TCEQ DOCKET NO. 2013-2211-UCR

LA VILLA INDEPENDENT SCHOOL DISTRICT BOARD OF TRUSTEES	§	**BEFORE THE TEXAS**
VS.	§	**COMMISSION ON**
THE BOARD OF ALDERMAN FOR THE CITY OF LA VILLA	§	**ENVIRONMENTAL QUALITY**

RESPONDENT'S PLEA TO THE JURISDICTION AND ORIGINAL ANSWER TO LA VILLA ISD'S APPLICATION FOR EMERGENCY ORDER

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, CITY OF LA VILLA, TEXAS ("CITY"), RESPONDENT in the above entitled and numbered cause, by and through her attorney of record, ROBERT J. SALINAS, and files this Plea to the Jurisdiction and Original Answer to La Villa ISD's Application for Emergency Order, and for cause would show the following:

I. Facts

1.1 In 2012, LA VILLA I.S.D. BOARD OF TRUSTEES ("SCHOOL BOARD") filed suit against the Board of Alderman for the City of La Villa ("CITY") in cause number C-2796-12-F alleging violations of the Texas Open Meetings Act, seeking a declaration that such violations rendered action by the CITY to adopt an ordinance raising water and sewage rates that would be charged to the school district void. The CITY generally denied the allegations and filed a counter-petition seeking declaration that the ordinance complied with the Open Meetings Act and therefore was valid and enforceable. The parties reached a settlement and the suit was dismissed with prejudice on November 19, 2012. The agreement clearly stated that the water and sewage rates would be effective "until further action is taken by the CITY to amend or supersede the rates contained therein." *See* **Exhibit #1**. There was no promise or agreement that the rates would not change.

1.2 On December 18, 2012, the CITY passed an ordinance to raise the water and sewage rates. On July 12, 2013, Applicant SCHOOL BOARD filed its Original Petition for Temporary and Permanent Injunction and for Declaratory Judgment in cause no. C-4271-13-B. The SCHOOL BOARD alleged that the water rate increase adopted by the CITY under an violated the Texas Constitution, Article 7 § 5(c), the Texas Water Code § 13.083 and the Texas Administration Code, Chapter 291. SCHOOL BOARD also alleged that a temporary restraining order and a permanent injunction were necessary to prevent the CITY from discontinuing water services. SCHOOL BOARD claimed that it had no adequate remedy at law and that irreparable harm would result without said order and injunction. SCHOOL BOARD also sought declaratory relief.

1.3 On September 11, 2013, the trial court rendered judgment in favor of the CITY. On September 17, 2013 the Court signed its final order which dissolved the Temporary Restraining Order against the CITY and denied the SCHOOL BOARD'S petition for temporary and permanent injunction. The Court further denied the SCHOOL BOARD'S request for a declaratory judgment.

1.4 On October 18, 2013, the SCHOOL BOARD filed its Motion for New Trial, more than 30 days after the judgment complained of was signed, in violation of T.R.C.P 329(b). The trial court has not ruled on said motion.

1.5 On October 25, 2013, the SCHOOL BOARD filed its Notice of Appeal with the 13th District Court of Appeals in cause no. 13-13-00568-CV. No proceedings have transpired in said cause.

1.6 As of December 10, 2013, the SCHOOL BOARD had an outstanding balance of $57,212.69.

1.7 On December 20, 2013, the CITY made the difficult choice of shutting off the water to the La Villa I.S.D. for failure to pay its outstanding balance.

II. Plea to the Jurisdiction

2.1 The City of La Villa denies the SCHOOL BOARD'S allegation that the Texas Commission on Environmental Quality ("TCEQ") has jurisdiction over the subject matter pursuant to Tex. Water Code §13.041 and §13.042.

2.2 Under §13.041(d), TCEQ may issue emergency orders in only two situations: 1. To compel a water or sewer service provider…to provide continuous and adequate water service…**if the discontinuance of the service is imminent or has occurred because of the service provider's actions or failure to act**; and 2. to compel a retail public utility to provide an emergency interconnection with a neighboring retail public utility for the provision of temporary water or sewer service…is service discontinuance or serious impairment in service is imminent or has occurred.

2.3 In the case at hand, the discontinuance of water and sewage services has occurred not because of the CITY'S actions or its failure to act, but because the SCHOOL BOARD has simply not paid its utility bill. It is the SCHOOL BOARD'S failure to pay its valid utility bill that has led to the interruption of water and sewage services. The 93rd District Court denied the SCHOOL BOARD'S request to declare the CITY'S water rate ordinance invalid. *See* **Exhibit #2, Order C-4271-13-B**. The Texas Water Code does not grant the SCHOOL BOARD the right to pick and choose which utility bills it pays.

