



Control Number: 43540



Item Number: 5

Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83rd
Legislature, Regular Session, transferred the functions
relating to the economic regulation of water and sewer
utilities from the TCEQ to the PUC effective
September 1, 2014

43540

TCEQ DOCKET NO. 2006-0373-UCR
SOAH DOCKET NO. 582-06-2906

APPLICATION OF THE VILLAGE
OF WIMBERLEY TO AMEND
SEWER CERTIFICATE OF
CONVENIENCE AND NECESSITY
NO. 20936 IN HAYS COUNTY,
APPLICATION NO. 35236-C

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

AQUA TEXAS' AMENDED MOTION TO DISMISS

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

COME NOW, Aqua Utilities, Inc. and Aqua Development, Inc. d/b/a Aqua Texas, Inc. ("Aqua Texas") and file this Amended Motion to Dismiss Application to Amend Certificate of Convenience and Necessity No. 20936 (Application No. 35236), filed by the Village of Wimberley on December 30, 2005 and amended by it on November 6, 2006 ("Application"),¹ and respectfully show the following:

I. BACKGROUND

A. Aqua Texas' existing service in Wimberley area.

Aqua Texas is the largest investor-owned water and wastewater utility in Texas, providing water service to more than 100,000 customers and wastewater service to more than 38,000 customers in 51 Texas counties. Among those is Hays County, where Aqua Texas serves over 1,200 wastewater customers. Aqua Texas' Hays County operations center around the Village of Wimberley, Texas ("Wimberley"). Aqua Texas holds CCN No. 20453, under which it provides

¹ Aqua Texas does not protest or request dismissal of those portions of the CCN area requested by Wimberley in the Application that are within "Wimberley's present and future service area," as defined and delineated by the settlement agreement between the Village of Wimberley and AquaSource Utility, Inc., executed on June 27, 2002. A copy of that Agreement is attached hereto as Exhibit A.

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sewer service to the Wimberley area (including portions of the Village of Wimberley, all of the City of Woodcreek and other surrounding areas). It provides that service with its Woodcreek Wastewater Treatment Plant ("Woodcreek WWTP"), which operates under TCEQ Discharge Permit No. 13989-001 and has a total permitted capacity of 0.375 MGD. Aqua Texas has constructed and is operating the first 0.25 MGD phase of the Woodcreek WWTP, and has excess uncommitted wastewater treatment capacity available in that phase.

B. Wimberley's existing CCN with GBRA.

By contrast, the newly incorporated Village of Wimberley has a wastewater CCN,² that it shares with the Guadalupe-Blanco River Authority ("GBRA"), but lacks the sewer treatment facilities to serve the areas it *currently* has under CCN — not to mention the new CCN it seeks by this Application. The reason Wimberley shares its existing CCN with GBRA is because it lacks the "financial, managerial, and technical capability to provide continuous and adequate service" to its existing customers. See TEX. WATER CODE § 13.241(a). Wimberley relies completely on GBRA to finance, build, construct, own and operate a sewer system to serve "Wimberley's" customers. See Exhibits B (Interlocal Agreement between GBRA and Wimberley) and C (Operating Agreement between GBRA and Wimberley). GBRA is responsible for building an entire system for the existing CCN area, including a treatment plant, collection and holding facilities, and lines. Exhibit C at 3. Although it has had 4 years since the GBRA/Wimberley CCN was granted, GBRA has failed to do so. GBRA has not developed, designed, permitted, or financed a wastewater system for Wimberley, though required by the Operating Agreement to do so. *Id.* Neither has it even commenced construction of such a system. *Id.* With one exception, there is no wastewater service in the existing

² Wimberley obtained its dually-certified CCN in 2002.

GBRA/Wimberley CCN area.³ Nor has Wimberley provided any wastewater service in its existing CCN area.

Rather than concentrate on providing service for the residents of its existing CCN area, Wimberley now seeks to expand its monopoly service territory far outside its city limits. It has not, however, sought dual certification with GBRA in its Application. Wimberley instead seeks to go it alone, despite its demonstrated inability to provide continuous and adequate service *to its existing service area*. Thus, Wimberley's "amendment" is not an amendment at all, but a request for a new CCN area certificated *only to it*. Given its current failure to provide service in its existing CCN area, Wimberley's motives in expanding its service territory given its present situation are unclear at best.

C. Wimberley's New Application.

On December 30, 2005, Wimberley filed its Application to amend its wastewater CCN No. 20936. A copy of the Application is attached as Exhibit D. It is undisputed that the CCN Application as originally filed: 1) sought to expand Wimberley's CCN in an area outside its city limits *and* extraterritorial jurisdiction ("ETJ"); 2) failed to demonstrate consent of landowners in the affected area; 3) failed to include any request for service from affected landowners; and, 4) failed to request service from Aqua Texas or other nearby utilities.

After Aqua Texas and affected landowners protested Wimberley's CCN Application, Wimberley amended its application on November 6, 2006 by deleting a substantial portion of its initially requested CCN area. But that amendment did not cure the previous defects. Even after that amendment, Wimberley still seeks a CCN for an area both outside its city limits *and* ETJ without the consent of the affected landowners. Wimberley's amendment still does not contain a single request for service for the remaining CCN area it seeks. Nor has Wimberley requested service from

³ The only customer presently receiving sewer service within the GBRA/Wimberley CCN area is a retirement home served by a small sewer package plant that was installed by the developer of that property.

Aqua Texas, which stands ready, willing and able to provide wastewater service with its nearby treatment plant.

Wimberley's decision to file its Application on December 30, 2005 is no coincidence. During the 2005 legislative session, the Legislature substantially amended Water Code Chapter 13 to curb certain CCN abuses, especially those involving small cities using CCNs outside their city limits and ETJ for improper purposes. The Legislature specifically provided that:

The [TCEQ] may not extend a municipality's [CCN] beyond its [ETJ] *without the written consent of the landowner* who owns the property in which the certificate is to be extended. The portion of any [CCN] that extends beyond the extraterritorial jurisdiction of the municipality without the consent of the landowner *is void*.

Tex. H.B. 2876, 79th Leg., R.S. (2005) ("H.B. 2876") (codified as TEX. WATER CODE § 13.2451(b) ("Section 13.2451")). Section 13.2451 not only withdraws the TCEQ's jurisdiction to issue CCNs to cities for areas outside their ETJs (unless the landowner consents), it even *voids* those already in existence. This withdrawal of the TCEQ's jurisdiction and voiding of preexisting CCNs came into effect on January 1, 2006. Tex. H.B. 2876, 79th Leg., R.S., ch. 1145, § 15 (2005).

Seeking to avoid this new law, Wimberley filed its Application on December 30, 2005, just two days before the new law became effective. But its effort to avoid the new law is ineffective because, after January 1, 2006, even *existing* CCNs beyond a city's ETJ are void unless the landowner consents. Here, by Wimberley's own admission, there has not been a single request for service — much less actual consent of the landowners of the proposed CCN territory. Exhibit D at 6. Thus, Wimberley's Application seeks a CCN amendment that would be void *ab initio*. Such a request asks an agency to perform a useless and futile act.

The TCEQ adopted rule changes in response to Section 13.2451. In making those changes, the TCEQ recognized the immediate jurisdictional bar to applications like Wimberley's. In the preamble to its rule amendments, the TCEQ declared that it would "consider those portions of cities'

pending CCN applications that are outside their ETJ *only [i]f they provide landowner consent for those areas.*" 30 Tex. Reg. 8979, 8961 (emphasis added) (excerpt attached as Exhibit E). In other words, the TCEQ recognized that it could not grant *nor even consider* applications like Wimberley's pending as of January 1, 2006, because it lacked the jurisdiction to grant such CCNs. Wimberley failed to provide any evidence of consent, and according to the TCEQ's own pronouncements, its Application must therefore be dismissed. Because the TCEQ lacks jurisdiction to grant the CCN requested in the Application, it must be dismissed pursuant to 1 TEX. ADMIN. CODE § 155.56(b).⁴

Wimberley's Application contains other fundamental flaws as well. Even if Wimberley were allowed to proceed under the old law (the law in effect prior to January 1, 2006), the TCEQ cannot issue a CCN in the absence of "the need for additional service in the requested area," or written requests by Wimberley to neighboring utilities like Aqua Texas to obtain service from existing sewer systems in the area. 30 TEX. ADMIN. CODE 291.102(d)(2); 30 TEX. ADMIN. CODE §§ 291.102(b)(2), (c). By failing to include even a single request for service, Wimberley did not make the threshold showing of demonstrated need for service needed to invoke the TCEQ's jurisdiction. Similarly, by failing to request service from Aqua Texas or other nearby utilities, Wimberley's Application failed to meet a fundamental, threshold requirement. Its facially-defective Application therefore failed to invoke the TCEQ's jurisdiction and must be dismissed for those independent reasons.

II. ARGUMENT AND AUTHORITIES

A. The TCEQ lacks jurisdiction to grant the Application under Section 13.2451.

Section 13.2451 *voids* any municipal CCN outside of a city's ETJ granted before January 1, 2006. An agency's jurisdiction is always "construed under the presumption that the Legislature

⁴ Dismissal is warranted on the grounds that TCEQ, as the referring agency, lacks of jurisdiction over the matter and that no statute or rule authorizes SOAH to conduct this proceeding. 1 TEX. ADMIN. CODE § 155.56(b)(1), (2).

never intends that the functions committed to the agency should be exercises in futility.” *Beaver Express Service, Inc. v. Railroad Comm’n*, 727 S.W.2d 768, 773-74 (Tex. App.—Austin 1987, writ denied) (citations omitted). The grant of Wimberley’s Application would be just such an exercise in futility. Under Section 13.2451, a CCN for including the area requested by Wimberley’s Application “*is void*.” TEX. WATER CODE § 13.2451(b). The TCEQ has recognized this fact in its rules adopted in response to Section 13.2451. The preamble to those rules states clearly that the TCEQ will consider applications like Wimberley’s that predate Section 13.2451 “*only [i]f they provide landowner consent for those areas*.” Exhibit E (emphasis added). If the TCEQ will not even consider applications like Wimberley’s, there is no jurisdiction on which this Court may proceed on its Application. Wimberley’s Application not only fails to demonstrate consent from the landowners in its requested CCN area, it clearly states that it has not even received *a single request for service* from the area. Exhibit D at 6. Wimberley’s November 7, 2006 Application amendment did not change this fact. Even after that amendment, Wimberley still seeks a CCN outside its ETJ for which it lacks landowner consent.

