

RESOLUTION 21 - R - 67

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS APPROVING AND AUTHORIZING THE WATER CCN TRANSFER FROM NEW BRAUNFELS UTILITIES IN THE ROLLING HILLS RANCH DEVELOPMENT TO THE CITY OF SCHERTZ.

WHEREAS, NBU provides retail water service under water CCN No. 10677, issued by the Public Utility Commission of Texas (“PUC”) to the City of New Braunfels for the provision of retail water services to certain areas in and about Comal County and Guadalupe County, as generally depicted in Exhibit A;

WHEREAS, Schertz provides retail water service under water CCN No. 10645, issued by the PUC, for the provision of retail water to certain areas in and about Bexar County Comal County and Guadalupe County, as generally depicted in Exhibit B;

WHEREAS, the boundaries of the NBU water CCN and the Schertz water CCN are adjacent to one another in various areas;

WHEREAS, Developer has requested that NBU transfer approximately 28.96 acres of its water CCN located within Guadalupe County along the border with Comal County, located to the west of the intersection of the Guadalupe-Comal county line and Engel Road within the city limits of the City of Schertz, which acreage forms the northernmost portion of Units 3B and 4 of the “Parklands Subdivision” and is more particularly depicted in Exhibit C (the “Property”) to Schertz, so that Schertz, which serves other portions of the Parklands Subdivision within its CCN area, might provide retail water services to the Property;

WHEREAS, the Property, which is part of an 89.50-acre tract out of Abstract G-A0253, John Noyes Survey, owned by Developer that is identified as PID#165195, Guadalupe County Appraisal District records, and depicted in Exhibit D, is currently undeveloped, and NBU does not currently have any water connections within the Property or near the Property;

WHEREAS, Schertz currently has water connections or water facilities adjacent to, or near the Property, including other portions of the Parklands Subdivision owned by the Developer; and

WHEREAS, NBU and Schertz are amenable to altering the boundaries of their respective CCNs by transferring the Property contained within the boundaries of the NBU CCN to Schertz so that the Property is removed from the NBU water CCN and added to the Schertz water CCN.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT:

Water CCN

1. The Parties hereby incorporate by this reference the recitals set forth above in this Agreement.
2. In accordance with Section 13.248 of the Texas Water Code, but at all times subject to the approval of the PUC, NBU hereby agrees to the modification of the boundaries of its CCN No.

10677 to exclude the approximately 28.96-acre area contained within the Property, such area to be transferred from NBU's CCN No. 10677 to the area to be encompassed within Schertz's CCN No. 10645.

3. In accordance with Section 13.248 of the Texas Water Code, but at all times subject to the approval of the PUC, Schertz hereby agrees to the expansion and modification of the boundaries of its CCN No. 10645 to include the area contained within the Property, such area to be transferred from NBU's CCN No. 10677 to the area to be encompassed within Schertz's CCN No. 10645.

4. NBU shall be responsible for preparing and filing the application to obtain the PUC's approval of the CCN transfer of the Property between Schertz and NBU. NBU shall also be responsible for hiring a third party-vendor to prepare hard copy maps with supporting electronic metadata for the Property that satisfies the PUC rules. The Parties hereto agree to cooperate and coordinate in seeking PUC approvals contemplated under this agreement.

5. The Developer agrees to pay all the expenses of NBU and Schertz in connection with this transfer, including, but not limited to, the following as may be applicable:

a. legal fees for NBU and Schertz;

b. PUC administrative fees, if any; and

c. fees associated with preparing hard copy maps and electronic maps with supporting electronic metadata for the Property filed in connection with the PUC application.

6. Schertz and NBU agree that no compensation shall be due and owing between Schertz and NBU in conjunction with such transfer as no real or personal property of either party is being affected by such transfer.

7. Schertz shall not commence providing retail water services for compensation to the Developer or any retail customer on the Property until the PUC has authorized the CCN transfer of the Property between Schertz and NBU.

8. Schertz shall not approve any documents indicating that Schertz is the retail water services provider prior to the PUC authorizing the CCN transfer of the Property between Schertz and NBU.

9. Schertz agrees that, upon approval of the revision to its CCN boundaries by the PUC to remove the Property presently within the boundaries of NBU's CCN No. 10677, NBU shall have no further obligation to provide retail water service to the Property, and that, upon PUC inclusion of the Property within the boundaries of Schertz's CCN No. 10645, Schertz shall be solely responsible for the provision of retail water service to any owner or occupant of, or customers on, the Property under such terms and condition as are allowed under its CCN and any applicable governmental statutes and regulations.

General Provisions

1. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED, CONSTRUED, AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. ALL ACTS REQUIRED OR PERMITTED TO BE PERFORMED HEREUNDER ARE PERFORMABLE IN GUADALUPE COUNTY, TEXAS, AND IT IS AGREED THAT ANY

CIVIL ACTION BROUGHT TO ENFORCE OR CONSTRUE THE TERMS OR PROVISIONS HEREOF OR TO ENJOIN OR REQUIRE THE PERFORMANCE OF ANY ACT IN CONNECTION HEREWITH, SHALL BE BROUGHT IN A COURT OF COMPETENT JURISDICTION SITTING IN COMAL COUNTY, TEXAS. IT IS AGREED THAT ANY ADMINISTRATIVE LAW ACTION BROUGHT TO ENFORCE OR CONSTRUE THE TERMS OR PROVISIONS HEREOF OR TO ENJOIN OR REQUIRE THE PERFORMANCE OF ANY ACT IN CONNECTION HEREWITH, SHALL BE BROUGHT AT THE PUC OR ITS SUCCESSOR AGENCY.

2. Severability. In the event one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

3. Unintended Omission. If any punctuation, word, clause, sentence, or provision necessary to give meaning, validity or effect to any other word, clause, sentence, or provision appearing in this Agreement shall be omitted here from, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence, or provision shall be supplied by inference.

4. Amendment. This Agreement shall not be amended or terminate except by an instrument signed by all parties to this Agreement.

5. Entire Agreement. This Agreement reflects the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection herewith.

6. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall be construed as one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

NEW BRAUNFELS UTILITIES,

a Texas municipal owned utility

By: _____

Ian Taylor, CEO

The City of Schertz, Texas

a Texas municipality

By: _____

Title: _____

Rolling Hills Ranch Development, Ltd.,

a Texas limited partnership

By: Rolling Hills Ranch Management, L.C.,

a Texas limited liability company,

its Sole General Partner

By: _____

William W. Alston, Manager