

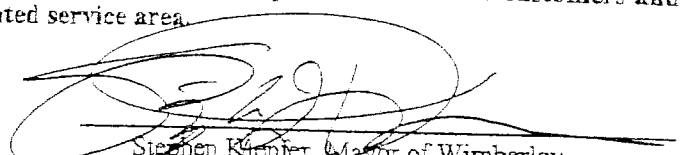
OATH

State of Texas

I, Stephen Klepfer, being duly sworn, file this application as the Mayor of the Village of Wimberley that in such capacity, I am qualified and authorized to file and verify such application, am personally familiar with the maps filed with this application, and have complied with all the requirements contained in this application; and, that all such statements made and matters set forth therein are true and correct. I further state that the application is made in good faith and that this application does not duplicate any filing presently before the Texas Commission on Environmental Quality.

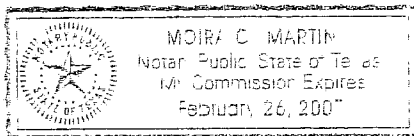
I further represent that the application form has not been changed, altered or amended from its original form available only from the Commission.

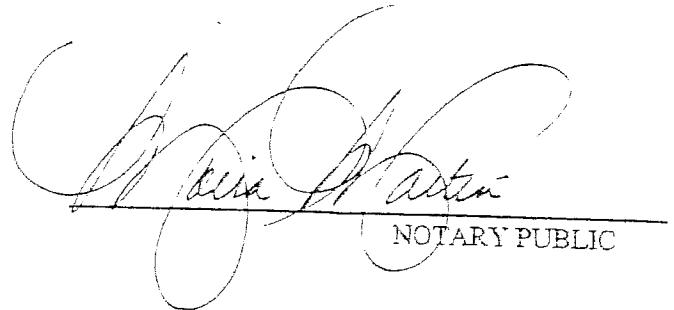
I further represent that the Applicant will provide continuous and adequate service to all customers and qualified applicants for service within its certificated service area.


Stephen Klepfer, Mayor of Wimberley

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public in and for the State of Texas, this 29th day
of December, 2005.

SEAL




NOTARY PUBLIC

Notice for Publication

NOTICE OF APPLICATION FOR CERTIFICATE OF CONVENIENCE
AND NECESSITY (CCN) TO PROVIDE SEWER
UTILITY SERVICE IN HAYS COUNTY, TEXAS

The Village of Wimberley has filed an application to amend CCN No. 20936 with the Texas Commission on Environmental Quality to provide sewer utility service in Hays County, Texas.

The proposed utility service area is located approximately one mile north of downtown Wimberley, Texas, and is generally bounded on the west by Ranch Road 12, on the south by Wimberley's existing certificated service area boundary, on the east by the eastern property boundaries of the Thomas Cramshaw Survey, the Clement Henson Survey, and the John Marks Survey tracts of land, and north by Skyline Drive. See the enclosed map of the proposed service area.

The total area being requested includes approximately 250 acres and no current customers.

A copy of the proposed service area map is available at the Village of Wimberley's City Hall, 13210 Ranch Road 12, Wimberley, Texas 78676.

A request for a public hearing must be in writing. You must state (1) your name, mailing address, and daytime telephone number; (2) the applicant's name, application number or another recognizable reference to this application; (3) the statement, "I/we request a public hearing"; (4) a brief description of how you or the persons you represent would be adversely affected by the granting of the application for a CCN; and (5) your proposed adjustment to the application or CCN which would satisfy your concerns and cause you to withdraw your request for a hearing.

Persons who wish to intervene or comment should write the:

Texas Commission on Environmental Quality
Water Supply Division
Utilities and Districts Section, MC-153
P. O. Box 13087
Austin, TX 78711-3087

within thirty (30) days from the date of this publication or notice. A public hearing will be held only if a legally sufficient hearing request is received or if the Commission on its own motion requests a hearing. Only those individuals who submit a written hearing request or a written request to be notified if a hearing is set will receive notice if a hearing is scheduled.

If a public hearing is requested, the Executive Director will not issue the CCN and will forward the application to the State Office of Administrative Hearings (SOAH) for a hearing. If no settlement is reached and an evidentiary hearing is held, the SOAH will submit a recommendation to the Commission for final decision. If an evidentiary hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Si desea informacion en Espanol, puede llamar al 512-239-0200.

