

LAW OFFICES OF MARK H. ZEPPA, P.C.

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November 3, 2016

Ms. Sheryl Sculley
City Manager
Ms. Leticia Vacek
City Clerk
City of San Antonio
PO Box 839966
San Antonio, TX 78283

RECEIVED
CITY OF SAN ANTONIO
CITY CLERK
16 NOV -7 AM 11:20

Re: South Central Water Company
PUC Docket No. 46279
Application to Amend Sewer CCN and to Decertificate SAWS in Comal County

Ladies:

South Central Water Company (South Central) has filed a petition with the Public Utility Commission of Texas to amend its sewer certificate of convenience and necessity (CCN) to include that property in Comal County known as Cibolo Valley Ranch (CVR). This application also seeks to decertificate San Antonio Water Systems (SAWS) inside CVR.

Representatives of South Central, CVR, and SAWS have met to resolve the issue of how to best extend sewer utility service to CVR. The attached agreement has been reached and has been approved by the management of all parties, including the SAWS Board of Directors. As a result of the agreement, the parties have agreed to various actions before the PUC and the City of San Antonio. The key agreement is that South Central will amend its pending application to limit the borders of the SAWS decertification to Comal County. South Central will also request the City of San Antonio to formally consent to South Central's being certificated within the City or its ETJ within the boundaries of CVR. Concurrent with these actions, SAWS will file a petition with the PUC requesting voluntary decertification of CVR inside Comal County. SAWS will also request the City of San Antonio to consent to South Central's certification to CVR in Comal County.

The purpose of this letter is to formally notify the City of San Antonio of this agreement and to formally request the City's consent to South Central's certification to CVR in Comal County.

If you have any questions, please feel free to contact me at any time.

Sincerely,



Mark H. Zeppa
Attorney for South Central Water Company

MZ/js
Enclosure

Cc: Joe Freeland, Attorney for SAWS
Sam Mills, SAWS
Ty Thaggard, CVR
Plack Carr, CVR
Cara Tackett, Engineer for CVR
Malcolm Bailey, South Central

**SETTLEMENT AGREEMENT BETWEEN
SAN ANTONIO WATER SYSTEM, CIBOLO VALLEY RANCH,
AND SOUTH CENTRAL WATER COMPANY**

THIS SETTLEMENT AGREEMENT ("Agreement") is made and entered into to be effective on the 20th day of October, 2016 (the "Effective Date"), by and between the San Antonio Water System ("SAWS"), Cibolo Valley Partners, LLC ("Cibolo Valley"), and the South Central Water Company ("South Central"). SAWS, Cibolo Valley, and South Central may be referred to herein individually as a "Party" or collectively as the "Parties."

I. RECITALS

WHEREAS, SAWS is a municipally owned utility providing potable water, recycled water, and wastewater collection and treatment services in Bexar and surrounding counties and is wholly owned by the City of San Antonio (the "City");

WHEREAS, Cibolo Valley is a limited liability company organized pursuant to the Texas Business Organizations Code;

WHEREAS, South Central is a for-profit corporation organized under the Texas Business Organizations Code and a retail public utility under the Texas Water Code;

WHEREAS, Cibolo Valley is developing a new residential development to be known as Cibolo Valley Ranch (the "Ranch") in Comal and Bexar Counties (Exhibit 1), and Cibolo Valley needs centralized sewage collection in order to develop at the density desired by Cibolo Valley;

WHEREAS, part of the Ranch is located in the Edwards Aquifer Recharge Zone and the remainder of the Ranch is located in the Edwards Aquifer Contributing Zone, and the portion of the Ranch located inside the City's extraterritorial jurisdiction (the "ETJ Portion") is subject to the City's Aquifer Protection Ordinance;

WHEREAS, SAWS currently holds the exclusive right to provide retail sewer utility to the ETJ Portion pursuant to its certificate of convenience and necessity ("CCN No. 20285");

WHEREAS, South Central holds the exclusive right to provide retail sewer utility service to an area immediately north of the Ranch pursuant to its certificate of convenience and necessity ("CCN No. 20964");

