



Filing Receipt

Received - 2021-08-31 10:39:38 AM

Control Number - 51683

ItemNumber - 32

PUC DOCKET NO. 51683

APPLICATION OF INTEGRA WATER § BEFORE THE
TEXAS, LLC FOR A SEWER §
CERTIFICATE OF CONVENIENCE § PUBLIC UTILITY COMMISSION
AND NECESSITY IN BASTROP §
COUNTY § OF TEXAS

INTEGRA WATER TEXAS, LLC'S RESPONSE TO COMMISSION STAFF'S
SECOND REQUEST FOR INFORMATION

Integra Water Texas, LLC (Integra) files this Response to the Second Request for Information (RFI) filed by the Staff of the Public Utility Commission of Texas (Staff). The discovery request was received by Integra on August 26, 2021; therefore these responses are timely filed. Pursuant to 16 Tex. Admin. Code (TAC) § 22.144(c)(2)(F), these responses may be treated as if they were filed under oath.

Respectfully submitted,

LLOYD GOSSELINK
ROCHELLE & TOWNSEND, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701
(512) 322-5800
(512) 472-0532 (Fax)



JAMIE L. MAULDIN
State Bar No. 24065694
jmauldin@lglawfirm.com

ATTORNEYS FOR INTEGRA WATER
TEXAS, LLC

CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on August 31, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.



JAMIE L. MAULDIN

PUC DOCKET NO. 51683

INTEGRA'S RESPONSE TO STAFF'S SECOND RFI

Staff 2-1 Please provide a sworn affidavit or other written binding guarantee that Integra Water, LLC, Integra Water Texas, LLC's parent company, is willing and capable to cover any temporary cash shortages for the first 5 years of operations.

RESPONSE: Please see attached Affidavit of John McDonald (Attachment Staff 2-1).

Prepared by: Erica Cochran, Executive Assistant for Integra Water Texas, LLC
Sponsored by: John McDonald


SWORN AFFIDAVIT

STATE OF ALABAMA

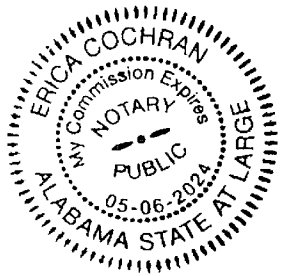
COUNTY OF JEFFERSON

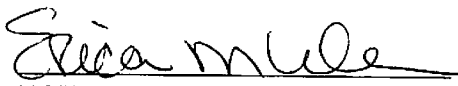
PERSONALLY came and appeared before me, the undersigned Notary, the within named JOHN MCDONALD, managing member of Integra Water, LLC and Integra Water Texas, LLC, who is a resident of JEFFERSON County, State of ALABAMA and makes this his statement and General Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of his knowledge:

Integra Water, LLC, parent company of Integra Water Texas, LLC, is willing and capable of covering any temporary cash shortages for the first five (5) years of operations on behalf of Integra Water Texas, LLC

DATED this the 2nd day of August, 2021

Signature of Affiant

SWORN to subscribed before me, this 30th day August, 2021




NOTARY PUBLIC
My Commission Expires:
5/6/24

PUC DOCKET NO. 51683

INTEGRA'S RESPONSE TO STAFF'S SECOND RFI

Staff 2-2 Please refer to Integra's March 4, 2021 Response to Order No. 2 and Supplement to Application at Attachment A on Pg. 15. The development agreement for the requested area was entered into with the developer Cayetano Development by Integra Water Tennessee, LLC and not Integra Water Texas, LLC. Please provide a written agreement or other documentation that shows what rights, obligations, and/or relationship Integra Water Texas, LLC will have in relation to the development agreement.

RESPONSE: Please see the Assignment of and Amendment to Agreement Concerning Wastewater Utility System (Attachment Staff 2-2) which assigns Integra Water Tennessee's rights and obligations under the development agreement to Integra Water Texas.

