



Filing Receipt

Received - 2023-03-08 09:10:31 PM
Control Number - 51657
ItemNumber - 46



Kimley»»Horn

March 08, 2023

Public Utility Commission of Texas
Attn: Filing Clerk
1701 N Congress
P.O. Box 13326
Austin, Texas 78711-3326

Re: Control Number 51657: Application to Amend a Sewer Certificate of Convenience and Necessity (CCN):

To Whom it May Concern:

This purpose of this submittal is to provide an update regarding the Texas Pollutant Discharge Elimination System (TPDES) Permit. TCEQ declared the application administratively complete on December 07, 2021. On January 23rd, 2023, North Texas Municipal Water District (NTMWD) and the City of Anna executed a regionalization agreement which included the withdrawal of the public comment NTMWD had previously made. The draft permit is currently being re-drafted by the TCEQ to include the addition of the language in the regionalization agreement.

Attached is the fully executed regionalization agreement and the email chain confirming the withdrawal of public comment and contest from North Texas Municipal Water District

Sincerely,

A handwritten signature in black ink, appearing to read "T. Strouse, P.E.", with a stylized flourish.

Todd Strouse, P.E.
Project Manager
Kimley-Horn and Associates, Inc.

CITY OF ANNA, TEXAS

RESOLUTION NO. 2022-12-1329

A RESOLUTION OF THE CITY OF ANNA, TEXAS AUTHORIZING THE CITY MANAGER TO EXECUTE A REGIONALIZATION AGREEMENT BY AND BETWEEN THE CITY OF ANNA, TEXAS, AND THE NORTH TEXAS MUNICIPAL WATER DISTRICT, IN A FORM APPROVED BY THE CITY ATTORNEY, FOR THE DEVELOPMENT OF A REGIONAL WASTEWATER TREATMENT FACILITY KNOWN AS THE HURRICANE CREEK REGIONAL WASTEWATER TREATMENT PLANT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, The City of Anna Capital Improvement Plan includes the design and construction of a regional wastewater treatment facility located in the southwest portion of the City's Extraterritorial Jurisdiction; and,

WHEREAS, the proposed facility will provide wastewater treatment for the west side of Anna, east side of Weston, and West side of Van Alstyne; and,

WHEREAS, the North Texas Municipal Water District and the City of Anna have reached an agreement on the terms and conditions necessary for the North Texas Municipal Water District to remove its current challenge to the discharge permit for the project; and,

WHEREAS, the City Attorney shall review and approve the final draft of the regionalization agreement prior to execution by the City Manager; and,

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ANNA, TEXAS THAT:

Section 1. Recitals Incorporated

The recitals above are incorporated herein as if set forth in full for all purposes.

Section 2. Authorization of Agreement and Funding.

That the City Council of the City of Anna hereby authorizes the City Manager to execute a regionalization agreement with North Texas Municipal Water District related to the Hurricane Creek Regional Wastewater Treatment Facility in a form approved by the City Attorney.

PASSED AND APPROVED by the City Council of the City of Anna, Texas on this 13th day of December 2022.

ATTEST:

Carrie L. Land

City Secretary, Carrie Land

APPROVED:

Nate Pike



Mayor, Nate Pike

REGIONALIZATION AGREEMENT
(City of Anna—Hurricane Creek)

This Regionalization Agreement is entered into by North Texas Municipal Water District (the “District”) and the City of Anna (the “City”) (collectively, the “Parties” and individually “Party”) to provide the terms and conditions by which the City will agree to provisions in its new Texas Pollutant Discharge Elimination System Permit No. WQ0016043001 for the Hurricane Creek Regional Wastewater Treatment Plant (“TPDES Permit”) and to facilitate incorporation of the City’s service area to the District’s regional wastewater system, if feasible, in exchange for the District withdrawing its protest of the TPDES Permit, as set forth below.

