

TPDES PERMIT NO. WQ0016049001

APPLICATION BY	§	BEFORE THE
RATTLER RIDGE, LLC FOR	§	TEXAS COMMISSION ON
NEW TPDES PERMIT	§	ENVIRONMENTAL
NO. WQ00164049001	§	QUALITY

APPLICANT'S RESPONSE TO CITY OF SAN MARCOS'
REQUEST FOR A CONTESTED CASE HEARING

BACKGROUND

The Applicant applied for the proposed permit, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 or 0.10 Million Gallons per Day (MGD) in the Interim I phase, at a daily average flow not to exceed 0.20 MGD in the Interim II phase, and at a daily average flow not to exceed 0.40 MGD in the Final phase.

If this permit is ultimately issued, the Rattler Ridge Wastewater Treatment Facility will serve the Rattler Ridge subdivision and will be located approximately 7,656 feet southeast of the intersection of Farm-to-Market Road 1978 and State Highway 123, in Guadalupe County, Texas 78666.

The Applicant met with Garland Powers III, Guadalupe County Commissioner-Precinct 2, Drew Engelke, and the City of San Marcos. The Applicant had positive meetings with Mr. Powers and Commissioner Engelke and believes that their concerns were resolved. The Applicant also attempted to resolve the issues raised by the City of San Marcos through negotiations on a development agreement but was unable to reach a resolution with the City, which is the only party who filed a Request for a Contested Case Hearing.

APPLICANT'S REQUEST

Of the issues raised by the City of San Marcos (COSM) in its August 10, 2022 Request for a Contested Case hearing, Applicant specifically requests the Commissioners in their discretion to deny COSM's requests in Item 4(k) to send the issues of "[w]hether the new plant violates the TCEQ's regionalization policy" and "[w]hether the permit meets the need requirements of TWC Sec. 26.0282" to the State Office of Administrative Hearings (SOAH) for consideration. As explained herein, COSM lacks sufficiently sized wastewater facilities in a geographic location

near the Rattler Ridge subdivision to provide wastewater service by economically feasible means.

TCEQ implements regionalization through Section 26.0282 of the Texas Water Code, which provides, in part:

In considering the issuance . . . of a permit to discharge waste, the commission may deny or alter the terms and conditions of the proposed permit . . . based on consideration of need, . . . *and the availability of existing or proposed areawide or regional waste collection, treatment, and disposal systems. . . . (emphasis added).*

TCEQ has recently provided guidance about regionalization on its website that states that TCEQ may approve applications for discharges of wastewater in four situations:

- There is no wastewater treatment facility or collection system within three miles of the proposed facility.
- The applicant requested service from wastewater treatment facilities within the three miles, and the request was denied.
- *The applicant can successfully demonstrate that an exception to regionalization should be granted based on costs, affordable rates, and/or other relevant factors.*
- The applicant has obtained a Certificate of Convenience and Necessity (CCN) for the service area of the proposed new facility or the proposed expansion of the existing facility.

While the COSM has sufficient capacity in its wastewater treatment plant located approximately 4.5 miles away as the crow flies from the Rattler Ridge subdivision, by its own admissions to the Applicant, the COSM does not have sufficiently sized collection lines anywhere close to Rattler Ridge to provide the subdivision with wastewater service.

In its pre-development meeting with the COSM, Applicant asked the City's engineer, Richard Reynosa, if the COSM planned to protest Applicant's application for a discharge permit. Mr. Reynosa responded that, while he could not speak in absolutes, he did not think the COSM would protest it because the City did not have sufficiently sized wastewater lines in the area to service a development the size of Rattler Ridge at 1,500 homes. On November 4, 2021, Applicant sent a certified letter to Mr. Reynosa requesting confirmation of his earlier statement that the COSM

did not have the capacity or infrastructure to serve Rattler Ridge due to its size. (*See Exhibit A attached hereto*). Mr. Reynosa responded to Applicant by email on November 12, 2021 advising that the COSM has the capacity in its wastewater plant to serve the development, but cleverly side-stepped the issue of the inadequately sized lines to serve the development, merely stating that the infrastructure beyond what is existing to serve the development would be the responsibility of the development. (*See Exhibit B attached hereto*).