Section 13.2451 withdrew the TCEQ’s jurisdiction to grant CCNs like that requested by Wimberley. The purpose of Wimberley’s Application was only to beat the deadline set forth in H.B. 2876. However, even if it beat that deadline, the grant of Wimberley’s requested CCN amendment would be a nullity, because any such CCN would be *void ab initio*. The TCEQ recognized this fact when it stated that it would not process applications like Wimberley’s *regardless of when filed* in the absence of landowner consent. Exhibit E. The fact that Wimberley failed to produce any requests for service — much less landowner consent — by its November 7, 2006 amendment reinforces Aqua Texas’ jurisdictional complaint. Wimberley’s Application must be dismissed because: 1) the TCEQ lacks jurisdiction to grant the requested CCN amendment; 2) because no

statute or rule authorizes SOAH to conduct this proceeding; and, 3) because the TCEQ has itself stated that it will not process applications like Wimberley's. 1 TEX. ADMIN. CODE § 155.56(b)(1), (2).

B. No valid requests for service support Wimberley's Application.

In addition to applying for a CCN amendment that would be void *ab initio*, Wimberley's CCN Application is facially defective. Wimberley has thus failed to properly invoke the agency's jurisdiction. *Hager v. Carter*, 554 S.W.2d 956, 958-59 (Tex. Civ. App.—Texarkana 1977, no writ) (finding that “the courts of this State on numerous occasions have held that defective applications will not invoke or confer jurisdiction upon administrative agencies and that orders of an administrative agency pursuant to a defective application are void.”).

Among the issues the TCEQ must consider when it receives an application for a CCN is “the need for additional service in the requested area.” 30 TEX. ADMIN. CODE 291.102(d)(2). The TCEQ is barred from granting a CCN where the requested expansion is not “necessary for the service, accommodation, convenience, or safety of the public.” 30 TEX. ADMIN. CODE § 291.102(c). Not only has Wimberley failed to demonstrate such a need in this case, it has admitted that no one lives in the CCN area it requests and that no landowners or prospective landowners have requested service for the area. Exhibit D at 6. Wimberley's requested amendment is not “necessary for the service, accommodation, convenience, or safety of the public.” 30 TEX. ADMIN. CODE § 291.102(c). This is not a case where there is a dispute about whether there is *sufficient* need to justify a CCN. Here, there is *no need*. Wimberley's did not file its Application to satisfy an arguable need for service, but to beat the Legislature's deadline for withdrawal of TCEQ's jurisdiction to issue the CCN area requested. As submitted, Wimberley's Application is facially defective and affirmatively demonstrates that it is not entitled to its requested CCN amendment and must therefore be dismissed.

C. Wimberley failed to request service from neighboring utilities.

Wimberley's CCN Application is also facially defective because it failed to make written requests for service from each sewer service provider within a two mile area and to include copies of those requests and the responses received with its Application. 30 TEX. ADMIN. CODE § 291.102(b). Wimberley was required to make those requests because its Application was not for an expansion of the existing CCN it shares with GBRA, but instead for a new CCN in Wimberley's name alone. In other words, although incorrectly styled an "amendment," Wimberley in actuality seeks a new CCN by itself. Wimberley has thus failed to properly invoke the agency's jurisdiction, and its Application must be dismissed. *Hager*, 554 S.W.2d at 958-59.

Consistent with the Legislature's mandate for sewer system regionalization, Water Code Chapter 13 prefers issuance of CCNs to existing regional sewer service providers over new providers who must construct entirely new systems. TEX. WATER CODE § 13.241(d). Wimberley has not built a system to serve its existing CCN area, and has instead relied upon GBRA to do so. GBRA has failed in that task. As a result, only a tiny portion of potential sewer customers within the GBRA/Wimberley existing CCN area are presently receiving sewer service. Now Wimberley, which lacks the financial, managerial and technical capability to build and operate a system to serve the customers in its shared CCN with GBRA, seeks a new CCN to serve additional customers outside its ETJ by itself.

To carry out the Legislature's regionalization mandate, the Water Code requires an applicant like Wimberley to prove that service from another existing sewer utility in the area is not economically feasible as part of a CCN application. TEX. WATER CODE § 13.241(d). It also requires the TCEQ to consider the effect that granting a CCN would have on retail public utilities of the same kind already serving the proximate area. TEX. WATER CODE § 13.246(c)(3). These requirements

are further developed by the TCEQ's rules. Those rules require CCN applications like Wimberley's to include, among other items:

(1) a list of all . . . sewer systems within a two-mile radius of the proposed system;

(2) copies of written requests seeking to obtain service from each of the . . . sewer systems or [a] demonstrat[ion] that it is not economically feasible to obtain service from a neighboring . . . sewer system; [and,]

(3) copies of written responses from each of the systems from which written requests for service were made or evidence that they failed to respond.

30 TEX. ADMIN. CODE § 291.102(b)(1) – (3). When fulfilled, these requirements ensure that existing regional providers like Aqua Texas get the first opportunity to serve new nearby customers. They also ensure that new customers pay the lower rates associated with expanding existing systems, rather than building entirely new systems. Of those three requirements, Wimberley only fulfilled the first. The only relevant information contained in the Application is a simple “List of Neighboring Utilities.” See Exhibit F. It cannot be disputed that Wimberley's Application does not comply with 30 TEX. ADMIN. CODE §§ 291.102(b)(1)-(3). Because Wimberley's Application is facially defective and fails to invoke the TCEQ's jurisdiction, it must be dismissed.

III. PRAYER

For the forgoing reasons, Aqua Texas respectfully requests that Wimberley's Application be dismissed on the grounds that the TCEQ lacks of jurisdiction over it and that no statute or rule authorizes SOAH to conduct this proceeding.

Respectfully submitted,

HAZEN & TERRILL, P.C.

By: 

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ATTORNEYS FOR AQUA UTILITIES, INC. AND
AQUA DEVELOPMENT, INC., D/B/A AQUA
TEXAS, INC.

CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2006, a true and correct copy of the foregoing has been served on the following as indicated:

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June 24, 2002

Mr. Mark H. Zeppa, Esq.
Law Offices of Mark H. Zeppa, P.C.
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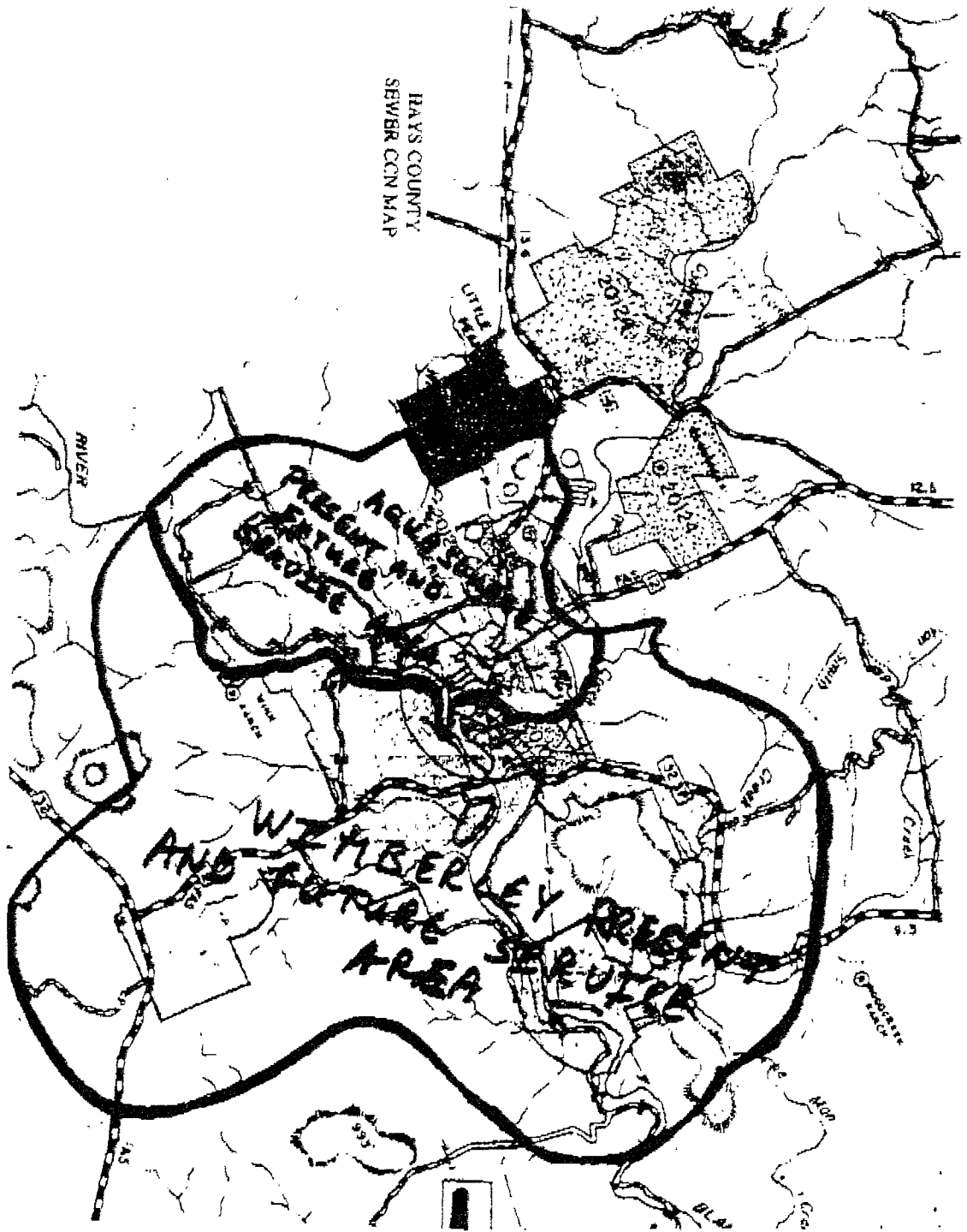
RE: *Application by Village of Wimberley to Obtain a Sewer Certificate of Convenience and Necessity in Hays County*; SOAH Docket No. 582-01-3914; TNRCC Docket No. 2001-00845-UCR

Dear Mr Zeppa:

The Village of Wimberley ("Wimberley") has authorized me to place in writing the terms of Wimberley's and AquaSource Utility Inc.'s ("ASU") settlement agreement that the parties orally agreed to on June 19, 2002.

SETTLEMENT TERMS

1. Wimberley agrees to amend its application in the above-referenced proceeding to delete a portion of its requested service area. The area to be deleted is highlighted on the attached map and is referenced as ASU's present and future service area.
2. ASU agrees to withdraw its protest to Wimberley's sewer CCN application, as amended, per this settlement agreement. ASU also agrees to withdraw as party in the above-referenced proceeding with the understanding that ASU will continue to be included on the "Service List" to enable ASU to monitor the proceeding.
3. Wimberley agrees not to oppose ASU's CCN amendment for extended service corridors along FM 2325 and RR 12 and for new service areas at its WWTP and the Wimberley Senior Citizens Center.
4. ASU agrees not to oppose future applications by Wimberley to amend its sewer CCN, so long as the requested service area in any such CCN amendment application, is located within the area delineated on the attached map as Wimberley's present and future service area.



