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APPLICATION OF THE CITY OF § BEFORE THE STATE OFFICE
AUSTIN DBA AUSTIN WATER FOR §
AUTHORITY TO CHANGE WATER § OF
AND WASTEWATER RATES § ADMINISTRATIVE HEARINGS

**OBJECTIONS OF AUSTIN WATER TO DISTRICTS'
CORRECTED FOURTH REQUEST FOR INFORMATION**

The City of Austin (City) doing business as Austin Water (Austin Water or AW), by and through its attorneys of record, files these Objections to North Austin Municipal Utility District No. 1, Northtown Municipal Utility District, Travis County Water Control and Improvement District No. 10, and Wells Branch Municipal Utility District's (collectively Districts) Corrected Fourth Request for Information (RFI) to Austin Water, and would respectfully show as follows:

I. PROCEDURAL HISTORY

Districts served their Corrected Fourth RFI to Austin Water on August 30, 2019. Pursuant to 16 Tex. Admin. Code (TAC) §§ 22.144(d) and 22.4(a), these objections are timely filed within 10 calendar days of Austin Water's receipt of the RFI. Counsel for Austin Water and Districts conducted good faith negotiations that failed to resolve the issues. While AW will continue to negotiate with Districts regarding these and any future objections, AW files these objections for preservation of its legal rights under the established procedures. To the extent any agreement is subsequently reached, AW will withdraw such objection.

II. GENERAL OBJECTIONS

Austin Water generally objects to these RFIs, including the Definitions and Instructions contained therein, to the extent they are overly broad and unduly burdensome.¹

III. SPECIFIC OBJECTIONS TO DEFINITIONS

Austin Water objects to Districts' definitions of the following terms:

¹ See Tex. R. Civ. Proc. 192.4.

DEFINITION NO. 5: "Describe" or "describe in detail" means to give a complete and full description concerning the matter about which the inquiry is made, including the full name, address, and telephone number(s) of the person(s) involved, dates, times, places, and other particulars, including all relevant documents and observations which make the answers to these written discovery requests fair and meaningful.

Objections:

Austin Water objects to this definition because it is unduly burdensome, unreasonable, and meant for the purpose of harassing Austin Water. Commission rules and the Texas Rules of Civil Procedure (TRCP) provide protection to parties from discovery requests that are unduly burdensome, unnecessarily expensive, or are for the purpose of harassment.² Districts use the terms "describe" or "describe in detail" in several of their RFIs that already call for an enormous amount of information. In addition to producing all of the responsive documents that are within Austin Water's possession, this definition of "describe" and "describe in detail" calls for Austin Water to provide a list of details for each individual document that are ultimately unnecessary to adequately describe the responsive document. Using this definition in Districts' overly broad requests would require Austin Water to expend unnecessary time and expense to respond. Districts' filing of its corrected RFIs with the inclusion of this expansive definition burdens Austin Water with providing unnecessary information. Notwithstanding this objection, Austin Water will provide a response to each request using the commonly understood meaning of the term.

DEFINITION NO. 10: To "identify" a document means the following: (i) to identify all files in which it and all copies of it are found; (ii) to identify its author; (iii) to identify its addresses, if any; (iv) to identify those persons who received a copy thereof; (v) to identify its current custodian or the person that had last known possession, custody, or control thereof; (vi) to state

² See 16 TAC § 22.142(a)(1)(D); *see also* Tex. R. Civ. Proc. 192.4.

the date of its preparation; and (vii) to state its general subject matter giving a reasonably detailed description thereof.

Objections:

Austin Water objects to this definition because it is unduly burdensome, unreasonable, and meant for the purpose of harassing Austin Water. Commission rules and the TRCP provide protection to parties from discovery requests that are unduly burdensome, unnecessarily expensive, or are for the purpose of harassment.³ Districts use the term “identify” in several of their RFIs that already call for an enormous amount of information. In addition to producing all of the responsive documents that are within Austin Water’s possession, this definition of “identify” calls for Austin Water to provide seven categories of detailed information for each individual document. Using this definition in Districts’ overly broad requests would require Austin Water to expend unnecessary time and expense to respond. Even simply stating each document’s “general subject matter giving reasonably detailed description thereof,” as category vii requires, could take countless hours for a response that calls for hundreds of documents. Districts’ filing of its corrected RFIs with the inclusion of this expansive definition burdens Austin Water with providing unnecessary information. Notwithstanding this objection, Austin Water will provide a response to each request using the commonly understood meaning of the term.

IV. SPECIFIC OBJECTIONS

Austin Water specifically objects to the following RFIs:

DISTRICTS 4-6: Please provide the revenue requirements for each of the Petitioners based on re-running the AW Water COS Model Docket 49189.xlsx using the classifications of 24” and greater as Transmission Mains and less than 24” as Distribution Mains.

³ See 16 TAC § 22.142(a)(1)(D); *see also* Tex. R. Civ. Proc. 192.4.

Objections:

Austin Water objects to this request because it would require Austin Water to create a document not in existence, and therefore, not within Austin Water's possession. A party is not required to produce a document or tangible thing unless it is within the party's possession, custody, or control. A document that does not exist is not within a party's "possession, custody, or control."⁴ Districts have been provided with a working version of Austin Water's Cost of Service (COS) Model. Additionally, Austin Water provided asset files that list the transmission and distribution mains that Districts' RFI No. 4-6 references. Although some portions of the model are "hard coded," Austin Water has provided sufficient source data that allows the Districts the ability to run the Model with any changes they desire. Austin Water should not be required to endure the time and expense required to make the requested changes to classifications and re-run its COS Model, creating a document that does not currently exist. Because this document does not exist, it is not within Austin Water's possession, and Austin Water should not be required to respond to Districts' request.

V. PRAYER

WHEREFORE, PREMISES CONSIDERED, Austin Water requests these objections be sustained and Austin Water be relieved of responding to these RFIs. Austin Water also requests any other relief to which it may show itself justly entitled.

⁴ *In re Colonial Pipeline Co.*, 968 S.W.2d 938, 942 (Tex. 1998); *see also In re Guzman*, 19 S.W.3d 522, 525 (Tex. App.—Corpus Christi 2000, no pet.); *see also* Tex. R. Civ. Proc. 192.3(b); *see also* 16 TAC § 22.141(a).

Respectfully submitted,

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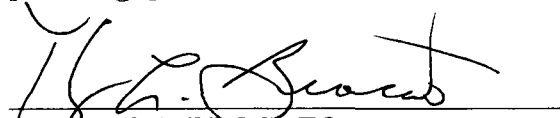
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CERTIFICATE OF CONFERENCE

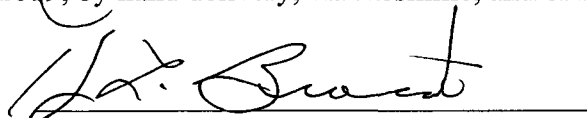
I hereby certify that I conferred with Mr. John Carlton, counsel for Districts, on September 6, 2019 concerning Austin Water's objections to Districts' Requests for Information. Mr. Carlton indicated that he believed Districts' Requests were valid and that he understood that this motion may be filed.



W. PATRICK DINNIN

CERTIFICATE OF SERVICE

I certify that a copy of this document was served on all parties of record in this proceeding on this 9th day of September, 2019, by hand delivery, via facsimile, and/or mailed by U.S. First Class Mail.



THOMAS L. BROCATO