Prepared by: Erica Cochran, Executive Assistant for Integra Water Texas, LLC
Sponsored by: John McDonald

**ASSIGNMENT OF AND AMENDMENT TO
AGREEMENT CONCERNING WASTEWATER UTILITY SYSTEM**

This Assignment of and Amendment to Agreement Concerning Wastewater Utility System (this "Assignment and Amendment"), dated as of February 26, 2020, is made by and among CAYETANO DEVELOPMENT, LLC, a Texas limited liability company ("Cayetano"), CENTEX LOS MILAGROS, L.P., a Texas limited partnership ("Los Milagros"), INTEGRA WATER TENNESSEE, LLC, a Tennessee limited liability corporation ("Integra Tennessee"), and INTEGRA WATER TEXAS, LLC, a Texas limited liability company ("Integra Texas").

RECITALS:

WHEREAS, Cayetano and Integra Tennessee entered into that one certain Agreement for the Design, Permitting, Construction, Ownership, Operation, and Maintenance of the Wastewater Utility System to be Installed to Serve Los Milagros dated December 20, 2018 (the "Agreement"), pursuant to which Integra Tennessee would build, operate and own a wastewater utility system for the benefit of the Los Milagros Subdivision in Bastrop County, Texas; and

WHEREAS, Cayetano desires to assign its rights in and obligations under the Agreement to Los Milagros;

WHEREAS, Integra Tennessee desires to assign its rights in and obligations under the Agreement to Integra Texas; and

WHEREAS, the parties desire to amend the Agreement to provide for payments made pursuant to the Agreement to be made to and disbursed by an escrow agent chosen by the parties.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants set forth herein and in the Agreement the parties hereby agree as follows:

1. **Assignment of the Agreement by Cayetano.** Cayetano hereby assigns all of its interest in the Agreement to Los Milagros, and Los Milagros hereby assumes all of Cayetano's interest in the Agreement and the rights, duties, and obligations of Cayetano therein. Integra Tennessee and Integra Texas hereby consent to the assignment of the Agreement to Los Milagros.

2. **Assignment of the Agreement by Integra Tennessee.** Integra Tennessee hereby assigns all of its interest in the Agreement to Integra Texas, and Integra Texas hereby assumes all of Integra Tennessee's interest in the Agreement and the rights, duties, and obligations of Integra Tennessee therein. Cayetano and Los Milagros hereby consent to the assignment of the Agreement to Integra Texas.

3. **Escrow for Reimbursement of Design, Permitting, and Construction Costs.** Section 6.3 of the Agreement is hereby amended to provide that the UTILITY (as that term is defined in the Agreement) shall provide invoices for the items to be reimbursed by DEVELOPER (as that term is defined in the Agreement) to an escrow agent appointed by the parties (the "Escrow Agent"), which shall consist of the actual costs of labor, equipment, materials, consultants, contractors, and other associated expenses, and the Contribution in Aid of

Construction tax (the "CIAC"). Upon receipt of such invoices, the DEVELOPER will transfer funds in the amount of such invoices to the Escrow Agent who will disburse such funds to the appropriate parties upon the written instructions of DEVELOPER and UTILITY.

4. Amendment to Cover Page. The phrase "Niederwald, Texas" shall be deleted from the cover page of the Agreement and from all other places it may appear within the Agreement. The phrase "Bastrop County, Texas" shall be substituted in its place.

5. Ratification. The Agreement, as hereby amended, is ratified and confirmed in all respects. This Assignment and Amendment shall be subject to, governed by and be a part of the Agreement.

6. Counterparts. This Assignment and Amendment may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.


[Signature pages follow.]

EXECUTED by Cayetano and Los Milagros the 12th day of February, 2020.

CAYETANO:

CAYETANO DEVELOPMENT, LLC, a Texas limited liability company

By:



MATTHEW J. LONG, President

LOS MILAGROS:

CENTEX LOS MILAGROS, L.P., a Texas limited partnership

By: **CENTEX LOS MILAGROS GP, LLC, a Texas limited liability company**

Its: **General Partner**

By:




MATTHEW J. LONG, Vice-President

EXECUTED by Integra Tennessee and Integra Texas the 25th day of February, 2020.