Mr. Reynosa was correct in his original statement that the COSM lacks sufficiently sized wastewater lines and facilities in close proximity to Rattler Ridge to provide service. There are only two possible connection points for the Rattler Ridge subdivision to connect to the COSM wastewater facilities: (1) connect at the Cottonwood Creek Lift Station #24, or (2) connect to the COSM Lift Station #51.

As depicted on the attached map labeled *Exhibit C*, the Cottonwood Creek Lift Station #24 is located 22,500 linear feet (over 4.25 miles) away from the Rattler Ridge proposed lift station. The route depicted on the map reflects the only course to get to the Cottonwood Creek Lift Station due to the fact that a more direct route would require off-site easements across lands whose owners have already rejected granting the Applicant an easement. Further, at only 0.5MGD, that lift station would have to be improved to accommodate Rattler Ridge's size. Despite the distance, the Applicant's engineer did a cost analysis that was provided to TCEQ staff on November 30, 2021. (*See Exhibit D attached hereto*). The cost analysis provides that the Rattler Ridge proposed plant would cost just under \$8.5 million, whereas the connection to the Cottonwood Creek Lift Station would cost just over \$14 million, a difference of over \$5.5 million. Further, these numbers do not reflect the additional costs if the wastewater line coming from the Cottonwood Creek Lift Station to the COSM wastewater plant needs to be oversized to accommodate Rattler Ridge.

The connection to the COSM Lift Station #51 is even farther away at 27,500 linear feet (over 5.2 miles). The Applicant's engineer did a cost analysis on this connection and it reflects that the cost to connect to the COSM Lift Station #51 is just over \$15.75 million, a difference of almost \$7.25 million. (*See Exhibit E attached hereto*).

Clearly, even though there are COSM wastewater connection points within 3 miles of Rattler Ridge as the crow flies, the improvements necessary to bring those

facilities up to a sufficient size to serve Rattler Ridge are grossly cost prohibitive when compared to the cost of building the proposed plant on Rattler Ridge.

What is the point of considering regionalization when adequate facilities do not exist and the costs to bring existing facilities to an adequate size is cost prohibitive? In this case, where it is so apparent that the COSM lacks sufficient facilities to currently serve Rattler Ridge and the costs associated with increasing the size of those facilities to provide service to the development are so much greater than the proposed plant, the COSM should be denied from bringing the two issues related to regionalization to SOAH, for to do so, is merely a waste of judicial economy. The City's own engineer has admitted that Applicant is correct that the facilities are undersized, so it seems ridiculous to allow COSM to further argue an issue that they expressly know to be untrue.

For these reasons, the Applicant respectfully requests that the Commissioners use their discretion to strike the regionalization issues from any possible issues they conclude need to be considered by SOAH.

Respectfully submitted,



Clint E. Jones, President
Rattler Ridge, LLC
Applicant

Rattler Ridge, LLC
1067 FM 306, Ste. 106
New Braunfels, Texas 78130
clint@regallanddevelopment.com

November 4, 2021

VIA Certified Mail, RRR

Mr. Richard Reynosa, PE
Planning & Development Services
The City of San Marcos
630 East Hopkins
San Marcos, TX 78666

RE: Out-Of-City Utility Extension for Rattler Ridge.

Dear Mr. Reynosa:

The purpose of this certified letter is to obtain confirmation that the City of San Marcos does not currently have the capacity or infrastructure to serve the proposed Rattler Ridge development consisting of approximately 1,500 single family homes off FM 1978 and Henk Lane as we have previously been advised by City staff.

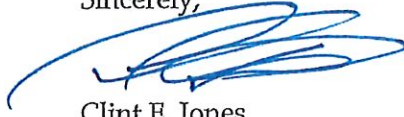
We are requesting wastewater service from the City of San Marcos for this development to comply with the TCEQ Application Requirements for Domestic Technical Report 1.1, B. 3. We have not enclosed an Out-Of-City Utility Extension or Connection Application for wastewater service to the Rattler Ridge subdivision due to the understanding that capacity and the infrastructure is not available and that there is presently no way to connect to the City's system.

We are aware that Section 86.003 of the City of San Marcos' Code of Ordinances provides that applications for service connections to existing city water or wastewater lines to serve a property located outside the city limits "must be accompanied by a written request for annexation of the applicant's property." Please confirm in writing that despite this Ordinance, the City will not require a written request for annexation as a condition for providing wastewater service to the Ratter Ridge subdivision if such service is available.