NOTICE OF APPLICATION FOR CERTIFICATE OF CONVENIENCE AND NECESSITY (CCN)
TO PROVIDE SEWER UTILITY SERVICE IN HAYS COUNTY

To Aqua Development Inc.
1421 Wells Branch Pkwy. Ste. 105
Pflugerville, TX 78660-3230

Date Notice Mailed _____, 20__

The Village of Wimberley has filed an application to amend CCN No. 20956 with the Texas Commission on Environmental Quality to provide sewer utility service in Hays County, Texas.

The proposed utility service area is located approximately one mile north of downtown Wimberley, Texas, and is generally bounded on the west by Ranch Road 12, on the south by Wimberley's existing certificated service area boundary, on the east by the eastern property boundaries of the Thomas Cramshaw Survey, the Clement Henson Survey, and the John Marks Survey tracts of land, and north by Skyline Drive. See the enclosed map of the proposed service area.

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Texas Commission on Environmental Quality
Water Supply Division
Utilities and Districts Section, MC-153
P. O. Box 13087
Austin, TX 78711-3087

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Si desea informacion en Espanol, puede llamar al 512-239-0200.

NOTICE OF APPLICATION FOR CERTIFICATE OF CONVENIENCE AND NECESSITY (CCN)
TO PROVIDE SEWER UTILITY SERVICE IN HAYS COUNTY

To: Aqua Source Utility, Inc.
1421 Wells Branch Pkwy. Ste. 105
Pflugerville, TX 78660-3230

Date Notice Mailed _____ 20__

The Village of Wimberley has filed an application to amend CCN No. 20956 with the Texas Commission on Environmental Quality to provide sewer utility service in Hays County, Texas.

The proposed utility service area is located approximately one mile north of downtown Wimberley, Texas, and is generally bounded on the west by Ranch Road 12, on the south by Wimberley's existing certificated service area boundary, on the east by the eastern property boundaries of the Thomas Cramshaw Survey, the Clement Henson Survey, and the John Marks Survey tracts of land, and north by Skyline Drive. See the enclosed map of the proposed service area.

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NOTICE OF APPLICATION FOR CERTIFICATE OF CONVENIENCE AND NECESSITY (CCN)
TO PROVIDE SEWER UTILITY SERVICE IN HAYS COUNTY

To: Guadalupe-Blanco River Authority
933 E. Court St.
Seguin, TX 78155-5819

Date Notice Mailed _____, 20__

The Village of Wimberley has filed an application to amend CCN No. 20956 with the Texas Commission on Environmental Quality to provide sewer utility service in Hays County, Texas.

The proposed utility service area is located approximately one mile north of downtown Wimberley, Texas, and is generally bounded on the west by Ranch Road 12, on the south by Wimberley's existing certificated service area boundary, on the east by the eastern property boundaries of the Thomas Crainshaw Survey, the Clement Henson Survey, and the John Marks Survey tracts of land, and north by Skyline Drive. See the enclosed map of the proposed service area.

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Texas Commission on Environmental Quality
Water Supply Division
Units and Districts Section, MC-153
P. O. Box 13087
Austin, TX 78711-3087

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NOTICE OF APPLICATION FOR CERTIFICATE OF CONVENIENCE AND NECESSITY (CCN)
TO PROVIDE SEWER UTILITY SERVICE IN HAYS COUNTY

To City of Woodcreek
41 Champion Cir.
Woodcreek, TX 78676

Date Notice Mailed _____ 20__

The Village of Wimberley has filed an application to amend CCN No. 20956 with the Texas Commission on Environmental Quality to provide sewer utility service in Hays County, Texas.

The proposed utility service area is located approximately one mile north of downtown Wimberley, Texas, and is generally bounded on the west by Ranch Road 12, on the south by Wimberley's existing certificated service area boundary, on the east by the eastern property boundaries of the Thomas Crainshaw Survey, the Clement Henson Survey, and the John Marks Survey tracts of land, and north by Skyline Drive. See the enclosed map of the proposed service area.