INTERLOCAL AGREEMENT BETWEEN THE GUADALUPE-BLANCO
RIVER AUTHORITY AND THE VILLAGE OF WIMBERLEY

STATE OF TEXAS §
 §
COUNTY OF HAYS §

This Interlocal Agreement ("Agreement") is entered into as of the 2nd day of April, 2002 (the "Effective Date") by and between the GUADALUPE-BLANCO RIVER AUTHORITY ("GBRA") a conservation and reclamation district and political subdivision of the State of Texas created pursuant to Article XVI, Section 59 of the Texas Constitution by special act of the Legislature formerly compiled at Article 8280-106, Vernon's Annotated Civil Statutes and the VILLAGE OF WIMBERLEY, Texas ("WIMBERLEY"), each organized and existing under Texas law and acting in a lawful manner through their authorized representatives.

RECITALS

WHEREAS, WIMBERLEY and the GBRA desire to enter into an interlocal cooperation agreement in accordance with the terms and provisions of Chapter 791, Texas Govt. Code ("Interlocal Cooperation Act"); and

WHEREAS, Texas law allows governmental entities to enter into interlocal agreements to increase the efficiency and effectiveness of local governments by authorizing them to contract with one another; and

WHEREAS, WIMBERLEY has applied for a Certificate of Convenience and Necessity ("CCN") to provide retail sewer service for the residents and businesses within the requested area covered by the CCN; and

WHEREAS, WIMBERLEY desires to have the GBRA develop, design, finance, construct, permit, operate and maintain sewer facilities on behalf of WIMBERLEY; and

WHEREAS, WIMBERLEY has determined that contracting with the GBRA to operate and maintain sewer facilities on behalf of WIMBERLEY will increase the efficiency and effectiveness of the retail sewer service provided to its residents and businesses; and

WHEREAS, the GBRA has reviewed the needs of WIMBERLEY and determined that it can efficiently and effectively develop, design, finance, construct, permit, operate and maintain sewer facilities in the service area of WIMBERLEY's CCN; and

WHEREAS, WIMBERLEY and the GBRA have heretofore entered into that certain agreement dated April 2, 2002 (the "Operating Agreement") wherein GBRA has agreed to develop, design, finance, permit, construct, operate and maintain a sewer

system to provide retail sewer service to residents and businesses located within WIMBERLEY's CCN service area.

WHEREAS, WIMBERLEY's City Council has reviewed and voted to accept the terms of this Agreement by a duly constituted quorum of the City Council at a properly noticed and called meeting of the City Council; and

WHEREAS, the Board of Directors of the GBRA has reviewed and voted to accept the terms of this Agreement by a duly constituted quorum of the GBRA Board at a properly noticed and called meeting of the GBRA Board.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the parties hereby agree as follows:

1. Definitions

"WIMBERLEY". The term WIMBERLEY refers to Village of Wimberley, the City Council of the Village of Wimberley and any and all officers and/or employees of the Village of Wimberley.

"CCN" or "Certificate of Convenience and Necessity". The terms CCN and Certificate of Convenience and Necessity refer to the CCN permit requested and to be issued by the Texas Natural Resource Conservation Commission to WIMBERLEY for the provision of retail sewer service to the Customers within the territorial boundaries of the CCN.

"Customer". The term Customer generally refers to any residential or business user of retail sewer service within the service area of WIMBERLEY's CCN.

"Services". The term Services refers to the retail sewer service provided by the GBRA to WIMBERLEY in accordance with the Operating Agreement.

2. Commitments of the GBRA

- (a) In consideration of the mutual covenants contained herein, and upon approval of the Operating Agreement by GBRA and WIMBERLEY, GBRA will, in accordance with the terms and conditions of said agreement, develop, design, finance, permit and construct any and all capital improvements necessary to own, operate and maintain sewer facilities for WIMBERLEY and to provide retail sewer service to Customers within the service area of WIMBERLEY's CCN.
- (b) GBRA agrees to support WIMBERLEY's Application for a CCN with technical and legal support services; provided, however, GBRA shall have

the right to provide input to WIMBERLEY on all material issues relating to WIMBERLEY's Application for a CCN and should WIMBERLEY and GBRA fail to reach agreement on any such material issue, GBRA shall have the sole and exclusive right and discretion to withdraw its legal and technical support services of WIMBERLEY's Application for a CCN.

3. Commitments of WIMBERLEY

In consideration of the mutual covenants contained herein, and in accordance with the terms and conditions of the Operating Agreement, WIMBERLEY hereby agrees to provide GBRA with the exclusive right to service any and all Customers within the service area of WIMBERLEY's CCN for the provision of Services for so long as this Agreement and the Operating Agreement are in effect.

4. Compensation

Compensation paid by WIMBERLEY and Customers to GBRA for the development, design, financing, permitting, construction, operation and maintenance of the sewer facilities shall be in accordance with the Operating Agreement.

5. Term of the Agreement

The term of this Agreement shall commence on the Effective Date and continue in effect for so long as the Operating Agreement remains in effect.

6. Termination of the Agreement

Neither Party shall have the right to terminate this Agreement for so long as the Operating Agreement remains in effect. This Agreement shall terminate upon the termination of the Operating Agreement.

7. Indemnification

ONLY TO THE EXTENT PERMITTED BY TEXAS LAW, EACH PARTY SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE OTHER PARTY, ITS OFFICIALS, OFFICERS, TRUSTEES, AGENTS, AND EMPLOYEES, BOTH PRESENT AND FUTURE, FROM ANY CLAIMS, EXPENSES, COSTS (INCLUDING, BUT NOT LIMITED TO, ALL COSTS OF DEFENSE, SUCH AS FEES AND CHARGES OF ATTORNEYS, EXPERT WITNESSES AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS), DEMANDS, JUDGMENTS, CAUSES OF ACTION, SUITS OR LIABILITY OF ANY NATURE, INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR BODILY INJURY, DEATH AND PROPERTY DAMAGE WHICH MAY ARISE FROM THE NEGLIGENT OPERATION OF THE SEWER FACILITIES. THIS

INDEMNIFICATION OBLIGATION SHALL SURVIVE THE TERMINATION
OF THE AGREEMENT.

8. No Liability for Torts

Each Party to this Agreement agrees that it shall have no liability for the actions or omissions of the employees, agents, or trustees of the other Party, and each Party is solely responsible for the actions and omissions of its own employees, trustees, or agents. Each Party specifically waives any claim, obligation, or cause of action for the tortious conduct of the other Party.

9. Amendments to Agreement

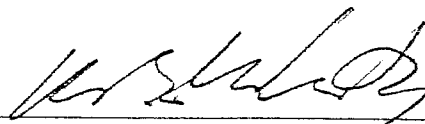
This Agreement can only be amended in writing by mutual agreement of the Parties.

10. Severability

All provisions to this Agreement are declared to be severable, in the event that any one section or provision is held to be illegal or unconstitutional.

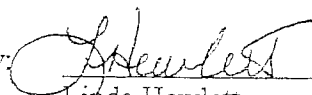
IN WITNESS WHEREOF, the undersigned Village of Wimberley, Texas and the Guadalupe-Blanco River Authority hereto, through their authorized representatives, execute this Interlocal Agreement in duplicate.

GUADALUPE-BLANCO RIVER AUTHORITY

By: 
William E. West, Jr., General Manager

Date: 4/15/02

VILLAGE OF WIMBERLEY, TEXAS

By: 
Linda Hewlett
Mayor

Date: April 2, 2002

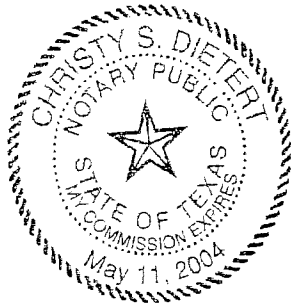
STATE OF TEXAS

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COUNTY OF GUADALUPE

BEFORE ME, the undersigned, a Notary Public in and for said State, on this day personally appeared William E. West, Jr., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the GUADALUPE-BLANCO RIVER AUTHORITY, a conservation district and political subdivision, and that he executed the same as the act of such conservation district and political subdivision for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 15th day of April, 2002.



Christy S. Dieters
Notary Public
The State of Texas

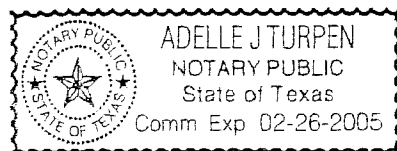
STATE OF TEXAS

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COUNTY OF HAYS

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Linda Hewlett known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the Village of Wimberley, and that she executed the same as the act of the Village of Wimberley for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 2nd day of April, 2002.



Adelle J. Turpen
Notary Public
The State of Texas



OPERATING AGREEMENT BETWEEN
VILLAGE OF WIMBERLEY, TEXAS
AND
GUADALUPE-BLANCO RIVER AUTHORITY

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OPERATING AGREEMENT BETWEEN
VILLAGE OF WIMBERLEY, TEXAS
AND
GUADALUPE-BLANCO RIVER AUTHORITY

This Operating Agreement Between Village of Wimberley, Texas and Guadalupe-Blanco River Authority (this "Operating Agreement") is made and entered into as of the 2nd day of April, 2002, (the "Effective Date") by and between the Village of Wimberley, Texas ("Wimberley"), and the GUADALUPE-BLANCO RIVER AUTHORITY ("GBRA"), a conservation and reclamation district and political subdivision of the State of Texas created pursuant to Article XVI, Section 59 of the Texas Constitution by special act of the Legislature, formerly compiled at Article 8280-106, Vernon's Annotated Civil Statutes.

RECITALS

Wimberley has applied for a Sewer Certificate of Convenience and Necessity which will authorize Wimberley to provide retail sewer service within the territory shown by the map attached as Exhibit 1 (the "Wimberley Service Area").

This Operating Agreement provides for the development, permitting, design, construction operation and maintenance of a Wastewater Project by GBRA for Wimberley for retail sewer service to Users within the Wimberley Service Area.

AGREEMENT

For and in consideration of the mutual promises, covenants, obligations, and benefits described in this Operating Agreement, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, GBRA and Wimberley agree as follows:

ARTICLE I

DEFINITIONS

"Annual Debt Service Requirement" means the total principal and interest scheduled to come due on all Bonds during each twelve month period ending on August 31 of each year, plus a debt service coverage factor as determined by GBRA and provided by the Bond Resolution but not to exceed 10% of such principal and interest unless GBRA and Wimberley mutually agree upon a greater percentage, less interest to be paid out of Bond proceeds as permitted by the applicable Bond Resolution, if any.

"Annual Operation and Maintenance Requirement" for a project means the total amount budgeted by GBRA for each twelve month period ending on August 31 of each year to pay all estimated Operation and Maintenance Expenses for that project.

