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DOCKET NO. 52632

**APPLICATION OF THE TOWN
OF LAKESIDE AND THE CITY
OF FORT WORTH FOR SALE,
TRANSFER, OR MERGER OF
FACILITIES AND CERTIFICATE
RIGHTS IN TARRANT COUNTY**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

**THE CITY OF FORT WORTH'S MARCH 2024 UPDATE AND MOTION TO APPROVE
THE PROPOSED AGREEMENT TO CONSUMMATE THE TRANSACTION**

TO: Honorable Jeffrey J. Huhn, Administrative Law Judge, Public Utility Commission of Texas
COMES NOW, the City of Fort Worth, by and through its counsel, and respectfully files "The
City of Fort Worth's March 2024 Update and Motion to Approve the Proposed Agreement to
Consummate the Transaction"

I. BACKGROUND

On October 23, 2021, the Town of Lakeside (Lakeside) and the City of Fort Worth (City) (collectively, Applicants) filed an application for approval of the sale, transfer, or merger of facilities and certificate rights in Tarrant County (Transaction). On June 27, 2022, the ALJ signed Order No. 10, admitting the evidence submitted by the parties to this proceeding. On June 30, 2022, the ALJ signed Order No. 11 approving the sale and allowing the transaction to proceed. Order No. 11 states that "the applicants must file monthly updates regarding the status of the closing of the transaction and submit documents evidencing that the transaction was consummated." On December 29, 2022, the ALJ signed Order No. 13 granting the City's motion to extend the deadline to complete the Transaction beyond the 180-days provided in 16 Tex. Admin. Code § 24.239(m). Per Order No. 13, the 180-day deadline was extended to June 28, 2023. The City subsequently filed a motion for a second extension on June 28, 2023. On July 10, 2023, the motion was partially granted in Order No.

14. The City subsequently filed a motion for a third extension on November 20, 2023. The ALJ, on December 1, 2023, signed Order No. 15 partially granting the City’s motion to extend the deadline until April 1, 2024. Therefore, the City submits the following update pursuant to Order Nos. 11, 13, 14, and 15.¹

II. THE CITY OF FORT WORTH’S MARCH 2024 UPDATE

The City has accepted all lines in Parcel 5 and put them into service for the purpose of allowing the City to begin connecting customers. The City initiated the bidding process for Parcel 4 construction on February 29, 2024, which closes on March 28, 2024. The City currently anticipates construction in Parcel 4 will begin in June or July, 2024.

The City is working with the Town of Lakeside to connect customers along the newly constructed lines in Parcel 5. Five customers remain connected to Lakeside in Parcel 5. Two Lakeside customers transferred their service to the City in February 2024.

III. MOTION TO APPROVE THE CITY OF FORT WORTH’S PROPOSED RELEASE AND TRANSFER AGREEMENT WITH THE TOWN OF LAKESIDE

The City drafted and sent a draft proposed Release and Transfer Agreement (“Agreement”) to the Town of Lakeside (“Lakeside”) on February 28, 2024. The Agreement is included with the City’s March 2024 Update. Lakeside has agreed to the terms of the Agreement. The City will execute the Agreement upon receiving the ALJ’s approval.

Order No. 11, signed by the ALJ on June 30, 2022, gave the City and Lakeside 180 days to complete the transaction. The order acknowledged that the City intended to replace the existing small diameter water pipes with infrastructure to provide sufficient water pressure and fire

¹ 16 Tex. Admin. Code § 24.239(j).

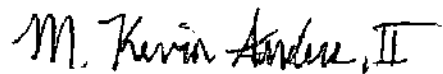
protection for the Parcels 3-5. *See* “Order No. 11 Approving Sale and Transfer to Proceed,” pg. 4. Between July and November 2022, as described in Items 26-30, the City began acquiring the necessary easements for construction. In December 2022, the City acknowledged it could not complete the transaction because of delays caused due to an unexpected increase in the number of easements needed for acquisition and construction delays in Parcel 5 due to ongoing TxDOT construction along Highway 199. *See* “The City of Fort Worth’s December Update and Motion for Extension,” pgs. 2-3. The City explained in Items 34-36, 38-40, 42-45, and 47-48, that TxDOT delays persisted throughout 2023. The ALJ granted deadline extensions under Order Nos. 11, 13-15 for the City and Lakeside to complete the transaction. The City completed infrastructure construction and accepted the lines for Parcel 5 in January 2024. *See* “The City of Fort Worth’s January 2024 Update” pg. 2. As discussed above, the City anticipates final construction in Parcel 4 will conclude in the summer of 2025.