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Persons who wish to intervene or comment should write the:

Texas Commission on Environmental Quality
Water Supply Division
Utilities and Districts Section, MC-153
P. O. Box 13087
Austin, TX 78711-3087

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Notice to Landowner

NOTICE OF APPLICATION FOR CERTIFICATE OF CONVENIENCE AND NECESSITY (CCN)
TO PROVIDE SEWER UTILITY SERVICE IN HAYS COUNTY

To Landowner

Date Notice Mailed _____, 20____

The Village of Wimberley has filed an application to amend CCN No. 2095c with the Texas Commission on Environmental Quality to provide sewer utility service in Hays County, Texas.

The proposed utility service area is located approximately one mile north of downtown Wimberley, Texas, and is generally bounded on the west by Ranch Road 12, on the south by Wimberley's existing certificated service area boundary, on the east by the eastern property boundaries of the Thomas Crainshaw Survey, the Clement Henson Survey, and the John Marks Survey tracts of land, and north by Skyline Drive. See the enclosed map of the proposed service area.

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Persons who wish to intervene or comment should write the:

Texas Commission on Environmental Quality
Water Supply Division
Utilities and Districts Section, MC-153
P. O. Box 13087
Austin, TX 78711-3087

within thirty (30) days from the date of this publication or notice. A public hearing will be held only if a legally sufficient hearing request is received or if the Commission on its own motion requests a hearing. Only those individuals who submit a written hearing request or a written request to be notified if a hearing is set will receive notice if a hearing is scheduled.

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Si desea informacion en Espanol, puede llamar al 512-239-0200.

Historical Profit & Loss Statement

	Current Year (a)	(a) - 1 year	(a) - 2 years	(a) - 3 years	(a) - 4 years
Number of connections					
Income					
Gross Revenue					
Fees					
Other					
Gros. Income					
Expenses General & Administrative					
Salary Expense					
Office Expense					
Computer Expense					
Auto Expense					
Insurance Expense					
Telephone Expense					
Utilities Expense					
Property Tax Expense					
Professional Fees					
Other					
Total General & Administrative					
Expenses Operational					
Salary Expense					
Auto Expense					
Utilities Expense					
Supply Expense					
Maintenance & Repair Expense					
Other Expense					
Total Operational					
Total Expenses					
Net Income					

Historical Balance Sheet - ASSETS					
	Current Year (a)	(a) - 1 year	(a) - 2 years	(a) - 3 years	(a) - 4 years
CURRENT ASSETS					
Cash					
Gov. Account Receivable					
Inventories					
Income Tax Receivable					
Other					
TOTAL CURRENT ASSETS					
FIXED ASSETS					
Land					
Collection/Distribution System					
Buildings					
Equipment					
Other					
TOTAL FIXED ASSETS					
Less					
Accum. Depreciation/Reserve					
NET FIXED ASSETS					
TOTAL ASSETS					

Historical Balance Sheet - LIABILITIES					
	Current Year	12 - 1 year	12 - 2 years	12 - 3 years	3 - 4 years
CURRENT LIABILITIES					
Account Payable					
Notes Payable Due 1 Year					
Accrued Expense					
Customer Deposits					
Other					
TOTAL CURRENT LIABILITIES					
LONG TERM LIABILITIES					
Notes Payable Due > 1 Year					
Other					
TOTAL LONG TERM LIABILITIES					
OWNER'S EQUITY					
Paid-in Capital					
Retained Equity					
Other					
Current Period Profit or Loss					
TOTAL OWNER'S EQUITY					
TOTAL LIABILITIES &					

Projected Profit & Loss Statement

	Year 1	Year 2	Year 3	Year 4	Year 5
Number of connection.					
Income					
Gross Revenue					
Fees					
Other					
Gross Income					
Expenses: General & Administrative					
Salary Expense					
Office Expense					
Computer Expense					
Auto Expense					
Insurance Expense					
Telephone Expense					
Utilities Expense					
Property Tax Expense					
Professional Fees					
Other					
Total General & Administrative					
Expenses: Operational					
Salary Expense					
Auto Expense					
Utilities Expense					
Supply Expense					
Maintenance & Repair Expense					
Other Expense					
Total Operational					
Total Expenses					
Net Income					