Recitals

1. The City has filed an application with the Texas Commission on Environmental Quality (“TCEQ”) for a TPDES permit that authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 16 million gallons per day (“MGD”) from a facility to be constructed by the City to serve the City’s extraterritorial jurisdiction (portions of which may be annexed by the City into its corporate limits from time to time) to the west of U.S. Highway 75 in Collin County, Texas along with the City of Van Alstyne and a portion of the City of Weston (the “Project”).
2. The District is a regional wholesale wastewater provider that owns and operates a regional wastewater system throughout portions of Collin, Dallas, Kaufman, and Rockwall Counties (the “Regional System”).
3. The District is designated by TCEQ as the regional entity to collect, transport, treat, and discharge wastewater within its designated regional area, which includes the watershed area of the East Fork of the Trinity River that lies in Collin, Dallas, Kaufman, and Rockwall Counties, pursuant to 30 Texas Administrative Code § 351.32 (the “Regional Area”).
4. As the designated regional wholesale wastewater provider, the District contemplates extending its existing Regional System within its Regional Area in as such need arises and as such extensions of the Regional System become feasible.
5. The property and proposed discharge pursuant to the TPDES Permit are located within the Regional Area in Collin County.
6. The District has protested the TCEQ’s proposed issuance of a TPDES Permit for the Project.

NOW, THEREFORE, for and in consideration of the mutual promises and benefits as set forth in detail below, the Parties agree as follows:

Agreement

A. Incorporation of Recital Definitions. The terms defined in the above Recitals are incorporated into this Agreement for all purposes.

B. Construction of First Phase. The District agrees and has no objection to the City's construction of the first phase of the Project up to 4 MGD ("Phase I"). References to Phase II and Phase III herein are references to permitted phases of the Project as defined in the TPDES Permit.

C. Future Phases and Feasibility of Regional Options. Prior to permitting, bidding, and commencing construction on any and all phases beyond Phase I, the City agrees that it shall cooperate with the District to review the feasibility of service from the Regional System. Such feasibility review shall be prepared by the District in consultation with the City and shall consider the following factors: environmental impacts, maintenance and operational costs, construction costs, funding sources, and current and future demands of the City's service area. The feasibility review shall consider the following options:

1. Construction of a trunk sewer main from existing District Regional Facilities to the Project to accept flows greater than the 4 MGD permitted for Phase I.
2. Decommissioning of the Project if the District is able to provide wastewater treatment and disposal for the service area served by Phase I.
3. The City's sale or transfer of the Project to the District
4. Construction of Phase II of the Project (additional 4MGD) with the understanding that the City and the District will continue to work together on all available sewer solutions prior to commencement of Phase III.
5. Other options which may have not yet become apparent to the Parties.

The District shall conduct the feasibility review in a time and manner that will not unreasonably delay or disrupt the City's ability to extend wastewater treatment and disposal service in its service area. If the feasibility review identifies an option available to bring the City's service area into the Regional System, the City agrees to work with the District to implement such option rather than pursue an expansion of the Project beyond Phase I. It shall not be considered feasible for the District to serve the area served and/or to be served by the City under the TPDES Permit if service by the District would unreasonably disrupt or delay any new private or public development in said area.

D. Permit Language. The City agrees to and will request from TCEQ the addition of the following language in the section entitled "Other Requirements" in the TPDES Permit:

This permit is granted subject to the policy of the Commission to encourage the development of area-wide waste collection, treatment, and disposal systems, as addressed in 30 Texas Administrative Code, Chapter 351, Subchapter C. The facilities authorized by this permit are proposed to be located within the designated regional area of the East Fork Trinity River served by the North Texas Municipal Water District (NTMWD). Permittee has entered into that certain Regionalization Agreement with NTMWD effective _____ which provides that prior to commencement of construction of future phases of the facility beyond the first

phase, Permittee shall work with NTMWD to determine if service is available for such phase from the NTMWD regional system. The Permittee shall include in all future applications documentation of consultation and coordination with NTMWD regarding feasibility review of service from the NTMWD regional system for future unbuilt phases. Based on such feasibility review, this permit may be modified or amended to accommodate integration into the NTMWD regional system.

E. Return Flows. As additional consideration for the District's withdrawal of its protest of the TPDES Permit as provided in Section F below, the City agrees that it shall make no claim to or seek authorization to reuse return flows (treated effluent) from the Project once discharged in accordance with the TPDES permit. The City agrees that the District may divert and reuse such return flows generated by the Project in accordance with applicable law.