INTEGRA TENNESSEE:

INTEGRA WATER TENNESSEE, LLC, a Tennessee limited liability corporation

By: 
Printed Name: John McDonald
Title: Manager

INTEGRA TEXAS:

INTEGRA WATER TEXAS, LLC, a Texas limited liability company

By: 
Printed Name: John McDonald
Title: Manager

INTEGRA'S RESPONSE TO STAFF'S SECOND RFI

Staff 2-3 Please refer to Integra's March 4, 2021 Response to Order No. 2 and Supplement to Application at Attachment A on Pg. 3. What rights, obligations, and/or relationship does the Escrow Agreement entered into by Integra Water Texas, LLC and Centex Los Milagros, L.P. create for the parties in relationship to the December 20, 2018 Design, Permitting, Construction, Ownership, Operation and Maintenance Agreement that was originally entered into by Integra Water Tennessee, LLC and Cayetano Development.

RESPONSE: Please see the Escrow Agreement (Attachment Staff 2-3) that outlines the terms of Agreement between Integra Water Texas and Centex Los Milagros, LP effective as of February 28, 2020. This Agreement supersedes any agreements made between Integra Water Tennessee, LLC and Cayetano Development.

See Response to Staff 2-2 for the Assignment of Rights and Amendment to Agreement Concerning Wastewater Utility System which assigns Integra Water Tennessee's rights and obligations under the development agreement to Integra Water Texas.

Prepared by: Erica Cochran, Executive Assistant for Integra Water Texas, LLC
Sponsored by: John McDonald

ESCROW AGREEMENT

This Escrow Agreement (this "Escrow Agreement") is made by and among **INTEGRA WATER TEXAS, LLC**, a Texas limited liability company ("Integra") and **CENTEX LOS MILAGROS, L.P.**, a Texas limited partnership ("Los Milagros") and **JONES, GALLIGAN, KEY & LOZANO, L.L.P.**, a Texas limited liability partnership ("Escrow Agent"), effective February 26, 2020 (the "Effective Date").

RECITALS

WHEREAS, Integra's and Los Milagros' predecessors-in-interest entered into an Agreement for the Design, Permitting, Construction, Ownership, Operation and Maintenance of the Wastewater Utility System (the "Agreement"), effective as of December 20, 2018, relating to the wastewater utility system that will serve the Los Milagros Subdivision in Bastrop County, Texas (the "Subdivision"); and

WHEREAS, Integra and Los Milagros have agreed to escrow funds payable by Los Milagros to Integra pursuant to Section 6.3 of the Agreement with Escrow Agent (the "Escrow Funds") so that Escrow Agent can disburse the Escrow Funds directly to the person entitled to receive such funds pursuant to Section 6.3.

THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are acknowledged and confessed, the parties hereto agree as follows:

TERMS OF AGREEMENT

1. **Defined Terms.** The following terms shall have the meanings given below:
 - (a) A "business day" is any day other than Saturday, Sunday, or a holiday observed by the Federal Reserve Bank of Dallas.
 - (b) "Escrow Account" means an escrow account kept by Escrow Agent in its ordinary course of business.
 - (c) "Escrow Funds" shall have the meaning described in the Recitals.
 - (d) "Invoices" shall have the meaning assigned in Paragraph 4(a).
2. **Escrow Account** - The Escrow Account will be under the sole control of Escrow Agent, and designated signers of Escrow Agent will have the sole and exclusive authority to draw checks or make withdrawals from the Escrow Account.
3. **Deposit and Disbursement of Escrow Funds.** Disbursements of the Escrow Funds will be made in accordance with the following conditions:
 - (a) In accordance with Section 6.3 of the Agreement, Integra will send invoices to Escrow Agent based on the progress of Integra's work under the Agreement. Such invoices will be for the actual cost of labor, equipment, materials, consultants, contractors, and other associated expenses (the "Invoices") with instructions to Escrow Agent for the payment of such expenses directly to the contractors, consultants, and persons providing