Projected Balance Sheet - ASSETS					
	Year	Year 2	Year 3	Year 4	Year 5
CURRENT ASSETS					
Cash					
Cost Account Receivable					
Inventories					
Income Tax Receivable					
Other					
TOTAL CURRENT ASSETS					
FIXED ASSETS					
Land					
Collection/Distribution System					
Buildings					
Equipment					
Other					
TOTAL FIXED ASSETS					
Less					
Accum. Depreciation Reserve					
NET FIXED ASSETS					
TOTAL ASSETS					

Projected Balance Sheets - LIABILITIES					
	Year 1	Year 2	Year 3	Year 4	Year 5
CURRENT LIABILITIES					
Accounts Payable					
Notes Payable Due < 1 Year					
Accrued Expenses					
Customer Deposits					
Other					
TOTAL CURRENT LIABILITIES					
LONG TERM LIABILITIES					
Notes Payable Due > 1 Year					
Other					
TOTAL LONG TERM LIABILITIES					
OWNER'S EQUITY					
Paid-in Capital					
Retained Equity					
Other					
Current Period Profit or Loss					
TOTAL OWNER'S EQUITY					
TOTAL LIABILITIES &					

Projected Statement of Sources & Uses of Cash					
	Year	Year 1	Year 2	Year 3	Year 4
SOURCES OF CASH					
Net Profit					
Depreciation or Amortization					
Loan Proceeds					
Other					
TOTAL SOURCES					
USES OF CASH					
Net Loss					
Principal portion of payments					
Fixed Asset Purchases					
Reserve					
Other					
TOTAL USES					
NET CASH FLOW					
AVAILABLE DEBT SERVICE COVERAGE (ADSC)					
Cash Available for Deb. Service					
Net Profit/Loss					
Depreciation or Reserve					
Interest					
TOTAL ADSC					
REQUIRED DEBT SERVICE COVERAGE (RDSC)					
Principal + Interest					
DEBT SERVICE COVERAGE RATIO (ADSC/RDSC)					

21. Regulated Entity Name (If an individual, please print last name first)

22. Street Address
(No PO Boxes)

City

State

ZIP

ZIP + 4

23. Mailing Address

City

State

ZIP

ZIP + 4

24. E-Mail Address:

25. Telephone Number

26. Extension or Code

27. Fax Number if applicable

28. Primary SIC Code
(4 digits)

29. Secondary SIC Code
(4 digits)

30. Primary NAICS Code
(5 or 6 digits)

31. Secondary NAICS Code
(5 or 6 digits)

32. What is the Primary Business of this entity? (Please do not repeat the SIC or NAICS description)

Questions 33 - 37 address geographic location. Please refer to the instructions for applicability.

33. County

34. Description of Physical Location

35. Nearest City

State

Nearest Zip

36. Latitude (N)

37. Longitude (W)

Degrees

Minutes

Seconds

Degrees

Minutes

Seconds

38. TCEQ Programs in Which This Regulated Entity Participates Not all programs have been listed. Please add to this list as needed. If you don't know or are unsure, please mark "Unknown". If you know a permit or registration # for this entity, please write it below the program.

Animal Feeding Operation

Petroleum Storage Tank

Water Rights

Title V - Air

Wastewater Permit

Industrial & Hazardous Waste

Water Districts

Municipal Solid Waste

Water Utilities

Unknown

New Source Review - Air

Licensing - Types

SECTION IV: Preparer Information

39. Name

Emily W. Rogers

40. Title

Attorney

41. Telephone Number

512-472-8021

42. Extension or Code

43. Fax Number if applicable

512-320-5638

44. E-mail Address: erogers@bickerstaff.com

BICKERSTAFF, HEATH, SMILEY,
POLLAN, KEVER & McDANIEL, L.L.P.

515 CONGRESS AVENUE, SUITE 1700
AUSTIN, TX 78701-2445

FROST NATIONAL BANK
MEMBER CULLEN FROST BANKERS INC.
www.frostbank.com
NOT VALID AFTER 120 DAYS

30-9 1141

12/30/2005

PAY

TO THE Texas Commission on Environmental Quality
ORDER OF

\$

\$100.00

One Hundred Dollars and 00/100

DOLLARS

Texas Commission on Environmental Quality

P.O. Box 13085

Austin, TX 78711-3085

TWO SIGNATURES REQUIRED IF OVER \$500.00

Thomas D. Felix

AUTHORIZED SIGNATURE

MEMO

⑈027619⑈ ⑆114000093⑆ 551071629⑈

BICKERSTAFF, HEATH, SMILEY, POLLAN, KEVER & McDANIEL, L.L.P.

