

Texas Water Development Board

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TO: Board Members

THROUGH: Jeff Walker, Executive Administrator
Todd Chenoweth, General Counsel
Jessica Zuba, Deputy Executive Administrator
T. Clay Schultz, Ph.D., Director, Regional Water Project Development

FROM: Dain Larsen, Manager, Regional Water Project Development

DATE: March 20, 2019

SUBJECT: City of Wimberley Project No. 73653
Amendment of Project Scope

ACTION REQUESTED

Consider approving by resolution a request from the City of Wimberley to amend Texas Water Development Board (TWDB) Resolution No. 16-032 to change the constructed project components.

BACKGROUND

The TWDB has approved two requests from the City of Wimberley (City) to finance wastewater system improvements identified as Project 73653. In April 2013, the TWDB, through Resolution No. 13-46, approved \$650,000 from the Clean Water State Revolving Fund (CWSRF) for planning and design of wastewater system improvements. Three years later, in April 2016, the TWDB, through Resolution No. 16-032, approved \$5,498,005 from the CWSRF for the construction phase, including \$5,255,000 in financing and \$243,005 in principal forgiveness for green project components. The City closed on the construction funding in October 2017.

The original project consisted of planning, design and construction of a collection system for the central Wimberley area, a 75,000 gallon per day (GPD) wastewater treatment plant (WWTP), and infrastructure to irrigate the City-owned Blue Hole Regional Park with treated effluent. The pledge of the financing for planning and design is tax anticipation notes secured by ad valorem taxes and surplus net revenues of the utility system. The pledge of the construction loan is revenues of the utility system, which includes a requirement for a service agreement between the City's Parks Department and Utility for

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To provide leadership, information, education, and support for planning, financial assistance, and outreach for the conservation and responsible development of water for Texas

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Jeff Walker, Executive Administrator

an annual transfer of funds to the Utility of up to \$200,000 for the purchase of reuse for irrigating Blue Hole park.

KEY ISSUES

The City's engineering feasibility report and environmental information document both include planning phase alternatives analyses evaluating an option for construction of a connection to Aqua Texas to purchase wholesale wastewater treatment services. During the planning phase, the City rejected the Aqua Texas option and selected the city-owned plant as the preferred alternative. Estimated costs were similar at that time, but the City's documentation indicated a preference to maintain control over the quality of effluent, operations and maintenance, and system rates.

In April 2017 the City bid two separate construction contracts, one for the WWTP and the second for the collection system. Though bids for the construction of the WWTP came in approximately \$2 million over the estimated cost, the City awarded both contracts. In addition to TWDB funding for the project, the City secured \$2 million in grants from the Economic Development Administration and Way Foundation for these construction items. In March 2018 construction began on the WWTP and on the collection system the following month.

In May 2018, two months after the start of construction, new leadership in the City reevaluated project alternatives and determined that a long-term contract with Aqua Texas was the preferred option. They concluded that in the long-term the increased cost of the WWTP would be costlier to citizens than service charges from Aqua Texas. In addition, the City has stated that Aqua Texas intends to treat the wastewater to Type I standards.

In August 2018 the city council voted to terminate its contract with the WWTP contractor and submit a request to the Texas Water Development Board (TWDB) to revise the project scope to eliminate construction of a wastewater treatment plant and add construction of a connection to Aqua Texas. The City's request was submitted to the TWDB on September 12, 2018. Construction of the collection system has continued since that time.

The use of the CWSRF funds for construction of the proposed change would require Executive Administrator (EA) approval of a change order to the existing collection system contract. This change order has an estimated cost of \$94,552, approximately 2.6 percent of the current contract amount. In addition to this estimated cost, the draft contract between the City and Aqua Texas includes a \$300,000 capacity buy-in fee to connect with Aqua Texas. The estimated total cost for the proposed change would be \$394,552.

The table below shows the construction costs for the project compared to the costs for the proposed change. The proposed change has a lower construction cost but results in the City not having funding available from two grants secured for the original project, including a \$1,000,000 grant from the U.S. Economic Development Administration and a \$1,000,000 grant from a private donor. In addition, the proposed change does not include a reuse

component, which will result in the loss of \$243,005 in principal forgiveness from the TWDB.

