

Control Number: 50224



Item Number: 8

Addendum StartPage: 0

2019-12-13 10:13
 PUBLIC UTILITY
 COMMISSION OF TEXAS

APPLICATION OF CITY OF	§	
BRUCEVILLE-EDDY AND	§	
ELM CREEK WATER SUPPLY	§	PUBLIC UTILITY
CORPORATION FOR SALE,	§	
TRANSFER, OR MERGER OF	§	COMMISSION OF TEXAS
FACILITIES AND CERTIFICATE	§	
RIGHTS IN McLENNAN COUNTY	§	

**NOTICE OF SUBMISSION OF SERVICE APPLICATION AND AGREEMENT,
 SERVICE AGREEMENT FOR NON-STANDARD WATER SERVICE AND
 AGREEMENT TO REIMBURSE**

NOW COMES ELM CREEK WATER SUPPLY CORPORATION, an applicant in the above matter, and makes this its Notice of Submission of Service Application and Agreement, Service Agreement for Non-Standard Water Service and Agreement to Reimburse and for good cause would show as follows:

1. On December 12, 2019, the Commission Staff's Recommendation on Administrative Completeness, Proposed Notice and Procedural Schedule was filed. Attached to said Recommendation was a memorandum reflecting the information sought by Commission Staff to complete the application. In response to the request of Commission Staff, submitted herewith as Exhibit "A" are a true and correct copy of the Elm Creek Water Supply Corporation Service Application Agreement, Service Agreement for Non-Standard Water Service and Agreement to Reimburse executed by and between the developer of the property in question and Elm Creek Water Supply Corporation.

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Respectfully submitted,

By: /s/ Charles D. Olson

CHARLES D. OLSON

State Bar No. 15273200

Email: colson@haleyolson.com

HALEY & OLSON, P.C.

100 N. Ritchie Road, Suite 200

Waco, Texas 76712

Telephone: (254) 776-3336

Telecopier: (254) 776-6823

ATTORNEYS FOR APPLICANT,

ELM CREEK WATER SUPPLY CORPORATION

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been delivered to the below-listed attorney for the Public Utility Commission on this 8th day of January, 2020:

Courtney Dean
Public Utility Commission of Texas
Legal Division
1701 N. Congress Avenue
P. O. Box 13326
Austin, Texas 78711-3326
Email: courtney.dean@puc.texas.gov

/s/ Charles D. Olson

CHARLES D. OLSON

ELM CREEK

WATER SUPPLY CORPORATION SERVICE APPLICATION AND AGREEMENT

Please Print:

DATE 3-7-19

APPLICANT'S NAME Double A Interest, LLC

CO-APPLICANT'S NAME _____

CURRENT BILLING ADDRESS:

601 Lake Air Dr.
Waco, TX 76710

FUTURE BILLING ADDRESS:

601 Lake Air Dr.
Waco, TX 76710

PHONE NUMBER - Home (____) _____

Work (254) 776-7000

PROOF OF OWNERSHIP PROVIDED BY _____

DRIVER'S LICENSE NUMBER OF APPLICANT _____

LEGAL DESCRIPTION OF PROPERTY (Include name of road, subdivision with lot and block number)

3308 Eddy Gatesville Pkwy Moody, TX 76557

PREVIOUS OWNER'S NAME AND ADDRESS (if transferring Membership)

ACREAGE 202

HOUSEHOLD SIZE _____

NUMBER IN FAMILY _____

LIVESTOCK & NUMBER _____

SPECIAL SERVICE NEEDS OF APPLICANT _____

NOTE: FORM MUST BE COMPLETED BY APPLICANT ONLY. A MAP OF SERVICE LOCATION REQUEST MUST BE ATTACHED.

The following information is requested by the Federal Government in order to monitor compliance with Federal laws prohibiting discrimination against applicants seeking to participate in this program. You are not required to furnish this information, but are encouraged to do so. This information will not be used in evaluating your application or to discriminate against you in any way. However, if you choose not to furnish it, we are required to note the race/national origin of individual applicants on the basis of visual observation or surname.