In Order No. 15, the ALJ required the City, if it were to file for a fourth motion for extension, to “show good cause as to why the transaction cannot be completed prior to the installation of the necessary infrastructure.” While the City asserts it cannot provide continuous and adequate service in Parcel 4 in its current condition, the City can provide continuous and adequate service in Parcels 3 and 5 now.

Therefore, the City desires to proceed with completing the portions of the transaction it can complete now instead of filing a fourth motion for extension. The City hereby submits this motion that the ALJ review and approve the Agreement so as to complete the transaction for Parcels 3 and 5. *See* Order No. 11, at pg. 7. Fort Worth also requests that if the ALJ will not approve the transaction for Parcel 4, that the ALJ issue an order allowing the City to re-apply in the future for a CCN transfer when the City can provide continuous and adequate service to Parcel 4. Upon

issuance of the ALJ's order approving this Agreement, the City will file an executed copy of this agreement and customer deposit documentation for Parcels 3 and 5 in this docket as required by 16 Tex. Admin. Code § 24.239(l), (k). The City remains willing and able to answer any questions the PUC may have.

Respectfully submitted,



M. Kevin Anders, II
Assistant City Attorney I
State Bar No. 24101444
kevin.anders@fortworthtexas.gov


City of Fort Worth
200 Texas Street
Fort Worth, Texas 76102-6311
(817) 392-7600
(817) 392-8359/Fax

CERTIFICATE OF SERVICE

I certify that on the 26th day of March, 2024, a true and correct copy of the foregoing “The City of Fort Worth’s January 2024 Update” was delivered to the individuals listed below by the method indicated.

Honorable Jeffrey J. Huhn, Administrative Law Judge
Public Utility Commission of Texas
P.O. Box 13326
Austin, Texas 78711-3326
Via Electronic Filing

Kevin Pierce
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
Kevin.Pierce@puc.texas.gov
Via Electronic Mail



M. Kevin Anders, II

**CCN RELEASE AND TRANSFER AGREEMENT
BETWEEN THE CITY OF FORT WORTH AND
THE TOWN OF LAKESIDE**

This **CCN RELEASE AND TRANSFER AGREEMENT** (“Agreement”) is made and entered into by and between the **CITY OF FORT WORTH**, a home-rule municipal corporation of the State of Texas (“City”), and the **TOWN OF LAKESIDE**, a Type A, General Law City located in the State of Texas (“Lakeside”). The City and Lakeside are collectively referred to herein as the “Parties.”

RECITALS

WHEREAS, the Parties have been granted their own respective certificates of convenience and necessity (CCN), which allow the holder the exclusive right to provide retail water service to an identified geographic area; and

WHEREAS, the City and Lakeside entered into a Settlement Agreement and Release, City Secretary Contract Number 48260, on October 3, 2016, in which the Parties agreed to decertify and transfer various portions of their respective CCNs; and

WHEREAS, on September 23, 2021, the City filed an application with the Public Utility Commission of Texas to acquire a portion of Lakeside’s facilities and certificated service area under CCN number 10073 and transfer it to the City, to amend the City’s CCN number 12311 to include the facilities and area previously included in Lakeside’s CCN number 10073, and to decertify a portion of Lakeside’s CCN number 10073 that is dually certified with the City’s CCN number 12311; and

WHEREAS, in Order No. 11 for Docket No. 52632, the Administrative Law Judge (“ALJ”) for the Public Utility Commission of Texas approved the sale and transfer and authorized the City and Lakeside to proceed with and consummate the transaction, finding the City’s notice to customers, utilities, and parties sufficient; and