27619

INVOICE	DATE	DESCRIPTION	NET
	12/30/2005	CCN application filing fee	100.00

Check# Date 27619 12/30/2005 Texas Commission on Environmental Quality

\$100.00

BICKERSTAFF, HEATH, SMILEY, POLLAN, KEVER & McDANIEL, L.L.P.

27619

INVOICE	DATE	DESCRIPTION	NET
	12/30/2005	CCN application filing fee	100.00

Check# / Date 27619 12/30/2005 Texas Commission on Environmental Quality

\$100.00

List of Attachments

1. List of Certified Operators
2. Maps of Proposed Service Area
3. GIS Information
4. Inspection Information
5. Interlocal Agreement between the Village of Wimberley and GBRA, and Operating Agreement between the Village of Wimberley and GBRA
6. Budget and Audit for the Village of Wimberley
7. 2005 Annual Report for GBRA
8. Wimberley's Rate Ordinances
9. List of Neighboring Utilities
10. Village of Wimberley Wastewater Masterplan - Final Report (June 2002) and Land Use Assumption and Capital Improvement Plan for the Village of Wimberley Wastewater Treatment System - Technical Report (January 2005)

Bickerstaff, Heath, Pollan & Caroom, L.L.P.

816 Congress Avenue

Suite 1700

Austin, Texas 78701

TEL 472-8021

FAX (512) 320-5638

www.bickerstaff.com

December 30, 2005

Via Messenger

Texas Commission on Environmental Quality
Registration, Review & Reporting Division
Permits Administrative Review Section
Water Quality Applications Team
12100 Park 35 Circle
Building F, 2nd Fl.
Austin, Texas 78711-3087

Re: *Application of Village of Wimberley to Amend Sewer CCN #20936*

Dear Sir or Madam:

Enclosed please find an original and four copies of the above-referenced application. Please file the original and three copies, and file-stamp the extra copy of the application and return it to our runner. Also enclosed is a check made payable to the TCEQ in the amount of \$100 to cover the filing costs.

Thank you for your assistance in this matter. If you have any questions, please give me a call at 472-8021.

Sincerely,



Emily W. Rogers

EWR/bc
Enclosures

Westlaw:

30 TexReg 8979
 30 Tex. Reg. 8979, 2005 WL 3543011 (Tex.Reg.)
 (Cite as: 30 Tex. Reg. 8979)

Page 1

TEXAS REGISTER
 Volume 30, Number 52
 DECEMBER 30, 2005
 ADOPTED RULES
 TITLE 30. ENVIRONMENTAL QUALITY
 PART 1. TEXAS COMMISSION ON
 ENVIRONMENTAL QUALITY
 CHAPTER 291. UTILITY REGULATIONS
 SUBCHAPTER A. GENERAL PROVISIONS

***8979** 30 TAC §§291.3, 291.5, 291.7

***8958** The Texas Commission on Environmental Quality (TCEQ or commission) adopts the amendments to §§291.3, 291.5, 291.7, 291.101, 291.102, 291.104 - 291.106, 291.109, 291.113, 291.115, 291.117, and 291.119. The commission also adopts new §291.120. Sections 291.102, 291.104, 291.105, 291.109, 291.113, 291.119, and 291.120 are adopted with changes to the proposed text as published in the September 30, 2005, issue of the Texas Register (30 TexReg 6211). Sections 291.3, 291.5, 291.7, 291.101, 291.106, 291.115, and 291.117 are adopted without changes to the proposed text and will not be republished.

BACKGROUND AND SUMMARY OF THE
 FACTUAL BASIS FOR THE ADOPTED RULES

The 79th Legislature, 2005, passed House Bill (HB) 2876, which amended Texas Water Code (TWC), §§13.002, 13.241, 13.242, 13.244, 13.246, 13.247, 13.254, 13.255, and 13.257. This bill also added to the TWC, §§13.245, 13.2451, and 13.2551 and repealed TWC, §13.254(h) and §13.2541. These changes relate to revising the criteria for obtaining, amending, transferring, and decertifying certificates of convenience and necessity (CCNs) for water and sewer service. These changes also amended the mapping requirements, which now require CCN holders to file a copy of their service area maps in the respective county deed records. The commission adopts the changes to the requirements in this chapter to correspond with the newly amended sections of the TWC.

