

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is made and entered into by and between the City of Wimberley ("City"), and the Blanco River Cypress Creek Water Association ("BRCCWA"), KKP3237, LLC, Paradise Valley Property Owners Association ("PVPOA"), and Rocky River Ranch, Inc., collectively referred to as the "Parties," for purposes and considerations set forth herein. Blanco River Cypress Creek Water Association, KKP 3237, LLC, Paradise Valley Property Owners Association, and Rocky River Ranch, Inc. are sometimes together referred to herein as the "Protestants." This Agreement is effective on September 30, 2015 (the "Effective Date"), which is the date of execution by the City.

RECITALS

The City applied with the Texas Commission on Environmental Quality ("TCEQ") to amend its Texas Pollutant Discharge Elimination Permit No. WQ0013321001 ("Permit No. 13321001") to expand the treatment capacity of its wastewater treatment plant to 75,000 gallons per day, and to allow the City to discharge the treated effluent to Deer Creek.

The Protestants requested a contested case hearing regarding the City's application to amend its Permit No. 13321001 and were admitted as parties in the administrative hearing before the State Office of Administrative Hearings ("SOAH"), TCEQ Docket No. 2015-0482-MWD, SOAH Docket No. 582-15-3337, on June 1, 2015.

On August 21 and 24, 2015, the Parties mediated their disputes over Permit No. 13321001, and through that process and additional negotiations, the Parties reached agreement on the terms provided for in this Agreement.

AGREEMENT

In consideration of the mutual promises, agreements, and covenants contained in the agreement, including the recitals above, and other good and valuable consideration including the settlement of disputed claims, the receipt and sufficiency of which are hereby acknowledged, Parties hereby agree to the following:

1. The City agrees to add a permit condition to Permit No. 13321001 that requires the City to discharge only as a last resort. The City will apply for a 210 authorization (the obtainment of which is a condition of the above permit provision), in order to use the treated effluent to irrigate Blue Hole Regional Park and for other potential reuses. The City will use its best efforts to minimize the occurrence of discharge into Deer Creek and the Blanco River. No discharge will occur unless:

- a. The irrigated area's ground is frozen or the ground is saturated as measured by soil moisture sensors; and

- b. No storage is available.
 2. Effluent storage capacity. The City agrees to maintain an effluent storage facility with a minimum capacity of 500,000 gallons.
 - a. The City will equip its effluent storage tank for bulk distribution.
 3. Wastewater capacity in Blue Hole Regional Park. The City agrees not to expand the wastewater treatment capacity within Blue Hole Regional Park beyond 75,000 gallons per day (gpd). The City will work diligently to determine the best mechanism to enforce this Agreement not to expand the wastewater treatment capacity above 75,000 gpd. To this end, the City agrees to pursue a grant-agreement amendment with Texas Parks and Wildlife Department ("TPWD") as a basis for prohibiting any future expansion of wastewater treatment capacity within Blue Hole Regional Park. If the TPWD refuses to make this amendment, the City will make its best efforts to find other legal means to restrict the City's future ability to expand the plant on Blue Hole Regional Park property.
 4. Beneficial reuse and irrigation. The City is committed to discharge into Deer Creek as a last resort. The City intends to avoid discharge by expanding irrigation within Blue Hole Regional Park, utilizing purple pipe distribution of effluent to downtown Wimberley or other acceptable locations, and utilizing the bulk loading on the storage tank and trucks for appropriate re-use/irrigation, as those opportunities and strategies are available to the City.
 - a. If the City is required to discharge its treated effluent after fourteen (14) consecutive days of no measurable (.01 inches or less) rainfall at the City's initial irrigation area in Blue Hole Regional Park, which is approximately twelve (12) acres and includes the soccer fields and great lawn, the City agrees to expand its irrigation area by at least five (5) acres within six (6) months after the above referenced discharge by the City.
 - b. Using the same rainfall and discharge criteria identified in 4.a., the City will expand the irrigation area up to an additional 18 acres as necessary after the initial irrigation area expansion.
 - c. All areas to be irrigated with the City's reclaimed water within Blue Hole Regional Park will be at least 500 feet from Cypress Creek. If the City or TCEQ determines that the City's irrigation of reclaimed water within Blue Hole Regional Park is degrading groundwater quality through a karst feature, spring, or seep, the City will take the necessary actions to protect the karst feature, spring or seep to prevent degradation of the groundwater quality.
 - d. The City will install soil moisture sensors (one per irrigation area).
 5. Facility design and operation. The City agrees to install, operate, and maintain a wastewater treatment facility that has a denitrification unit that is designed to achieve not more than 6 mg/l total nitrogen in the wastewater effluent. Effluent with total nitrogen concentrations higher than 6 mg/l, however, does not constitute a violation of this Agreement.

