



**CITY OF
WIMBERLEY**

SPECIAL CITY COUNCIL MEETING PACKET

**Thursday, April 30, 2020
6:00 p.m.**



City of Wimberley

221 Stillwater Drive, Wimberley, Texas 78676

SPECIAL CITY COUNCIL MEETING **THURSDAY, APRIL 30, 2020 – 6:00 P.M.**

AGENDA

In accordance with order of the Office of the Governor issued March 16, 2020, the City Council of the City of Wimberley will conduct a teleconference/video conference meeting in order to advance the public health goal of limiting face-to-face meetings (also called “social distancing”) to slow the spread of the Coronavirus (COVID-19).

The meeting will be held on **Thursday, April 30, 2020, at 6:00 p.m.**

The public may participate in this meeting via the following toll-free numbers 888-475-4499 or 877-853-5257 and/or using the meeting ID 811 7027 2408 and using the password 008360.

The public will be permitted to offer comments via teleconference or video conference, as provided by the agenda and as permitted by the presiding officer during the meeting.

Anyone wishing to offer public comments or offer written questions or comments must notify City Secretary, Laura Calcote, at lcalcote@cityofwimberley.com, at least two hours before the meeting.

A recording of the meeting will be made and will be available to the public in accordance with the Texas Public Information Act upon written request.

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1. **CALL TO ORDER** April 30, 2020 at 6:00 p.m.
 2. **CALL OF ROLL** City Secretary, Laura Calcote
 3. **PRESENTATION**

Presentation by Live Oak Health Partners, Dr. Hernandez and Dr. Price, regarding the current Centers for Disease Control and Prevention (CDC) guidelines for preventing the spread of COVID-19 and up-to-date testing within the Wimberley community. *(Amy Hernandez and Eric Price, MDs)*

4. **CITY ADMINISTRATOR REPORT**

Updates regarding the COVID-19 virus, City facilities and current and short-term staffing plans *(City Administrator Shawn Cox)*

5. DISCUSSION AND POSSIBLE ACTION

- 5.1. Discuss and consider possible action regarding the development of an action plan to re-open Wimberley. *(Place One Council Member Rebecca Minnick)*
- 5.2. Discuss and consider possible action regarding a Public Health Advisory related to COVID-19 by the City of Wimberley City Council. *(Place One Council Member Rebecca Minnick)*
- 5.3. Discuss and consider possible action regarding the City of Wimberley's contract with Aqua Texas for the treatment of wastewater. *(City Administrator Shawn Cox)*

6. ADJOURNMENT

The City Council may retire into Executive Session at any time between the meeting's opening and adjournment for the purpose of discussing any matters listed on the agenda as authorized by the Texas Government Code including, but not limited to, homeland security pursuant to Chapter 418.183 of the Texas Government Code; consultation with legal counsel pursuant to Chapter 551.071 of the Texas Government Code; discussion about real estate acquisition pursuant to Chapter 551.072 of the Texas Government Code; discussion of personnel matters pursuant to Chapter 551.074 of the Texas Government Code; deliberations about gifts and donations pursuant to Chapter 551.076 of the Texas Government Code; discussion of economic development pursuant to Chapter 551.087 of the Texas Government Code; action, if any, will be taken in open session.

CERTIFICATION

I hereby certify the above Notice of Meeting was posted on the bulletin board at Wimberley City Hall, a place convenient and readily accessible to the general public at all times, and to the City's website, www.cityofwimberley.com, in compliance with Chapter 551, Texas Government Code, on Monday, April 27, 2020, by 6:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.



Laura J. Calcote, MPA, TRMC
City Secretary

The City of Wimberley is committed to compliance with the Americans with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request. Please contact City Secretary Laura Calcote at (512) 847-0025 two business days in advance of the meeting for appropriate arrangements.



PUBLIC HEALTH ADVISORY RELATED TO COVID-19
BY
CITY OF WIMBERLEY CITY COUNCIL

WHEREAS, on March 13, 2020, a Declaration of State of Disaster was issued by Governor Abbott to take additional steps to prepare for, respond to, and mitigate the spread of COVID-19 to protect the health and welfare of Texans, which was extended on April 12, 2020; and

WHEREAS, On March 16, 2020, a Declaration of Local Disaster was issued by Wimberley Mayor Susan Jagers to allow Wimberley to take measures to reduce the possibility of exposure to COVID-19 and promote the health and safety of Wimberley residents utilizing state and federal resources made available with the declaration, which was continued by the City Council on March 19, 2020; and

WHEREAS, On April 17, 2020, Texas Governor Greg Abbott issued Executive Order GA-16 relating to the safe, strategic reopening of select services as the first step to Open Texas in response to the COVID-19 disaster; and

WHEREAS, as of April 28, 2020, the level of community spread of COVID-19 in Hays County and within Wimberley is evidenced by more than 155 cumulative cases across the county including one death; and

WHEREAS, the Centers for Disease Control and Prevention (“CDC”) recommends an “All of Community” approach focused on slowing the transmission of COVID-19; and

WHEREAS, On April 27, 2020, Texas Governor Greg Abbott issued Executive Order GA-18, recognizing that the virus that causes COVID-19 can be spread to others by infected persons who have few or no symptoms and that even if an infected person is only mildly ill, the people they spread it to may become seriously ill or even die, especially if that person is 65 or older with pre-existing health conditions that place them at higher risk, and the virus that causes COVID-19 is still circulating in our communities; and

WHEREAS, because of the risk of the rapid spread of the virus, and the need to protect ALL members of the community, this **PUBLIC HEALTH ADVISORY** is necessary to **strongly encourage the citizens of and the visitors to the City of Wimberley to follow the formal recommendations of the City of Wimberley to assist our citizens in remaining safe during the COVID-19 pandemic.**

NOW, THEREFORE, UNDER THE AUTHORITY OF TEXAS HEALTH AND SAFETY CODE, SECTION 122.005, THE CITY COUNCIL OF THE CITY OF WIMBERLEY, TEXAS HEREBY STRONGLY RECOMMENDS AS FOLLOWS:

SECTION 1. TAKE CARE OF YOURSELF.