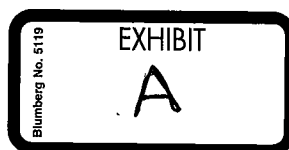
Ethnicity: ☐ Hispanic or Latino
☐ Not of Hispanic or Latino

Race: ☐ White ☐ Black or African American ☐ American Indian/Alaska Native
☐ Asian ☐ Native Hawaiian or Other Pacific Islander

Gender: ☐ Male ☐ Female

EQUAL OPPORTUNITY PROGRAM

Page 1 of 4



AGREEMENT made this 7th day of March, 2019, between Elm Creek Water Supply Corporation, a corporation organized under the laws of the State of Texas (hereinafter called the Corporation) and Double A Interest, LLC (hereinafter called the Applicant and/or Member),

Witnesseth:

The Corporation shall sell and deliver water and/or wastewater service to the Applicant and Applicant shall purchase, receive, and/or reserve service from the Corporation in accordance with the Bylaws and Tariff of the Corporation as amended from time to time by the Board of Directors of the Corporation. Upon compliance with said policies, including payment of a Membership Fee, the Applicant qualifies for Membership as a new Applicant or continued Membership as a Transferee and thereby may hereinafter be called a Member.

The Member shall pay the Corporation for service hereunder as determined by the Corporation's Tariff and upon the terms and conditions set forth therein, a copy of which may be provided at the request of the Member, for which Member acknowledges receipt of declination hereof by execution of this Agreement. A copy of this agreement shall be executed before service may be provided to the Applicant.

The Board of Directors shall have the authority to discontinue service and cancel the Membership of any Member not complying with any policy or not paying any utility fees or charges as required by the Corporation's published rates, fees, and conditions of service. At any time service is discontinued, terminated or suspended, the Corporation shall not re-establish service unless it has a current, signed copy of this agreement.

If this agreement is completed for the purpose of assigning utility service as part of a rural domestic water and/or wastewater system loan project contemplated with the Rural Development, an Applicant shall pay an Indication of Interest Fee in lieu of a Membership Fee for the purposes of determining:

- a. the number of taps to be considered in the design and
- b. the number of potential ratepayers considered in determining the financial feasibility of constructing either
 - (1) a new water system or
 - (2) expanding the facilities of an existing water system.

The Applicant thereby agrees to obtain, utilize, and/or reserve service as soon as it is available. Applicant, upon qualification for service under the terms of the Corporation's policies, shall further qualify as a Member and the Indication of Interest Fee shall then be converted by the Corporation to a Membership Fee. Applicant further agrees to pay, upon becoming a Member, the monthly charges for such service as prescribed in the Corporation's Tariff. Any breach of this agreement shall give cause for the Corporation to liquidate, as damages, the fees previously paid as an indication of interest. In addition to any Indication of Interest Fees forfeited, the Corporation may assess a lump sum of \$300.00 as liquidated damages to defray any losses incurred by the Corporation. If delivery of service to said location is deemed infeasible by the Corporation as a part of this project, the Applicant shall be denied Membership in the Corporation and the Indication of Interest Fee, less expenses, shall be refunded. The Applicant may re-apply for service at a later date under the terms and conditions of the Corporation's policies. For the purposes of this agreement, an Indication of Interest Fee shall be of an amount equal to the Corporation's Membership Fees.

All water shall be metered by meters to be furnished and installed by the Corporation. The meter and/or wastewater connection is for the sole use of the Member or customer and is to provide service to only one (1) dwelling and/or only one (1) business. Extension of pipe or pipes to transfer utility service from one property to another, to share, resell, or sub-meter water to any other persons, dwellings, business, and/or property, etc, is prohibited.