F. Agreement to Withdraw Protest. The District agrees to withdraw its protest of the TPDES Permit upon completion of all of the following conditions:

- (1) The City's execution of this Agreement; and
- (2) Written confirmation, including electronic transmission, from the TCEQ Executive Director staff of agreement to include of the language at Section D above into the TPDES Permit.

G. Applicable Law and Venue. This Agreement shall be construed under the laws of the State of Texas and all obligations of the Parties hereunder are performable in Collin County, Texas. Venue for any action arising under this Agreement shall be in Collin County, Texas.

H. Entire Agreement. This Agreement contains the complete and entire agreement between the Parties respecting the matters addressed herein and supersedes any prior negotiations, agreements, representations and understandings, oral or written, if any, between the Parties respecting such matters. This Agreement may not be modified, discharged, or changed in any respect whatsoever, except by a further agreement in writing duly executed by the Parties hereto. However, any consent, waiver, approval, or authorization shall be effective if signed by the Party granting or making such consent, waiver, approval, or authorization.

I. Severability. If any provision of this Agreement is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and this Agreement shall be construed as if such invalid provision had never been contained herein, and the remaining enforceable provisions of this Agreement are expressly deemed severable for this purpose.

J. Amendments. Any amendment to this Agreement must be in writing and shall be effective only if signed by the authorized representatives of each Party to this Agreement.

K. Attorney's Fees. Attorney's fees and related expenses are recoverable if either Party seeks to enforce this agreement and is successful in its enforcement.

L. Future Permit Applications. The District reserves the right to comment on and protest any future applications regarding the TPDES Permit not in conformance with this Regionalization Agreement.

M. Assignment. This Agreement is binding upon and shall inure to the benefit of the Parties, their heirs, successors, and assigns. This Agreement shall be binding upon and inure to the benefit of all subsequent persons and entities of every description to which the final TPDES Permit may be transferred. If the TPDES Permit is transferred to another Party, this Agreement may be assigned by the City to that Party, and upon such assignment all rights and obligations under this Agreement shall pass to that Party, and the City shall be relieved of any obligations hereunder.

N. Expiration. This Agreement shall terminate and be of no further force or effect if the TPDES Permit is not issued to the City within two years of the Effective Date.

O. Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) business days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below or on the day actually received as sent by courier or otherwise hand delivered:

If intended for CITY, to:

City of Anna
Attn: City Manager
120 W. 7th Street
Anna, Texas 75409

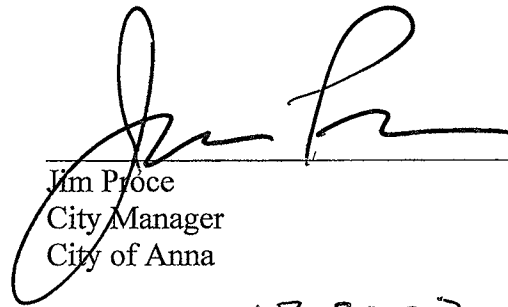
Wolfe, Tidwell & McCoy, LLP
Attn: Clark McCoy
2591 Dallas Parkway, Suite 300
Frisco, Texas 75034

If intended for DISTRICT, to:

North Texas Municipal Water District
Attn: Cesar Baptista
Deputy Director of Engineering, Capital Improvement Projects
501 East Brown Street
Wylie Texas 75098

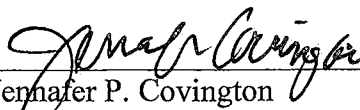
North Texas Municipal Water District
Attn: Jerry Allen
Permitting Manager
501 East Brown Street
Wylie Texas 75098

P. Effective Date. The effective date of this Regionalization Agreement shall be the last date of execution by either Party as shown below.



Jim Proce
City Manager
City of Anna

1-18-2023
Date:



Jennifer P. Covington
Executive Director
North Texas Municipal Water District

1/23/2023

Date:

Dunn, Riley

From: Jerry Allen <jallen@NTMWD.COM>
Sent: Thursday, January 26, 2023 3:29 PM
To: Firoj Vahora; Melinda Luxemburg
Cc: Greg Peters; Harrison Malley; R.J. Muraski
Subject: RE: Permit No. WQ0016043001 - Executed Regionalization Agreement NTMWD
Attachments: Regionalization language to include in TPDES No. WQ0016043001.docx; LJK to TCEQ Re Withdrawal of Protest Hurricane Creek.pdf

Melinda,

NTMWD submitted a withdrawal of a Contested Case Hearing and I have attached a copy for your reference. Also, attached is a Word Document containing the language we agreed to included in TPDES Permit No. WQ001643001. Please let me know if you have any questions or there is any other information you need. I appreciate everyone patience and cooperation as we worked through this process.