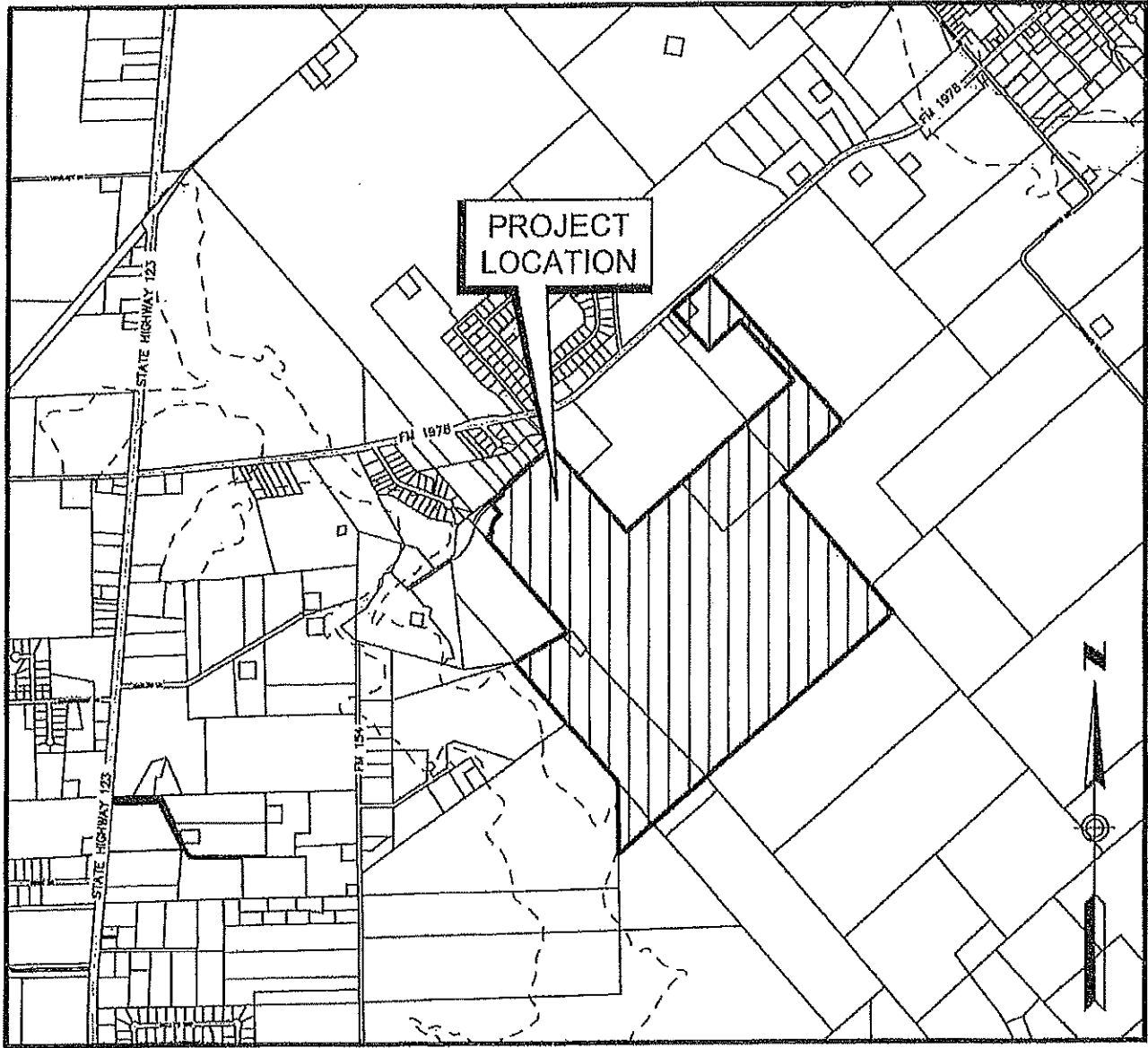
Upon receipt of written correspondence from you that you will accept and process our application without requiring consent to annexation, and a written description of how the City proposes to have Rattler Ridge connect to the City's wastewater system, we will then pay the applicable filing fees. If the City is not able to serve Rattler Ridge subdivision, we ask that you confirm that with a written response. If we have not received a response from you within five (5) business days following your receipt of this certified letter advising otherwise, we will assume that the previous acknowledgments from City staff that wastewater service is not available to serve Rattler Ridge remain true.