The Corporation shall have the right to locate a water service meter and the pipe necessary to connect the meter on the Member's property at a point to be chosen by the Corporation, and shall have access to its property and equipment located upon Member's premises at all reasonable and necessary times for any purpose connected with or in the furtherance of its business operations, and upon discontinuance of service the Corporation shall have the right to remove any of its equipment from the Member's property. The Member shall install, at their own expense, any necessary service lines from the Corporation's facilities and equipment to the point of use, including any customer service isolation valves, backflow prevention devices, clean-outs, and other equipment as may be specified by the Corporation. The Corporation shall also have access to the Member's property for the purpose of inspecting for possible cross-connections, potential contamination hazards, illegal lead materials, and any other violations or possible violations of state and federal statutes and regulations relating to the federal Safe Drinking Water Act or Chapter 341 of the Texas Health & Safety Code or and the corporation's tariff and service policies.

The Corporation is responsible for protecting the drinking water supply from contamination or pollution which could result from improper practices. This service agreement serves as notice to each customer of the restrictions which are in place to provide this protection. The Corporation shall enforce these restrictions to ensure the public health and welfare. The following undesirable practices are prohibited by state regulations:

- a. No direct connection between the public drinking water supply and a potential source of contamination is permitted. Potential sources of contamination shall be isolated from the public water system by an airgap or an appropriate backflow prevention assembly in accordance with state regulations.
- b. No cross-connection between the public drinking water supply and a private water system is permitted. These potential threats to the public drinking water supply shall be eliminated at the service connection by the proper installation of an airgap or a reduced pressure-zone backflow prevention assembly and a service agreement must exist for annual inspection and tested by a certified backflow prevention device tester.
- c. No connection which allows condensing, cooling, or industrial process water to be returned to the public drinking water supply is permitted.
- d. No pipe or pipe fitting which contains more than 8.0% lead may be used for the installation or repair of plumbing on or after July 1, 1988, at any connection which provides water for human consumption.
- e. No solder or flux which contains more than 0.2% lead may be used for the installation or repair plumbing on or after July 1, 1988, at any connection which provides water for human consumption.

The Corporation shall maintain a copy of this agreement as long as the Member and/or premises is connected to the public water system. The Member shall allow **their** property to be inspected for possible cross-connections, potential contamination hazards, and illegal lead materials. These inspections shall be conducted by the Corporation or its designated agent prior to initiating service and periodically thereafter. The inspections shall be conducted during the Corporation's normal business hours.

The Corporation shall notify the Member in writing of any cross-connections or other undesirable practices which have been identified during the initial or subsequent inspection. The Member shall immediately correct any undesirable practice on their premises. The Member shall, at **their** expense, properly install, test, and maintain any backflow prevention device required by the Corporation. Copies of all testing and maintenance records shall be provided to the Corporation as required. Failure to comply with the terms of this service agreement shall cause the Corporation to either terminate service or properly install, test, and maintain an appropriate backflow prevention device at the service connection. Any expenses associated with the enforcement of this agreement shall be billed to the Member.

In the event the total water supply is insufficient to meet all the Members, or in the event there is a shortage of water, the Corporation may initiate the Drought Contingency Plan/Emergency Rationing Program as specified in the Corporation's Tariff. By execution of this agreement, the Applicant hereby shall comply with the terms of said program.


By execution hereof, the Applicant shall hold the Corporation harmless from any and all claims for damages caused by service interruptions due to waterline breaks by utility or like contractors, tampering by other Members/users of the Corporation, normal failures of the system, or other events beyond the Corporation's control.

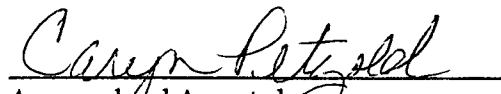
The Member shall grant to the Corporation, now or in the future, any easements of right-of-way for the purpose of installing, maintaining, and operating such pipelines, meters, valves, and any other equipment which may be deemed necessary by the Corporation to extend or improve service for the existing or future Members, on such forms as required by the Corporation.