WHEREAS, on August 11, 2016, South Central filed an application for a certificate of convenience and necessity with the Public Utility Commission of Texas ("PUC") to allow South Central to provide retail sewer utility services to a tract of land (the "Ranch") owned by Cibolo Valley and located in both Comal and Bexar Counties (PUC Docket No. 46279);

WHEREAS, Cibolo Valley and South Central approached SAWS seeking SAWS' agreement to allow South Central to provide retail sewer utility service to the ETJ Portion, and

SAWS is willing to agree to allow South Central to provide retail sewer utility service to the ETJ Portion, in Comal County so long as certain conditions are met;

WHEREAS, SAWS, Cibolo Valley, and South Central desire to resolve their conflicts and disputes regarding the Application and retail sewer service to the Ranch and to avoid protracted litigation between and among them;

NOW, THEREFORE, it is the intent of SAWS, Cibolo Valley, and South Central to effectuate a full and complete settlement and resolution of their concerns regarding which entity will provide retail sewer service to the Ranch, and the CCN Application through the execution of this settlement agreement ("Agreement"). This Agreement neither confirms nor denies the merits of any Party's objections or concerns, but, rather, is executed solely to buy peace between the Parties. By signature below SAWS, Cibolo Valley, and South Central agree as follows:

II. TERMS OF AGREEMENT

1. **Recitals.** The Recitals, which the Parties agree are true and correct, and the definitions contained herein are incorporated herein for all purposes.
2. **Definitions.** Terms as used in this Agreement have the following meanings:
 - a. "Aquifer Protection Ordinance" means the City's ordinances codified in Chapter 34, Article VI, Division 6 of the City Code titled "Aquifer Recharge Zone and Watershed Protection."
 - b. "City" means the City of San Antonio, Texas.
 - c. "ETJ Portion" means that portion of the Ranch that is located inside the extraterritorial jurisdiction of the City of San Antonio in Bexar and Comal Counties.
 - d. "PUC" means the Public Utility Commission of Texas, and any agency that succeeds to all or part of the regulatory authority of the PUC.
 - e. "Ranch" means the 498-acre tract generally located in southern Comal County and northern Bexar County south of FM 1863 and east of US 281 (Exhibit 1).
 - f. "TCEQ" means the Texas Commission on Environmental Quality, and any agency that succeeds to all or part of the regulatory authority of the TCEQ.
3. **Aquifer Protection.**
 - a. Cibolo Valley will develop the ETJ Portion, in accordance with the requirements of the Aquifer Protection Ordinance (except as otherwise provided in this Agreement), including the requirement to obtain a Letter of Certification as required by Subdivision C of the Aquifer Protection Ordinance.
 - b. Cibolo Valley will develop the ETJ Portion only for residential land use with a

maximum 40% impervious cover. Cibolo Valley will not allow any multi-family or commercial land use within the ETJ Portion.

c. Cibolo Valley will maintain a 100-year floodplain buffer as required per Section 34-913 of the Aquifer Quality Ordinance. The creek proper and the 100-year floodplain shall not be counted within any calculation for impervious cover for any project within the ETJ Portion as pervious cover/green space, but the 100-year floodplain buffer shall be counted in impervious cover calculations.

d. Cibolo Valley will develop a water pollution abatement plan and an organized sewage collection system plan pursuant to 30 Texas Administrative Code Chapter 213.5 (utilizing the TCEQ Technical Guidance on Best Management Practices RG-348) as if the entire site was inside the recharge zone. Cibolo Valley will submit plans to TCEQ and SAWS for review, and Cibolo Valley must receive SAWS approval prior to proceeding with construction.

e. For portion of the Ranch outside the ETJ Portion, the WPAP will include information sufficient to meet the requirements of the Aquifer Protection Ordinance Section 34-911, except as otherwise provided in this Agreement.

f. South Central will not amend TPDES Permit No. WQ0014988001 to seek less restrictive permit conditions without SAWS' written consent.