EXHIBIT A

Sincerely,

A handwritten signature in blue ink, consisting of several overlapping loops and a final horizontal stroke.

Clint E. Jones



LOCATION MAP

1" = 2000'

ADDRESS

FM 1978

SAN MARCOS, TX 78666

ZONING : ETJ

SITE AREA : 347.60 ACRES

Clint Jones

From: Reynosa, Richard <RReynosa@sanmarcostx.gov>
Sent: Friday, November 12, 2021 2:31 PM
To: Clint Jones
Cc: Moyer, Laurie; Hjorth, Tyler; Kite, Paul
Subject: RE: Out-Of-City Utility Extension for Rattler Ridge
Attachments: 20211113021148102.pdf

Mr. Jones,

In response to your attached letter please accept this as confirmation of the City of San Marcos' capability to serve the Rattler Ridge development. Capacity in the City of San Marcos Wastewater Treatment does exist and is available to serve this 1,500 single family home subdivision. The infrastructure requirements beyond what is existing to serve the development would be the responsibility of the development. Regarding annexation, the terms in which wastewater service is provided to a development currently outside of the city limits can be negotiated through a Development Agreement. This agreement may include terms of annexation or a deferral of annexation.

Please let me know if you would like to schedule a meeting to discuss further options for wastewater service.

