



Filing Receipt

Filing Date - 2024-04-11 04:59:28 PM

Control Number - 54813

Item Number - 24

DOCKET NO. 54813

APPLICATION OF THE CITY OF	§	PUBLIC UTILITY COMMISSION
DONNA TO AMEND ITS	§	
CERTIFICATE OF CONVENIENCE	§	OF TEXAS
AND NECESSITY IN HIDALGO	§	
COUNTY	§	

**APPLICANT’S RESPONSE TO
ORDER NO. 9 REQUESTING CLARIFICATIONS**

On April 1, 2024, the presiding Commission Administrative Law Judge (“ALJ”) issued Order No. 9 Requiring Clarification (“Order”) regarding the City of Donna’s capital improvements plan. Specifically, the Order states that not all of the components of a capital improvement plan under 16 Texas Administrative Code § 24.233(a)(6) were found within the Application of the City of Donna (hereinafter “Donna” or “Applicant”), though the Commission Staff’s final recommendation states that the information was included.

The ALJ’s Order requires that, by April 11, 2024, Donna must file a capital improvement plan that meets the requirements of under 16 TAC § 24.233(a)(6), or the parties must clarify where in the record the information can be found. If Donna must file a new capital improvement plan, by April 25, 2024, Commission Staff must file a recommendation on the plan and the parties must move to admit the plan and Commission Staff’s recommendation into evidence. The City of Donna’s response is as follows:

Donna filed an Application to amend its Certificate of Convenience and Necessity (“CCN”) No. 20825 for wastewater on March 31, 2023¹, seeking to add approximately 81 acres into its CCN wastewater service area to allow Donna to provide wastewater services to a subdivision development to become known as El Encantado Subdivision a/k/a Encantado Subdivision. El Encantado Subdivision is being developed by Cayetano Development, LLC (“Developer”) and Los Vecindades RGV, L.P. is the owner or authorized agent of the owner. The subdivision is being developed in three phases. As a condition for providing the requested wastewater service, Donna required that the Developer and/or Owner of the El Encantado

¹ Application at 1 (March 31, 2023).

Subdivision bear all costs associated with the installation of any infrastructure necessary for the provision of sewer service for the subdivision service area.² A copy of the plat which reflects the sewer infrastructure to be provided by the Developer prior to the initiation of wastewater service is included as Exhibit “6” to the Application.

In addition, a copy of the most recent audited financial report for Donna was included in the application as Attachment “1”,³ which reflects the recent historical, current, and projected income and expenses budgeted for Donna’s sewer system reflecting that Donna’s ability to continuously and adequately provide wastewater service to the area.

Subsequent to the filing of the Application, and in line with the MOU, Donna entered into a Wastewater Service Agreement with Developer. A copy of the Wastewater Service Agreement which provides for turnover of the lift station to Donna is attached hereto as Exhibit “1.” A copy of the map of the sewer lift station located off of Hutto Road in Donna is also attached as Exhibit “2”, providing further support that the required sewer infrastructure for the development was being addressed to meet the service requirements of the development.

The information referenced above demonstrates that the required sewer infrastructure was being constructed and existing infrastructure upgraded by the developer as part of Donna’s requirements for wastewater service. As such, the components of 16 TAC §24.233(a)(6) were addressed in the Application and are reflected in the record.

²Application; Memorandum of Understanding, Exhibit 1 at 1; *see also*, Subdivision Plat, Exhibit 6

³Application; Audited Annual Financial Report, Attachment 1

Respectfully submitted,

FRYER AND HANSEN, P.L.L.C.
1352 W. Pecan Blvd.
McAllen, Texas 78501
Telephone: (956) 686-6606
Facsimile: (956) 686-6601

/s/ Richard W. Fryer
Richard W. Fryer
State Bar No. 24085316
email@fryerandhansen.com

**ATTORNEY FOR THE CITY OF DONNA,
TEXAS**

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 April 11, 2024, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Richard W. Fryer
Richard W. Fryer

EXHIBIT “1”

CITY OF DONNA WASTEWATER SERVICE AGREEMENT

AGREEMENT REGARDING WASTEWATER SERVICE FOR THE PROPOSED SUBDIVISION:

NAME: **Encantado Subdivision Phase 1**

LOCATION: **2500 Block of Hutto Road (behind Veterans Middle School)**

LEGAL DESCRIPTION: **LOTT, TOWN & IMPROVEMENTS BLK 30 & N. 1/2 OF W.
19.24 OF E. 34.24 BLK 31, Hidalgo County, Texas**

I. PARTIES

This Agreement is by and between the City of Donna and the Subdivider, to wit: The City of Donna is the governing board and owner of a retail public utility which provides wastewater treatment and is known as City of Donna Wastewater Treatment Plant.

The Subdivider is **LOS VECINDADES RGV, L.P** who is the owner, or the authorized agent of the owner, of a tract of land in Hidalgo County, Texas, within the City of Donna's city limits, that has been proposed to be divided into a subdivision known as **Encantado Subdivision Phase 1.**

II. TERMS

This Agreement is entered into in partial satisfaction of requirements under the Texas Water Development Board's Economically Distressed Areas Program Model Subdivision Rules. The Subdivider has prepared a plat of the Subdivision for submission to Hidalgo County for its approval. The Subdivider plans to construct for the Subdivision a wastewater treatment system to be connected to the City of Donna's wastewater treatment system. Such wastewater will consist of domestic sewage, i.e., waterborne human waste and waste from domestic activities such as bathing, washing and food preparation. The City has reviewed the plans for the said Subdivision and has estimated the wastewater flow projected from the Subdivision under fully built-out conditions to be approximately **10,000** gallons daily.

The City covenants that it has or will have the capacity to treat the projected wastewater flow, and it will treat that wastewater flow for at least thirty (30) years, and that it will provide that water flow. The City reserves the right to provide the needed wastewater treatment service at the time and on the terms and conditions which the City believes is most advantageous to the City. These covenants will be in effect until thirty (30) years after the plat of the Subdivision has been recorded and the Subdivision's wastewater collection system has been connected to the City's wastewater treatment plant.

The Subdivider covenants that the wastewater collection system will be constructed as shown in the Plans and as provided for through the plat approval process so that the residents of the lots of the Subdivision may receive wastewater treatment service from the City. Upon completion of the wastewater collection system and upon its approval and acceptance by the City, the Subdivider will convey to the City all right and title to the wastewater collection system.

The Subdivider has paid the City of Donna the sum of \$257,600.00 (\$800 Access Fee x 322 Lots), which sum represents the total costs for access fees, capital recovery charges and other fees associated with connecting the individual lots in the Subdivision to the City's wastewater collection and treatment system.

The above provision notwithstanding, this Agreement shall no longer be in effect if the plat of the Subdivision is not approved by the City of Donna, whose approval is required.

By affixing his or her signature to this Agreement, the person signing for the City of Donna warrants that he or she is authorized to sign this Agreement on behalf of the City of Donna. By affixing his or her signature to this Agreement, the person signing for the Subdivider warrants that he or she is authorized to sign this Agreement on behalf of the Subdivider.

This Agreement is effective on Sept. 5, 2023.

CITY OF DONNA

By: Ricard L Morales
Printed Name: Rick Morales
Office Position: Mayor
Date: 9/5/2023

SUBDIVIDER:

By: John M. [Signature]
Printed Name: LOS VECINDADES RGV, L.P
Office Position: Representative/Land Owner
Date: 8/28/23

APPROVED AS TO FORM:

By: [Signature]
Printed Name: Javier Villalobos
Office Position: City Attorney
Date: 9/5/2023

EXHIBIT “2”