Consistent with Executive Order GA-18, as we begin to open Texas, we must continue to follow

these critical health guidelines:

- i. **Stay home if you can.**
- ii. **Wash hands often and for 20 seconds, or use hand sanitizer with at least 60% alcohol.**
- iii. **Cover coughs and sneezes with a tissue, then throw the tissue away.**
- iv. **Avoid touching your eyes, nose, and mouth with unwashed hands.**
- v. **Disinfect surfaces, buttons, handles, doorknobs, and other places touched often.**
- vi. **Avoid close contact with people who are sick. Continue to practice social distancing, avoid crowds, and limit physical contact**

SECTION 2. LIMIT CONTACT WITH THE PUBLIC

Consistent with Executive Order GA-18, because of the hidden nature of this threat, everyone should rigorously follow the practices specified in the Minimum Standard Health Protocols as issued in that order, all of which facilitate a safe and measured reopening of Texas and we should continue to observe practices that protect everyone, including those who are most vulnerable, including the following:

- i. That all people travelling to or from essential or reopened services or providing essential or reopened services in Wimberley should follow the recommendations of the Centers for Disease Control and Prevention **by practicing social (physical) distancing**, environmental sanitation and cleanliness.
- ii. That all people should follow the recommendations of the Centers for Disease Control and Prevention **by the wearing of cloth face coverings or face masks by people older than the age of two (2) while in public.**
- iii. People are also strongly encouraged to stay home when sick.
- iv. Residents should call their doctor's office before arrival.

SECTION 3. LIMIT CONTACT WITH PUBLIC SURFACES

- i. Residents are reminded to wash their hands for at least 20 seconds upon arrival at home or after touching anything others may have touched which includes gas pump and door handles. Use hand sanitizer when hand washing is not possible.
- ii. Sanitize before touching any keypad. Use gloves or disinfecting wipes on any handle or button before touching it.

SECTION 4. ADDITIONAL RECOMMENDATIONS

- i. Prior Orders. This **PUBLIC HEALTH ADVISORY**, shall be applicable on a City-wide basis at noon on the May 1, 2020.
- ii. Notice to Public. This **PUBLIC HEALTH ADVISORY** shall be widely advertised to help accomplish the public health and safety objectives of the City of Wimberley and the Hays County Local Health Department.

SIGNED this the 30th day of April, 2020.

Susan Jagers, Mayor
City of Wimberley

Attest:

Laura J. Calcote, City Secretary

AGREEMENT FOR WHOLESALE WASTEWATER SERVICE BETWEEN
CITY OF WIMBERLEY, TEXAS, AND AQUA TEXAS

This Agreement (this “Agreement”) is made and entered into as of _____, 2020, by and between the CITY OF WIMBERLEY, TEXAS, a Texas Type A General Law Municipality (“City”), and AQUA UTILITIES, INC. D/B/A AQUA TEXAS and AQUA TEXAS, INC. D/B/A AQUA TEXAS, each a Texas corporation¹ (“Aqua”), hereinafter collectively referred to as the “Parties.”

WHEREAS, Aqua has provided at its own expense, and now owns, operates and maintains a Domestic Wastewater collection, treatment, and disposal system that serves Aqua’s retail sewer utility customers in and in close proximity to the City; and

WHEREAS, the City desires to maintain all rights and service abilities under the City’s Certificate of Convenience and Necessity No. 20936 (“CCN”) allowed under Chapter 13 of the Texas Water Code and does not want to transfer such CCN to Aqua; and

WHEREAS, the City is constructing and will own, operate, and maintain at the City’s expense a wastewater collection system and use that system to furnish wastewater service to the City’s customers within its City Service Area; and

WHEREAS, it is deemed to be in the immediate best interest of both Aqua and the City that the Parties enter into a mutually satisfactory agreement by means of which the City may obtain from Aqua wastewater treatment services at a mutually agreed upon wholesale rate; and

WHEREAS, neither Aqua nor the City wants to execute an agreement that includes surrender of any of their respective rights to the ownership and operation of their present or future wastewater collection and treatment systems, which includes the City’s and Aqua’s respective CCNs and Aqua’s ownership of the capacity in its collection and treatment facilities;

NOW, THEREFORE, KNOW ALL BY THESE PRESENT that for and in consideration of the mutual covenants, promises and agreements contained herein, Aqua and the City hereby covenant and agree as follows:

¹ The Public Utility Commission (“PUC”) of Texas has issued an order that in pertinent part approves the transfer of the Aqua System, as defined in this Agreement, from Aqua Utilities, Inc. to Aqua Texas, Inc. and Aqua has closed on the transfer of assets as approved, but the PUC has not yet finally approved the transfer application. *Application of Aqua Utilities, Inc., Aqua Development, Inc., and Aqua Texas, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Bandera, Bastrop, Bexar, Blanco, Burnet, Comal, Gillespie, Hays, Kendall, Kerr, Kimble, Live Oak, Llano, Medina, Nueces, Travis, Williamson, and Wilson Counties*, Docket No. 48769, Order No. 12 Approving Sale/Transfer to Proceed (Aug. 22, 2019) (“STM Application Order”).