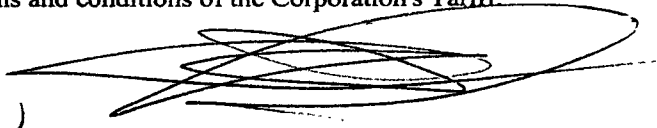
By execution hereof, Applicant shall guarantee payment of all other rates, fees, and charges due on any account for which said Applicant owns a Membership. Said guarantee shall pledge any and all Membership Fees against any balance due the Corporation. Liquidation of said Membership Fees shall give rise to discontinuance of service under the terms and conditions of the Corporation's Tariff.

By execution hereof, Applicant agrees that non-compliance with the terms of this Agreement by said Applicant shall constitute denial or discontinuance of service until such time as the violation is corrected to the satisfaction of the Corporation.

Any misrepresentation of the facts by the Applicant on any of the four pages of this agreement shall result in discontinuance of service pursuant to the terms and conditions of the Corporation's Tariff.


Witnesseth


Approved and Accepted


Applicant/Member A.W. Hines

3/11/19
Date Approved

SERVICE AGREEMENT for NON-STANDARD WATER SERVICE

Elm Creek Water Supply Corporation

This agreement is made by and between Elm Creek Water Supply Corporation (hereinafter referred as "Water Supply"), a non-profit water supply corporation organized and existing under the laws of the State of Texas, and Hines Texas, LLC and Double A Interest, LLC (hereinafter referred to as "Developers").

Whereas the Developers owns two tracts of land a 159.922 acre tract and a 43.946 acre tract, both being more particularly described in attached "Exhibit A" and are within the certified service area of the Water Supply and desires to develop the property by subdividing the tracts into 44 residential lots lots and tracts; and

Whereas the tariff of the Water Supply requires that a separate water service be provided to each residential structure.

Now, therefore, the Water Supply and the Developer agree as follows:

Application Phase

- (1) The Water Supply Service Agreement for Non-Standard Water Service shall be completed in full and signed by the Developer.
- (2) The Water Supply shall present to the Developer a cost estimate and general description of improvements necessary to provide the requested service.
- (3) The Developer shall tender payment to the Water Supply in the amount shown on the cost estimate before design of improvements is initiated.

Design Phase

- (1) The Water Supply's engineer shall design the improvements necessary to maintain current pressure and volume provided to existing meters plus the addition of the requested service, including on-site and off-site facilities in accordance with the Texas Commission on Environmental Quality (TCEQ) Rules and Regulations.
- (2) The Developer shall provide right-of-way easements solely and specifically for the placement of water lines, facilities and appurtenances within its property. Water facilities located outside of the Developers property may be placed on existing easements provided by the Water Supply. In the absence of existing easements, the Developer shall be responsible for any costs associated with acquisition of off-site easements including but not limited to purchase cost, administrative fees, survey fees, legal fees, and filing fees.

(3) The Developer shall provide proof that application has been made to the proper regulatory authority for approval and installation of on-site sewage disposal facilities for all services requiring such installations.

(4) The Water Supply reserves the right to change specifications or design due to unforeseen circumstance to better facilitate operation of the facility or increase the capacity of the improvements for future service. Changes made to increase the capacity of the improvements shall be paid by the Water Supply.

Construction

(1) The Water Supply will contract with a construction contractor for the required on-site and off-site improvements. The Water Supply may select construction contractors by competitive bidding or other methods determined by the Water Supply and as allowed in the tariff of the Water Supply.

(2) After bids have been received and approved by the Developer and the Water Supply, the Developer shall pay to the Water Supply the amount as shown on Attachment #1 to this Agreement and in accordance with the terms of this Agreement.

(3) Construction will be administered and inspected by the Water Supply for compliance with the plans and specifications.

(4) Construction of the required improvements shall include standard water service facilities including but not limited to a tap to the main with standard valves, a service line to a point on the Developers property, shutoff valves at the meter box, meter box, water meter, meter nipple and customer valve. These facilities shall be included in the construction contract and paid for by the Developer. After meters are installed in the meter box for alignment purposes, they shall be removed by the contractor and delivered to the Water Supply to be kept until service activation.