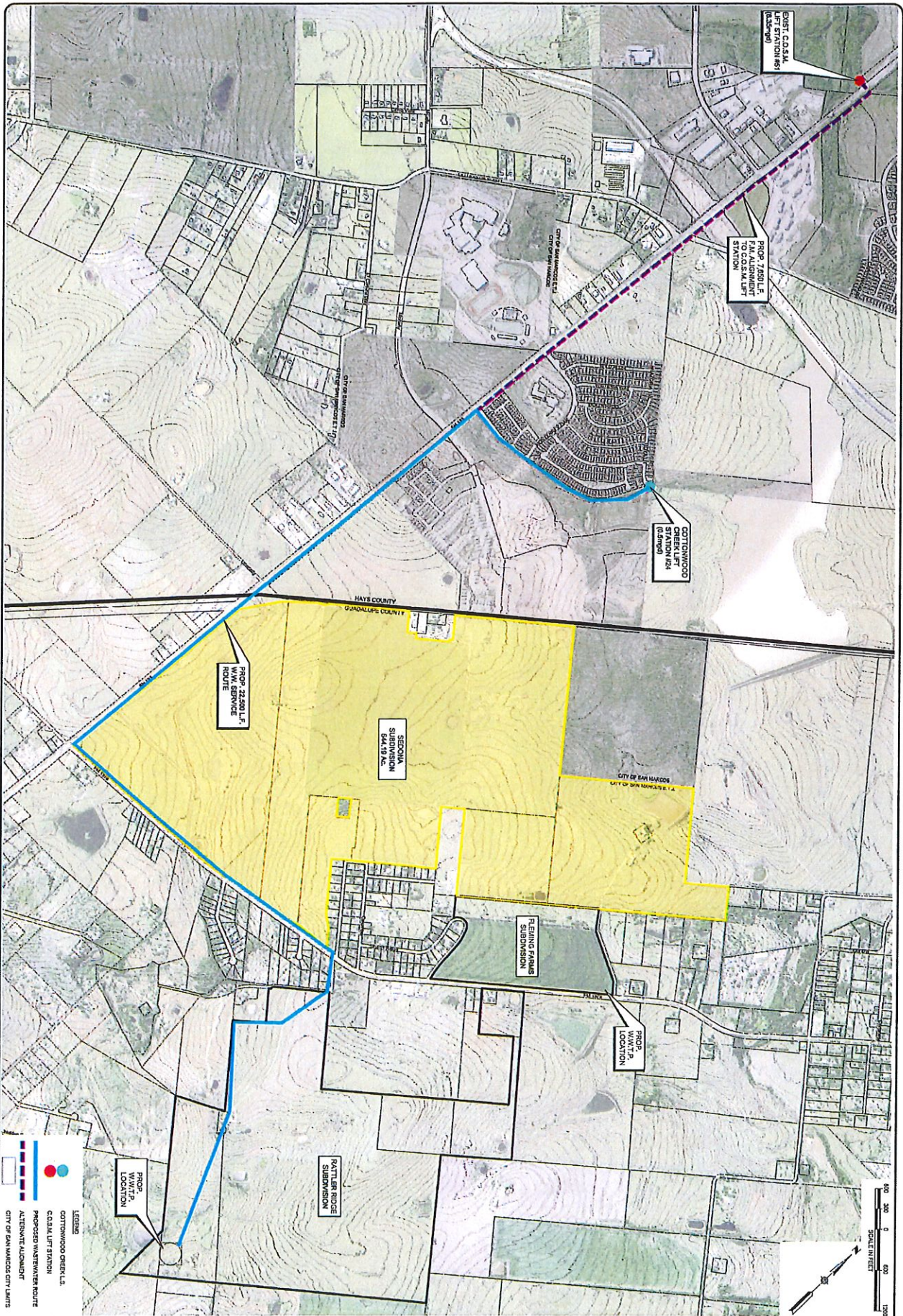
Thank you,



Richard Reynosa, PE, CFM

Assistant Director of Engineering | Capital Improvements/Engineering
630 E Hopkins, San Marcos, TX 78666
512.393.8235

EXHIBIT B



JOB NUMBER: 15492532 SHEET NO: 1 OF 1 SHEETS	LJA Engineering, Inc. 7500 Rialto Boulevard, Building B Suite 100 Austin, Texas 78735 Phone 512.439.4700 Fax 512.439.4718 TRV - F-1356	THIS DOCUMENT IS RELEASED FOR THE PURPOSE OF INTERNAL REVIEW AND IS NOT THE PROPERTY OF LJA ENGINEERING, INC. IT IS NOT TO BE USED FOR CONSTRUCTION PURPOSES.			DATE: 2/15/14 DESIGNED BY: DIVE CHECKED BY: JMC DRAWING NAME: www.ljaengineer.com	REVISIONS <table border="1"> <thead> <tr> <th>NO.</th> <th>DESCRIPTION</th> <th>BY</th> <th>DATE</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> </tbody> </table>	NO.	DESCRIPTION	BY	DATE																					RATTLER RIDGE & FLEMING FARMS T.P.D.&S PERMIT WASTEWATER SERVICE ROUTE EXHIBIT
		NO.	DESCRIPTION	BY	DATE																										
LEGEND COTTONWOOD GREEN L.S. C.O.S.M. LIFT STATION PROPOSED WASTEWATER ROUTE ALTERNATE ALIGNMENT CITY OF SAN MARCOS CITY LIMITS																															

EXHIBIT C



7500 Rialto Boulevard, Building II, Suite 100, Austin, Texas 78735
t 512.439.4700 LJA.com TBPE F-1386

November 30, 2021

Hanne Lehman Nielsen
Municipal Permits Team
Water Quality Division – TCEQ, MC 148
12100 Park 35 Circle
Austin, Texas 78753

Re: Rattler Ridge WWTP, Application No. WQ0016049001, LJA Project No. A292-0405.501

Dear Ms. Nielsen:

Please find enclosed followup correspondence related to the permit application for Rattler Ridge WWTP. This correspondence is provided to supplement the original submittal for Domestic Technical Report 1.1, Section 1.B.

As stated in the application, the City of San Marcos has a collection system within 3 miles. In response to a request by the applicant on November 4, 2021, the City responded via email on November 12, 2021 that it had “capacity in the City of San Marcos Wastewater Treatment”.

The reason Appendix M stated the City doesn't have current facilities to serve the project is that the City indicated during a pre-development meeting that the existing lift station at Cottonwood Creek and the lines leading to it did not have sufficient carrying capacity. This information was not included in the email response but the City did state that all upgrades to those facilities would be the responsibility of the developer.

A cost comparison of connecting to the City system to building an on-site system has been developed and is attached. It demonstrates that connecting to the City would be more costly than developing a new wastewater treatment plant on site, by approximately \$5.5 million.