such labor, equipment, material, or other related expenses. Los Milagros shall review the Invoices and shall inform Escrow Agent and Integra of its approval of or any dispute regarding the Invoices within fifteen (15) business days following its receipt of the Invoices. Upon receipt and approval of the Invoices, Los Milagros will transfer Escrow Funds in an amount sufficient to pay the Invoices into the Escrow Account and will direct Escrow Agent to pay the Invoices, which Escrow Agent will do immediately upon receipt of such notice. Escrow Agent shall not be required to pay any of the Invoices which are disputed by Los Milagros until such time as Integra and Los Milagros jointly direct Escrow Agent to do so. As used herein, the term "Invoices" shall include the CIAC taxes payable under Section 6.3 of the Agreement, which shall be payable to Integra.

(b) Under no circumstances may Escrow Agent release any portion of the Escrow Funds for Invoices approved by Los Milagros without written authorization from Los Milagros. Further, Escrow Agent shall not release any portion of the Escrow Funds for Invoices disputed by Los Milagros without the written authorization of both Integra and Los Milagros.

4. Termination. This Escrow Agreement will terminate when all work required of Integra by the provisions of the Agreement has been completed.

5. Exculpation Provisions for Escrow Agent.

(a) It is agreed that (i) Escrow Agent will in no event be liable for any direct or indirect damage caused by the performance of Escrow Agent's obligations in accordance with the terms of this Escrow Agreement, except to the extent caused by Escrow Agent's negligence or willful breach of its duties hereunder; and (ii) Escrow Agent will not be liable or responsible for the sufficiency or correctness as to form, manner of execution, or validity of any instrument tendered to Escrow Agent hereunder, nor as to identity, authority, or rights of any person executing the same.

(b) In the event of any disagreement between the parties to this Escrow Agreement resulting in adverse claims or demands being made in connection with the Escrow Funds, or if Escrow Agent, in good faith, is in doubt as to what action it should take hereunder, Escrow Agent may, at its option, refuse to comply with any requests, claims or demands relating to this Escrow Agreement, so long as such disagreements continue or such doubt exists, and in any such event, Escrow Agent may continue to refrain from acting until (i) the rights to the Escrow Funds have been fully and finally adjudicated by a court of competent jurisdiction or (ii) all differences have been resolved by written agreement among all of the persons making requests, claims, or demands with respect to the Escrow Funds and Escrow Agent has been notified thereof in writing signed by all such persons. In connection with any such disagreement as aforesaid, Escrow Agent may institute a bill of interpleader, and any costs so incurred by Escrow Agent may be payable out of the Escrow Funds. The rights of Escrow Agent under this paragraph are cumulative of all other rights that it may have by law or otherwise and will survive the termination of this Escrow Agreement.

6. Replacement of Escrow Agent.

(a) At any time during the term of this Escrow Agreement, Escrow Agent may resign and be discharged of the obligations created by this Escrow Agreement by executing and delivering to Integra and Los Milagros, written notice of its resignation as

Escrow Agent and specifying the date when such resignation is to take effect. Any resignation of Escrow Agent will not become effective until the earlier to occur of (i) acceptance of appointment by the successor Escrow Agent or (ii) thirty (30) days after Escrow Agent's notice of resignation.

(b) Escrow Agent may be removed at any time by Integra and Los Milagros by a written notice to Escrow Agent executed by both Integra and Los Milagros, whereupon a successor Escrow Agent will be appointed pursuant to subparagraph (d) below.

(c) If Escrow Agent resigns, is dissolved, or its property or affairs are taken under the control of any state or federal court or administrative body or agency because of insolvency or bankruptcy or for any other reason, a vacancy shall forthwith exist in the office of Escrow Agent, and a successor will be appointed pursuant to subparagraph (d) below.