"Annual Miscellaneous Bond Requirement" means the total amount determined by GBRA for each twelve month period ending on August 31 of each year to be required to pay the following:

- (1) the amount of any debt service reserve and contingency funds required to be established and maintained by the provisions of the Bond Resolution which are not otherwise provided from proceeds of Bonds;
- (2) an amount in addition thereto sufficient to restore any deficiency in any of such funds required to be accumulated and maintained by the provisions of the Bond Resolution;
- (3) any amounts due under a reimbursement agreement between GBRA and any credit facility provider providing a credit facility issued to cause the balance on deposit in any debt service reserve funds to satisfy the requirements of the Bond Resolution; and
- (4) any charges of the bank or banks where the Bonds are payable.

"Bonds" means all bonds and other obligations issued and outstanding from time to time by GBRA to finance or refinance the costs of construction, acquisition, repair, improvements and upgrading related to a project and any extension, expansion, maintenance, repair, improvement, upgrade or other modification of that project including, without limitation of the generality of the foregoing, any costs necessary or desirable to maintain or increase the capacity of the project and comply with applicable laws, rules and regulations.

"Bond Resolution" means the resolution or resolutions approved by the Board of Directors of GBRA which authorize the issuance of each series of Bonds, including all amendments related thereto.

"Operation and Maintenance Expenses" for a project means all costs and expenses of operation and maintenance of that project, including (for greater certainty but without limiting the generality of the foregoing) repairs and replacements which are not paid from a special fund created in the Bond Resolutions or other project debt instruments, employee salaries, benefits and other expenses, the cost of utilities, the costs of supervision, engineering, accounting, auditing, legal services, other services, supplies, charges by GBRA for administrative and general expenses, and equipment necessary for proper operation and maintenance of the project.

"Other Customers" means any customer of GBRA's for wastewater service from the Wastewater Project other than Users, as identified in Section 2.9 of this Operating Agreement, regardless of when GBRA and the customers enter into the contract for such wastewater service.

"Project" at any time means the Wastewater Project, together with any and all extensions, expansions or other modifications, as it or they exist at that time.

"Termination Date" means the expiration date of the term of this Operating Agreement, as defined in Section 6.1 of this Operating Agreement.

"TNRCC" means the Texas Natural Resource Conservation Commission.

"User" means any person within the Wimberley Service Area to which GBRA provides retail sewer service on behalf of Wimberley. Wimberley may be a User.

"Wastewater Service" means retail sewer service.

"Wimberley Service Area" means that area included within Wimberley's CCN as approved by the Texas Natural Resource Conservation Commission and shown on the map attached as Exhibit 1.

ARTICLE II

WASTEWATER PROJECT

Section 2.1 Description of the Wastewater Project.

The wastewater system (the "Wastewater System") will consist of a wastewater treatment plant, collection and holding facilities, facilities to convey the treated effluent to the point of discharge or place of use or other disposal, meters, valves, telemetry equipment and ancillary facilities necessary or desirable to collect domestic wastewater generated by Users within the Wimberley Service Area, to store and treat that wastewater, and to store, convey and discharge or use or otherwise dispose of such treated effluent. The "Wastewater Project" consists of the Wastewater System and all lands and interests in lands necessary or desirable for the construction, operation and maintenance of the Wastewater System. The Wastewater Project will be further described by one or more maps and facility plans to be developed by GBRA showing the general locations and the routings of major facilities comprising the Wastewater System.

Section 2.2 GBRA's Responsibilities.

(a) GBRA shall be responsible for the development, design, permitting, financing, acquisition, construction, operation and maintenance of the Wastewater Project. GBRA will comply with all Wimberley ordinances in the construction and maintenance of the Wastewater Project. GBRA may assign or subcontract all or any part of such responsibilities.

(b) GBRA will develop a master plan, including capital improvements necessary for construction of the Wastewater Project, connection fees and criteria, and a rate plan including debt service requirements for wastewater operations within Wimberley's CCN, and will submit the plan to Wimberley for approval prior to commencement of construction, which approval shall not be

unreasonably withheld, and which rate plan shall be sufficient to recover all costs of the construction, operation, and maintenance of the Wastewater Project. Thereafter GBRA will offer retail sewer service to Users and Other Customers based on their meeting these conditions.

(c) Notwithstanding anything in this Operating Agreement to the contrary, GBRA shall be under no obligation to proceed with the development, design, permitting, financing, acquisition, construction, operation or maintenance of the Wastewater Project unless and until GBRA determines, after consultation with Wimberley, that it is economically and otherwise feasible for it to do so.

(d) GBRA will select and retain all legal, financial, engineering and other consultants that GBRA determines are necessary or desirable for GBRA to satisfy its obligations under this Operating Agreement. GBRA will consult with Wimberley regarding the employment of all consultants.

(e) GBRA, on behalf of Wimberley, will provide all management and operations functions for the Wastewater Project, including accounting, billing, collections, and customer service for the Wastewater Project.

Section 2.3 Ownership of Wastewater Project.

(a) Except as provided otherwise in subsection (b) and (c), below, GBRA shall own the Wastewater System and all lands and interests in land comprising the Wastewater Project, and may transfer title to the Wastewater System and/or any lands and interests in land comprising a portion of the Wastewater Project to any person.

(b) Wimberley shall have the exclusive right to purchase that portion of the Wastewater Project located within the Wimberley Service Area subject to the following terms and conditions:

- (i) any conditions of a Bond issue or bondholder rights;
- (ii) full payment of all debt instruments issued to finance the Wastewater Project, if any such debt remains unpaid at the time Wimberley decides to purchase that portion of the Wastewater Project located within the Wimberley Service Area;
- (iii) the purchase price of that portion of the Wastewater System located within the Wimberley Service Area shall be the depreciated value of said Wastewater System at the time that Wimberley exercises its exclusive right to purchase;
- (iv) the purchase price for land and interests in land shall be the fair market value at the time that Wimberley exercises its exclusive right and option to purchase; and

- (v) the purchase price of wastewater systems donated to GBRA shall have a value of \$1.00 for the purposes of establishing the value for resale, provided however, any improvements to said wastewater system made by GBRA shall be based on the depreciated value and any land and interest in land shall be valued for resale at the fair market value.
- (vi) if Wimberley purchases that portion of the Wastewater Project located within the Wimberley Service Area within the first fifteen (15) years after the Effective Date of this Operating Agreement, the parties agree that GBRA will continue and shall have the exclusive right to operate the Wastewater System until the expiration of said fifteen (15) year period or five (5) years after the date of the purchase, whichever is greater. If Wimberley purchases the Wastewater Project after said fifteen (15) year period, then the parties agree that GBRA will continue and shall have the exclusive right to operate the Wastewater System for a period of five (5) years after the closing of Wimberley's purchase, it being the intent and agreement of the parties hereto that GBRA shall have the exclusive right to operate the Wastewater System for a period not less than fifteen (15) years and no less than five (5) years beyond the date of closing, whichever is greater.
- (vii) if Wimberley has not purchased that portion of the Wastewater Project located within the Wimberley Service Area prior to the termination of this Operating Agreement, Wimberley shall promptly, thereafter transfer Wimberley's CCN to GBRA at no cost to GBRA.

Section 2.4 Project Management Committee.

GBRA will create a Project Management Committee, comprised of two members appointed by GBRA and two members appointed by Wimberley, to provide recommendations to GBRA regarding preliminary design and cost estimates, plant site locations, issues related to methods of treatment and discharge alternatives, preparation of plans and specifications, process design, financing and service fees and rates, and other matters related to operation of the Wastewater System.

Section 2.5 Preliminary Design and Cost Estimate.

GBRA will prepare and provide to Wimberley copies of a preliminary design and cost estimate of the Wastewater Project and criteria and proposed service agreements for review and approval. Such approval shall be provided in writing and shall not be unreasonably withheld or delayed. GBRA will then proceed with final design, acquisition, and construction of the Wastewater Project as Users and Other Customers request service and meet criteria

If Wimberley notifies GBRA that Wimberley does not provide approval and the parties cannot reach an agreement within 30 days after such notice, GBRA, at its sole discretion shall have the right to terminate this Operating Agreement.

Section 2.6 Preparation of Plans and Specifications: Competitive Bids.

GBRA will cause to be prepared plans, specifications, cost estimates and contract documents for construction of all facilities comprising the Wastewater System. GBRA will prepare and provide to Wimberley copies of such plans, specifications, cost estimates and contract documents for review and approval. Such approval shall be provided in writing and shall not be unreasonably withheld or delayed. GBRA will then proceed with final design, acquisition, financing and construction of the Wastewater Project as Users and Other Customers request service and meet criteria.

If Wimberley notifies GBRA that Wimberley does not provide approval and the parties cannot reach an agreement within 30 days after such notice, GBRA, at its sole discretion shall have the right to terminate this Operating Agreement.

Plans and specifications for any portion of the Wastewater System shall be subject to approval by the GBRA General Manager, after which GBRA will advertise for competitive bids for construction of that portion and GBRA shall determine which construction bid or bids to accept. GBRA will prepare and provide to Wimberley copies of such construction bids for review and approval. Such approval shall be provided in writing and shall not be unreasonably withheld or delayed. If Wimberley notifies GBRA that Wimberley does not provide approval and the parties cannot reach agreement within 30 days after such notice, GBRA, at its sole discretion shall have the right to terminate this Operating Agreement. However, if Bonds are outstanding on the Wastewater Project, GBRA may approve construction bids without Wimberley's approval.

Section 2.7 Financing of Wastewater Project.

(a) GBRA may finalize the terms and conditions (including maturity) of GBRA's Bonds necessary to finance the design, acquisition, construction and testing of all facilities, lands and interests in lands comprising the portion of the Wastewater Project being constructed. GBRA will prepare such data, materials and documents as may be necessary to facilitate the sale and delivery of the Bonds, and Wimberley agrees to furnish GBRA with such data, projections and related information as may reasonably be required by GBRA in the sale of the Bonds in compliance with all applicable laws, rules and regulations. In addition to the amounts paid under the construction contract or contracts, the proceeds of the Bonds will also be used to pay additional costs such as Wastewater Project development costs (including, without limitation, preliminary engineering costs, employee salaries, benefits and other expenses, legal, and other advisory fees, charges by GBRA for administrative and general expenses, insurance premiums, if any, and any other costs incurred in developing and pursuing information, contracts and permit applications related directly to the Wastewater Project), land acquisition costs, interest during construction, employee salaries, benefits and other expenses, printing costs, engineering, legal, financial and other advisory fees, charges by GBRA for administrative and general expenses, insurance premiums, if any, and any other costs

incurred in the issuance of the Bonds and in the design, acquisition, construction and testing of the facilities, lands, and interests in lands comprising the Wastewater Project.

(b) GBRA shall be authorized from time to time to issue Bonds to refund outstanding Bonds or to meet regulatory or compliance requirements. GBRA shall consult with Wimberley prior to issuance of any such debt. Such refunding Bonds may be issued without approval from Wimberley.

Section 2.8 Extensions or Other Modifications of Wastewater Project.