***8959** The 79th Legislature also passed Senate Bill (SB) 425, relating to subdivision platting requirements

and assistance for certain counties near an international border, which amended the definition of affected county. The commission will revise the definition of affected county in this rulemaking to correspond with the TWC

In addition to the changes based on HB 2876 and SB 425, the commission also modifies the definition of service; amends the contents of the CCN application; amends the notice requirements for CCN transfers by contract under TWC, §13.248; amends the requirements for utilities that want to change names; amends the requirements to include an agreement to consent from the affected utility for dual certification if consent exists; more specifically explains some of the criteria for granting or amending a CCN; more specifically explains CCN decertification and cancellation procedures, and amends the requirements for applicants who owe delinquent fees or penalties. These are requirements that have been identified by stakeholders and staff as causing confusion because of differing interpretations. The changes to these requirements will help to clarify these rules and eliminate the differences in interpretation. This will provide more certainty for the entities that are regulated by these rules.

HB 2876 requires the commission to promulgate rules to implement the changes to the TWC by January 1, 2006.

SECTION BY SECTION DISCUSSION

The commission will update the names of the agency, the division, and the section used in Subchapters A and G. The commission also adopts updates to references to the TWC. Finally, the commission adopts formatting changes throughout Subchapters A and G to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, November 2004, and to conform with Texas Register and agency guidelines.

Subchapter A, General Provisions

The commission adopts the amendment to §291.3, Definitions of Terms, which revises the definition of "Affected county" from "a county any part of which is

necessity under the rights granted by its certificate and this chapter. The commission adopts this amendment to implement TWC, §13.2451, as amended by the 79th Legislature. Subsection (c) will specify that the commission 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 commission has decided to remove that part of subsection (c), which provides that the portion of any CCN that extends beyond the ETJ of the municipality without the consent of the landowner is void on September 1, 2005. The commission decided to remove the provision that states that within 30 days of receipt of a written request by a landowner in an area of a voided certificate, the executive director shall affirm that the certificate is modified to reflect the voided portion of the CCN and direct the municipality to prepare and record revised maps of its service area within 30 days of receipt of the affirmation. The commission has decided to remove the provision that a municipality that holds a CCN, a portion of which is void under proposed subsection (c), may submit an application to the commission to reinstate all or a portion of such voided area if the municipality has obtained the written consents of all affected landowners. The commission removed the language in §291.105(c)(2) regarding the voiding of a city's CCN outside its ETJ for lack of landowner consent, subsequent executive director affirmation, and potential reinstatement of the void portion of the CCN because the second sentence in TWC, §13.2451(b), as enacted by the 79th Legislature, is self-implementing and does not require any further action by the commission.

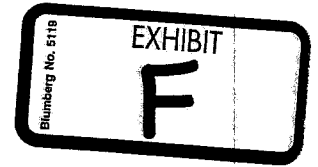
As a result of input and comments from affected parties and the public, the commission recognizes the existence of interpretive differences in regard to CCNs outside cities' ETJs. Therefore, the commission will not take any affirmative action on cities' CCNs outside their ETJ until after January 1, 2008, in order to conduct a study and to provide opportunities to cities to obtain any necessary landowner consent in those areas. This will also allow the legislature to further consider this very important issue. During this period, the commission will consider those portions of cities' pending CCN applications that are outside their ETJ only if they provide landowner consent for those areas.

The commission also adds subsection (d)(3)(A) and (B)

to specify that a municipality shall notify the commission prior to filing an eminent domain lawsuit to acquire a substandard water or sewer system and that the municipality, in its sole discretion, shall request that the commission either cancel the CCN of the acquired system or transfer the certificate to the municipality and that the commission shall take such requested action. The commission adopts this amendment to clarify that the CCN is still in operation even though the system has been acquired by eminent domain and that the city must cancel or transfer the CCN so that the portion of the utility being acquired is no longer obligated to provide service.