(d) In the event of the removal or resignation of the Escrow Agent pursuant to subparagraph (a), (b) or (c) above, Integra and Los Milagros will endeavor in good faith to agree upon a successor Escrow Agent to be appointed by written instrument, one copy of which instrument will be delivered to each of the predecessor Escrow Agent, the successor Escrow Agent, Integra and Los Milagros. Any successor Escrow Agent appointed by Integra and Los Milagros pursuant to this subparagraph will, in Integra's and Los Milagros's reasonable judgment, be adequately bonded, qualified and reputable.

(e) Any successor Escrow Agent appointed hereunder will execute, acknowledge and deliver to Integra and Los Milagros an instrument accepting such appointment hereunder, and thereupon such successor Escrow Agent, without any further act will become duly vested with all of the property, rights, powers, trusts, duties and obligations of its predecessor hereunder, with the same effect as if originally named Escrow Agent.

7. Miscellaneous.

(a) Any notice, demand, contest, request, or other communication (herein, a "**notice**") provided or permitted to be given under this Escrow Agreement must be in writing and may be served by (i) depositing the same in the United States Mail, addressed to the party to be notified, postage prepaid, via certified mail with return receipt requested; (ii) delivering the same in person (e.g., by local courier) to such party; (iii) overnight delivery service that retains regular records of delivery and receipt; or (iv) electronic mail during the hours of 9:00 a.m. and 4:30 p.m., Central Standard Time, so long as the notice is also delivered by one of the other methods provided herein. Notices sent by United States Mail, as aforesaid, or by overnight courier service shall be deemed received on the date of actual receipt or refusal of service. Notices given by personal delivery shall be deemed received on the date of receipt or refusal of service. Notices sent via electronic mail during the aforesaid hours shall be deemed received on the date of actual receipt. A party's address for notice hereunder must be an address within the United States of America. The addresses of Integra, Los Milagros, and Escrow Agent (and parties to whom copy must be sent) for purposes of notice hereunder will be as follows until changed by notice:

If to Integra:

INTEGRA WATER TEXAS, LLC
Attn: John L. McDonald, Manager

3212 6th Avenue South, Suite 200
Birmingham, Alabama 35222
JMcDonald@integrawater.com (e-mail)

If to Los Milagros: CENTEX LOS MILAGROS, L.P.
Attn: Matthew J. Long
2211 Hancock Drive
Austin, Texas 78756
mlong@cayetanodevelopment.com (E-mail)

If to Escrow Agent: JONES, GALLIGAN, KEY & LOZANO, L.L.P.
c/o Eugene R. Vaughan, III
P.O. Drawer 1247
Weslaco, Texas 78599-1247
evaughan@jgkl.com (e-mail)

(b) This Escrow Agreement will be governed by the laws of the State of Texas.

(c) The provisions of this Escrow Agreement may be amended only by a written agreement signed by or on behalf of Integra, Los Milagros, and Escrow Agent.

(d) This Escrow Agreement evidences the entire agreement between the undersigned relating to the manner of Escrow Agent's holding and disbursing the Escrow Funds and supersedes all prior agreements, understandings, negotiations and discussions, oral or written, of the parties relating to such subject matter.

(e) The terms of this Escrow Agreement will be binding upon and will inure to the benefit of Escrow Agent, Integra and Los Milagros and their respective successors and permitted assigns, including any debtor in possession or bankruptcy trustee acting for any of said parties. Neither Integra, Los Milagros, nor Escrow Agent may assign its rights or obligations under this Escrow Agreement or any interest herein without the other parties' prior written consent.

(f) Time is of the essence of this Escrow Agreement and all time periods hereunder; provided, however, if any day for the occurrence of an event or act under this Escrow Agreement falls on a day other than a business day, then the time of the occurrence of such event or act shall be extended to the next succeeding business day.