Thank you,

JERRY ALLEN

Permitting Manager
North Texas Municipal Water District
O: (469) 626-4634
M: (214) 212-6153

From: Firoj Vahora <firoj.vahora@tceq.texas.gov>
Sent: Friday, January 13, 2023 7:41 AM
To: Melinda Luxemburg <melinda.luxemburg@tceq.texas.gov>
Cc: Greg Peters <gpeters@annatexas.gov>; Harrison Malley <Harrison.Malley@tceq.texas.gov>; Jerry Allen <jallen@NTMWD.COM>
Subject: FW: Permit No. WQ0016043001 - Executed Regionalization Agreement NTMWD
Importance: High

Good Morning Melinda:

Please work with Cole on this matter. Once we have NTMWD withdrawal with any suggested language for the permit regarding the Regionalization, let's revise the draft permit. I am aware of such language but let's wait for the response from the NTMWD. I am adding Jerry in the loop so he knows, he can work with you and Cole.

Please keep Greg in the loop so he knows that we will be working to help the city move with their permit.

Thanks,

Firoj

Note for Greg: Hanne Nielsen is no longer working for the agency and I have re-assigned the subject permit to Melinda Luxemburg, P.E. Please follow up with Melinda, if you have any additional questions on this matter.

Thanks,

Firoj Vahora, Team Leader

Municipal Permits Team (MC 148)



Wastewater Permitting Section

Water Quality Division, TCEQ

email: firoj.vahora@tceq.texas.gov

phone: 512-239-4540

☐ Please consider whether it is necessary to print this e-mail

How is our Customer Service? Fill out our online customer satisfactory survey at

www.tceq.texas.gov/customersurvey

From: Greg Peters <gpeters@annatexas.gov>

Sent: Thursday, January 12, 2023 5:23 PM

To: Firoj Vahora <firoj.vahora@tceq.texas.gov>; Shemica Wilford <Shemica.Wilford@tceq.texas.gov>; Hanne Nielsen <hanne.nielsen@tceq.texas.gov>

Cc: Jerry Allen <jallen@NTMWD.COM>; R.J. Muraski <rmuraski@NTMWD.COM>; Jim Proce <jproce@annatexas.gov>; Ryan Henderson <rhenderson@annatexas.gov>; Taylor Lough <tlough@annatexas.gov>; Steven Smith <ssmith@annatexas.gov>; Justin Clay <jclay@annatexas.gov>; Joanna Golleher <jgolleher@annatexas.gov>; Strouse, Todd <todd.strouse@kimley-horn.com>; Kubista, Kyle <kyle.kubista@kimley-horn.com>; James, Jeff <Jeff.James@kimley-horn.com>; Connolly, Chris <Chris.Connolly@kimley-horn.com>; Vela, Chris <Chris.Vela@kimley-horn.com>

Subject: Permit No. WQ0016043001 - Executed Regionalization Agreement NTMWD

Firoj, Shemica, and Hanne,

Please see the attached regionalization agreement between NTMWD and the City of Anna related to permit number WQ0016043001. The City has signed the agreement. Per NTMWD, they will execute the agreement and withdraw their protest upon "Written confirmation from the TCEQ Executive Director Staff of agreement to include of the language at Section D above into the TPDES Permit."

Please let us know if we need to coordinate with any members of your team to achieve this task. Thanks!

Greg Peters, P.E.

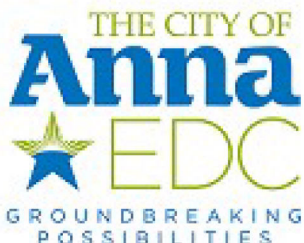
Director of Public Works

City of Anna, Texas

972-924-4510



Visit: AnnaTexas.gov. Like us on [Facebook](https://www.facebook.com/annatexas).