The commission adds subsection (d) to §291.105. Subsection (d) will specify that if an area is within the boundaries of a municipality, a retail public utility that is certified or entitled to certification can continue and extend service in its area of public convenience and necessity unless a municipality with a population of more than 500,000 exercises its power of eminent domain under §291.105(d)(3). Subsection (d) would also specify that a municipally owned or operated utility may not provide retail water and sewer utility service within the area certificated to another retail public utility without first having obtained from the commission a CCN that includes the areas to be served. Additionally, subsection (d) specifies that this section may not be construed as limiting the power of municipalities to incorporate or extend their boundaries by annexation. Finally, subsection (d) would provide that a municipality with a population of more than 500,000 may exercise the power of eminent domain in the manner provided by Texas Property Code, Chapter 21, to acquire a substandard water or sewer system if all the facilities of the system are located entirely within the municipality's boundaries and that the municipality shall pay just and adequate compensation for the property. The commission adopts this amendment to implement TWC, §13.247, as amended by the 79th Legislature.

The commission adopts the amendment to §291.106, Notice for Applications for Certificates of Convenience and Necessity, which outlines the requirements for notice related to applications for CCNs, and is retitled "Notice for Applications for Certificates of Convenience and Necessity and Requirements for Recording Maps and Descriptions of Areas Covered by Certificates of Convenience and Necessity," because it



Attachment No. 9

List of Neighboring Utilities

Application by the Village of Wimberley to
Amend Sewer CCN No. 20936

Attachment No. 9
List of Neighboring Utilities

1. Aqua Development Inc.
1421 Wells Branch Pkwy, Ste. 105
Pflugerville, TX 78660-3230
2. Aqua Source Utility, Inc.
1421 Wells Branch Pkwy, Ste. 105
Pflugerville, TX 78660-3230
3. Guadalupe-Blanco River Authority
933 E. Court St.
Seguin, TX 78155-5819
4. City of Woodcreek
41 Champions Cir.
Woodcreek, TX 78676

BN

**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.

5

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.

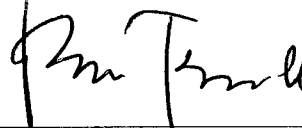
III. PRAYER

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:

Emily Rogers
Bickerstaff, Heath, Smiley, Pollan, Kever, & McDaniel LLP
816 Congress Avenue, Suite 1700
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Michael D. Stevens
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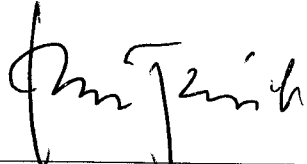
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Docket Clerk
Texas Commission on Environmental Quality
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June 24, 2002

Mr. Mark H. Zeppa, Esq.
Law Offices of Mark H. Zeppa, P.C.
4833 Spicewood Springs, #202
Austin, Texas 78759-8436

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.

Mr. Mark H. Zeppa

June 24, 2002

Page 2

5. Wimberley agrees not to oppose future applications by ASU to amend its sewer CCN, so long as the requested service area in any such sewer CCN amendment application, is located within the area delineated on the attached map as ASU's present and future sewer area.

If the above-mentioned settlement terms are acceptable to ASU, please indicate ASU's approval in the space provided below. Should you have any questions, please call me at (512) 404-7878.

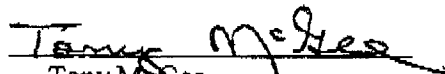
Sincerely,



Bruce Wasinger

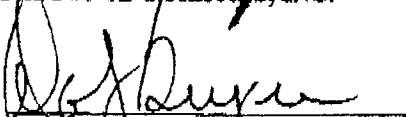
APPROVED on 24th of June, 2002.