Total project costs

Use	Original	Proposed
Construction	\$6,442,125	\$4,255,854 ¹
Engineering	\$775,239	\$889,314
Green Project Costs	\$243,005	\$0
Capacity Buy-in (Aqua)	\$0	\$300,000
Fiscal Services and Other	\$495,522	\$647,269
Contingency	\$815,694	\$136,013
Total	\$8,771,585	\$6,228,450

Total Funding Sources

TWDB Loans	\$6,148,005	\$5,905,000
Grants	\$2,000,000	\$0
Local Funds	\$623,580	\$323,450
Total	\$8,771,585	\$6,228,450

TWDB Funds Available

As of February 19, 2019

Use	Released	Available	
		Current	Proposed
Construction	\$2,509,808 ²	\$1,869,292	\$1,546,046
Engineering	\$600,239	\$0	\$289,075
Green Project Costs	\$0	\$243,005	\$0
Capacity Buy-in (Aqua)	\$0	\$0	\$300,000
Fiscal Services and Other	\$352,972	\$0	\$170,847
Contingency	\$0	\$572,689	\$136,013
Total	\$3,463,019	\$2,684,986	\$2,441,981

The City has provided a sufficiency of funds statement indicating it will have sufficient funds available to complete the revised project and has submitted revised plans. In addition, the City is negotiating a substantively complete contract with Aqua Texas and has held a public hearing regarding the proposal.

¹ Included in the "Construction" category" of the "Proposed" column is \$200,000 in penalties the City incurred from termination of its contract with the WWTP contractor that are ineligible for CWSRF funding.

² No requests for releases of CWSRF funds have been received for construction of the wastewater treatment plant since May 31, 2018.

Delays in the project since May 2018 and the possibility of an incomplete project have introduced additional risk to the TWDB and potentially affect the City's long-term ability to repay the existing debt secured by system revenue. In the near-term the City is using capitalized interest, transfers from its general fund, and cash reserves. The City's first principal payment is due August 1, 2019. The City's 2019 budget, adopted on September 25, 2018, includes a transfer of \$501,131 from its general fund into the utility fund that is available for the payment of approximately \$340,000 in debt service. After 2020, annual debt service payments are approximately \$250,000.

In 2018, the City's existing utility system and parks department combined produced approximately -\$43,635 in net revenues available for debt service. The net loss is primarily due to an increase of approximately \$200,000 in expenses in 2018 for the utility system. This was primarily due to increased expenses for services attributed to the wastewater project. In addition, the City has \$737,617 in its bond reserve fund and the utility has \$125,374 in cash equivalents.

Of additional concern is how the proposed change affects the existing contract between the City's parks department and utility system. The existing contract formalizes a transfer of up to \$200,000 annually to the utility system for the purchase of reuse water. The City's proposed change does not include reuse. The City has indicated that it intends to continue transferring funds and has provided a draft of the revised contract that removes the sale of reuse water as a condition for payment to the utility system. The contract would need to be executed to allow for payments to the utility system absent the availability of reuse water.

To mitigate the additional risk associated with long-term repayment ability, the EA is recommending that approval of the proposed change will require that the City exchange its existing construction phase bonds with TWDB and include a pledge of ad valorem taxes, along with the system's net revenues.

Based on this recommendation, the following milestones will need to be completed prior to the approval of the proposed change order by the EA, including:

- Exchange refunding for the City in accordance with Chapter 1207 of the Texas Government Code to refund the City's revenue bonds;
- Submission of an executed wholesale wastewater treatment service contract between the City and Aqua Texas;
- Documentation that the City has acquired or is in the process of acquiring all real property interest, as evidenced by earnest money contracts, contracts for sale, firm option agreements to purchase the subject property needed to complete the project;
- Issuance of an updated favorable environmental determination.

In February 2019, based on the recommendation of the Executive Administrator, the Board voted to table the City's request for a change in scope to allow sufficient time for the City to provide information required for the environmental review process, including regulatory agency coordination and the City's response to public comments. Since that time, the City

and its consultants have worked diligently to provide the required information. This information has been reviewed and accepted and TWDB Staff are now working on preparing the Statement of Findings, which will document the updated environmental review. The City is scheduled to consider approving the exchange refunding transaction on April 4, 2019. A schedule of additional milestones related to the proposed transaction and completion of construction will also be provided.

RECOMMENDATION

Because it appears that the City has sufficient available project funds to complete the proposed change in scope, and the proposed project is eligible and will solve the water quality problem identified, the EA recommends the change in scope for the project. However, because of previous delays and the potential of additional delays that could affect the ability of the City to generate sufficient system revenues to repay the debt, the EA recommends that the Board require the City to issue and exchange refunding bonds with a Tax and Revenue pledge.