GBRA may extend, expand, maintain, repair, improve, upgrade or otherwise modify the Wastewater Project from time to time, as it determines to be necessary or desirable. GBRA shall be authorized from time to time to issue Bonds for any such expansion, maintenance, repair, improvement, upgrade or other modification of the Project. GBRA shall consult with Wimberley regarding any such Bond sale. Such Bonds may be issued without approval from Wimberley provided such debt is used to finance facilities necessary for service to Users within the Wimberley Service Area.

Section 2.9 Other Customers.

GBRA may utilize all or any portion of the Wastewater Project to provide wastewater service to Other Customers located outside the Wimberley Service Area, provided such wastewater service is approved in advance by Wimberley, and provided further that Wimberley has the first right to amend its CCN to expand its service area and to provide wastewater service to any Other Customer outside the Wimberley Service Area.

ARTICLE III

WASTEWATER SERVICE

Section 3.1 Commencement of Service.

After completion of construction of the Wastewater Project, GBRA shall provide retail sewer service to Users within the Wimberley Service Area, subject to the limitations provided in this Operating Agreement.

Section 3.2 Acceptable Wastes.

GBRA shall not be required to accept into the Wastewater System any kind or character of wastes other than domestic wastes as such term is defined by TNRCC. No other kind or character of wastes may be generated or disposed of within the Wimberley Service Area. Wimberley agrees to impose by ordinance or other lawful means, to the extent Wimberley has the authority, requirements by which those who own or occupy lands within the Wimberley Service Area are required to comply with the restriction set forth above in this Section 3.2.

Section 3.3 Preferred Service.

Wimberley agrees that, unless GBRA agrees otherwise in writing, the preferred means of disposing of wastewater generated by Users within the Wimberley Service Area shall be pursuant to wastewater service provided by GBRA utilizing the Wastewater Project developed under this Operating Agreement.

Nothing in this Operating Agreement shall require a user of an onsite wastewater treatment system which is in existence prior to the date that wastewater service is available or an onsite wastewater treatment system that complies with ordinances and regulations of Wimberley and which is approved by Wimberley to connect to the Wastewater Project.

Wimberley agrees to impose by ordinance or other lawful means, to the extent Wimberley has the authority, requirements by which those who own or occupy lands within the Wimberley Service Area are required to comply with the restriction set forth above.

Section 3.4 User Service.

Wimberley may prepare and provide to GBRA reports raising User service issues with GBRA on behalf of Wimberley and its ratepayers. GBRA agrees to make reasonable efforts to address the issues raised in the reports and to reasonably respond to Wimberley and its' ratepayers.

ARTICLE IV

PERMITTING AND OTHER REGULATORY REQUIREMENTS

Section 4.1 Applicable Laws and Regulations.

This Operating Agreement is subject to all applicable federal, state, and local laws and any applicable ordinances, rules, orders, and regulations of any local, state, or federal governmental authority having jurisdiction. This Operating Agreement is specifically subject to all applicable sections of the Texas Water Code and the rules of the TNRCC, or any successor agency, and to all applicable requirements of Hays County.

Section 4.2 Cooperation.

(a) Wimberley agrees to cooperate with and support GBRA in pursuing all permits and approvals that GBRA determines to be necessary or desirable for the Wastewater Project to complete and file all required reports, and to comply with all applicable laws, rules and regulations.

(b) Without limiting the generality of and in addition to the requirements set forth in subsection (a), above, Wimberley expressly agrees to support the following:

- (1) an application filed for a certificate of convenience and necessity, in the name of Wimberley, providing for the retail sewer service by GBRA within the Wimberley Service Area pursuant to the terms of this Operating Agreement, and
- (2) an application or applications by GBRA for authorization under state and federal law to discharge and/or reuse or otherwise dispose of treated effluent derived from wastewater generated from Users located within the Wimberley Service Area, provided any application requesting authorization to discharge into a private or public body of water shall, prior to filing such application, be presented, considered and approved by Wimberley.
- (c) Wimberley agrees to cooperate with and support GBRA in promoting ordinances and regulations that provide for alternative development methods which protect natural resources, including the reuse of wastewater within the Wimberley Service Area.

Section 4.3 Operating Agreement Conditioned upon Permitting.

(a) GBRA's obligations under this Operating Agreement are expressly conditioned upon GBRA and Wimberley obtaining the necessary permits, amendments to permits, licenses and other governmental authorizations to allow the construction, operation and maintenance of the Wastewater Project, and to provide retail sewer service to Users within the Wimberley Service Area as provided herein.

(b) Without limiting the generality of the condition set forth in subsection (a), above, and in addition to that condition, GBRA's obligations under this Operating Agreement are expressly conditioned upon:

- (1) the granting of Wimberley's application for a certificate of convenience and necessity providing for retail sewer service by GBRA on behalf of Wimberley within the Wimberley Service Area pursuant to the terms of this Operating Agreement; and

- (2) Wimberley remaining legally incorporated.

(c) If for any reason, construction on the Wastewater Project has not started before January 1, 2005, either party may terminate this Operating Agreement by giving written notice of termination to other party so long as no Bonds have been issued for the Wastewater Project.

Section 4.4 Development Within the Wimberley Service Area.

(a) Wimberley agrees that the provision of retail sewer service to Users within the Wimberley Service Area under this Operating Agreement shall be conditioned on compliance, in the design, construction and operation of any building, facility, development or other improvement on

such lands or other use of or activities on such lands, with all federal, state and local laws, rules and regulations relating to land use or protection of the environment or natural resources including, without limitation, (i) protection of the quality of groundwaters or surface waters, (ii) regulation of the use of groundwaters or surface waters; (iii) recharge of aquifers, and (iv) drainage and flood control. Wimberley further agrees that GBRA shall have the right not to provide retail sewer service under this Operating Agreement for any lands if and for so long as there is any material non-compliance, in the design, construction or operation of any building, facility, development or other improvement on such lands or other use of or activities on such lands, with any such laws, rules or regulations. At GBRA's request from time to time, Wimberley shall demonstrate to GBRA compliance with the requirements of this Section 4.4. If Wimberley fails to demonstrate such compliance on any lands within the Wimberley Service Area and Wimberley has the authority to require compliance on such lands, then GBRA shall have available all remedies allowed by law including, without limitation, suspension or termination of this Operating Agreement, until Wimberley demonstrates that compliance has been achieved on such lands.

(b) Without limiting the generality of the requirements set forth in subsection (a), above, Wimberley shall insure, to the extent it has the authority to do so, that there is compliance with all requirements of Hays County relating in any way to development and use of lands within the Wimberley Service Area including, without limitation, compliance with all requirements to submit plats and obtain approvals thereof.

Section 4.5 Use of Wimberley's Public Rights of Way.

Wimberley grants GBRA the non-exclusive right and privilege to have, acquire, construct, expand, reconstruct, maintain, use and operate in, along, across, on, over, through, above and under the public rights of way of Wimberley, a Wastewater System to provide retail sewer service to Users within the Wimberley Service Area. GBRA will comply with uniform codes and ordinances adopted by Wimberley for use of Wimberley public rights of way. As used herein, the term "public rights of way" means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, easement or similar property in which Wimberley holds any property interest or exercises any rights of management or control and which, consistent with the purposes for which it was acquired or dedicated, may be used for the installation and maintenance of the Wastewater System. A reference in this Operating Agreement to a "public rights of way" shall not be a representation or guarantee by Wimberley that its interests or other rights in the property are sufficient to permit its use for the installation and maintenance of the Wastewater System and GBRA shall receive only those rights which Wimberley has the right and power to give.

Wimberley and GBRA agree to enter into a separate agreement governing the specific terms of GBRA's use of, occupancy of, and construction upon the Village's public right of way.

ARTICLE V

CHARGES AND FEES

Section 5.1 Connection Fees Charged to Users.

GBRA will develop fees to be charged to individual Users within the Wimberley Service Area for connecting to the Wastewater System, and shall present such fees to Wimberley for review and approval, which approval shall not be unreasonably withheld or delayed. Wimberley agrees to approve fees necessary to provide funds to support the Annual Debt Service Requirement and Annual Operation and Maintenance Requirement associated with the provision of wastewater to Users within the Wimberley Service Area. Such fees may be changed by the GBRA Board of Directors at any time and from time to time, provided, however, GBRA shall first provide Wimberley at least 30 days notice of any such proposed change. Wimberley shall have the right to assert rate or fee issues before GBRA on behalf of Users within the Wimberley Service Area.

Section 5.2 Charges to Users for Retail Sewer Service.

(a) The amount to be paid to GBRA by each User for retail sewer service each month will be charges for GBRA costs and services associated with the provision of retail sewer service to each User.

(b) GBRA will establish rates and other charges to be charged each User of the Wastewater System based on a cost-of-service methodology. These rates and other charges shall be adequate to permit the prompt payment of all costs of operation of the Wastewater System including the Annual Debt Service Requirement. These rates and charges may be changed by the GBRA Board of Directors at any time and from time to time.

(c) Wimberley agrees that GBRA shall be entitled to recover from all Users for the twelve month period ending on August 31 of each year not less than the product of 1.0 times the Total Annual Requirement (hereinafter defined) for that twelve month period. The "Total Annual Requirement" for each twelve month period ending on August 31 of each year shall be the sum of the following for that twelve month period: (1) the Annual Operation and Maintenance Requirement for the Wastewater Project; (2) the Annual Debt Service Requirement, if any, for the Wastewater Project; and (3) the Annual Miscellaneous Bond Requirements, if any, for the Wastewater Project.

(d) Not later than August 1 of each year, GBRA shall prepare and submit to Wimberley an estimated budget showing the estimated Total Annual Requirement for the twelve month period beginning September 1 of that year, and the estimated total revenues from Users during that twelve month period from the amounts charged such Users for the Wastewater Project.

(e) GBRA shall have the right to use all funds received by GBRA from Users under this Operating Agreement for any purpose related to providing wastewater service to Users within the Wimberley Service Area and any other lawful purpose approved by the GBRA Board of Directors.

Section 5.3 Fees Charged to GBRA.

Any fees that GBRA is required to pay in connection with the provision of retail sewer service shall be included as part of the Annual Operation and Maintenance Requirement for the Wastewater Project

ARTICLE VI

TERM OF AGREEMENT, EXTENSION, AND RIGHTS AFTER TERMINATION

Section 6.1 Term and Extension of Term.

(a) This Operating Agreement shall be effective as of the Effective Date and, unless it is terminated earlier pursuant to its terms, shall continue in effect until the Termination Date (as such date is defined initially under subsection (c), below, or as it may be extended pursuant to subsection (d) below), on which date this Operating Agreement shall terminate.

(b) From and after the Termination Date, GBRA shall have no obligation to operate the Wastewater System to provide retail sewer service to any User.

(c) The Termination Date shall be December 31, 2037, unless such date is extended pursuant to subsection (d) below.