2.4 Furthermore, the SCHOOL BOARD "seeks an order from TCEQ declaring the certain past, present, and threatened future actions of Respondent are unlawful…" *See* **SCHOOL BOARD'S Application for Emergency Order, page 2**. Tex. Water Code §13.042 does not

grant the commission declaratory judgment powers and as such cannot grant the SCHOOL BOARD'S requested relief. As stated above, the SCHOOL BOARD'S petition for declaratory judgment was fully litigated and denied by the 93rd District Court by Final Order on September 17, 2013.

2.5. Tex. Water Code §13.042 Sec.(a) grants the governing body of each municipality exclusive original jurisdiction over all water and sewer utility rates, operations, and services provided by a water and sewer utility within its corporate limits.

2.6 Tex. Water Code §13.042 Sec.(b) allows the governing body of a municipality to elect to have TCEQ exercise exclusive original jurisdiction by ordinance. The City of La Villa has passed no ordinance surrendering its exclusive original jurisdiction to the commission.

III. Res Judicata

3.1 On September 17, 2013, final judgment on the merits by the 93rd District Court was conclusive between the parties as to all matters that were litigated or that could have been litigated in that suit, including all the issues raised by the SCHOOL BOARD in its Application for Emergency Order.

3.2 The CITY alleges that the SCHOOL BOARD is precluded and estopped from requesting relief that was already denied by a court that had jurisdiction over the same parties and the same issues presented in the SCHOOL BOARD'S Application for Emergency Order.

3.3 The application of res judicata and collateral estoppel produces finality for the parties and promotes judicial economy.

IV. Unclean Hands

4.1 The SCHOOL BOARD'S request for an emergency injunction is not based in law, but rather, it is the product of petty local politics. In a newspaper article dated December 28, 2013, La Villa school Superintendent Narciso Garcia summed up the SCHOOL BOARD'S position. He stated, "Just like they decided to raise the rates, we decided not to pay them." *See* **Exhibit #3**.

4.2 Through election the residents of La Villa entrusted the current board of alderman for the CITY to make the tough choices necessary to keep the antiquated water system running and keep it up to code, or face receivership by TCEQ. Unfortunately, it was a necessary evil for the CITY to exercise its exclusive jurisdiction and raise the water and sewage rates. If the members of the SCHOOL BOARD believe that the water rates are unreasonable, their remedy is to have its members run for elected office and lower the rates, not to spend thousands on attorney's fees and litigation costs so as to negotiate a better rate as it has done in C-2796-12-F and C-4271-13-B.

V. General Denial

Respondent CITY enters a general denial to the SCHOOL BOARD'S pleadings and demands strict proof therof that the SCHOOL BOARD is entitled to the relief requested.

WHEREFORE, PREMISES CONSIDERED, Respondent City of La Villa requests that PLAINTIFF'S application for emergency order be denied.

Respectfully Submitted,

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AND
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Attorneys for City of La Villa

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Defendant's Original Answer has been delivered upon the following parties on **January 10, 2014** via mail and fax.

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Roel Gutierrez

CAUSE NO. C-2796-12-F

LA VILLA INDEPENDENT SCHOOL DISTRICT BOARD OF TRUSTEES	§	IN THE DISTRICT COURT
vs.	§	332ND JUDICIAL DISTRICT
THE BOARD OF ALDERMEN FOR THE CITY OF LA VILLA	§	HIDALGO COUNTY, TEXAS

COMPROMISE, SETTLEMENT AND MUTUAL RELEASE AGREEMENT

This Compromise, Settlement and Mutual Release Agreement (hereinafter "Agreement") is made and entered into by and between the **LA VILLA INDEPENDENT SCHOOL DISTRICT BOARD OF TRUSTEES**, (hereinafter "DISTRICT"), its trustees, officers, employees, agents, successors, assigns, and **THE BOARD OF ALDERMEN FOR THE CITY OF LA VILLA**, (hereinafter "CITY"), its officers, directors, successors and assigns, for the mutual considerations and purposes expressed herein. The CITY and the DISTRICT may collectively be referred to herein as the "Parties".