The EA recommends approving the City of Wimberley's request to amend Texas Water Development Board (TWDB) Resolution No. 16-032 to change the constructed project components.

Attachments:

Attachment 1; proposed TWDB Resolution (19-)

Attachment 2; TWDB Resolution (17-033)

Attachment 3; TWDB Resolution (16-032)

Attachment 4; Letter from City

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
RELATING TO THE CHANGE IN SCOPE REQUEST
SUBMITTED BY THE CITY COUNCIL OF WIMBERLEY, TEXAS

(19-)

WHEREAS, at its April 11, 2016 meeting, the Texas Water Development Board (TWDB), through Resolution No. 16-032, as amended by TWDB Resolution No. 17-033, made a commitment to provide financial assistance in the total amount of \$5,498,005 through the Clean Water State Revolving Fund (CWSRF) to finance the construction of certain wastewater system improvements identified as Project No. 73653 (Project) for the City of Wimberley (City); and

WHEREAS, after an extension of the commitment made by TWDB Resolution No. 16-032, as amended by TWDB Resolution No. 17-033, the City and TWDB mutually closed on the commitment of financial assistance with the delivery of City system revenue bonds (Bonds) through City Ordinance No. 2017-015, to the TWDB on October 26, 2017 financing the Project; and

WHEREAS, after the City commenced construction of the Project, the City Council voted 4-1 on August 28th, 2018 to authorize the submission of a request to the TWDB to modify the scope of the Project, said written request dated September 12, 2018;

WHEREAS, the City has submitted to the Executive Administrator for review a request to modify the scope of the Project; and

WHEREAS, the Executive Administrator recommends approval of the City's request for modification to its project scope through a change order to its construction contract for the construction phase of the Project, contingent on the following actions and documentation necessary for the Executive Administrator's approval.

NOW THEREFORE, based on these considerations, the TWDB resolves as follows:

1. The TWDB acknowledges the City's intent to use its Bond proceeds, as delivered to the TWDB on October 26, 2017, for the (1) construction of a collection system to provide wastewater service to the City; (2) funding of a reserve fund as required by TWDB rules and regulations; and (3) payment of professional services and costs of issuance related to the Bonds, as proposed by the City in an official action to modify City Ordinance No. 2017-015, and that the foregoing purposes is consistent with the construction of certain wastewater system improvements as identified in the Project.
2. That prior to approval of a change order modifying the Project scope by the Executive Administrator, the City shall:
 - a. take all necessary steps to issue and exchange refunding bonds (Refunding Bonds) to the TWDB in compliance with Texas Government Code Chapter

1207, thereby refunding the city's Bonds, and pledging to the payment of the Refunding Bonds ad valorem taxes and revenues of the City's System. A loan origination fee as required by 31 Texas Administrative Code Chapter 375 will not be assessed on the Refunding Bonds;

- b. upon issuance of the Refunding Bonds, the City shall transfer the proceeds of the reserve fund established for Ordinance No. 2017-015, to be used for eligible project costs as approved by the Executive Administrator, into the escrow account established for the Project, entitled, "City of Wimberley, Texas Sewer System Revenue Bonds, Series 2017 Texas Water Development Board L1000394 Escrow Account";
 - c. the Refunding Bonds shall contain a covenant where the City agrees to levy and collect sufficient ad valorem taxes and maintain sufficient rates, and charges to produce System revenues in an amount necessary to meet the debt service requirements of all outstanding obligations with the same pledge as the Refunding Bonds, and to maintain the funds established and required by the covenants of the Refunding Bonds;
 - d. should the proceeds of the Refunding Bonds be used to professional services as that term is used in this subsection, submit to the Executive Administrator written documentation sufficient to demonstrate that the City has met all applicable state procurement requirements as well as all federal procurement requirements under the Disadvantaged Business Enterprises program prior to the release of any TWDB funds for professional services, including but not limited to, those services for engineer, financial advisor, and bond counsel, as appropriate; and
 - e. comply with all conditions as specified in the in a final environmental finding of the Executive Administrator, including the standard emergency discovery conditions for threatened and endangered species and cultural resources.
3. all other terms and conditions of TWDB Resolution No. 16-032, as amended by TWDB Resolution No. 17-033, including but not limited those related to SEC continuing disclosure requirements, TWDB CWSRF program guidelines and policies, and the tax-exempt status of the Bonds, shall apply to the Refunding Bonds, and it is the TWDB's intent that those covenants shall remain in full force and effect for the Project.