Visit: opportunityannatx.com

From: Jerry Allen <jallen@NTMWD.COM>

Sent: Thursday, January 12, 2023 4:06 PM

To: Joanna Golleher <jgolleher@annatexas.gov>; R.J. Muraski <rmuraski@NTMWD.COM>

Cc: Greg Peters <gpeters@annatexas.gov>; Jim Proce <jproce@annatexas.gov>; Justin Clay <jclay@annatexas.gov>; Steven Smith <ssmith@annatexas.gov>; Ryan Henderson <rhenderson@annatexas.gov>; Taylor Lough <tlough@annatexas.gov>

Subject: RE: Regionalization Agreement NTMWD

Joanna,

This is good news. I want to provide a reminder and direct your attention to Item F of the Regionalization Agreement which is provided below:

F. Agreement to Withdraw Protest. The District agrees to withdraw its protest of the TPDES Permit upon completion of all of the following conditions:

- (1) The City's execution of this Agreement; and
- (2) Written confirmation, including electronic transmission, from the TCEQ Executive Director staff of agreement to include of the language at Section D above into the TPDES Permit.

Once the written confirmation is received, we will execute the Regionalization Agreement and submit our protest withdrawal to TCEQ. I will provide copy of the protest withdrawal and original fully executed Regionalization Agreement.

Thank you,

JERRY ALLEN

Permitting Manager

North Texas Municipal Water District

O: (469) 626-4634

M: (214) 212-6153

From: Joanna Golleher <jgolleher@annatexas.gov>

Sent: Thursday, January 12, 2023 3:34 PM

To: Jerry Allen <jallen@NTMWD.COM>; R.J. Muraski <rmuraski@NTMWD.COM>

Cc: Greg Peters <gpeters@annatexas.gov>; Jim Proce <jproce@annatexas.gov>; Justin Clay <jclay@annatexas.gov>; Steven Smith <ssmith@annatexas.gov>; Ryan Henderson <rhenderson@annatexas.gov>; Taylor Lough <tlough@annatexas.gov>

Subject: Regionalization Agreement NTMWD

Good afternoon,

Attached is the partially executed Regionalization Agreement for the Hurricane Creek Regional Wastewater Treatment Plant. Greg Peters will hand deliver three original partially executed agreements to your attention for full execution either tomorrow morning or late afternoon.

Included:

- (3) Resolution Number 2022-12-1329
- (3) Partially Executed Regionalization Agreement

Please let us know if you have any questions.

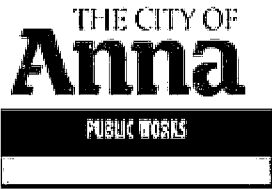
Best Regards,

Joanna Golleher

Administrative Coordinator

Office: 972-924-4510

Public Works Department
3223 N. Powell Parkway
Anna, TX 75409
www.annatexas.gov



Ms. Kalisek's Direct Line: (512) 322-5847
lkalisek@lglawfirm.com

January 17, 2023

Ms. Laurie Gharis
Office of the Chief Clerk (MC 105)
Texas Commission on Environmental Quality
P. O. Box 13087
Austin, Texas 78711-3087

VIA ELECTRONIC FILING

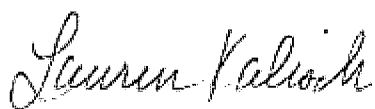
Re: City of Anna, Texas – Withdrawal of Protest and Hearing Request
Proposed Permit Hurricane Creek Regional WWTP TPDES Permit No.
WQ0016043001 (446-13)

Dear Ms. Gharis:

This letter is submitted on behalf of my client, the North Texas Municipal Water District ("District"), as formal notice that the District unconditionally withdraws its comments, protest, and request for a contested case hearing with respect to the above-referenced application.

Please do not hesitate to contact me if you have any questions or if I can be of assistance. Thank you for your attention to this matter.

Sincerely,



Lauren J. Kalisek

LJK

cc: Mr. Jerry Allen, *North Texas Municipal Water District*
Mr. R.J. Muraski, *North Texas Municipal Water District*
Ms. Lora Naismith, *Lloyd Gosselink Rochelle & Townsend*