ARTICLE 1. Definitions

Capitalized terms used in this Agreement shall have the meanings provided for them below, unless otherwise defined or the context clearly requires otherwise.

Aqua System. The Aqua wastewater treatment and collection system that will be used to provide wholesale wastewater services to the City System through the Point of Connection as provided herein.

Availability. The available capacity in the Aqua System while this Agreement is effective *and* the Parties' mutual election to continue this Agreement pursuant to its terms. Notice by Aqua pursuant to Section 2.4 or by either party pursuant to Article 8 shall be determinative that there is no longer a mutual election to continue this Agreement.

Calendar Day. The period from midnight of one day to 11:59 PM of the next day.

City Service Area. The areas inside the City's Certificate of Convenience and Necessity No. 20936 boundaries shown on **Exhibit A**, and such other areas as may be identified therein or added pursuant to Section 2.2.

City System. All City sewer mains, transmission lines and collection facilities on the City's side of the Point of Connection.

Domestic Wastewater. Wastewater which originates primarily from kitchen, bathroom, and laundry sources, including waste from food preparation, dishwashing, garbage grinding, toilets, baths, showers, and sinks of a residential dwelling. Domestic Wastewater may contain commercial or industrial contributions. Bulk quantities of food or food scraps not previously processed by a grinder or similar garbage disposal unit and grease and oils, except as incidental waste in process or wash water, used in or resulting from food preparation by customers engaged in the preparation and/or processing of food for other than domestic consumption for sale to the public is not Domestic Wastewater. Neither storm waters or run off waters are Domestic Wastewater. Further, for purposes of this Agreement, wastewater that exceeds the limits specified in **Exhibit B** (Allowable Influent Limits) is not Domestic Wastewater.

Emergency. A situation, event or condition created by unforeseeable mechanical failure, unprecedented high rate of treated wastewater usage, or circumstances beyond the Parties' reasonable control.

Permit. The TCEQ-issued Domestic Wastewater water quality permit under which the Aqua System wastewater treatment plant operates.

Point of Connection. The point through which Domestic Wastewater is delivered by the City System to the Aqua System for collection and treatment. The approximate location of this point is shown on **Exhibit C**.

PUC. The Public Utility Commission of Texas or its successor agency.

TCEQ. The Texas Commission on Environmental Quality or its successor agency.

Term. The period specified in Article 5.

TWDB. The Texas Water Development Board or its successor agency.

TWDB Exchange Refunding Bonds. Exchange refund bonds issued in accordance with Chapter 1207 of the Texas Government Code to refund and exchange \$5,255,000.00 Sewer System Revenue Bonds, Series 2017, that were purchased by the TWDB and issued by the City.

ARTICLE 2. Delivery/Collection of Wastewater

2.1 Delivery; collection line. During the Term of this Agreement, Aqua agrees to furnish and sell to the City, to accommodate the City's customers, wholesale Domestic Wastewater treatment services meeting all applicable governmental standards, for Domestic Wastewater delivered at the Point of Connection. The Domestic Wastewater shall be delivered through the Point of Connection as provided herein, it being understood that the City will collect the Domestic Wastewater from its customers, who shall be retail customers of the City within the City Service Area. The City will notify Aqua at least semi-annually of its anticipated current and future Domestic Wastewater treatment requirements. The City System delivery facilities that connect to the Aqua system shall be designed, installed, operated, repaired, and maintained in accordance with TCEQ requirements.

2.2 Acceptance and Payment. During the Term, the City agrees to deliver, and Aqua agrees to accept, Domestic Wastewater at the Point of Connection up to an average of 75,000 gallons per day measured on a calendar month basis. The City agrees to pay for the treatment of such Domestic Wastewater delivered in accordance with the terms and conditions of this Agreement. Domestic Wastewater delivered by the City shall become the property of Aqua at the Point of Connection, but title to and responsibility for any substance delivered by the City at the Point of Connection that is not Domestic Wastewater shall remain with the City. Aqua reserves the right, within its sole discretion, to regulate the flow rate of effluent at the Aqua System wastewater treatment plant, the time of day the flow of Domestic Wastewater is taken or shut off at the Point of Connection, and receipt of Domestic Wastewater from the City System as needed to maintain Permit compliance so long as such flow regulation does not persist for more than twelve (12) consecutive hours, does not occur more than once per month or more than six (6) times per calendar year, and does not render the City System out of compliance with applicable regulatory requirements. Aqua will coordinate such events with the City to cause minimal disruption to the City System. The Parties will coordinate the construction and operation of their respective facilities to address flow rate regulation needs prior to the Aqua System accepting Domestic Wastewater from the City System.

2.3 Operations. Aqua is entitled at all times to install, repair, maintain, and replace any equipment or devices in the Aqua System. In the event of service interruptions, Aqua shall make every reasonable effort to expedite the restoration of service in a timely manner, and shall not unreasonably interrupt, withhold or delay service to the City or favor other Aqua customers, retail or wholesale, nor shall Aqua be required to favor the City over other Aqua customers, retail or wholesale. The City agrees to operate and maintain its wastewater system in good condition, to promptly repair any leaks or breaks therein, and to undertake such actions as may be required to control unreasonable infiltration water or inflow water into the City System.