APPROVED and ordered of record this the 28th day of March, 2019.

TEXAS WATER DEVELOPMENT BOARD

Peter Lake, Chairman

DATE SIGNED: _____

ATTEST:

Jeff Walker, Executive Administrator

**A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AMENDING TWDB RESOLUTION NO. 16-032
TO EXTEND THE COMMITMENT PERIOD FOR FINANCIAL ASSISTANCE TO
THE CITY OF WIMBERLEY**

(17-033)

WHEREAS, at its April 11, 2016 meeting, the Texas Water Development Board (TWDB), by TWDB Resolution No. 16-032, made a commitment to provide financial assistance to the City of Wimberley (City) in the amount of \$5,498,005, consisting of the TWDB's purchase of \$5,255,000 City of Wimberley, Texas Sewer System Revenue Bonds, Proposed Series 2016, from the Clean Water State Revolving Fund program, with \$243,005 in financial assistance to be forgiven, for the purpose of financing the construction phase of the City's wastewater system identified as Project No. 73653; and

WHEREAS, pursuant to TWDB Resolution No. 16-032, the commitment period will expire April 30, 2017; and

WHEREAS, by letter dated February 13, 2017, the City requested that the TWDB amend TWDB Resolution No. 16-032 to extend the TWDB commitment of financial assistance for one (1) year; and

WHEREAS, the City warrants that a one-year extension is necessary to "make any necessary adjustments to the project scope"; and

WHEREAS, the Executive Administrator has reviewed the City's request and recommends extending the TWDB commitment period for six (6) months to allow the City sufficient time to close its financial assistance, all as if more specifically set forth in the recommendations of the Executive Administrator's staff, to which documents express reference is made; and

WHEREAS, the TWDB hereby finds that granting an extension of six (6) months is in the public interest and will serve a public purpose; and

NOW, THEREFORE, based on these considerations and findings, the TWDB resolves as follows:

1. The commitment of the TWDB to provide financial assistance in the amount of \$5,498,005, as authorized in TWDB Resolution No. 16-032, is further amended to extend the commitment period six (6) months to expire on October 31, 2017.
2. That all other terms and conditions of TWDB Resolution No. 16-032 shall remain in full force and effect.

APPROVED and ordered of record this the 20th day of April, 2017.

TEXAS WATER DEVELOPMENT BOARD



Bech K. Bruun

Bech K. Bruun, Chairman

DATE SIGNED: 4-20-17

ATTEST:

Jeff Walker

Jeff Walker
Executive Administrator

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF
\$5,498,005 TO THE CITY OF WIMBERLEY
FROM THE CLEAN WATER STATE REVOLVING FUND
THROUGH THE PROPOSED PURCHASE OF
\$5,255,000 CITY OF WIMBERLEY, TEXAS SEWER SYSTEM REVENUE BONDS,
PROPOSED SERIES 2016
AND
\$243,005 IN LOAN FORGIVENESS

(16-032)

WHEREAS, the City of Wimberley (City) has filed an application for financial assistance in the amount of \$5,498,005 from the Clean Water State Revolving Fund (CWSRF) to finance the construction of certain wastewater system improvements identified as Project No. 73653; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of \$5,255,000 City of Wimberley, Texas, Proposed Series 2016 (together with all authorizing documents, "Obligations"), and the execution of a Loan Forgiveness Agreement in an amount of \$243,005, all as is more specifically set forth in the application and in recommendations of the TWDB's staff; and

WHEREAS, the City has offered a pledge of a first lien on the net revenues of the sewer system as sufficient security for the repayment of the Obligations; and

WHEREAS, the TWDB hereby finds:

1. that the revenue pledged by the City will be sufficient to meet all the Obligations assumed by the City, in accordance with Texas Water Code § 15.607;
2. that the application and assistance applied for meet the requirements of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*, as well as state law, in accordance with Texas Water Code § 15.607;
3. that the City has adopted and implemented a water conservation program for the more efficient use of water that will meet reasonably anticipated local needs and conditions and that incorporates practices, techniques or technology prescribed by the Texas Water Code and TWDB's rules;
4. that the City has considered cost-effective, innovative, and nonconventional methods of treatment, in accordance with Texas Water Code § 15.007;
5. that the TWDB has made a timely and concerted effort to solicit projects that address green infrastructure, water, or energy efficiency improvements and other environmentally innovative activities and has determined that the entire Project, or a portion of the Project, satisfies the EPA's criteria for Green Projects; and

6. that the Executive Administrator issued a Finding of No Significant Impact on August 6, 2014, such findings being subject to the standard emergency discovery conditions for threatened and endangered species and cultural resources in the Project contract documents. The TWDB concurs with the environmental finding issued by the Executive Administrator.