The applicant does not intend to connect to the City of San Marcos system due to the difference in cost, the economic disadvantages associated with forced annexation, and the costs to be incurred and the amount of time needed to acquire easements and construct off-site improvements.

Should you have any questions or need any additional information, please do not hesitate to call.

Sincerely,

Daniel Ryan, P.E.

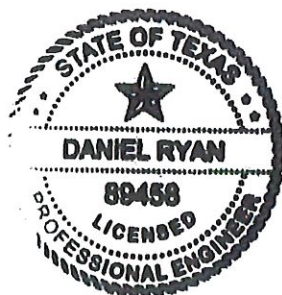


EXHIBIT D

LA Engineering, Inc.
Rattler Ridge (On-Site WWTP)

Project: Rattler Ridge
 Client: Regal, LLC
 Date: 11/19/2021
 By: D. Ryan

WASTEWATER IMPROVEMENTS		Unit	Cost/Unit	On-Site Wastewater System Cost
WW-1	Influent Lift Station	EA.	\$400,000.00	1 \$400,000.00
WW-2	400,000 gal/day WWTP	EA.	\$6,000,000.00	1 \$6,000,000.00
WW-3	WWTP Access Drive	EA.	\$100,000.00	1 \$100,000.00
WW-4	Extend 3-Phase Power	LF	\$100.00	4,500 \$450,000.00
				SUBTOTAL
				\$6,950,000.00

SUBTOTAL	\$6,950,000.00
10% Contingency	\$695,000.00
12% Engineering and Surveying	\$834,000.00
Grand Total	\$8,479,000.00





Engineering, Inc.

Rattler Ridge (City of San Marcos Connection)

Project: Rattler Ridge
 Client: Regal, LLC
 Date: 11/19/2021
 By: D. Ryan

WASTEWATER IMPROVEMENTS			Connection to San Marcos WWTP	
	Unit	Cost/Unit	Quantity	Cost
WW-1	EA.	\$1,500,000.00	1	\$1,500,000.00
WW-2	LF	\$250.00	22,500	\$5,625,000.00
WW-3	LF	\$100.00	4,500	\$450,000.00
WW-4	LF	\$600.00	200	\$120,000.00
WW-5	LS	\$500,000.00	1	\$500,000.00
WW-6	SY	\$25.00	8000	\$200,000.00
			SUBTOTAL	\$8,195,000.00

SUBTOTAL	\$8,195,000.00
10% Contingency	\$819,500.00
12% Engineering and Surveying	\$983,400.00
Impact Fees	\$4,026,000.00
Grand Total	\$14,023,900.00

Cost of Service Difference (On-site vs COSM) **(\$5,544,900.00)**





Engineering, Inc.

Rattler Ridge (On-Site WWTP)

Project: Rattler Ridge
Client: Regal, LLC

Date: 11/19/2021
By: D. Ryan

WASTEWATER IMPROVEMENTS				On-Site Wastewater System	
	Unit	Cost/Unit		Cost	
WW-1	Influent Lift Station	EA.	\$400,000.00	1	\$400,000.00
WW-2	400,000 gal/day WWTP	EA.	\$6,000,000.00	1	\$6,000,000.00
WW-3	WWTP Access Drive	EA.	\$100,000.00	1	\$100,000.00
WW-4	Extend 3-Phase Power	LF	\$100.00	4,500	\$450,000.00
				SUBTOTAL	\$6,950,000.00

SUBTOTAL		\$6,950,000.00
10% Contingency		\$695,000.00
12% Engineering and Surveying		\$834,000.00
Grand Total		\$8,479,000.00



Engineering, Inc.