1. STATEMENT OF DISPUTE

The DISTRICT filed the above-entitled and numbered cause against the CITY (the "Lawsuit"), alleging violations of the Texas Open Meetings Act, seeking a declaration under the Texas Declaratory Judgment Act that such violations rendered action by the City's Board to adopt an ordinance raising water and sewer rates that would be charged by the CITY were void. In response, the CITY generally denied the allegations and filed a counter-petition against the DISTRICT seeking a declaration under the Texas Declaratory Judgment Act, that the action taken by its Board was taken in accordance with the Open Meetings Act, and was therefore valid and enforceable. Both parties requested recovery of its attorney's fees under the Declaratory Judgment Act.

It is the intent of the Parties, acting through their duly authorized agents, to compromise and settle the Lawsuit, any and all claims and counterclaims associated with City of La Villa Ordinance No. 08-03 and its amendments through the date of this Agreement (the "Ordinance"), as it applies to the DISTRICT, and any other matters and issues in dispute between the Parties associated with the adoption of the Ordinance, obligations of the DISTRICT for payment to the CITY for water and sewer service between December 1, 2011 and August 31, 2012, or any other matter addressed in the Lawsuit, now existing or hereafter arising, whether known or unknown ("the Disputes"), under the terms and conditions set forth herein in order to avoid litigation and minimize expenses. Nothing in this Agreement is intended to be an admission of liability or fault by either party.

Exhibit 1

2. CONSIDERATION

As consideration of this Agreement and for the releases and indemnities included herein, the Parties agree as follows:

A. **Payment of Arrearage.** The DISTRICT agrees to pay to the CITY and the CITY agrees to accept the sum of THIRTY-TWO THOUSAND TWO HUNDRED THIRTEEN AND 60/100 DOLLARS ($32,213.60) in full and final payment of any outstanding obligations of the DISTRICT for water and sewer service provided by the CITY to the DISTRICT between December 1, 2011 and August 31, 2012, inclusive of penalties and interest. All other penalties, late fees, and any other obligations related to service provision or payment during this time period are hereby waived.

B. **Application of City Ordinance #08-03.** The Parties also agree to be bound by the City of La Villa Amended Ordinance #08-03 adopted by the City of La Villa on August 8, 2012 attached hereto as **Exhibit A,** and incorporated herein by reference as if fully set forth, and that this Amended City Ordinance shall control with regard to the water and sewer rates applicable to the DISTRICT until further action is taken by the CITY to amend or supersede the rates contained therein. It is the intention of the Parties that the City of La Villa Amended Ordinance #08-03 shall control the DISTRICT's rates and obligations for sewer and water services in all respects on a going forward basis, with the exception of the incorporation of a minimum of 75 persons per campus in calculating the applicable per student, faculty and staff charges required by Amended Ordinance #08-03, as set out in provisions I(B)(6) and II(A)(7) of the Amended Ordinance. The PARTIES agree that provision C. below entitled PEIMS Reports, will control with regard to calculating the applicable per student, faculty and staff charges required by Amended Ordinance #08-03.

C. **PEIMS Reports.** For purposes of calculating the applicable per student, faculty and staff charges required by Amended Ordinance #08-03, the PARTIES agree that the DISTRICT shall provide to the CITY a report of these figures from the DISTRICT's current Public Education Information Management System (PEIMS) Report by the 25th day of each month. The monthly count shall report the number of students reported on the District's PEIMS report showing the student count for the prior month, as well as the District's report of the number of faculty working on the individual campuses during the prior month by District Water Account, i.e. Account Numbers 58.0, 58.1, 58.2, 16.0 and 16.1.

D. **Joint Dismissal of All Claims.** The Parties agree that an Agreed Motion to Dismiss with Prejudice will be filed as to the Lawsuit requesting entry of an Agreed Order of Dismissal dismissing all claims between the CITY and the DISTRICT with prejudice to the re-filing of any claim which either Party has asserted or might have asserted against the other in the Lawsuit.

E. **Fees and Costs.** All court costs and attorneys fees are to be paid by the party incurring same.

3. RELEASE

A. **By the CITY.** In consideration of the terms set out above, the CITY, with the intention of and in fact binding itself and its past, present and future aldermen, elected officials, attorneys, employees, agents, representatives, successors and assigns, does hereby knowingly and expressly

RELEASE, DISCHARGE and FOREVER ACQUIT the DISTRICT, and all of its past, present and future, trustees, attorneys, officers, elected officials, employees, agents, contractors, representatives, successors, and assigns, all both in their individual and in their representative, official capacities, from any and all claims, disputes, demands, actions, suits, causes of action, administrative proceedings, obligations, debts, controversies, promises, allegations, judgments and executions of every kind, character or type whatsoever, whether in contract or in tort, constitutional, administrative, common-law or statutory, state or federal, legal or equitable, known or unknown, past, present or future, in any manner arising out of or related in any way whatsoever to the Lawsuit or the Ordinance.