WHEREAS, Lakeside’s existing small diameter water pipes are in a deteriorated condition and cannot provide sufficient water pressure and fire protection for the requested area, which the City was unaware of until after the ALJ issued Order No. 11; and

WHEREAS, the City has obtained easements and begun constructing new water mains; and

WHEREAS, the City has incurred construction delays due to Texas Department of Transportation’s construction on frontage roads along Texas Highway 199, and the City anticipates its construction will be completed by the end of 2024; and

WHEREAS, the City and Lakeside continue to work together to transfer or connect customers from Lakeside to the City’s water service as the City completes construction of new water mains to replace the existing small diameter water pipes; and

WHEREAS, in light of the ALJ's findings in Order No. 11, the City and Lakeside desire to consummate the transaction;;

NOW THEREFORE, in consideration of the mutual promises described herein, including the Recitals set forth above, which are incorporated herein by reference, the City and Lakeside agree as follows:

1. THE TRANSACTION

- 1.1. The Parties agree that this Agreement is being entered into as required by Texas law and the Order of the Administrative Law Judge and in furtherance of the Parties meeting their duties and obligations in the Settlement Agreement, as amended.
- 1.2. The Transaction involves the CCN boundary adjustments for PARCELS 3, 4, and 5 ("Parcels") stated in section III of the Settlement Agreement, the First Amendment to the Settlement Agreement, and the Application, all being attached hereto as Exhibit "A" ("Boundary Adjustments"). The Boundary Adjustments include the following terms as stated, depicted, and described in the Settlement Agreement, the First Amendment to the Settlement Agreement, and the Application:
 - 1.2.1. PARCEL 3 - Lakeside will release that portion of its CCN for the Casino Beach area to the City, giving the City the exclusive CCN in the Casino Beach area. This area is depicted as PARCEL "3" on Exhibit 3 of the Settlement Agreement. The CCN territory is more specifically described in the description attached as Exhibit 4 in the Settlement Agreement.
 - 1.2.2. PARCEL 4 - Lakeside will transfer that portion of its CCN for the area north of the south pavement edge of the north service road of Highway 199 to the City. This area is depicted as PARCEL "4" on Exhibit 3 of the Settlement Agreement. The CCN territory is more specifically described in the description attached as Exhibit 4 of the Settlement Agreement.
 - 1.2.3. PARCEL 5 - Lakeside will transfer that portion of its CCN for the area approximately south of Highway 199 from Tyler Place to Casino Beach. This area is depicted as PARCEL "5" on Exhibit 3 of the Settlement Agreement. The CCN territory is more specifically described in the revised property description in the First Amendment to the Settlement Agreement.
- 1.3. The City has acquired the easements necessary to construct replacement water lines within the Parcels.
- 1.4. The City will continue to replace existing small diameter water lines with new infrastructure intended to provide sufficient water pressure and fire protection to the Parcels. The City has completed construction for Parcels 3 and 5. The Parties agree to transfer water service from Lakeside to the City for all properties in Parcels 3 and 5

connected to the new infrastructure on the effective date of this Agreement. The Parties agree Lakeside shall continue to serve properties connected with the small diameter water lines in Parcel 4 on the effective date of this Agreement until connected with the new infrastructure. The Parties agree to transfer service of Parcel 4 properties to the City when the Parcel 4 properties are connected to the new infrastructure.