Rattler Ridge (City of San Marcos Connection)

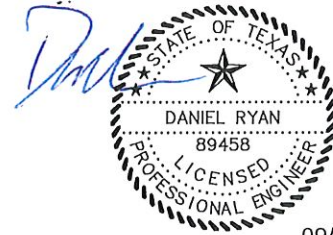
Project: Rattler Ridge
Client: Regal, LLC

Date: 9/7/2022
By: D. Ryan

WASTEWATER IMPROVEMENTS				Connection to San Marcos WWTP	
	Unit	Cost/Unit	Quantity	Cost	
WW-1	Rattler Ridge Lift Station	EA.	\$1,500,000.00	1	\$1,500,000.00
WW-2	12" Force Main	LF	\$250.00	27,500	\$6,875,000.00
WW-3	Extend 3-Phase Power	LF	\$100.00	4,500	\$450,000.00
WW-4	Bore & Encased Crossing of FM 1978	LF	\$750.00	200	\$150,000.00
WW-5	Bore & Encased Crossing FM 110/ SH123	LF	\$750.00	750	\$562,500.00
WW-6	Connect to LS #51	LS	\$75,000.00	1	\$75,000.00
				SUBTOTAL	\$9,612,500.00

SUBTOTAL	\$9,612,500.00
10% Contingency	\$961,250.00
12% Engineering and Surveying	\$1,153,500.00
Impact Fees	\$4,026,000.00
Grand Total	\$15,753,250.00

Cost of Service Difference (On-site vs COSM)	(\$7,274,250.00)
--	------------------



09/07/2022

I hereby certify that Applicant's Response to City of San Marcos' Request for a Contested Case Hearing was sent to the persons identified in the attached Mailing List in accordance with the instructions therein on September 9, 2022.

A handwritten signature in blue ink, consisting of several overlapping loops and strokes, positioned above a horizontal line.

Clint Jones

MAILING LIST
RATTLER RIDGE, LLC
DOCKET NO. 2022-1046-MWD; PERMIT NO. WQ0016049001

FOR THE APPLICANT:
via electronic mail:

Clint Jones, President
Rattler Ridge, LLC
1067 Farm to Market Road 306
Suite 106
New Braunfels, Texas 78130
clint@regallanddevelopment.com

Daniel Ryan, P.E., Vice President
LJA Engineering
7500 Rialto Boulevard
Building II, Suite 100
Austin, Texas 78735
Tel: (512) 439-4700
Fax: (512) 439-4716
dryan@lja.com

Lauren Crone, P.E., Project Manager
LJA Engineering
7500 Rialto Boulevard
Building II, Suite 100
Austin, Texas 78735
Austin, TX 78735-8531
Tel: (512) 439-4737
Fax: (512) 439-4716
lcrone@lja.com

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Michael T. Parr, II, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711
Tel: (512) 239-0600
Fax: (512) 239-0606
michael.parr@tceq.texas.gov

Jose Alfonso Martinez, Technical Staff
Texas Commission on Environmental
Quality
Water Quality Division, MC-148
P.O. Box 3087
Austin, Texas 78711
Tel: (512) 239-4668
Fax: (512) 239-4430
jose.martinez@tceq.texas.gov

Ryan Vise, Deputy Director
Texas Commission on Environmental
Quality
External Relations Division
Public Education Program, MC-108
P.O. Box 13087
Austin, Texas 78711
Tel: (512) 239-4000
Fax: (512) 239-5678
pep@tceq.texas.gov

FOR PUBLIC INTEREST COUNSEL
via electronic mail:

Vic McWherter, Public Interest Counsel
Texas Commission on Environmental
Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711
Tel: (512) 239-6363
Fax: (512) 239-6377
vic.mcwherter@tceq.texas.gov

FOR ALTERNATIVE DISPUTE
RESOLUTION
via electronic mail:

Kyle Lucas
Texas Commission on Environmental
Quality
Alternative Dispute Resolution, MC-222
P.O. Box 13087
Austin, Texas 78711
Tel: (512) 239-0687
Fax: (512) 239-4015
kyle.lucas@tceq.texas.gov

FOR THE CHIEF CLERK:
via electronic mail:

Docket Clerk
Texas Commission on Environmental
Quality
Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711
Tel: (512) 239-3300
Fax: (512) 239-3311
www.tceq.texas.gov/goto/efilings

REQUESTER(S):

Arturo D. Rodriguez, Jr., Attorney
Russell Rodriguez Hyde Bullock LLP
1633 Williams Drive
Building 2, Suite 200
Georgetown, Texas 78628

INTERESTED PERSON(S):

Drew Engelke
101 East Court Street
Seguin, Texas 78155

Garland Powers, III
2741 Farm to Market Road 1979
San Marcos, Texas 78666

Bettye Jean Urban
745 Laubach Road
Seguin, Texas 78155