2.4 Quality of Delivered Domestic Wastewater. The quality of the Domestic Wastewater delivered by the City at the Point of Connection for treatment by Aqua shall be Domestic Wastewater as defined herein. Aqua shall monitor the quality of the Domestic Wastewater received from the City System at the Point of Connection and the quality of Domestic Wastewater received from Aqua's retail sewer utility connections within the Aqua System. If there is sufficient evidence from sampling within the City System showing that Domestic Wastewater from the City System at the Point of Connection is not Domestic Wastewater or does not meet the water quality criteria authorized for treatment under the Permit and receipt of such Domestic Wastewater by Aqua has caused the Aqua System wastewater treatment plant to become non-compliant with the Permit, the City shall take immediate corrective action to either identify and correct the source of the issue(s) within the City's collection system causing the non-compliant wastewater flows or add pretreatment facilities to ensure delivery of compliant wastewater to the Aqua System. Further, the Parties shall calculate a reasonable sum to reimburse Aqua for fines resulting from the non-compliance, if any, and costs to bring the Aqua System wastewater treatment plant back into compliance and repair or replace any Aqua System components damaged by the non-compliance, if any; however, the City shall bear all costs associated with correcting the quality of its delivered Domestic Wastewater so that it conforms to the definition of Domestic Wastewater in this Agreement, except that Aqua shall bear such costs if Domestic Wastewater sampling from the Point of Connection does not confirm that Domestic Wastewater from the City System violated the water quality standards for Domestic Wastewater. Proceeds of the TWDB Exchange Refunding Bonds shall not be used to reimburse Aqua to become compliant with its Permit in the event of the aforesaid occurrence. Aqua shall at all times bear responsibility for Permit compliance and will immediately inform the City of any concerns Aqua may have about wastewater received from the City System at the Point of Connection so that corrective measures may be implemented by the City, if necessary. Aqua shall provide the City with reasonable notice prior to Aqua conducting any sampling in response to such concerns in order to provide the City with the opportunity to conduct split sampling with Aqua. The results of such sampling shall be determinative of whether Domestic Wastewater from the City System does or does not meet the water quality standards for Domestic Wastewater. The parties recognize that the City has adopted ordinances related to the quality of Domestic Wastewater the City will accept from its commercial or residential retail customers. The Parties agree that the City's

ordinances enable the City to investigate and take enforcement action against discharges into the City System that enter into the Aqua System when such discharges are not consistent with both the definition of Domestic Wastewater herein and the Permit conditions regarding the quality of wastewater that can be accepted for treatment. Upon request by the City, Aqua agrees to assist the City with any such investigation. By executing this Agreement, the City confirms that its interpretation of its ordinances is consistent with the requirements of this paragraph and agrees to share the results of any investigation pursuant to same, including the source of any identified discharges that are not consistent with the definition of Domestic Wastewater herein or the Permit conditions. Further, in the event a court of competent jurisdiction determines a contrary interpretation of the existing City ordinances, City shall, after consultation with Aqua, amend or enact an ordinance consistent with requiring enforcement action against any discharges into either of the Systems that does not comply with either the definition of Domestic Wastewater herein or the Permit conditions.

2.5 City Domestic Wastewater to be Measured. The volume of Domestic Wastewater received by Aqua at the Point of Connection shall be measured by a meter with specifications acceptable to Aqua installed, operated, repaired, and maintained at the sole cost of the City at or near the Point of Connection. Before Domestic Wastewater is received from the City System at the Point of Connection, Aqua and the City shall agree on the type of meter to be used for measurement. The meter shall be calibrated by, and at the expense of, City at any time the meter is found not operating at five percent (5%) above or below AWWA standards for the type and size of meter being utilized. In addition, the meter may be tested and calibrated at any other reasonable time by either Party to this Agreement, provided that the Party making the test or calibration shall notify the other Party in writing at least two (2) weeks in advance and shall allow the other Party to witness the calibration.

ARTICLE 3. Billing

3.1 Billing. Aqua shall send the City an invoice each month for Aqua's wholesale Domestic Wastewater services provided to the City during the prior month for each month this Agreement is in effect.

3.2 Rates. Domestic Wastewater treatment supplied hereunder shall be billed to the City at the same flat monthly wholesale rate for the first five-year period beginning January 1, 2020 while this Agreement is in effect. Initially, that flat monthly wholesale rate shall be \$4,398.43 per month for 50,000 gallons per day (measured based on the average daily volume during a calendar month). This rate is based on the currently existing environs Aqua Southwest Region Sewer Utility Tariff Rates for a six-inch meter size. If the City exceeds 50,000 gallons per day (as measured based on the average daily

volume during a calendar month), the flat monthly wholesale rate shall be adjusted for such month to the rate of \$7,037.49 per month. This rate is based on the currently existing environs Aqua Southwest Region Sewer Utility Tariff Rates for an eight-inch meter size. After the first five-year period beginning January 1, 2020, if this Agreement remains in effect, the Parties agree to review Aqua's existing environs Aqua Southwest Region Sewer Utility Tariff retail sewer rates and Aqua shall determine if a wholesale rate change is necessary based upon those rates. Any new wholesale rate charged to the City per this Agreement shall not exceed Aqua's six-inch or eight-inch meter size retail sewer rate, whichever is applicable based on volume per this Paragraph, then existing and set by the PUC or applicable regulatory authority for Aqua's Southwest Region environs service area adjacent to the City. If Aqua's retail sewer six-inch or eight-inch meter size rates are lowered from \$4,398.43 (current six-inch rate) or \$7,037.49 (current eight-inch rate), Aqua shall not be required to lower its wholesale rates charged to the City as applicable based on volume per this Paragraph. Further, for purposes of each rate comparison described in this Paragraph, the commercial/non-residential rate class shall be used if such rate class is established in Aqua's Southwest Region Sewer Utility Tariff for Aqua's environs service area adjacent to the City. Additionally, if the City increases the franchise fee charged to Aqua in connection with its operation of the portion of the Aqua System located within the City's corporate limits at any time during the term of this Agreement, the cost of wholesale sewer service charged by Aqua to the City shall increase by a corresponding percentage.