(d) If all of the Wastewater Project debt instruments (including principal and interest) will not be fully paid by the Termination Date, then GBRA shall have the right, at any time before such date, to extend the Termination Date to December 31 of the year in which the Wastewater Project debt instruments are to be paid. Any extension by GBRA pursuant to this subsection shall be effective as of the date that GBRA gives Wimberley written notice of the extension.

Section 6.2 Rights after Termination.

Except as specifically provided otherwise in this Operating Agreement, all of the rights and obligations of the parties under this Operating Agreement shall terminate upon termination of this Operating Agreement, except that such termination shall not affect any rights or liabilities accrued prior to such termination.

ARTICLE VII

OTHER PROVISIONS

Section 7.1 Waiver and Amendment.

Failure to enforce or the waiver of any provision of this Operating Agreement or any breach or nonperformance by Wimberley or GBRA shall not be deemed a waiver by GBRA or Wimberley of the right in the future to demand strict compliance and performance of any provision of this Operating Agreement. No officer or agent of GBRA or Wimberley is authorized to waive or modify any provision of this Operating Agreement. No modifications to or rescission of this Operating Agreement may be made except by a written document signed by GBRA's and Wimberley's authorized representatives.

Section 7.2 Remedies.

It is not intended hereby to specify (and this Operating Agreement shall not be considered as specifying) an exclusive remedy for any default by either party, but all such other remedies existing at law or in equity including, without limitation, termination or suspension of service, may be availed of by either party and shall be cumulative. In no event shall either party be entitled to any monetary damages (including, without limitation, any consequential or indirect damages) or any other remedy other than specific performance for any default by either party under this Operating Agreement or for any claim brought against either party under this Operating Agreement or otherwise relating to the provision of retail sewer service by GBRA, and in no event shall either party be entitled to any attorneys fees, court costs or other expenses incurred by either party in bringing any suit alleging such default or claim.

Section 7.3 Force Majeure.

If for any reason of force majeure, either GBRA or Wimberley shall be rendered unable, wholly or in part, to carry out its obligations under this Operating Agreement, other than the obligation of Wimberley to make the payments required under the terms of this Operating Agreement, then if the party shall give notice of the reasons in writing to the other party within a reasonable time after the occurrence of the event, or cause relied on, the obligation of the party giving the notice, so far as it is affected by the force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period. The term "force majeure" as used in this Operating Agreement shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders or actions of any kind of government of the United States or of the State of Texas, or any civil or military authority, insurrections, riots, epidemics, land slides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accident to dams, machinery, pipelines, canals, or other structures, partial or entire failure of water supply including pollution (accident or intentional), and any inability on the part of GBRA to provide retail sewer service on account of any other cause not reasonably within the control of GBRA.

Section 7.4 Non-Assignability.

Neither Wimberley nor GBRA may assign this Operating Agreement without first obtaining the written consent of the other party.

Section 7.5 Entire Agreement.

Except for the right of way agreement referenced in Section 4.5 and the Interlocal Agreement of even date herewith, this Operating Agreement constitutes the entire agreement between GBRA and Wimberley and supersedes any prior understanding or oral or written agreements between GBRA and Wimberley respecting the subject matter of this Operating Agreement.

Section 7.6 Severability.

The provisions of this Operating Agreement are severable and if, for any reasons, any one or more of the provisions contained in the Operating Agreement shall be held to be invalid, illegal or unenforceable in any respect, the invalidity, illegality or unenforceability shall not affect any other provision of this Operating Agreement and this Operating Agreement shall remain in effect and be construed as if the invalid, illegal or unenforceable provision had never been contained in the Operating Agreement.

Section 7.7 Captions.

The sections and captions contained herein are for convenience and reference only and are not intended to define, extend or limit any provision of this Operating Agreement.

Section 7.8 No Third Party Beneficiaries.

This Operating Agreement does not create any third party benefits to any person or entity other than the signatories hereto, and is solely for the consideration herein expressed.

Section 7.9 Notices.

All notices, payments and communications ("notices") required or allowed by this Operating Agreement shall be in writing and be given by depositing the notice in the United States mail postpaid and registered or certified, with return receipt requested, and addressed to the party to be notified. Notice deposited in the mail in the previously described manner shall be conclusively deemed to be effective from and after the expiration of three (3) days after the notice is deposited in the mail. For purposes of notice, the addresses of and the designated representative for receipt of notice for each of the parties shall be as follows:

For GBRA:

Guadalupe-Blanco River Authority
Attention: General Manager
933 E. Court Street
Seguin, Texas 78155

And for Wimberley:

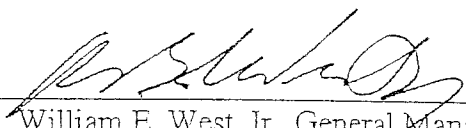
Village of Wimberley
Attention: Mayor
14500 Ranch Road 12, Suite 22
P.O. Box 2027
Wimberley, Texas 78676

Either party may change its address by giving written notice of the change to the other party at least fourteen (14) days before the change becomes effective.

In witness whereof, the parties hereto, acting under the authority of the respective governing bodies, have caused this Operating Agreement to be duly executed in multiple counterparts, each of which shall constitute an original.

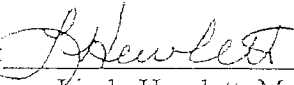
GUADALUPE-BLANCO RIVER AUTHORITY

By: _____


William E. West, Jr., General Manager

VILLAGE OF WIMBERLEY, TEXAS

By: _____


Linda Hewlett, Mayor

GENERAL OFFICE
953 Eas. Court Street
Seguin, Texas 78155
Phone 830-374-5822
800-431-5822
Fax 830-374-0718



GUADALUPE-BLANCO RIVER AUTHORITY

BUDA WASTEWATER
RECLAMATION
PLANT
575 County Road 236
Buda, Texas 78010
Phone 512-312-0526
Fax 512-312-0526

COLETO CREEK PARK
AND RESERVOIR
P.O. Box 68
Fannin, Texas 77960
Phone 361-575-6300
Fax 361-575-2267

LAKE WOOD
RECREATION AREA
167 FM 2091 South
Gonzales, Texas 78629
Phone 830-672-2779
Fax 830-672-2779

LOCKHART WATER
TREATMENT PLANT
547 Old McManan Road
Lockhart, Texas 78644
Phone 512-398-3528

LOCKHART
WASTEWATER
RECLAMATION
SYSTEM
4435 FM 20 East
Lockhart, Texas 78644
Phone 512-398-6391
Fax 512-398-2036

LULING WATER
TREATMENT PLANT
350 Memorial Drive
Luling, Texas 78648
Phone 830-875-2132
Fax 830-875-2132

PORT LAVACA
OPERATIONS
P.O. Box 146
Port Lavaca, Texas 77979
Phone 361-552-9751
Fax 361-552-6529

SAN MARCOS WATER
TREATMENT PLANT
91 Old Bastrop Road
San Marcos, Texas 78666
Phone 512-353-3888
Fax 512-353-3127

VICTORIA REGIONAL
WASTEWATER
RECLAMATION
SYSTEM
P.O. Box 2085
Victoria, Texas 77902-2085
Phone 361-578-2878
Fax 361-578-9039

GBRA WEBSITE
www.gbra.org

July 15, 2005
File 20 036 03 0703

Mr. Steve Harrison, City Administrator
Village of Wimberley
PO Box 2027
13210 RR 12
Wimberley, TX 78676

Dear Mr. Harrison:

Enclosed for your review is the Wimberley Wastewater Treatment Plant Work Plan and Budget for fiscal year 2006. This work plan is prepared in accordance with Section 5.2 (d) of the Operating Agreement which provides that GBRA furnish the Village of Wimberley an estimated budget no later than August 1st of each year.

If you have any questions concerning the information contained, please feel free to contact John Smith, Darel Ball or Fred Blumberg.

Sincerely,

Alvin Schuerg
Executive Manager of Finance and Administration

Enclosure

Copy to: Rickey Wright, Village of Wimberley
Fred Blumberg, GBRA
John Smith, GBRA
Darel Ball, GBRA



APPLICATION TO OBTAIN OR AMEND A WATER OR SEWER
CERTIFICATE OF CONVENIENCE AND NECESSITY (CCN)



GENERAL INFORMATION

*** THIS APPLICATION IS NOT A RATE CHANGE APPLICATION. THE APPROPRIATE FORMS NEEDED TO FILE A RATE CHANGE APPLICATION MAY BE OBTAINED BY CONTACTING THE UTILITIES AND DISTRICTS SECTION, TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ). ***

Pursuant to V.T.C.A., Water Code, Chapter 13, Subchapter G:

- ☐ CCNs *may be obtained* by any retail public water and sewer utility.
- ☐ CCNs *are required* for:
 - a) Investor Owned Utilities (IOU),
 - b) Non-profit, member-owned, member-controlled water supply or sewer service corporations (WSC) incorporated under Water Code Chapter 67, and
 - c) affected counties
- ☐ CCNs *may be required* for political subdivisions, except affected counties, before utility service can be provided to an area already lawfully being served.

A CCN gives the holder:

- ☐ the legal right to provide water and/or sewer utility service;
- ☐ for compensation, either directly through a monthly rate or indirectly through maintenance fees, property owners fees, etc.;
- ☐ a delineated service area; AND
- ☐ obligates the certificate holder to provide service to every customer and qualified applicant who requests service within that area.

A CCN is *not required* when service is either submetered pursuant to Water Code, Chapter 13, Subchapter M or included in the rental of the property.

IOUs and WSCs with 15 or less potential connections may register as "exempt" and then are not required to possess a CCN for their service area if they meet the exemption criteria.

If this application was downloaded from the TCEQ web site or sent via E-mail, it shall not be changed, altered or amended from its original form only available from the Commission.

PROCESSING YOUR CCN APPLICATION

FLOW CHART

Enclosed in this packet is a flow chart of the review process. Your application will go through an Administrative Review and, when accepted for filing, through a Technical Review. For uncontested applications, processing time depends on the response time of the applicant. Contested applications generally take longer because of the need for scheduling a public hearing, and processing time depends on whether a settlement agreement between the applicant and the protestor(s) is reached. The dates provided in the flow chart are generally the time it takes to process an uncontested application.

ADMINISTRATIVE REVIEW OF YOUR CCN APPLICATION

- ☐ Your application will be reviewed for completeness by the Commission staff within ten (10) working days after it is received in our offices.
- ☐ If necessary, you may be requested to provide additional information within thirty (30) days to complete the application.
- ☐ Proposed notice forms are included with the application.

- ☐ If the application is administratively incomplete, you will be sent a letter that outlines the application's deficiencies and describing what you need to do to correct the deficiencies.
 - a) After receiving that letter, you will have thirty (30) days to make the necessary corrections.
 - b) If you fail to make the corrections in full:
 - (a) the application will be returned.
 - (b) the application fee will be forfeited, and
 - (c) if you are already operating a system, you will be referred for enforcement action which may include administrative penalties of up to \$500 per day.