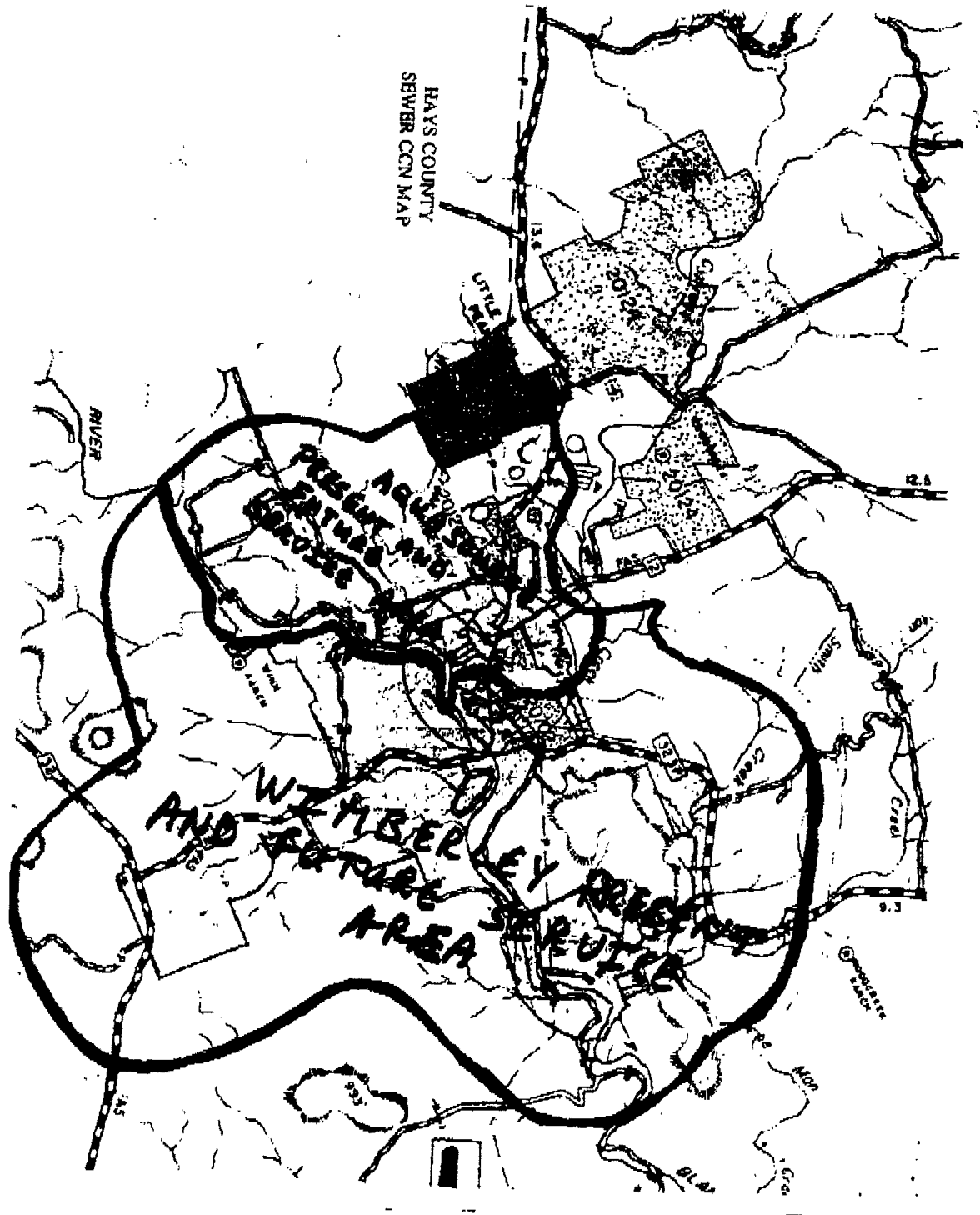
VILLAGE OF WIMBERLEY

By: 
Tony McGee
Mayor

APPROVED on 27th of June, 2002.

AQUASOURCE UTILITIES, INC.

By: 
David J. Beyer, P.E.





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 with 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

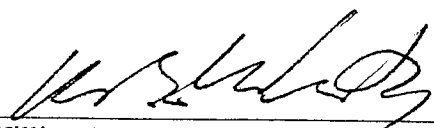
This Agreement can only be amended in writing by mutual agreement of the Parties.

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.

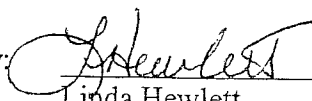
IN WITNESS WHEREOF, the undersigned Village of Wimberley, Texas and the Guadalupe-Blanco River Authority hereto, through their authorized representatives, execute this Interlocal Agreement in duplicate.

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

§
§
§

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

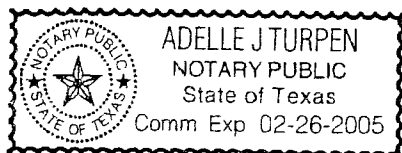
STATE OF TEXAS

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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