NOW THEREFORE, based on these findings, the TWDB resolves as follows:

A commitment is made by the TWDB to the City of Wimberley for financial assistance in the amount of \$5,498,005 from the Clean Water State Revolving Fund through the TWDB's proposed purchase of \$5,255,000 City of Wimberley, Texas Sewer System Revenue Bonds, Proposed Series 2016 and the execution of a Loan Forgiveness Agreement in the amount of \$243,005. This commitment will expire on April 30, 2017.

Such commitment is conditioned as follows:

Standard Conditions

1. this commitment is contingent on a future sale of bonds by the TWDB or on the availability of funds on hand;
2. this commitment is contingent upon the issuance of a written approving opinion of the Attorney General of the State of Texas stating that all of the requirements of the laws under which said Obligations were issued have been complied with; that said Obligations were issued in conformity with the Constitution and laws of the State of Texas; and that said Obligations are valid and binding obligations of the City;
3. this commitment is contingent upon the City's compliance with all applicable requirements contained in 31 TAC Chapter 375;
4. the Obligations must provide that the Obligations can be called for early redemption only in inverse order of maturity, and on any date beginning on or after the first interest payment date which is 10 years from the dated date of the Obligations, at a redemption price of par, together with accrued interest to the date fixed for redemption;
5. the City, or an obligated person for whom financial or operating data is presented to the TWDB in the application for financial assistance either individually or in combination with other issuers of the City's Obligations or obligated persons, will, at a minimum, regardless of the amount of the Obligations, covenant to comply with requirements for continuing disclosure on an ongoing basis substantially in the manner required by Securities and Exchange Commission (SEC) in 17 CFR § 240.15c2-12 (Rule 15c2-12) and determined as if the TWDB were a Participating Underwriter within the meaning of such rule, such continuing disclosure undertaking being for the benefit of the TWDB and the beneficial owners of the City's Obligations, if the TWDB sells or otherwise transfers such Obligations, and the beneficial owners of the TWDB's bonds if the City is an obligated person with respect to such bonds under SEC Rule 15c2-12;

6. the Obligations must contain a provision requiring the City to maintain and collect sufficient rates and charges to produce system revenues in an amount necessary to meet the debt service requirements of all outstanding obligations and to maintain the funds established and required by the Obligations;
7. the Obligations must include a provision requiring the City to use any loan proceeds from the Obligations that are determined to be surplus funds remaining after completion of the project for the following purposes as approved by the Executive Administrator: (1) to redeem, in inverse annual order, the Obligations owned by the TWDB; (2) deposit into the Interest and Sinking Fund or other debt service account for the payment of interest or principal on the Obligations owned by the TWDB; or (3) eligible project costs as authorized by the Executive Administrator;
8. the Obligations must contain a provision that the TWDB may exercise all remedies available to it in law or equity, and any provision of the Obligations that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect;
9. loan proceeds are public funds and, as such, the Obligations must include a provision requiring that these proceeds shall be held at a designated state depository institution or other properly chartered and authorized institution in accordance with the Public Funds Investment Act, Government Code, Chapter 2256, and the Public Funds Collateral Act, Government Code, Chapter 2257;
10. loan proceeds shall not be used by the City when sampling, testing, removing or disposing of contaminated soils and/or media at the project site. The Obligations shall include an environmental indemnification provision wherein the City agrees to indemnify, hold harmless and protect the TWDB from any and all claims, causes of action or damages to the person or property of third parties arising from the sampling, analysis, transport, storage, treatment and disposition of any contaminated sewage sludge, contaminated sediments and/or contaminated media that may be generated by the City, its contractors, consultants, agents, officials and employees as a result of activities relating to the project to the extent permitted by law;
11. prior to closing, the City shall submit documentation evidencing the adoption and implementation of sufficient system rates and charges or, if applicable, the levy of an interest and sinking tax rate sufficient for the repayment of all system debt service requirements;
12. prior to closing, and if not previously provided with the application, the City shall submit executed contracts for engineering, and, if applicable, financial advisor and bond counsel contracts, for the project that are satisfactory to the Executive Administrator. Fees to be reimbursed under the contracts must be reasonable in relation to the services performed, reflected in the contract, and acceptable to the Executive Administrator;