NOTICE

The Commission cannot grant a CCN until proper notice of the application has been given. It is the applicant's responsibility to ensure that proper notice is given. Notice forms for publication, neighboring cities and systems, and customers are included with this application to use in preparing your proposed notices. These notice forms are also available in Spanish upon request. If the applicant is an operating IOU currently providing service without a CCN, then proposed notices must be provided for publication, to neighboring cities and systems and current customers in the proposed service area. All three forms must be completed and submitted with the application. However, if the applicant has no customers in the proposed area at the time of filing and is only proposing to provide service at some future date, or if the applicant is a WSC or political subdivision, then only the notices for publication and neighboring cities and systems must be submitted. Do not publish the notice or send copies of the proposed notices or maps to anyone at the time you submit this application to the Commission. Your proposed notices and maps will be reviewed for completeness. When your application is accepted for filing, you will be directed to provide the appropriate notices for publication, to the neighboring cities and systems and, if necessary, to current customers.

TECHNICAL REVIEW OF YOUR CCN APPLICATION

When the application is complete, you will be notified by mail and be required

- ☐ to publish notice once each week for two (2) consecutive weeks in a newspaper of general circulation in your local area and county. If the proposed area is in more than one county, publication in each county is required;
- ☐ to provide a copy of the individual notice with copy of location map (CCN map) to neighboring cities and systems within:
 - a) two (2) miles of your proposed service area, if you are an existing retail public utility amending the existing service area; or
 - b) five (5) miles if you are obtaining a new CCN to serve a new service area; and
 - c) to provide individual mailed notice with copy of location map (CCN map) to all affected current customers if you are required to have a CCN but are currently providing service without a CCN.

If the application is technically incomplete, you will be sent a letter that outlines the application's deficiencies and describing what you need to do to correct the deficiencies.

- ☐ After receiving that letter, you will have thirty (30) days to make the necessary corrections.
- ☐ If you fail to make the corrections in full,
 - a) the application will be returned.
 - b) the application fee will be forfeited and
 - c) if you are already operating a system, you will be referred for enforcement action which may include administrative penalties of up to \$500 per day.

V.T.C.A. Water Code Section 13.246(c) requires the Commission to consider the following factors before it can issue a CCN:

- ☐ the adequacy of service currently provided to the requested area,
- ☐ the need for additional service in the requested area,

- ☐ the effect of the granting of a certificate on a recipient of the certificate and on any retail public utility of the same kind already serving the proximate area.
- ☐ the ability of the applicant to provide adequate service
- ☐ the feasibility of obtaining service from an adjacent retail public utility
- ☐ the financial stability of the applicant, including the adequacy of the applicant's debt-equity ratio.
- ☐ environmental integrity AND
- ☐ the probable improvement of service or lowering of cost to consumers in that area resulting from the granting of the certificate

In addition to these factors,

- ☐ the Commission must ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service AND
- ☐ the applicant must also demonstrate that regionalization or consolidation with another retail public utility is not economically feasible.

If there are no protests, you will be provided a copy of the technical staff recommendation and proposed CCN. If you have any questions or concerns, you should contact the technical staff person assigned to your application immediately. If you disagree with the staff recommendation and/or proposed CCN, the application will be considered contested, and a hearing may be requested.

If the application is contested and a hearing is requested, the application may be referred to the State Office of Administrative Hearings (SOAH). During the preliminary hearing, the presiding Administrative Law Judge (ALJ) may give the parties time to negotiate a settlement. Alternative Dispute Resolution (ADR) is available upon request of all of the parties. If a settlement is reached, the application will be remanded to staff for administrative processing. If a settlement is not reached, a discovery schedule and a date for an evidentiary hearing will be set. The ALJ will take testimony from each party and present a report to the Commission to consider in making a final decision on the application.

The completed application and copies should be sent to:

Texas Commission on Environmental Quality
 Registration, Review & Reporting Division
 Permits Administrative Review Section
 Water Quality Applications Team
 MC-156
 P. O. Box 13087
 Austin, TX 78711-3087

☆☆☆ THIS APPLICATION IS NOT A RATE CHANGE APPLICATION.
 THE APPROPRIATE FORMS NEEDED TO FILE A RATE CHANGE
 APPLICATION MAY BE OBTAINED BY CONTACTING THE UTILITIES
 AND DISTRICTS SECTION, TEXAS COMMISSION ON
 ENVIRONMENTAL QUALITY. ☆☆☆



APPLICATION TO OBTAIN OR AMEND A WATER/SEWER CERTIFICATE OF CONVENIENCE AND NECESSITY (CCN)

*RN # 03107546

*CI # 601642473

*If known (See instructions)

PURPOSE OF THIS APPLICATION

OBTAIN ☐ New Water CCN ☐ New Sewer CCN
AMEND ☐ Water CCN # _____ ☒ Sewer CCN # 20936

1. APPLICANT INFORMATION

Utility Name: Village of Wimberley
Utility Address (city/state/zip): P.O. Box 202
Wimberley, TX 78676
Utility Phone and Fax Number (512) 847-0025 Phone (512) 847-0422 Fax

Contact Person. Please provide information about the person to be contacted regarding this application. Indicate if this person is the owner, operator, engineer, attorney, accountant, or other title related to the applicant.

Name: Emily Rogers Title: Attorney
Address: 816 Congress Ave., Suite 1700 Telephone (512) 472-8021
City: Austin St: TX Zip: 78701 Fax: (512) 320-5638
County(ies) in which service is proposed: Hays

A. Provide the following information about the utility's certified operators

Name	Classes	License Number
See Attachment No. 1		

- Attach additional sheet(s) if necessary -

B. Check the appropriate box and provide information regarding the legal status of the applicant:

<input type="checkbox"/>	Investor owned utility
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Home or Property Owners Association
<input type="checkbox"/>	For-profit corporation
<input type="checkbox"/>	Non-profit, member-owned, member-controlled cooperative corporation (Water Code Chapter 67, Water Supply or Sewer Service Corporation)
<input checked="" type="checkbox"/>	Municipality
<input type="checkbox"/>	District
<input type="checkbox"/>	Other Please explain:

- C. If the applicant is a For-Profit Corporation. N/A
- i. Please provide a copy of the corporation's "Certification of Account Status" from the Texas State Comptroller of Public Accounts. See Note below.
 - ii. Please provide the corporation's charter number as recorded with the Office of the Texas Secretary of State _____.
- D. If the applicant is a Water Code Chapter 67 water supply or sewer service corporation or other non-profit corporation. N/A
- i. Please provide a copy of the Articles of Incorporation and By-Laws.
 - ii. Please provide the corporation's charter number as recorded with the Office of the Texas Secretary of State _____.

2. LOCATION INFORMATION

- A. Are there people already living in the proposed area?
YES _____ NO ✓ _____
If YES, are any currently receiving utility service?
YES _____ NO _____, if YES, from Whom _____.
- B. Have you received any requests for service in the requested service area?
YES _____ NO ✓ _____
If yes, please indicate the number of verbal and number of written requests and provide a clear explanation of the need for service in the requested area.
WRITTEN _____ VERBAL _____
On a separate page, list the name, address and phone number of persons requesting service. Include any letters of intent, service inquiries, and/or any other documentation demonstrating a need for service in the proposed area. Requests for service must be identified on the large scale map. See 2.E.1.a below.
If no, please justify the need for service in the proposed area.

There is a need for service for this area because the Ranch Road 12 bypass is being constructed through the area. Additionally, the Wimberley Independent School District intends to purchase part of the property to build another school. Finally, several of the properties in the requested area are partially located in Wimberley's existing CCN.

See also land use assumptions and populations projections in the Village of Wimberley Wastewater Masterplan - Final Report (June 2002), and Land Use Assumptions and Capital Improvements Plan for the Village of Wimberley Wastewater Treatment System - Technical Memorandum (January 2005) attached hereto as Attachment No. 10.

- C. Is any portion of the proposed service area inside an incorporated city?
YES _____ NO ✓ _____
If YES, within the city limits of: _____
Provide a copy of any franchise permit, or consent granted by the city. If not available, please explain: _____
- D. Is any portion of the proposed service area inside another utility's CCN area?
YES _____ NO ✓ _____
If YES, has the current CCN holder agreed to decertify the proposed area.
YES _____ NO _____
If NO, are you seeking dual or single certification of the area? Explain why decertification of the area is in the public interest.
- E. Attach the following maps with each copy of the application: (All maps should include applicant's name, address, telephone number, and date of drawing or revision. All maps should be folded to

- i. Subdivision plat or engineering plans or other large scale map showing the following:
- A. The exact proposed service area boundary showing locations of requests for service and locations of existing connections, if applicable.
 - ★ NOTE: Applicant may send their facility line map showing current connections (if available). Or, estimate the number of connections along each side of the street on the large scale map.
 - B. The existing service area (if applicable).
 - C. Metes and bounds (if available).
 - D. Proposed and existing service area boundaries should be plotted on the map in relation to verifiable natural and man-made landmarks such as roads, creeks, rivers, railroads, etc.
 - E. *Service area boundaries should be shown with such exactness that they can be located on the ground.*
 - ★ NOTE: *Applicant may use a USGS 7.5"-minute series map if no other large scale map is available.*
- ii. Small scale location map delineating the proposed service area. The proposed service area boundary should be delineated on a copy of the TCEQ official CCN map. This map will assist TCEQ staff in locating the proposed service area in relation to neighboring utility service areas. *A copy of the TCEQ official CCN map may be obtained by contacting the Utilities & Districts Section at 512-239-4691 or by mailing a written request to the following address.*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Water Supply Division
Utilities & Districts Section
MC-153
P O Box 13087
Austin, TX 78711-3087

★ NOTE: If the proposed service areas shown on the large scale map and small scale map do not delineate the same area, the more detailed large scale map will be used to delineate the official CCN service area.

- iii. Hard copy maps should include the following items:
- A. Map scale should be prominently displayed
 - B. Color coding should be used to differentiate the applicants existing service areas from the proposed service area.
 - C. Attach a written description of the proposed service area.
 - D. Proposed service area should be the same on all maps.
 - E. Include map information in digital format (if available), *see Section 5, GIS Information*

- iv. Each utility shall make available to the public at each of its business offices and designated sales offices within Texas the map of the proposed service area currently on file with the Commission. The applicant employees shall lend assistance to persons requesting to see a map of the proposed area upon request.

3. GIS INFORMATION

We are currently developing a state wide Geographic Information Systems (GIS) coverage of all CCN service areas. The mylar maps are being retired. In order to assist us in this move, we are requesting that a digital

file of the proposed CCN service area boundary, be submitted with the 3 hard copy maps. This is not a requirement. It is understood that not all utilities employ the services of an engineering company or use mapping software to produce a map of the proposed CCN service area boundary. However, by submitting the information digitally, the evaluation of your CCN will be faster and more accurate. Also, by receiving the information in digital form, it is easier for us to update and maintain the CCN GIS coverage.