B. **By the DISTRICT.** In consideration of the terms set out above, the DISTRICT, with the intention of and in fact binding itself and its past, present and future trustees, elected officials, attorneys, officers, employees, agents, contractors, representatives, successors, and assigns, does hereby knowingly and expressly RELEASE, DISCHARGE and FOREVER ACQUIT the CITY, and all of its past, present and future, aldermen, attorneys, officers, elected officials, employees, agents, contractors, representatives, successors, and assigns, all both in their individual and in their representative, official capacities, from any and all claims, disputes, demands, actions, suits, causes of action, administrative proceedings, obligations, debts, controversies, promises, allegations, judgments and executions of every kind, character or type whatsoever, whether in contract or in tort, constitutional, administrative, common-law or statutory, state or federal, legal or equitable, known or unknown, past, present or future, in any manner arising out of or related in any way whatsoever to the Lawsuit or the Ordinance.

4. NO RELEASE OF WARRANTY

Except for the release granted by the DISTRICT and the CITY in Article 3 above, nothing in this Agreement shall constitute a release of any claims, disputes, demands, actions, suits, causes of action, administrative proceedings, obligations, debts, controversies, promises, allegations, judgments and executions of every kind, character or type whatsoever, arising from future service obligations, payment obligations or any warranty obligation of the CITY imposed by law in favor of its ratepayers, if any, it being the intent of the Parties that this Agreement shall not amend or modify any such obligations.

5. WARRANTIES

A. The CITY and the DISTRICT each warrant that it has read this Agreement and fully understands it to be a compromise, settlement and release of all claims against the other, and those named in paragraph 3, known or unknown, present or future.

B. The CITY and the DISTRICT each warrant that it is legally authorized to execute this Agreement, which it understands to be contractual, and that it does so of its own free will and accord, without reliance upon any representation of any kind or character not expressly set forth in this Agreement. Each has had the opportunity to consult with an attorney of its choice, and has had the opportunity for said attorney to review this Agreement and to counsel it regarding the execution of this Agreement.

C. The CITY and the DISTRICT each warrant that no other person or entity has any interest in the cause of action involved in the Agreement, except for agreements with its attorney concerning attorney's fees.

D. The CITY and the DISTRICT each warrant that it has the exclusive right to execute this Agreement and it has not assigned, sold, transferred, or otherwise disposed of any of the claims or causes of action referred to in this Agreement, with the exception of agreements as to attorney's fees.

6. MISCELLANEOUS PROVISIONS

A. The CITY and the DISTRICT, agree that should any provision of this Agreement be found to be in violation of any law, the remainder of this Agreement shall retain full validity.

B. The CITY and the DISTRICT agree that the titles used in this Agreement are for the purposes of clarification only and should not be used in interpreting or construing this Agreement.

C. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. The Parties hereto further agree that they shall execute any and all documents necessary to affect the intent and purposes of this Agreement. Further, this Agreement supersedes any and all prior oral or written agreements, arrangements or understandings between the Parties that relate to any of the subject matter of this Agreement. This Agreement may be modified or terminated only in writing, executed by all the Parties hereto.

D. This Agreement is hereby deemed performable entirely in Hidalgo County, Texas, and shall be governed, construed and enforced in accordance with the subject to the laws of the State of Texas.

LA VILLA INDEPENDENT SCHOOL DISTRICT BOARD OF TRUSTEES

_____
Signature

_____
Printed Name and Title

_____
Date

CITY OF LA VILLA BOARD OF ALDERMEN

Hector Elizondo
Signature

HECTOR ELIZONDO MAYOR
Printed Name and Title

NOV. 6, 2012
Date

Filed
12 November 9 P12:21
Laura Hinojosa
District Clerk
Hidalgo District

CAUSE NO. C-2796-12-F

LAVILLA INDEPENDENT SCHOOL DISTRICT BOARD OF TRUSTEES	§	IN THE DISTRICT COURT
vs.	§	332ND JUDICIAL DISTRICT
THE BOARD OF ALDERMEN FOR THE CITY OF LA VILLA	§	HIDALGO COUNTY, TEXAS

AGREED ORDER OF DISMISSAL WITH PREJUDICE

On this day came on to be considered the Agreed Motion to Dismiss with Prejudice filed in the above-entitled and numbered cause.