3.3 Wholesale Service Connection Fee; Other Connection Costs. The City shall pay Aqua a one-time wholesale service fee of \$300,000.00 in installments as provided for herein. Within 15 days of the Effective Date, the City shall pay Aqua \$150,000.00. Within 365 days of the Effective Date, the City shall pay Aqua the remaining \$150,000.00 balance of the wholesale service fee. These funds shall not be sourced from the TWDB. The Aqua System shall be connected with the City System at the Point of Connection. The City shall bear all costs of extending the City System to the Point of Connection and interconnecting it with the Aqua System. In addition to other facilities that may be necessary for the interconnect within the City System, the City shall design, construct, and install at its sole expense an interconnecting force main from the City System to the Point of Connection with the Aqua System on the Aqua side of Cypress Creek. The City shall also bear all costs of facilities needed to accept, transport, store, and otherwise use treated effluent received from the Aqua System as reclaimed water in accordance with TCEQ rules. The City and Aqua shall work cooperatively to obtain TCEQ approvals as appropriate that may be necessary for the City to use treated effluent from the Aqua System as reclaimed water in accordance with TCEQ rules.

3.4 Aqua's Reclaimed Water Services. The Parties agree that the \$300,000.00 wholesale service fee set forth in Section 3.3 is consideration for Aqua's service of receiving Domestic Wastewater from the City, treating it, and making it available to the City as treated effluent that may be used "as is" as Type 2 reclaimed water or treated to a higher standard for City use in accordance with TCEQ rules. However, the City shall

bear all costs of receiving, transporting, treating to a higher quality (if desired), and, if necessary, storing reclaimed water received from the Aqua System wastewater treatment plant prior to its use. The Parties recognize that the City's use of reclaimed water from the Aqua System wastewater treatment plant will require review and approval by TCEQ. The Parties agree that the City must provide Aqua with its final engineering plans for the City's reclaimed water facilities, including but not limited to a description of where those facilities will be located and how the reclaimed water will ultimately be utilized by the City, prior to Aqua seeking review and approval from TCEQ to provide reclaimed water to the City pursuant to Section 12.2. Upon Aqua receiving TCEQ approval pursuant to Section 12.2 and the \$300,000.00 wholesale service fee as prescribed by Section 3.3, the City will have the entirety of the Term to complete its reclaimed water facilities necessary to receive, transport, treat to a higher quality (if desired), and, if necessary, store treated effluent prior to its use by the City. The City will have sole discretion over whether the City elects to use the reclaimed water received from the Aqua System wastewater treatment plant "as is" as Type 2 reclaimed water or the City intends to apply further treatment so that the treated effluent received may qualify as Type 1 reclaimed water, but shall inform Aqua of such election prior to Aqua seeking review and approval from TCEQ pursuant to Section 12.2 for reclaimed water use by the City. The Parties shall work together to coordinate TCEQ review of requests to approve the City's planned reclaimed water use and facilities, as well as the City's construction timing for those facilities. Aqua shall not be required to undertake new construction to facilitate the City's reclaimed water use plans. The City shall notify Aqua in writing as soon as practicable after deciding the City will not be accepting reclaimed water from Aqua during the Term, but the City shall continue accepting reclaimed water from Aqua for at least 60 days after providing such notification to Aqua if the City has commenced accepting reclaimed water from Aqua. In the event the City notifies Aqua that the City no longer intends to accept reclaimed water from Aqua during the Term, Aqua may dedicate its reclaimed water to other beneficial uses.

3.5 Easements for Access. The City shall grant Aqua an easement upon the City's property or provide any other easement that may be necessary for Aqua to access any equipment the Parties use to measure the volume of Domestic Wastewater received from the City System under Section 2.5. Additionally, the City shall obtain all necessary easements to construct the City System to connect to Aqua's System at the Point of Connection.

3.6 Payment. Payment for wholesale Domestic Wastewater service shall be due and payable monthly by the City to Aqua and said payments shall be subject to the Texas Prompt Payment Act (currently codified at Texas Government Code, §§ 2251.001 - 2251.055).

ARTICLE 4. Effective Date

4.1 The Effective Date of this Agreement will be the later of the date of issuance of the TWDB Exchange Refunding Bonds or the date the TWDB finalizes its Environmental Statement of Findings.

ARTICLE 5. Term

5.1 This Agreement expires on _____, 2030, ten years from the Effective Date, unless terminated earlier in accordance with this Agreement. This Agreement may also be renewed on terms mutually agreeable to the Parties, and shall be automatically renewed for additional three-year terms unless one Party notifies the other in writing of its intent not to renew at least two years prior to expiration of the current or renewal term.

ARTICLE 6. TCEQ Wastewater Facilities Approval

6.1 The facilities used by both Parties to comply with the terms of this Agreement shall be approved by the TCEQ during the life of this Agreement. If, at any time, the City System is not approved by the TCEQ, there shall not be any direct physical connection between the Aqua System and the City System.

ARTICLE 7. No Other Domestic Wastewater Customers

7.1 The City agrees that it will not provide Domestic Wastewater to Aqua for treatment hereunder from any other person or entity outside of the City Service Area without the express written consent of Aqua, which consent shall not be unreasonably withheld. Aqua neither recognizes nor approves any such existing agreements entered into by the City with other governmental or corporate entities or persons outside of the City Service Area, unless expressly approved in writing.

ARTICLE 8. Breach, Termination and Other Remedies

8.1 Termination by Mutual Consent. This Agreement may be terminated in whole or in part by the mutual consent of the City and Aqua.