See Attachment No. 3

A. Digital Map Requirements In order that your digital data can be properly used, the following information is necessary:

- i. Submit digital data of the proposed CCN service area on a 3.25" diskette or CD. Only one diskette or CD is necessary. Most files of CCNs (minus the base map) should be small enough to zip up and put on a diskette or CD.
- ii. The digital data should include all items represented in the hard copy maps (see Section 2, items E.i and E.ii).
- iii. Please identify data file format, projection information, map units and base map used.

Acceptable Data File Formats

ArcView shape file (preferred)

1. AutoCAD dwg file
2. Arc/Info E00 file
3. DXF file
4. Microstation dgn files

★ NOTE: If you use a format that is not listed, contact the Cartographer at the number listed below to see if we can use the data.

- a. **Projection, Datum, and Units Information** The data should be submitted in the Texas State Mapping System (TSMS) Projection. However, if it cannot be submitted in TSMS, list the Projection (e.g. State Plane Central Zone, NAD27) or coordinate system being used and Units (e.g. meters, feet, etc.)

- b. **Base Map Information**

List the base map used (e.g. TxDOT county digital road maps, USGS maps, etc.). Base map information should be included only if it has been produced in-house and is not easily available at most data repositories.

★ NOTE: TCEQ uses TxDOT county (urban) digital road maps as the official CCN base map. Copies of these files can be obtained from Texas Natural Resources Information Systems (TNRIS) at (512) 463-8337 or downloaded from the TNRIS website at: <http://www.tnris.state.tx.us/DigitalData/TxDOT/txdot.htm>

- c. **Read-me text file**

Data file format, base map used, projection and units information, and other necessary information can be specified in a read-me text file.

B. Important Information For those applicants that submit digital data:

- i. Please make sure the proposed service area boundary shown on the hard copy map is identical to the digital data. If the proposed service area shown on the digital data does not delineate the same area shown on the hard copy map, the hard copy map will be used to delineate the official CCN service area.
- ii. Modifications may be made to submitted digital data in order to match the proposed service area boundary to features represented on the TxDOT base map, as opposed to the same features used in the applicant's base map.
- iii. If an applicant proposes to amend a portion of their existing CCN service area, the existing service area shown on the digital data must match the official CCN service area that was previously certificated to the utility. If it does not, then only the proposed portion of the digital data will be used.

If you have any questions about sending the data or our GIS CCN coverage, please contact the Cartographer.

4. NEW SYSTEM INFORMATION OR UTILITIES REQUESTING A CCN FOR THE FIRST TIME

A Please provide the following information. A A

- i. A list of all public drinking water supply systems or sewer systems within a 2 mile radius of the proposed system.
- ii. Copies of written requests seeking to obtain service from each of the public drinking water supply systems or sewer systems listed in #4.a.i above or documentation that it is not economically feasible to obtain service from them.
- iii. Copies of written responses from each system or evidence that they did not reply.

B Were your requests for service denied?

- 1 If yes continue
11 If no, please provide a detailed analysis which justifies your reasons for not accepting service. A separate analysis must be prepared and submitted for each system that granted your request for service

C Please summarize how the proposed utility system will be constructed and describe each projected construction phase, if any: _____

D. Date of plat approval, if required: _____
 Approved by: _____

E. Date Plans & Specifications submitted for approval _____ Log No. _____
Attach copy of approval letter if available.

F. Date construction is scheduled to commence _____

G. Date service is scheduled to commence _____

5. EXISTING SYSTEM INFORMATION

A. Please provide the following information for each water and/or sewer system:

1. Water system's TCEQ Public Water System identification number:

--	--	--	--

--	--	--	--

11. Sewer system's TCEQ Discharge Permit number. (for each system)

W	Q	1	3	3	2	1	-	0	0	1	.	W	Q						-				
---	---	---	---	---	---	---	---	---	---	---	---	---	---	--	--	--	--	--	---	--	--	--	--

- iii. Date of last inspection November 28, 2001
- iv. Attach a copy of the most recent inspection report letter. *See Attachment No. 4*
- v. For each system deficiency listed in the inspection report letter, attach a brief explanation listing the actions taken or being taken by the utility to correct the listed deficiencies, including the proposed completion dates

Since the last inspection, the Village of Wimberley purchased the plant and the wastewater discharge permit was transferred to the Village and to the Guadalupe-Blanco River Authority. Both the Village and the GBRA are working to ensure the plant complies with its permit.

B Using the current number of customers, is any facility component in systems named in #5A above

operating at 85% or greater of minimum standard capacity? N/A

Yes No

Attach an explanation listing the actions to be taken to make system improvements including proposed completion dates (See 291.93(5)(A) of TCEQ Rules)

- C. List in the table below, the number of existing and/or proposed metered and non-metered connections (by size). The proposed number should reflect the information presented in the business plan and reflect the number of service requests identified in Question 2.b above.

Water System			Sewer System		
Connection	Existing	Proposed	Connection	Existing	Proposed
5/8" or 3/4" meter			Residential		
1" meter or larger			Commercial	1	
Non-Metered			Industrial		
Other:			Other:		1
Total Water			Total Sewer	1	1

See also Attachment No. 10.

- D. If this application is for a water CCN only, please explain how sewer service is provided:
N/A

- E. If this application is for a sewer CCN only, please explain how water service is provided:
Water service is provided by the Wimberley WSC or through private wells.

- F. What is the effect of the granting or amending a certificate on a recipient of the certificate and on any retail public utility of the same kind already serving the proximate area: There should be no effect on other utilities serving the proximate area because the territory Wimberley seeks is uncertificated. With respect to the Guadalupe-Blanco River Authority (GBRA), GBRA has the exclusive right to serve as Wimberley's contract operator and to provide sewer service in the Village's CCN. GBRA operates Wimberley's Blue Hole Wastewater Treatment Plant.

- G. Do you currently purchase or plan to purchase water or sewer treatment capacity from another source?

i. No ✓ (skip the rest of this question and go to #6)

ii. Water:

Yes

Purchased on a () regular - () seasonal - () emergency basis?

Source	% of total supply

- iii. Sewer treatment capacity

Yes

Purchased on a: regular - (seasonal) - (emergency) basis	
Source	% of total treatment

- iv. Provide a certified copy of the most current water or sewer treatment capacity purchase agreement or contract.

The Village of Wimberley has entered into an Interlocal Agreement and an Operating Agreement with the Guadalupe-Blanco River Authority (GBRA). Pursuant to these contracts, GBRA has agreed develop, design, permit, finance, acquire, construct, operate, and maintain the wastewater system for the Village of Wimberley. Certified copies of the agreements are included herein as Attachment No. 5.

6. FINANCIAL INFORMATION

- A. For new systems and for applicants with existing CCNs who are constructing a new stand alone system
- i. the applicant must provide an analysis of all necessary costs for constructing, operating, and maintaining the system for which the CCN is requested for at least the first five years. In addition, if service has been offered by an existing water service provider as stated in #4.A., but the applicant has determined that the cost of service as finally offered renders the project not economically feasible the applicant must provide a comparison analysis of all necessary costs for acquiring and continuing to receive service from the existing system for the same period.
 - ii. Attach projected profit and loss statements, cash flow worksheets, and balance sheets (projected five year financial plan worksheet is attached) for each of the first five years of operation. Income from rates should correlate to the growth projections in #6.A. above.
 - iii. Attach a proposed rate schedule or tariff. Describe the procedure for determining the rates and fees and indicate date of last change, if applicable. Attach copies of any cost of service studies or rate analysis worksheets.
- B. For existing systems. *See Attachments 6, 7 and 8.*
- i. Attach a profit and loss statement and current balance sheet for existing businesses (end of last fiscal year is acceptable). Describe sources and terms for borrowed capital such as loans, bonds, or notes (profit and loss and balance sheet worksheets are attached, if needed).
 - ii. Attach a proposed rate schedule or tariff.
- ★ NOTE: An existing system may be required to provide the information in 6 A.i. above during the technical review phase if necessary for staff to completely evaluate the application.
- C. Identify any funds you are required to accumulate and restrict by lenders or capital providers.
- D. In lieu of the information in #6.A. thru #6.C., you may provide information concerning loan approvals within the last three (3) years from lending institutions or agencies including the most recent financial audit of the applicant.

7. NOTICE REQUIREMENTS

- A. All proposed notice forms must be completed and submitted with the application. However, do not mail or publish them until you receive written approval from the Commission to do so.
- B. The Commission cannot grant a CCN until proper notice of the application has been given. Commission rules do not allow a waiver of these notice requirements.
- C. It is the applicant's responsibility to ensure that proper notice is given to all entities that are required to receive notice.

- I. Recommended notice forms for publication, neighboring cities and systems, and customers are included with this application to use in preparing your proposed notices. (These notice forms are also available in Spanish upon request.)
- E. After reviewing and, if necessary, modifying the proposed notice, the Commission will send the notice to the applicant after the application is accepted for filing along with instructions for publication and/or mailing. Please review the notice carefully and note any additional neighboring utilities which may be included in the acceptance letter.
- F. Notice For Publication
The applicant shall publish the notice in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, once each week for two consecutive weeks beginning with the week after the notice is received from the Commission. Proof of publication in the form of a publisher's affidavit shall be submitted to the Commission within 30 days of the last publication date. The affidavit shall state with specificity each county in which the newspaper is of general circulation.
- G. Notice To Neighboring Utilities. *See Attachment No. 9*
- i. List all neighboring retail public utilities and cities providing the same utility service within the following vicinities of the applicant's proposed certificate area, and
 - ii. any city whose extra-territorial jurisdiction (ETJ) overlaps the proposed service area.
 - iii. For applications for the issuance of a **NEW** certificate of public convenience and necessity, the applicant must mail the notice with a copy of the location map (CCN map) to all cities and neighboring retail public utilities providing the same utility service within **five (5) miles** of the requested service area, and any city with an ETJ which overlaps the proposed service area.
 - iv. For applications for the **AMENDMENT** of certificate of public convenience and necessity, the applicant must mail the notice with a copy of the location map (CCN map) to all cities and neighboring retail public utilities providing the same utility service within **two (2) miles** of the requested service area, and any city with an extra-territorial jurisdiction which overlaps the proposed service area.
- H. Notice to Customers
Investor Owned Utilities (IOUs) that are currently providing service without a certificate must provide individual mailed notice to all current customers. The notice must contain the current rates, the date those rates were instituted, and any other information required in the application.
- I. The Commission may require the applicant to deliver notice to other affected persons or agencies.

Do not publish or send copies of the proposed notices to anyone at the time you submit the application to the Commission. Wait until you receive written authorization to do so. This will occur after the Commission has reviewed the notices for completeness,