It appearing to the Court that all matters in controversy between Plaintiff, **LA VILLA INDEPENDENT SCHOOL DISTRICT BOARD OF TRUSTEES,** and Defendant, **THE BOARD OF ALDERMEN FOR THE CITY OF LA VILLA,** have been compromised and settled, that no further dispute exists between them, and that said cause, and all claims, counter-claims, actions, and causes of action asserted by the respective parties should be dismissed with prejudice.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that all claims, counter-claims and causes of action asserted by the respective parties be and are hereby dismissed with prejudice as to the refiling of same.

SIGNED this 19th day of November, 2012.

JUDGE PRESIDING

SCANNED

AGREED AND APPROVED AS TO FORM:

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COUNSEL FOR DEFENDANT,
THE BOARD OF ALDERMAN
FOR THE CITY OF LA VILLA

NO. C-4271-13-B

LA VILLA INDEPENDENT SCHOOL DISTRICT BOARD OF TRUSTEES	§	IN THE DISTRICT COURT
VS.	§	93RD JUDICIAL DISTRICT
THE BOARD OF ALDERMAN FOR THE CITY OF LA VILLA	§	HIDALGO COUNTY, TEXAS

ORDER

ON THIS the 11th day of September, 2013, came to be heard the above numbered and captioned cause. Plaintiff La Villa Independent School District appeared by its duly authorized representatives and through its attorney of record, the Hon. Mike Saldana. Defendant City of La Villa appeared by its duly authorized representatives and through its attorneys of record, the Hon. Robert J. Salinas and the Hon. Roel Gutierrez.

The Court finds that it has jurisdiction over the parties and the subject matter. The Court, after hearing the evidence and the argument of counsel, finds that the Temporary Restraining Order heretofore issued by the Court on July 26, 2013, restraining the City of La Villa, its Board of Aldermen, its employees from taking any action directly or indirectly to discontinue water service to any facility or school operated by the La Villa Independent School District should be and same is hereby dissolved. The Court finds that Plaintiff's Petition for temporary injunction should be and same is hereby denied.

The Court further finds that Plaintiff's Petition for Declaratory Judgment should be and same is hereby denied.

Costs are adjudged against the parties incurring same. Any specific remedy not granted herein is specifically denied.

Signed the 17 day of Sepetember, 2013.

JUDGE PRESIDING

Exhibit 2

Amid rate controversy, city turns off water to La Villa ISD

By Jacob Fischler | The Monitor Follow @fischlerRGV **| Posted: Saturday, December 28, 2013 7:46 pm**

LA VILLA — When the La Villa school district's winter break ends on Jan. 13, classrooms and administration buildings may not have running water.

Put another way, if the city and school district don't resolve their dispute over water and sewer rates, the 625 students will not be able to attend classes — and will have to make up the missed school days later.

The long-running quarrel — in which the city says it's attempting to collect on past due bills, and the district characterizes as a unilateral money grab that would devastate its ability to educate — intensified last week when the city shut off services to the district on Dec. 20.

"Well, our side is: There's a balance due and they're going to have to pay for the services," City Manager Wilfredo Mata said in a Thursday telephone interview.

In December 2012, the city passed an ordinance requiring the school district to pay a $14 per student and staff member surcharge for its water usage — in addition to regular consumption rates — mere months after the two sides agreed on a $6 surcharge, wrote La Villa school Superintendent Narciso Garcia in a scathing Tuesday new release.

The district refused to pay the extra $8 of the surcharge, instead continuing to pay its regular consumption rate plus $6 per head.

"Just like they decided to raise the rates, we decided not to pay them," Garcia said Friday.

In his statement, Garcia wrote the $14 charge would make the effective rate six to seven times higher than any other Texas public school district. He called the charge "unfair" and accused city leaders of attempting to fix years of budgetary mismanagement by reaching into the pockets of the school district — which he said receives 80 percent of its funding from the state.

The state funding, incidentally, is allotted specifically for educational purposes. It should not be used to bail out a broke city, Garcia said.

"That's fine and dandy, but we're going to look after our kids," he said.

"If the $14 surcharge were to be paid by the district, the district would deplete its reserves within a year and would be required to curtail instructional services by either reducing staff, available

Exhibit 3