8.2 Termination for Material Breach. Notwithstanding anything in this Agreement to the contrary, any material breach by either Party to perform any of its duties or obligations under this Agreement, or to faithfully keep and perform any of the terms, conditions and provisions of this Agreement, shall be cause for termination of this Agreement by the non-breaching Party in the manner set forth in this Section. Upon such breach, the non-breaching Party shall notify the breaching Party of the non-breaching Party's intention to terminate this Agreement if the breaching Party fails to cure such breach within 60 days from the date of the notice. The notice must include a reasonable description of the breach. The non-breaching Party shall notify the breaching Party in writing upon acceptance of the cure of any breach. If by the 60th day the breaching Party fails or refuses to cure such breach pursuant to the terms and conditions of this Agreement, then the non-breaching Party shall have the right to terminate this Agreement with 30 days additional notice to the breaching Party, regardless of whether

curative measures are taken by the breaching party following the expiration of the 60 day cure period and subsequent Notice of Termination.

8.3 Termination for Repeated Material Breach. Upon a second material breach within a rolling twelve- month time period of a similar nature by a Party and irrespective of any cure of such material breach, the non-breaching Party may terminate this agreement by providing 30 days notice. Upon such termination, the nonbreaching Party may elect to extend the actual date of service termination for up to two years such that the City may arrange for uninterrupted service.

8.4 Material Breach. The following breach, default or failure to perform a duty or obligation under this Agreement is a material breach:

- (a) Failure to pay any bill, charge, or fee as required by this Agreement;
- (b) Making any connection to the Aqua System at any point except the Point of Connection without expressed permission from Aqua;
- (c) Failure to correct any potentially hazardous connection after notice delivered by certified mail; or
- (d) Failure by Aqua to provide adequate Domestic Wastewater treatment by not meeting the City's needs herein unless the failure is caused by the City.
- (e) Failure of Domestic Wastewater delivered by the City to meet the Quality standards specified in Section 2.4 of this Agreement.

All other breaches are deemed to be non-material.

8.5 Effect of Termination. Upon termination of this Agreement as determined by an applicable notice provided in accordance with the terms of this Article 8, all rights, powers, and privileges of the City and Aqua under this Agreement shall cease and terminate, and neither Party shall make any claim of any kind whatsoever against the other Party, its agents or representatives, by reason of termination or any act incident to termination. If this Agreement is not renewed before it expires, and the Parties are negotiating in good faith regarding the provisions of a new agreement, then the Parties may extend the date for termination, in writing signed by both Parties. No continuation of the service obligation exists or will be implied after expiration or termination.

8.6 No Waiver. Any failure by either Party to terminate this Agreement, or the acceptance by either Party of any benefits under this Agreement, for any period of time after a material breach, default or failure by the City or by Aqua shall not be determined to be a waiver by Aqua or the City of any rights to terminate this Agreement for any subsequent material breach, default or failure.

8.7 Goods and Services. The City and Aqua agree that this Agreement constitutes an agreement for providing goods and services by Aqua to the City and is subject to the provisions of Subchapter I of Chapter 271, Texas Local Government Code, as amended, and any successor statute(s). In accordance with Sections 271.152 and 271.153 thereof, the City hereby waives any constitutional, statutory or common law right to sovereign or governmental immunity from liability or suit and expressly consents to be sued and liable as described in said statutes, but only as to Aqua and this Agreement. City does not waive any additional rights under Texas Local Government Code Sections 271.155-157.

ARTICLE 9. Ownership and Liability

9.1 No Joint Venture. No provision of this Agreement shall be construed to create any type of joint or equity ownership of any property, any partnership or joint venture, nor shall same create any other rights or liabilities and City payments (whether past, present, or future) shall not be construed as granting the City partial ownership of, pre-paid capacity in, or equity in the Aqua System.

9.2 Liabilities and Risk of Loss. Liabilities for damages and risk of loss arising from the proper treatment, transportation and delivery for all Domestic Wastewater hereunder shall remain with the City to the Point of Connection and, upon passing through the valve at the Point of Connection, liability for such damages as well as risk of loss shall pass to Aqua. Liabilities for any substance delivered by the City at the Point of Connection which is not Domestic Wastewater as defined in this Agreement shall at all times remain with the City and shall not pass to Aqua. Each Party agrees to save, release and hold harmless the other Party from all claims, demands, and causes of action which may be asserted by anyone on account of the quality, collection, transportation and delivery while Domestic Wastewater is in the control of such Party. This covenant is not made for the benefit of any third party. Aqua takes the responsibility as between the Parties for the proper treatment, quality, collection, transportation, and delivery of all such Domestic Wastewater provided by City to the Point of Connection, but does not take responsibility as between the Parties for any other substance delivered at the Point of Connection by the City.

ARTICLE 10. Force Majeure

10.1 Notice and Suspension. If by any reason of force majeure either Party shall be rendered unable, wholly or in part, to carry out its obligations under this Agreement, other than the obligation of the City to make payments required under the terms hereof, then if such Parties shall give notice and full particulars of such force majeure 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 such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and such Party shall endeavor to remove or overcome such inability with all reasonable dispatch.

10.2 Definition. The term “force majeure,” as employed herein, shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the government of the United States or the State of Texas, or any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions breakage or accidents to machinery, pipelines or canals, partial or entire failure of water supply or the City or Aqua Systems, and inability on the part of City to deliver Domestic Wastewater to the Aqua System hereunder or Aqua to receive and treat Domestic Wastewater from the City hereunder on account of any other cause not reasonably in the control of the Party claiming such inability.