13. prior to closing, when any portion of the financial assistance is to be held in escrow or in trust, the City shall execute an escrow or trust agreement, approved as to form and substance by the Executive Administrator, and shall submit that executed agreement to the TWDB;
14. the Executive Administrator may require that the City execute a separate financing agreement in form and substance acceptable to the Executive Administrator;

Conditions Related To Tax-Exempt Status

15. the City's bond counsel must prepare a written opinion that states that the interest on the Obligations is excludable from gross income or is exempt from federal income taxation. Bond counsel may rely on covenants and representations of the City when rendering this opinion;
16. the City's bond counsel opinion must also state that the Obligations are not "private activity bonds." Bond counsel may rely on covenants and representations of the City when rendering this opinion;
17. the Obligations must include a provision prohibiting the City from using the proceeds of this loan in a manner that would cause the Obligations to become "private activity bonds" within the meaning of § 141 of the Internal Revenue Code of 1986, as amended (Code) and the Treasury Regulations promulgated thereunder (Regulations);
18. the Obligations must provide that no portion of the proceeds of the loan will be used, directly or indirectly, in a manner that would cause the Obligations to be "arbitrage bonds" within the meaning of § 148(a) of the Code and Regulations, including to acquire or to replace funds which were used, directly or indirectly, to acquire Nonpurpose Investments (as defined in the Code and Regulations) which produce a yield materially higher than the yield on the TWDB's bonds that are issued to provide financing for the loan (Source Series Bonds), other than Nonpurpose Investments acquired with:
 - a. proceeds of the TWDB's Source Series Bonds invested for a reasonable temporary period of up to three (3) years after the issue date of the Source Series Bonds until such proceeds are needed for the facilities to be financed;
 - b. amounts invested in a bona fide debt service fund, within the meaning of § 1.148-1(b) of the Regulations; and
 - c. amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed the least of maximum annual debt service on the Obligations, 125% of average annual debt service on the Obligations, or 10 percent of the stated principal amount (or, in the case of a discount, the issue price) of the Obligations;

19. the Obligations must include a provision requiring the City take all necessary steps to comply with the requirement that certain amounts earned on the investment of gross proceeds of the Obligations be rebated to the federal government in order to satisfy the requirements of § 148 of the Code. The Obligations must provide that the City will:
 - a. account for all Gross Proceeds, as defined in the Code and Regulations, (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and retain all records of such accounting for at least six years after the final Computation Date. The City may, however, to the extent permitted by law, commingle Gross Proceeds of its loan with other money of the City, provided that the City separately accounts for each receipt and expenditure of such Gross Proceeds and the obligations acquired therewith;
 - b. calculate the Rebate Amount, as defined in the Code and Regulations, with respect to its loan, not less frequently than each Computation Date, in accordance with rules set forth in § 148(f) of the Code, § 1.148-3 of the Regulations, and the rulings thereunder. The City shall maintain a copy of such calculations for at least six years after the final Computation Date;
 - c. as additional consideration for the making of the loan, and in order to induce the making of the loan by measures designed to ensure the excludability of the interest on the TWDB's Source Series Bonds from the gross income of the owners thereof for federal income tax purposes, pay to the United States the amount described in paragraph (b) above within 30 days after each Computation Date;
 - d. exercise reasonable diligence to assure that no errors are made in the calculations required by paragraph (b) and, if such error is made, to discover and promptly to correct such error within a reasonable amount of time thereafter, including payment to the United States of any interest and any penalty required by the Regulations;
20. the Obligations must include a provision prohibiting the City from taking any action that would cause the interest on the Obligations to be includable in gross income for federal income tax purposes;
21. the Obligations must provide that the City will not cause or permit the Obligations to be treated as "federally guaranteed" obligations within the meaning of § 149(b) of the Code;
22. the transcript must include a No Arbitrage Certificate or similar Federal Tax Certificate setting forth the City's reasonable expectations regarding the use, expenditure and investment of the proceeds of the Obligations;
23. the transcript must include evidence that the information reporting requirements of § 149(e) of the Code will be satisfied. This requirement may be satisfied by filing an IRS

Form 8038 with the Internal Revenue Service. In addition, the applicable completed IRS Form 8038 or other evidence that the information reporting requirements of § 149(e) have been satisfied must be provided to the Executive Administrator within fourteen (14) days of closing. The Executive Administrator may withhold the release of funds for failure to comply;

