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August 19, 2010

VIA HAND DELIVERY

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Texas Commission on Environmental Quality
Office of the Chief Clerk
P.O. Box 13087, MC-105
Austin, Texas 78711-3087

2010 AUG 19 AM 8:09
CHIEF CLERKS OFFICE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

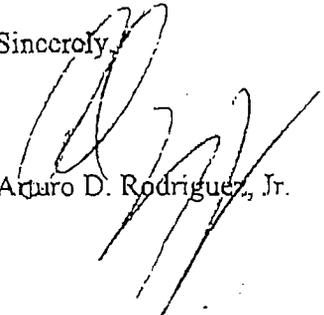
Re: *Application from the City of Princeton to Obtain a Water and Sewer Certificate of Convenience and Necessity (CCN) in Collin County; Application Nos. 35072-C and 35073-C; SOAH Docket No. 582-06-1641; TCEQ Docket No. 2006-0044-UCR*

Dear Ms. Castanuela,

Enclosed for filing please find an original and seven copies of the City of Princeton's *Reply to Exceptions to the Proposal for Decision filed by the Executive Director of the Texas Commission on Environmental Quality* in the above-reference matter.

Thank you very much for your attention to this matter.

Sincerely,


Arturo D. Rodriguez, Jr.

- cc : Service List
- Mr. Lee Lawrence
- Ms. Bonnie Goldstein
- Mr. Rider Scott

August 19, 2010
Page 2 of 2

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of August, 2010, a true and correct copy of the foregoing document has been sent via facsimile, first class mail, or hand-delivered to the following counsel or party representatives of record:

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**Mr. Robert Gammethaler on behalf of
the Aligned Group of Property Owners
and David Strawn, Felicia A. Saigling
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SOAH DOCKET NO. 582-06-1641 TCEQ DOCKET NO. 2006-0044-UCR CHIEF CLERKS OFFICE

APPLICATIONS OF THE CITY OF PRINCETON TO OBTAIN A WATER AND SEWER CERTIFICATE OF CONVENIENCE AND NECESSITY (CCN) IN COLLIN COUNTY, TEXAS APPLICATION NOS. 35072-C & 35073-C BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

THE CITY OF PRINCETON'S REPLY TO EXCEPTIONS TO THE PROPOSAL FOR DECISION FILED BY THE EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

COMES NOW, Applicant, the City of Princeton ("Princeton", "City", or "Applicant") and presents this its Reply to Exceptions to the Proposal for Decision filed by the Executive Director of the Texas Commission on Environmental Quality in the above-referenced proceeding.

I. INTRODUCTION

Only the Executive Director ("ED") of the Texas Commission on Environmental Quality ("TCEQ") filed exceptions to the Administrative Law Judge's ("ALJ") Proposal for Decision ("PFD"). The Office of Public Interest Counsel ("OPIC") filed replies to the ED's exceptions and recommended that none of the ED's proposed changes be made. The City supports the decision of the ALJ as accurately adjudging the evidence and present Commission deference to municipalities' long-term planning efforts.

The ED takes issue with the ALJ's articulation of Commission staff policy and the ALJ's evaluation of the financial evidence in this case only as it relates to areas outside the City's extraterritorial jurisdiction ("ETJ") or areas currently served by the City. Clearly, the ED's only substantive statutory and regulatory issue with this case revolves around the City's financial position to provide continuous and adequate service to areas outside the City's ETJ. The City

will primarily address the ED's argument regarding the City's financial ability to provide continuous and adequate service to areas outside the City's ETJ.

II. ED'S POSITION REGARDING EXTRATERRITORIAL JURISDICTION

Without addressing any mistake in the PFD, the ED attempts to articulate his unwritten "guidance" when evaluating a municipality's ETJ. However, in clarifying the guidance that was utilized, the City believes it misstates the guidance that Commissioners of the TCEQ have previously articulated. The case most closely analogous to Princeton's application is the case of the City of Meridian.¹

In that case, Meridian introduced planning documents, requests for service, etc. to justify the area being requested in its CCN amendment application. The ALJ issued a PFD recommending approval of Meridian's CCN in its entirety. During the agenda meeting to consider the PFD, Commissioner Larry Soward stated that he wished the Commission could see more applications like this from cities and that the Commission should be granting CCNs similar to this because of the planning that they do. Commissioner Soward specifically referenced Meridian's long-range planning and a deferral to a municipality's judgment regarding what the municipality is willing to take on as its obligation to serve. Commissioner Buddy Garcia stated that planning to serve, like Meridian did, could benefit the area in the future. All three commissioners, two of which are still serving on the Commission, referenced municipal planning as a motivation for approving Meridian's application. The case is similar in that planning has been appropriately been done. The only difference is that in the Meridian case, Meridian had substantially cash reserves in anticipation of building infrastructure for future growth. In this case, Princeton already built the infrastructure for the growth.