(g) Termination of this Escrow Agreement will not terminate the rights and obligations of Integra and Los Milagros under any other contracts or agreements then in effect between them.

(h) Integra represents and warrants to Los Milagros and Escrow Agent that Integra has full right, power and authority to execute, deliver, and perform the terms and obligations of this Escrow Agreement, and this Escrow Agreement has been authorized and approved by all necessary actions of Integra. Accordingly, this Escrow Agreement constitutes the legal, valid and binding obligation of Integra, and is enforceable in accordance with its terms and provisions.

(i) Los Milagros represents and warrants to Integra and Escrow Agent that Los Milagros has full right, power, and authority to execute and deliver and perform the

terms and obligations of this Escrow Agreement, and this Escrow Agreement has been authorized and approved by all necessary actions of Los Milagros. Accordingly, this Escrow Agreement constitutes the legal, valid and binding obligation of Los Milagros, and is enforceable in accordance with its terms and provisions.

(j) Escrow Agent represents and warrants to Integra and Los Milagros that Escrow Agent has full right, power, and authority to execute and deliver and perform the terms and obligations of this Escrow Agreement, and this Escrow Agreement has been authorized and approved by all necessary actions of Escrow Agent. Accordingly, this Escrow Agreement constitutes the legal, valid and binding obligation of Escrow Agent, and is enforceable in accordance with its terms and provisions.

(k) The failure of a party to insist, in any one or more instances, upon performance of any provision of this Escrow Agreement, shall not be construed as a waiver or relinquishment of the future performance of any such provision by another party, and the obligation of such other party with respect to such future performance shall continue in full force and effect. No waiver of any provision hereof shall be effective unless set forth in writing signed by the waiving party and no waiver of any provision hereof shall be deemed to imply or constitute a waiver of any other provision set forth herein. If any provision of this Escrow Agreement, or its application to any person or circumstance, is ever held to be invalid or unenforceable, then in each such event the remainder of this Escrow Agreement or the application of such provision to any other person or any other circumstance (other than those as to which it is invalid or unenforceable) shall not be thereby affected, and each provision hereof shall remain valid and enforceable to the fullest extent permitted by law or in equity.

(l) The headings in this Escrow Agreement are for convenience only, shall in no way define or limit the scope or content of this Escrow Agreement, and shall not be considered in any construction or interpretation of this Escrow Agreement or any part hereof. The parties acknowledge that they and their counsel have reviewed and revised this Escrow Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Escrow Agreement or any amendments or exhibits hereto. Whenever the context requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include all other genders.

(m) If any party files a lawsuit in connection with this Escrow Agreement, then the party that prevails in such action, as determined by the court, shall be entitled to recover from the non-prevailing party, in addition to all other remedies or damages provided herein, reasonable attorneys' fees and costs of court incurred in such lawsuit.

(n) This Escrow Agreement may be executed in multiple counterparts, each one of which will be deemed an original, but all of which when disassembled, aggregated and taken together will constitute one and the same instrument.

IN WITNESS WHEREOF, Integra, Los Milagros, and Escrow Agent have executed this Escrow Agreement to be effective as of February 26, 2020.

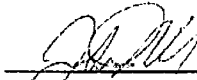
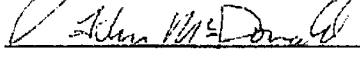
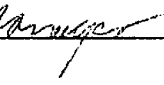
Integra:

INTEGRA WATER TEXAS, LLC, a Texas limited liability company

By: _____

Printed Name: _____

Title: _____

Los Milagros:

CENTEX LOS MILAGROS, L.P., a Texas limited partnership

By: **CENTEX LOS MILAGROS GP, LLC**, a Texas limited liability company

Its: General Partner

By:



MATTHEW J. LONG, Vice-President

Escrow Agent:

JONES, GALLIGAN, KEY & LOZANO, L.L.P.

By: Eugene R. Vaughan III
EUGENE R. VAUGHAN, III