ARTICLE 11. Notices

11.1 Required Notice. Any notice or other communication that is required, given or provided for under this Agreement shall be in writing, and addressed as follows:

To Aqua: Aqua Utilities, Inc. d/b/a Aqua Texas, or, if applicable,
Aqua Texas, Inc. d/b/a Aqua Texas²
Attn: President
1106 Clayton Lane, Suite 400W
Austin, Texas 78723
E-mail: RLLaughman@aquaamerica.com

To City: City of Wimberley, Texas
Attn: City Administrator

221 Stillwater (Physical Location)
Wimberley, TX 78676
E-mail: scox@cityofwimberley.com

Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after such notice or communication is mailed by prepaid certified or registered mail, (iii) one (1) working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is sent electronically, provided that the sender has received a confirmation of such electronic transmission. A party may, for purposes of this Agreement, change his, her or its address, email address or the person to whom a notice or other communication is marked to the attention of, by giving notice of such change to the other party pursuant to this Section.

11.2 Delivery and Receipt. Notice shall be either (a) delivered personally, (b) sent by United States certified mail, postage prepaid, return receipt requested, (c) placed in the custody of a nationally recognized overnight carrier for next day delivery, or (d) sent via

² See STM Application Order, *supra* note 1.

e-mail. Notice shall be deemed given when received if delivered personally or sent via e-mail with written confirmation of receipt; or, within two days after mail or deposit. Each Party shall provide notice in writing of any change in its address.

ARTICLE 12. Reclaimed Water

12.1 Reclaimed Water Rights. Subject to the terms and conditions set forth in Sections 3.3 and 3.4 of this Agreement, for as long as this Agreement is in effect, Aqua agrees to make the treated effluent from the Aqua System wastewater treatment plant available “as is, where is” to the City for receipt and use by the City at the City’s sole expense and without additional payment to Aqua as reclaimed water in accordance with TCEQ rules based on the gallons of Domestic Wastewater treated by Aqua for the City System up to 75,000 gallons per day unless there is mutual agreement to provide more; but Aqua may be relieved of this obligation as specified in Section 3.4 if applicable.

12.2 Reclaimed Water Use Permit. The Parties acknowledge that a TCEQ permit under 30 Tex. Admin. Code (“TAC”), Chapter 210 will be required for Aqua to make treated effluent from the Aqua System wastewater treatment plant available to the City for beneficial reuse as reclaimed water.

ARTICLE 13. Miscellaneous

13.1 Subject to Laws and Permits. This Agreement is subject to all applicable Federal and State laws and any applicable permits, amendments, orders, or regulations of any State or Federal governmental authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, order, rule or regulation in any forum having jurisdiction except as described herein with respect to Subchapter I of Chapter 271, Texas Local Government Code, as amended, and any successor statute(s). The City agrees to abide by any changes in this Agreement made necessary by any new, amended, or revised state or federal regulation; however, the Parties may not enact rules or laws that conflict with this Agreement.

13.2 Entry on the City’s Premises. The City shall allow any duly authorized employee of Aqua who presents Aqua employee identification to access any premises located within the City Service Area or served by the City, and which the City has right of entry, as may be necessary for the purpose of inspections and observation, measurements, sampling and testing and/or auditing, in accordance with the provisions of this Agreement. The City may elect to accompany the Aqua representative. To the extent permitted by law, Aqua agrees to be responsible to the City for any damage or injury to person or property caused by the negligence of such duly authorized employee while such employee is in the course and scope of their employment.

13.3 Assignment. Neither Party may assign this Agreement without the prior written consent of the other. However, notwithstanding the foregoing, Aqua shall be entitled to assign its interest in this Agreement without need for prior consent if such assignment is

performed to consolidate ownership of Aqua's wastewater facility assets with those of an affiliated entity with commonality of ownership (e.g., Aqua Texas, Inc. d/b/a Aqua Texas).

13.4 No Waiver. No waiver by either Party of any term or condition of this Agreement, or failure to give notice of any breach, shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

13.5 VENUE. THE PARTIES AGREE THAT THIS AGREEMENT IS PERFORMABLE IN HAYS COUNTY, TEXAS, AND THAT THE COURTS OF HAYS COUNTY ARE A PROPER FORUM FOR THE DETERMINATION OF ANY DISPUTE ARISING UNDER THIS AGREEMENT.

13.6 Construction. As used in this Agreement, the term "including" means "including without limitation," the words "shall" and "will" are mandatory and the word "may" is permissive, and the term "days" means calendar days, not business days. Wherever required by the context, the singular shall include the plural, and the plural shall include the singular.

13.7 Severability. If any term or provision in this Agreement is held to be invalid or unenforceable by any legislative act or court of competent jurisdiction, and the extent of such invalidity or unenforceability does not cause substantial deviation from the underlying intent of the parties as expressed in this Agreement, then such invalid or unenforceable provision shall be deemed severed from this Agreement without invalidating the remainder of this Agreement, and a new provision shall be deemed substituted in lieu of the provision severed, which new provision shall, to the extent possible, accomplish the intent of the parties as evidenced by the provision severed, and without affecting any other term or provision in this Agreement.

13.8 Counterparts. This Agreement may be executed in any number of counterparts and any signatory hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. This Agreement shall become binding when one or more counterparts taken together shall have been executed and delivered by all signatories. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

13.9 Exhibits. All exhibits attached to this Agreement are incorporated into this Agreement by reference, for all intents and purposes of this Agreement, as follows:

Exhibit A City CCN and City Service Area

Exhibit B Allowable Influent Limits

Exhibit C Proposed Point of Connection

13.10 Tax Ownership. Aqua agrees to not claim any depreciation or amortization deduction, investment tax credit, or deduction for any payment as rent with respect to the City System or any other facilities that may be necessary for the City to design, construct, and install the City System interconnect to the Point of Connection with the Aqua System.