¹ *Application of the City of Meridian to Amend its Water and Sewer Certificate of Convenience and Necessity (CCN) Nos. 10884 and 20349 in Bosque County; TCEQ Docket No. 2005-2089-UCR.*

III. THE ED'S FINANCIAL CONCERNS

The ED remains concerned regarding the City's financial position. Although, the ED admittedly has less concerns than when it provided testimony at the Hearing on the Merits. Thus, during the hearing process, the ED became more comfortable with the City's financial position, because a bulk of the new debt that the City incurred were to address water and sewer utility infrastructure that is designed to serve the area within the City's proposed service area for future growth.

Mr. Kerry Maroney, P.E. testified that the improvements made by the City were an upgrade of facilities for future growth.² In fact, Mr. Maroney testified that if the City was to assume that they would not grow there would be no need to make any of the improvements the City has constructed or undertaken.³ The City has the water supply capacity at the present time, they have the elevated storage capacity at the present time, they have the pump capacity at the present time, they have the storage capacity at the present time to meet not only their current water and sewer customers, but to serve potential customers well into the future. All of the improvements that have been made by the City, or are being made, are for future growth and future development.⁴ It is clear from the evidence that all increased debt has been incurred in anticipation of future growth.⁵

The ED's financial concerns should be relieved based on the evidentiary record. The City's financial expert, Mr. Steve Perry, indicated that the City is in a strong financial position.⁶ The City has incurred debt in anticipation of future growth⁷ and has plenty of room under its tax rate to increase taxes if required.⁸ As a person that analyzes the fiscal health of municipalities on a

² Tr. at 131, l. 21 through 132, l. 2.

³ *Id.* at 131, l. 11-13.

⁴ *Id.* at 131, l. 11 through 132, l. 2.

⁵ *Id.*; see also Tr. at 162, l. 1-3.

⁶ Exhibit APP-4 at 9, l. 1-16 (Prefiled Testimony of Steve Perry).

⁷ Tr. at 131, l. 21 through 132, l. 2.

⁸ Exhibit APP-4 at 8, l. 13-19 (Prefiled Testimony of Steve Perry).

regular basis, Mr. Perry has opined that the City is financially able to serve the entirety of the City's requested service area.⁹

The ED makes, as the OPIC appropriately characterizes, a new argument regarding the City's tax rate without any evidentiary support for his conclusion.¹⁰ The City supports the argument and conclusion drawn by the OPIC in this regard.

IV. ED'S EXCEPTIONS AND PROPOSED REVISED FINDINGS, CONCLUSIONS AND ORDERING PROVISIONS

The City supports the Replies to Exceptions filed by the OPIC. Like the OPIC, the City likewise does not recommend that the ALJ make any changes to Findings of Fact Nos. 148 and 150 and Conclusion of Law Nos. 5 and 7 in her PFD.

V. NON-SUBSTANTIVE CORRECTIONS

The City does not oppose any of the corrections suggested by the ED to Findings of Fact Nos. 7, 10, 59, 66, 67, 80, 91, 98, and 165. Regarding the change to Finding of Fact No. 113, the City suggests that "166 percent" be replaced with "57.5 percent."

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⁹ *Id.* at 12, l. 1-21.

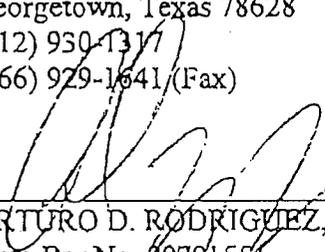
¹⁰ *Office of Public Interest Counsel's Reply to Exceptions*, SOAH Docket No. 582-06-2069, TCEQ Docket No. 2006-0044-UCR (Aug. 13, 2010) [hereinafter *OPIC's Replies to Exceptions*].

VI. CONCLUSION

The City does not recommend that the ALJ make any substantive changes to her PFD. The record clearly supports her PFD. The City prays that the Commission approve and adopt the ALJ's PFD.

Respectfully submitted,

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State Bar No. 00791551

ATTORNEY FOR CITY OF PRINCETON

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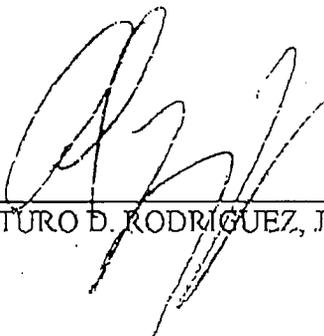
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**Mr. Robert Gammenthaler on behalf of
the Aligned Group of Property Owners
and David Strawn, Felicia A. Saigling
Estate, W. N. Saigling, Jr.**

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Client Number: 1090-00

From: Art Rodriguez

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Pages: 9 (Including Cover Sheet)

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