- 1.5. Lakeside will cease providing water service to customers within Parcels 3 and 5 upon execution of this Agreement, subject to the provisions of this Agreement, and the issuance of an order by the Public Utility Commission of Texas approving the Transaction for Parcels 3 and 5. Lakeside will continue to provide water service to customers within Parcel 4, subject to the provisions of this Agreement, and the issuance of an order by the Public Utility Commission of Texas approving the Transaction for Parcel 4.
- 1.6. Lakeside shall refund any outstanding deposits to its Customers with interest within 30 days of the effective date of this Agreement.
- 1.7. Within 30 days of the effective date of this Agreement, Lakeside will file an executed copy of this Agreement and the following information, supported by notarized affidavit, with the Public Utility Commission of Texas.
 - 1.7.1. The names and addresses of Lakeside's customers with a deposit on record;
 - 1.7.2. The date the deposits were made;
 - 1.7.3. The amount of the deposits;
 - 1.7.4. The interest on the deposits; and
 - 1.7.5. Documentation demonstrating that the customer deposits have been refunded with interest.
- 1.8. Upon execution of this Agreement and completion of the terms herein, and the issuance of an order by the Public Utility Commission of Texas approving the Transaction for Parcels 3 and 5, the CCN release and transfer is complete for Parcels 3 and 5. The City will provide water service to customers within Parcels 3 and 5. Upon connecting all Parcel 4 customers to the new infrastructure, and the issuance of an order by the Public Utility Commission of Texas approving the Transaction for Parcel 4, the CCN release and transfer is complete for Parcel 4.

2.

SEVERABILITY

- 2.1 The provisions of this Agreement are severable, and if for any reason a clause, sentence, paragraph or other part of this Agreement shall be determined to be invalid by a court or federal or state agency, board or commission having jurisdiction over the subject matter thereof, such invalidity shall not affect other provisions that can be given effect without the invalid provision.

3.

WAIVER OF DEFAULT

- 3.1 No waiver by the parties hereto of any default or breach or the failure to insist upon the performance of any term, condition, provisions or covenant of this Agreement shall be deemed to be a waiver or relinquishment to any extent of any other breach of the same or any other term, condition, provision, or covenant contained herein or the right of the parties to assert or rely upon any such term.

4.

APPLICABLE LAW

- 4.1 This Agreement shall be construed in accordance with the laws of the State of Texas.
- 4.2 Should any action, whether real or asserted, at law or in equity, arise out of the execution, performance, attempted performance or non-performance of this Agreement, venue for said action shall lie in Tarrant County, Texas or the United States District Court for the Northern District of Texas – Fort Worth Division.

5.

SOLE AGREEMENT

- 5.1 This written instrument and any attached exhibits constitute the entire understanding between the parties hereto concerning the Transaction. Any prior or contemporaneous, oral or written agreement, that purports to vary from the terms hereof shall be void.

6.

AMENDMENT

- 6.1 No amendment, modification or alteration of the terms hereof shall be binding unless the same is in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

7.

PARTIES BOUND.

- 7.1 This Agreement shall be binding upon the successors and assigns of both parties in like manner as upon the original parties.

8.

FORCE MAJEURE

- 8.1 If either party is unable, either in whole or part, to fulfill its obligations under this Agreement due to acts of God: strikes, lockouts, or other industrial disturbances; acts of public enemies; wars; blockades; insurrections; riots; epidemics; public health crises; earthquakes; fires; floods; restraints or prohibitions by any court, declaration of a state of disaster or emergency by the federal, state, county, or City government in accordance with applicable law; any arrests and restraints; civil disturbances; or explosions; or some other

reason beyond the party's reasonable control (collectively, "Force Majeure Event"), the obligations so affected by such Force Majeure Event will be suspended during the continuance of such event.

9.

SIGNATURE AUTHORITY

- 9.1 Each party certifies that the person signing this Agreement has been properly delegated this authority.

10.

EFFECTIVE DATE

- 10.1. The effective date of this Agreement shall be the date it is executed by duly authorized representatives of the Parties.

Signatures on next page

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in Tarrant County, Texas.

CITY OF FORT WORTH

THE TOWN OF LAKESIDE

By: _____
Dana Burghdoff
Assistant City Manager

By:  _____
Norman Craven
Town Administrator

Date: _____

Date: 3/7/2024

Recommended by:

Chris Harder
Director, Fort Worth Water



City Secretary:

By: _____
Name: Jannette Goodall
Title: City Secretary

APPROVED AS TO FORM AND LEGALITY:

Kevin Anders
Assistant City Attorney

 _____
Attorney for Town of Lakeside