4. CCN Proceedings.

a. Within 30 days after the effective date of this Agreement, SAWS will file an application to amend its CCN to exclude from SAWS' service area the ETJ Portion located in Comal County ("SAWS Amendment"). SAWS reserves its right to withdraw the SAWS Amendment if the application is protested by a non-signing third party with standing to challenge the application. The issue of standing will be determined by the State Office of Administrative Hearings (SOAH) and SAWS may not withdraw its application until a SOAH judge has made that determination.

b. The SAWS Amendment application will request that the amendment be granted with the following findings:

i. a finding that the amendment to SAWS' sewer CCN is based on Texas Water Code § 13.254(a);

ii. a finding that once SAWS' CCN is amended, SAWS may not be required to provide service to the Ranch for any reason, including violation of PUC or TCEQ rules.

c. Within 30 days after the effective date of this Agreement, South Central will amend its pending application for an amendment to its CCN (PUC Docket No. 46279) ("South Central Amendment") to only include the portion of the Ranch located in Comal County and exclude the portion of the Ranch in Bexar County. The South Central

Amendment may continue to seek to decertificate SAWS from the ETJ Portion located in Comal County. It shall not seek to modify SAWS's CCN anywhere else.

d. Cibolo Valley and South Central acknowledge that once SAWS' CCN is amended to exclude the ETJ Portion located in Comal County from SAWS' service area, SAWS will have no obligation to ever serve the tract for any reason.

e. South Central agrees that all sewer facilities to be constructed and operated within the entire Ranch will be designed and constructed in accordance with SAWS' utility service regulations and construction specifications except South Central shall not be required to locate collection and transmission lines under roadways. South Central collection and transmission lines will be located in easements provided by Cibolo Valley.

f. Once South Central has amended its pending application (PUC Docket No. 46279), SAWS will recommend that the City consent to the South Central Amendment conditioned on the PUC approving an amendment to SAWS' CCN excluding the ETJ Portion located in Comal County from SAWS' service area and that facilities are constructed and operated consistent with this Agreement.

III. TERM; TERMINATION; DEFAULT AND REMEDIES

1. **Default.** "Event of Default" shall mean the failure of a Party to comply with an obligation of the Party stated in this Agreement. If an Event of Default occurs under this Agreement, the Defaulting Party must be given notice of the default and 30 days from the date the notice is delivered in which to cure the default before the Non-Defaulting Party may exercise any of the remedies set forth in this Section.

If an Event of Default is not remedied within the cure period, then each Non-Defaulting Party, whose rights under this Agreement are directly affected by the default, shall have the following rights and remedies:

- a. to seek specific performance or injunctive relief, without the necessity of having to prove the inadequacy of legal remedies or irreparable harm;
- b. to terminate its obligations under this Agreement; and/or
- c. to pursue any and all rights and remedies available at law or at equity, including, but not limited to, the right to pursue claims before PUC, TCEQ or any successor agency with jurisdiction.

IV. NOTICE

1. **Written Notice.** All notices required to be given must be in writing. Any notice or communication required or permitted hereunder shall be deemed to be delivered, whether actually received or not, when deposited in the United States mail, postage fully prepaid, registered or certified mail, and addressed to the intended recipient at the address set forth below, with a copy sent concurrently by facsimile, or on the date hand-delivered by a national courier

service, as evidenced by written acknowledgment of receipt for such hand-delivery. Notice given in any other manner will be deemed delivered only if and when actually received. Notice may not be given exclusively by e-mail. Any address for notice may be changed by written notice delivered as provided herein.

2. Addresses for Notice.

SAWS: Attn: Sam Mills
San Antonio Water System
2800 U.S. Hwy 281 North
San Antonio, Texas 78212
(210) 233-3742

Cibolo Valley: Attn: Plack Carr
Milam Real Estate Capital, LLC
250 W Nottingham, Suite 410
San Antonio TX 78209
(210) 822-7500

South Central: Attn: Malcolm D. Bailey
South Central Water Company
P.O. Box 570177
Houston, TX 77257
(713) 789-8469

