PUBLIC RECORDS

2018092464

Pages: 6 Fee: \$37.00 10/16/2018 04:00 PM

35.5.

Nancy E. Rister, County Clerk Williamson County, Texas

Exhibit "B" Amended Service Area