[SIGNATURES ON NEXT PAGE]

IN TESTIMONY WHEREOF, intending to be legally bound, the Parties have duly executed this Agreement on the date first written.

CITY OF WIMBERLEY, TEXAS

Susan Jagers, Mayor

ATTEST

Secretary

AQUA UTILITIES, INC. D/B/A AQUA TEXAS AND AQUA TEXAS, INC. D/B/A
AQUA TEXAS

By: _____

Robert Laughman, President

ATTEST

By: _____

Name: _____

Title: _____

Exhibit A
City Service Area
Estimated Point of Connection

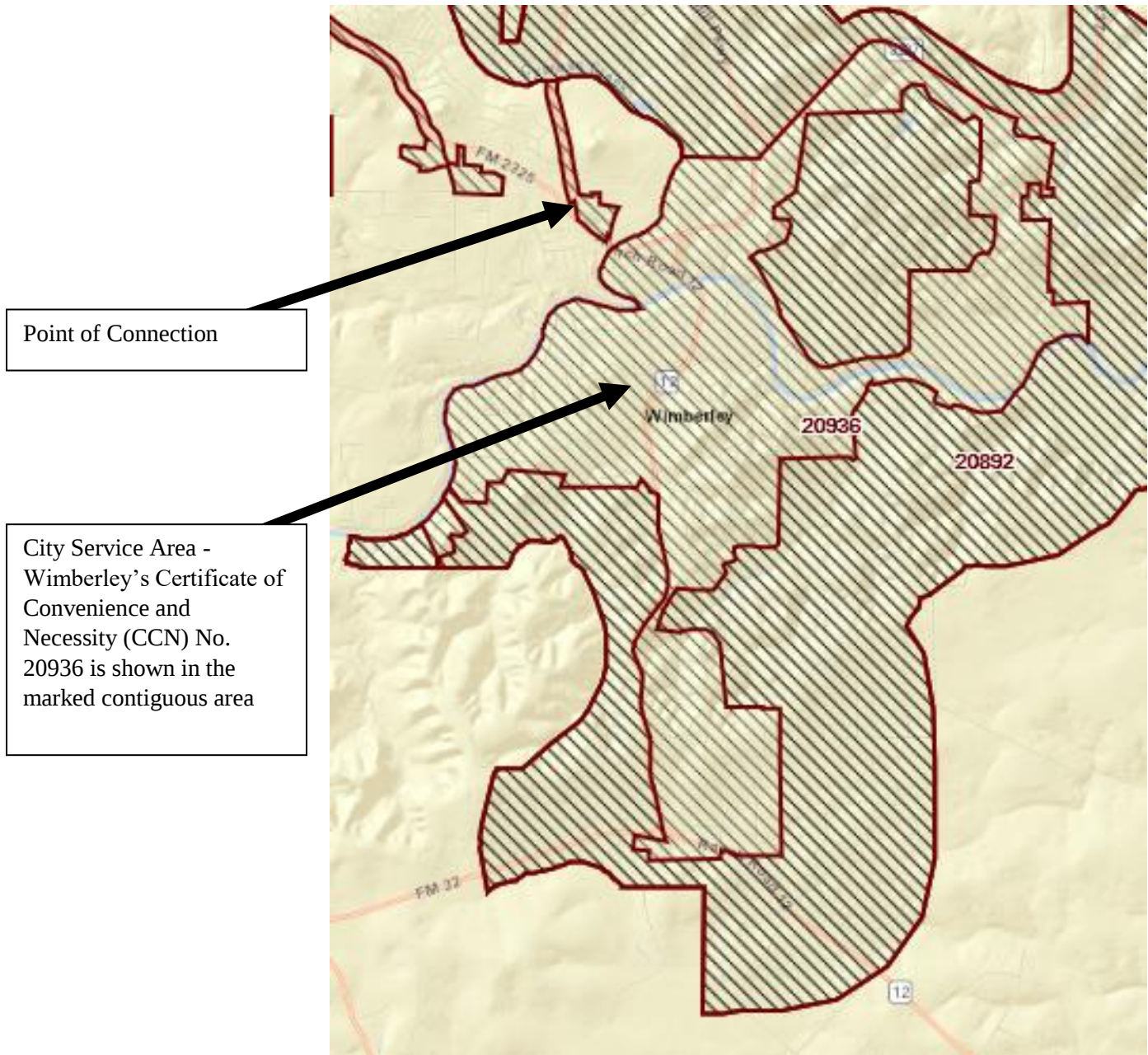


Exhibit B: Allowable Influent Limits

Maximum Allowable Limits (Grab Sample)	Maximum Allowable Limits (Composite Sample)
BOD5 (mg/l)400	 250
TSS (mg/l).....400	 200
Oil & Grease (mg/l)50	 50
COD (mg/l)500	 500
Ammonia.....50	 50
pH..... 6-10	 N/A
Temperature (F)113	 N/A
Arsenic (mg/l)0.3	 0.2
Barium (mg/l).....2.0	 1.0
Boron (mg/l).....4.0	 2.0
Cadmium (mg/l).....0.2	 0.1
Chromium (mg/l)3.0	 1.0
Copper (mg/l).....2.0	 1.0
Lead (mg/l).....1.5	 1.0
Manganese (mg/l)3.0	 2.0
Mercury (mg/l).....0.01	 0.005
Nickel (mg/l).....2.0	 2.0
Selenium (mg/l)0.2	 0.1
Silver (mg/l)0.2	 0.1
Zinc (mg/l)2.0	 2.0

Exhibit C

Estimated Point of Connection