V. MISCELLANEOUS

- 1. Governing Laws.** This Agreement shall be governed by and construed and enforced under the laws of the State of Texas.
- 2. Venue.** The obligations and undertakings of each of the Parties to this Agreement shall be performed in Bexar County, Texas. Except for matters within the jurisdiction of the PUC, TCEQ or another state or federal agency, the parties expressly agree that all judicial proceedings to enforce any of the provisions of this Agreement shall take place in Bexar County, Texas.
- 3. Third Party Beneficiaries.** The Parties agree that there are no third party beneficiaries to this Agreement.
- 4. Attorneys' Fees.** Each Party shall bear its own attorneys' fees and costs related to this Agreement or the enforcement of this Agreement.
- 5. No Admission.** The Parties agree that nothing in this Agreement shall be used as an admission of any sort in any litigation or other contested matter, except to enforce the terms of this Agreement.
- 6. Entire Agreement.** This Agreement contains the entire agreement of the Parties with respect to the subject matter of the Agreement. No agreement, statement, or promise made by

any Party or to any employee, agent, or officer of any Party that is not contained in this Agreement shall be valid, binding, or of any force or effect.

7. **Amendment.** Any amendments to this Agreement must be in writing and signed by all the Party or Parties to be charged.

8. **Successors and Assigns.** This Agreement may be assigned (in whole or in part, as applicable) by Cibolo Valley to any purchaser of all or a portion of the Ranch. This Agreement shall be binding upon the parties hereto and their respective successors, heirs, representatives, and assigns.

9. **Construction.** This Agreement shall be deemed drafted equally by the Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against either Party shall not apply. When required by context, the gender of words in this Agreement includes the masculine, feminine, and neuter genders and the singular includes the plural (and vice-versa). The headings in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

10. **Severability.** Should any provision of this Agreement be declared void by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect.

11. **Authority.** The respective signatories to this Agreement represent that they are authorized to sign this Agreement on behalf of their respective Party, and that such signatory has received the necessary approval of its governing body to execute this Agreement on the Party's behalf.

12. **Execution.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which counterparts, when taken together, shall constitute one and the same Agreement. The Parties agree that delivery of a signed counterpart, or the signed Agreement or amendment by facsimile or electronic mail, shall be deemed the same as the delivery of an original document.

[Signature Pages Follow]

SAN ANTONIO WATER SYSTEM

BY: *Robert R. Puente*
Robert R. Puente, President/CEO

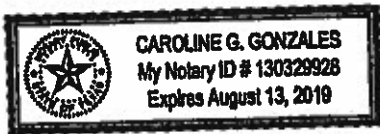
Date: 10-20-16

THE STATE OF TEXAS §
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COUNTY OF BEXAR §

This instrument was acknowledged before me on the 20th day of October, 2016.


Caroline Gonzales

Notary Public, State of Texas
My Commission Expires: August 13, 2019



**CIBOLO VALLEY PARTNERS, LLC,
a Texas Limited Liability Company**

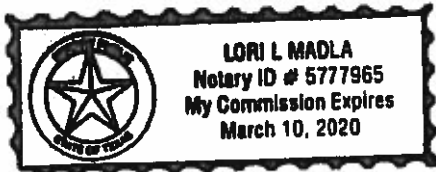
**By: Milam Real Estate Capital, LLC,
a Texas Limited Liability Company,
Its Manager**

BY: 
Taylor D Thaggard, Manager

Date: 10-17-16

THE STATE OF TEXAS §
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COUNTY OF BEXAR §

This instrument was acknowledged before me on the 17 day of October, 2016.



Lori L Madla
Notary Public, State of Texas
My Commission Expires: 3-10-20

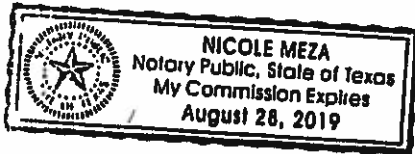
SOUTH CENTRAL WATER COMPANY, INC.

BY: *Malcolm D Bailey*
Malcolm D. Bailey, President

Date: 10/17/16

THE STATE OF TEXAS §
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COUNTY OF BEXAR §

This instrument was acknowledged before me on the 17th day of October, 2016.



Nicole Meza
Notary Public, State of Texas
My Commission Expires: August 28, 2019

