

PUC DOCKET NO. 51698

2021 JUN 14 AM 11:04
BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS

PETITION OF TRI POINTE HOMES §
TEXAS, INC. TO AMEND MSEC §
ENTERPRISES INC.'S CERTIFICATE §
OF CONVENIENCE AND NECESSITY §
IN MONTGOMERY COUNTY BY §
EXPEDITED RELEASE §

JOINT NOTICE OF AGREEMENT REGARDING COMPENSATION

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

In accordance with Texas Water Code §§ 13.254 and 13.2541 and current Public Utility Commission of Texas (“PUC”) Rule 24.245, Petitioner Tri Pointe Homes Texas, Inc. (“Tri Pointe”) and Respondent MSEC Enterprises, Inc. (“MSEC”) (cumulatively, the “Parties”) file this joint notice of agreement and accompanying Agreement Regarding Compensation. The Parties have, through good faith negotiations, resolved all their issues concerning compensation to their mutual satisfaction, do not desire to further burden the PUC, and executed and memorialized in writing the attached Compromise and Settlement Agreement that provides for the payment of \$7,327.00 for just and adequate compensation and that otherwise meets the applicable compensation standards set forth in Texas Water Code §§ 13.254(g) and 13.2541 and applicable PUC regulations.

CONCLUSION AND PRAYER

Texas Water Code § 13.2541(f) provides that the PUC may require an award of compensation by the petitioner to the certificate holder where a landowner successfully petitions the PUC for the streamlined expedited release of at least 25 acres. The Parties jointly request that an order be issued approving the resolution of the compensation issue by agreement of the Parties and closing this docket.

Respectfully submitted,

ATTORNEY FOR TRI POINTE HOMES TEXAS, INC.



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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 June 14, 2021, in accordance with the Orders Suspending Rules filed in Project No. 50664.



Natalie B. Scott

**AGREEMENT REGARDING COMPENSATION
BY AND BETWEEN
TRI POINTE HOMES TEXAS, INC. AND MSEC ENTERPRISES, INC.**

This Compromise and Settlement Agreement (“Agreement”) is entered into by and between Tri Pointe Homes Texas, Inc., a Texas for-profit corporation (“Tri Pointe”), and MSEC Enterprises, Inc., a Texas for-profit corporation and investor-owned utility (“MSEC”) (collectively, the “Parties,” and individually depending upon the context, “Party”), to memorialize the resolution of their dispute regarding Public Utility Commission of Texas (“PUC”) Docket No. 51698 (“Docket 51698”).

RECITALS

WHEREAS, MSEC is the holder of water Certificate of Convenience and Necessity (“CCN”) No. 12887 in Montgomery County, Texas;

WHEREAS, the PUC approved a petition filed by Tri Pointe to decertify portions of MSEC’S water CCN boundaries that overlap approximately 125.08 acres of land (the “Decertified Area”) in Docket 51698;

WHEREAS, Texas Water Code § 13.2541(f) provides that the PUC may require an award of compensation to the CCN holder in a matter where the petitioner successfully decertifies land from the certificate holder’s CCNs by streamlined expedited release;

WHEREAS, in lieu of pursuing the appraisal process contemplated by Order No. 2 in Docket 51698, the Parties have, through good faith negotiations and in an interest to forego further expense of appraisals, legal fees and costs associated with Docket 51698, resolved all issues concerning the compensation for the Decertified Area, and have entered into this Agreement to memorialize their understandings regarding said compensation; and

WHEREAS, the Parties agree and stipulate that this Agreement will resolve all matters in dispute regarding Docket 51698.

NOW THEREFORE, in consideration of the mutual promises and agreements herein contained, including the recitals set forth hereinabove, the Parties agree as follows:

AGREEMENT

1. Recitals. The recitals above are incorporated into the terms of the Agreement for all purposes.
2. Settlement Amount. Tri Pointe agrees to pay MSEC the amount of \$7,327.00 (seven thousand three hundred twenty-seven and no/100 dollars) (the “Settlement Amount”) to provide adequate compensation and settle all issues in Docket 51698. In lieu of the 90-day period to pay any compensation due as contemplated in Order No. 2 in this docket, Tri Pointe agrees to pay MSEC the Settlement Amount no later than thirty-five (35) calendar days after the PUC enters a final order approving the method and manner of compensation

herein described and closing the docket. MSEC agrees that the Settlement Amount is appropriate to resolve its dispute with Tri Pointe regarding compensation in Docket 51698.