(5) An inspection by a qualified licensed inspector shall be conducted at each meter location to determine compliance with the state plumbing requirements at the expense of Developer. The Water Supply and the Developers agree that all water lines constructed outside the development, inside the development and the service lines and meters will remain the property of Water Supply.

Final inspection and operation

(1) Final inspection will be conducted by the Water Supply and will include flushing, pressure testing, and bacteriological test before the new facilities are placed in service.

(2) Upon completion of construction the Water Supply will provide a detailed final cost to the Developer. If the final cost is greater than the initial estimated cost, the Developer

shall pay the additional cost incurred by the Water Supply to provide the requested service. If the final cost is less than the initial estimated cost, the Water Supply will reimburse the Developer the balance remaining of the original funds.

(7) When a new service is placed in operation by the Water Supply, the meter will be installed by the Water Supply Operator and the Developer shall commence payment for the new service in accordance with the standard billing procedures and charges of the Water Supply. Charges to place a new service in operation are as follows:

- a. Equity Buy-in Fee: \$15,000.00
- b. Membership Fee: \$1,000.00
- c. Administration Fee: \$1,000.00
- d. New Service Fee: \$1,000.00

(8) The Water Supply and the Developer agree that the meters made available by the improvements to the system will be reserved for the Developer in accordance with the Water Supply Tariff for a period of five (5) years from the date water system improvements are complete. If the meter is not secured and monthly payments made within five (5) years, any meter replacement or the service after five (5) years will be required to pay the standard fees applicable to standard meter connections to the tariff of installation for service and in accordance with the tariff of the Water Supply.

(9) The Water Supply and the Developer agree that service will only be provided for 44,500 - 4 residential water meters and not more. All future meters that may be required to serve other tracts or land in area part of the Developers' interests will require a separate application for nonstandard service in accordance with the Water Supply's Tariff.

IN WITNESS WHEREOF, both of the parties have caused this Agreement to be executed by their duly authorized representatives on multiple copies, each of equal dignity, on the date and dates indicated below:

For the Water Supply Corporation:

Signature

Title

Date

For the Developer:

Signature: **A.W. Hines**
Title: **Manager**
Date: **1-7-2020**

AGREEMENT TO REIMBURSE

I, A.W. Hines, Owner, Operations Manager, and CEO of Hines Texas, LLC and Double A Interest LLC, acknowledge my understanding that at this time Elm Creek Water Supply Corporation is unable to provide Water Service to proposed land developments, Deer Creek Ranch and Deer Run because there are tracts on each of the developments which are currently outside Elm Creek WSCS CCN.

I, A.W. Hines, hereby confirm my agreement to reimburse Elm Creek Water Supply Corporation for all expenses incurred by the Corporation, its engineers, and legal counsel during the process of applying for and pursuing an Amendment to their CCN in order to serve all the land tracts in the proposed Deer Creek Ranch and Deer Run Developments.

I, A. W. Hines further understand that this agreement does not constitute payment for system upgrades, or the purchase of new water service to any of the tracts included in my preliminary land plats for The Deer Creek Ranch, or Deer Run Developments.

I, A.W. Hines acknowledge my understanding that all statements resulting from Elm Creek's pursuit of the amendment to their CCN in the area of my proposed developments will be due upon receipt.

EXECUTED THIS 16th day of August, 2019

A.W. Hines, Owner & CEO, Hines Texas, LLC and
Owner & CEO of Double A Interest, LLC

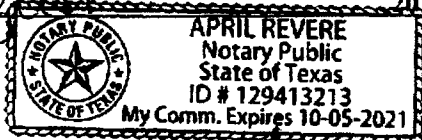
ACKNOWLEDGEMENT

STATE OF Texas
COUNTY OF Williamson OF

BEFORE ME, the undersigned, a Notary Public in and for said County and state, on this day personally appeared known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS THE 16th day of

August, 2019.



(Seal)

April Revere
Notary Public in and for
Williamson County, State of Texas