24. the Obligations must provide that neither the City nor a related party thereto will acquire any of the TWDB's Source Series Bonds in an amount related to the amount of the Obligations to be acquired from the City by the TWDB;

State Revolving Fund Conditions

25. the City shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;
26. the Obligations must include a provision stating that all laborers and mechanics employed by contractors and subcontractors for projects shall be paid wages at rates not less than those prevailing on projects of a similar character in the locality in accordance with the Davis-Bacon Act, and the U.S. Department of Labor's implementing regulations. The City, all contractors, and all sub-contractors shall ensure that all project contracts mandate compliance with Davis-Bacon. All contracts and subcontracts for the construction of the project carried out in whole or in part with financial assistance made available as provided herein shall insert in full in any contract in excess of \$2,000 the contracts clauses as provided by the TWDB;
27. the Obligations must include a provision stating that the City shall provide the TWDB with all information required to be reported in accordance with the Federal Funding Accountability and Transparency Act of 2006, Pub. L. 109-282, as amended by Pub. L. 110-252. The City shall obtain a Data Universal Numbering System (DUNS) Number and shall register with System for Award Management (SAM), and maintain current registration at all times during which the Obligations are outstanding;
28. the Obligations shall provide that all loan proceeds will be timely and expeditiously used, as required by 40 CFR § 35.3135(d), and also shall provide that the City will adhere to the approved project schedule;
29. the Obligations and Loan Forgiveness Agreement must contain a covenant that the City will abide by all applicable construction contract requirements related to the use of iron and steel products produced in the United States, as required by the 2014 Federal Appropriations Act and related State Revolving Fund Policy Guidelines;
30. the Obligations must contain language detailing compliance with the requirements set forth in 33 U.S.C. § 1382 *et seq.* related to maintaining project accounts containing financial assistance for planning, design, acquisition, or construction, as applicable, in accordance with generally accepted accounting principles (GAAP). These standards and principles also apply to the reporting of underlying infrastructure assets;

31. the City shall submit, prior to the release of funds, a schedule of the useful life of the project components prepared by an engineer as well as a certification by the applicant that the average weighted maturity of the obligations purchased by the TWDB does not exceed 120% of the average estimated useful life of the project, as determined by the schedule;

Clean Water State Revolving Fund Conditions

32. prior to or at closing, the City shall pay a 1.85% origination fee to the TWDB calculated pursuant 31 TAC Chapter 375;
33. at the TWDB's option, the TWDB may fund the financial assistance under this Resolution with either available cash-on-hand or from bond proceeds. If the financial assistance is funded with available cash-on-hand, the TWDB reserves the right to change the designated source of funds to bond proceeds issued for the purpose of reimbursing funds used to provide the financial assistance approved in this Resolution;
34. prior to release of funds for professional consultants including, but not limited to, the engineer, financial advisor, and bond counsel, as appropriate, the City must provide documentation that it has met all applicable state procurement requirements as well as all federal procurement requirements under the Disadvantaged Business Enterprises program;
35. prior to release of funds for professional services related to architecture or engineering, including but not limited to contracts for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or other architectural and engineering services as defined in 40 U.S.C. § 1102(2)(A)(C), the City must provide documentation that it has met all applicable federal procurement requirements as more specifically set forth in 40 U.S.C. § 1101 *et seq.*;

Pledge Conditions For The Loan

36. the Obligations must require the accumulation of a reserve fund of no less than average annual debt service requirements, to be accumulated in equal monthly installments over the initial sixty (60) months following the issuance of the Obligations;
37. if the City has existing revenue obligations with the same pledge of security as the proposed Obligations that will remain outstanding after any loan(s) made by the TWDB pursuant to this commitment, the lien or liens securing the Obligations issued to the TWDB shall be at least on a parity with lien or liens securing such outstanding obligations; and
38. the Obligations must contain a provision providing that additional revenue obligations may only be incurred if net system revenues are at least 1.25 times the average annual debt service requirements after giving effect to the additional obligations when net

revenues are a) determined from the last completed fiscal year or a 12 consecutive calendar month period ending not more than ninety (90) days preceding the adoption of the additional obligations as certified by a certified public accountant; or b) the City certifies that the City is expected to continue to meet or exceed the net system revenue test with a minimum coverage of 1.25 times the average annual debt service requirement. An authorized representative of the City must provide the calculations, identifying reasonable assumptions, in a manner and format that is acceptable to the Executive Administrator.