MSEC agrees to represent to the PUC that it has been appropriately compensated by Tri Pointe in this docket under the applicable standards in sections 13.254 and 13.2541 of the Texas Water Code and PUC's applicable regulations and policies (the "Compensation Standards"). In the event that the PUC orders the Parties to submit an appraisal or any other information indicative of the amount of compensation due, the Parties agree at most to advise that the agreed-upon compensation of the Settlement Amount of \$7,327.00 represents appropriate compensation under the Compensation Standards. If the PUC orders a lesser or greater amount be paid for compensation, the Parties agree to coordinate a joint filing advising the PUC that their Settlement Amount represents appropriate compensation under the Compensation Standards.

3. Joint Notice of Agreement Regarding Compensation. The Parties recognize that current PUC Rule 24.245(i) provides that if the current CCN holder and the petitioner reach an agreement regarding compensation, they must make a joint filing with the Commission stating the amount of the compensation to be paid. The Parties agree to file at the PUC a Joint Notice of Agreement Regarding Compensation.
4. Effect of Agreement.
 - a. This Agreement does not adopt any particular methodology underlying the compensation amount reflected in this Agreement.
 - b. The failure to litigate any specific issue in this docket does not waive any Party's rights to contest that issue in any other current or future proceeding. The failure to litigate an issue cannot be asserted as a defense or estoppel, or any similar argument, by or against any Party in any other proceeding.
 - c. The terms of this Agreement may not be used either as an admission or concession of any sort except to enforce the terms of this Agreement. Oral or written statements made during the course of the settlement negotiations may not be used for any purposes other than as necessary to support the entry by the Commission of an order consistent with this Agreement. All oral or written statements made during the course of the settlement negotiations are governed by TEX. R. EVID. 408.
 - d. The Parties arrived at this Agreement through extensive negotiation and compromise. The settlement discussions were open, transparent, and inclusive of each Party to this docket who desired to participate. This Agreement reflects a compromise, settlement and accommodation among the Parties, and the Parties agree that the terms and conditions herein are interdependent. All actions by the Parties contemplated or required by this Agreement are conditioned upon entry by the Commission of a final order fully consistent with this Agreement. If the Administrative Law Judge or Commission does not accept this Agreement as presented or enters an order inconsistent with any term of this Agreement, then the Parties agree to request a continuance for sufficient time for the Parties to address the Administrative Law Judge's or Commission's issues with the Agreement. If

after the Parties attempt to address any concerns as contemplated in the preceding sentence, the Commission ultimately enters an order inconsistent with any term of the most recently filed agreement and any amendment thereto, each Party shall be released from all commitments and obligations, and shall have the right to seek hearing on all issues, present evidence, and advance any positions it desires, as if it had not been a Party.

e. This Agreement is binding on each Party for the purpose of settling the issues as set forth herein and for no other purposes. It is acknowledged that a Party's support of the matters contained in this Agreement may differ from the position taken or testimony presented by it in this proceeding or other proceedings. To the extent that there is a difference, a Party does not waive its position in any other proceedings. Because this is a compromise and settlement Agreement, no Party is under any obligation to take the same positions as set out in this Agreement in other proceedings, whether those proceedings present the same or a different set of circumstances. This Agreement shall not be binding or precedential upon a Party outside this docket, and the Parties retain their rights to pursue relief to which they may be entitled in other proceedings.

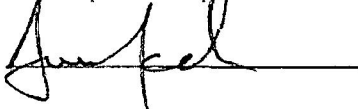
5. Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed an original, and all of which will constitute one and the same agreement.

6. Entire Agreement. This Agreement contains the entire agreement and understanding among the Parties with respect to full compromise and settlement of all matters involving PUC Docket No. 51698 and supersedes all prior agreements and understandings, inducements or conditions, whether express or implied, oral or written.

By their signatures below, the individuals signing this Agreement represent that they have full authority to bind and otherwise compromise the respective interests of the Parties they represent, and hereby intend to cause this Agreement to be effective as of the date late signed by the Parties.

AGREED:

TRI POINTE TEXAS HOMES, INC.
a Texas for-profit corporation

By: 

Date: 6/2/2021

MSEC ENTERPRISES, INC.
a Texas for-profit corporation

By: 

Date: 6-14-2021