PROVIDED, however, the commitment is subject to the following special conditions:

Special Conditions:

39. prior to closing, the City shall execute a Loan Forgiveness Agreement in a form and substance acceptable to the Executive Administrator;
40. the Loan Forgiveness Agreement must include a provision stating that the City shall return any loan forgiveness funds that are determined to be surplus funds in a manner determined by the Executive Administrator;
41. prior to closing, the City must submit an executed service agreement between the City's Park's Department and the Utility sufficient to establish an annual transfer of funds into the Utility system's revenue stream;
42. the Obligations must include a provision stating that the City's wastewater system includes the sale of reuse water; and
43. the City must comply with the standard emergency discovery conditions for threatened and endangered species and cultural resources, as more fully specified in the final environmental finding of the Executive Administrator.

APPROVED and ordered of record this 11th day of April, 2016.

TEXAS WATER DEVELOPMENT BOARD



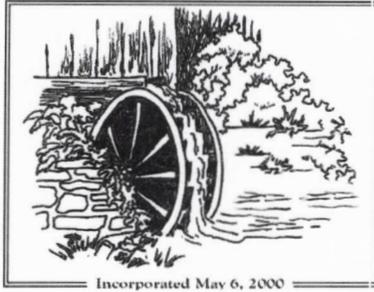
Bech K. Bruun, Chairman

DATE SIGNED: 4-11-16

ATTEST:



Kevin Patteson
Executive Administrator



City of Wimberley

221 Stillwater, P.O. Box 2027, Wimberley, Texas 78676
 (512) 847-0025 Fax (512) 847-0422 www.cityofwimberley.com

Susan Jagers, *Mayor* Gary Barchfeld, *Mayor Pro-tem, Place 4*

Mike McCullough, *Place 1* Craig Fore, *Place 2*

Allison Davis, *Place 3* Patricia Cantu Kelly, *Place 5*

September 12, 2018

Mr. Dain Larsen
 Texas Water Development Board
 P.O. Box 13231
 1700 N. Congress Ave.
 Austin, TX 787141-3231

Re: City of Wimberley
 TWDB Project No. 73653

Dear Mr. Larsen:

The purpose of this letter is to request a modification of the scope of the above referenced project. On August 28, 2018, the City Council of Wimberley voted 4-1 (plus the support of the Mayor) to change the scope of the project. The current scope consists of two components: construction of a collection system ("Collection System") to primarily serve downtown Wimberley, and construction of a wastewater treatment plant that also includes a storage tank and irrigation system (collectively "Plant"). The Council voted to stop construction of the Plant and instead enter into an agreement with Aqua Texas, the regional wastewater treatment provider, to process the City's wastewater at Aqua's existing plant in Wimberley. It should be noted that Aqua currently serves north Wimberley. The City would continue construction of the City-owned Collection System and connect to Aqua's system.

Please find included with this letter:

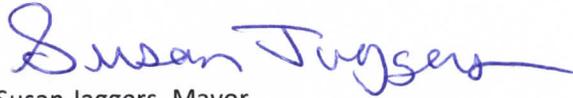
- Project Update – including revised project description, budget, schedule and map
- TWDB Presentation – provides additional background and other relevant information
- A copy of the proposed Aqua agreement, which is substantially complete
- A letter from the City describing Aqua as being a sole source vendor
- Proposed amendment to the City's reclaimed water agreement

A key reason for the change in scope is financial. This includes concerns over the project cost, sufficiency of funds, annual operating expenses, and the ability of the users to repay the revenue bonds. A key element to this change is that under the proposed agreement Aqua will upgrade its existing plant from Type 2 effluent to Type 1 effluent, benefiting not only the City, but the entire Wimberley Valley. Aqua will make such Type 1 effluent available to the City of Wimberley at no cost. Under this agreement, the City will be a wholesale customer of Aqua and the Collection System users would be retail customers of the City. Another important reason for this scope change is environmental. The City Plant would have operated under a TCEQ permit allowing effluent discharge into Deer Creek, which feeds the Blanco River. Aqua's existing plant operates under a land application permit with no discharge allowed.

City of Wimberley

We would be glad to meet with you and your team to further explain the situation and answer any questions. We look forward to hearing and working with you to accomplish this change. Thank you.

Sincerely,

A handwritten signature in blue ink that reads "Susan Jagers". The signature is fluid and cursive, with a long horizontal stroke at the end.

Susan Jagers, Mayor



City of Wimberley