- a. The Protestants will be provided an opportunity to review and comment on the City's wastewater treatment plant design before the City adopts the final design to ensure the proposed design is capable of meeting the target 6 mg/l figure.
6. The facility will utilize ultraviolet disinfection (UV) instead of chlorine disinfection.
7. Odor control. The City will provide for odor control for odor generating units.
8. Effluent sampling. The City agrees to add as a permit condition to Permit No. 13321001 the following effluent sampling requirements. The City agrees to maintain records of daily irrigation volume. The City agrees to sample and analyze its effluent for:
 - a. Phosphorus, ammonia, TKN, nitrate, and nitrite on each day there is effluent discharge to Deer Creek.
 - b. Emerging contaminants as listed: caffeine, isophorone, camphor, phenol, DEET, HHCB, Triethyl citrate, Methyl salicylate, and Triphenyl phosphate on an annual basis. These results will be posted to the City's website annually.
 - c. Toxic heavy metals listed in the Texas Surface Water Quality Standards (30 Tex. Admin. Code Chp. 307) on an annual basis.
9. Access to Reports. The City will post its quarterly and annual sampling results to its website. Discharge effluent concentration data and daily irrigation volume records will be publically available upon written request.
10. Phosphorus limitations. The City agrees that total phosphorus discharge will not be greater than 1.5 pounds per month.
11. Water quality monitoring. The City agrees to add as a permit condition to Permit No. 13321001 the following water-quality monitoring requirements. The City agrees, using an independent entity selected by the City, to conduct quarterly sampling of Cypress Creek and the Blanco River. The water quality sampling will be conducted as follows:
 - a. Samples will be collected at three locations: in Cypress Creek where runoff tributary from soccer fields enters the creek and in the Blanco River above Deer Creek and below Deer Creek.
 - b. The City will test the samples collected at the three locations identified in 11.a. for total phosphorus, ammonia, TKN, nitrite, nitrate, chlorophyll-a, and dissolved oxygen.
 - c. Testing will be conducted quarterly, and the results posted on the City's website.

12. The Parties agree to participate in a joint press release in favor of the settlement and the draft permit as amended by the settlement.

13. The Protestants agree to withdraw as parties from the contested case hearing docketed as SOAH Docket No. 582-15-3337 within 5 days after the Effective Date of this Agreement and to not pursue any additional legal action before any state or federal agency or before any court regarding this TPDES permit application or any takings or tort suit contemplated by the Protestants in relation to the draft permit as amended by this Agreement. This Agreement is not an admission that Deer Creek or dry Deer Creek is a waterway of the state, but Protestants agree not to assert that it is not a waterway of the state before any state or federal agency or any civil court proceeding with respect to the City's draft permit as amended by this Agreement. The Protestants, in their corporate capacities only (not including the individual members or board members in their individual capacities), also agree to not oppose or otherwise protest the City's pending Texas Water Development Board ("TWDB") application for financing at the TWDB. The Protestants also acknowledge that the addition of the denitrification unit designed to achieve a total nitrogen of 6.0 mg/l could affect the construction cost of the City's treatment and reuse system, and the engineer's estimate of costs, for purposes of meeting the objectives of the stakeholder committee's recommendations, will include the costs of those units.

14. The settlement is contingent on Aqua Texas withdrawing as a party in SOAH Docket No. 582-15-3337.

15. The term of this Agreement shall commence on the Effective Date and shall remain effective for so long as the City is authorized to discharge into Deer Creek pursuant to Permit No. 13321001.

16. **Good Faith.** The Parties agree to cooperate with each other and act in good faith in the performance of this Agreement.

17. **Notice and Opportunity to Cure.** If a party alleges that another party is not in compliance with this Agreement, then the party alleging non-compliance shall provide a written notice to the other party or parties within thirty (30) days of becoming aware of the non-compliance (the "Notice"). The Notice shall include a reasonably complete description of each individual act or omission constituting the alleged non-compliance, including any available supporting documentation, and specify actions necessary to cure the alleged non-compliance. Within thirty (30) days following receipt of the Notice by the alleged non-complying party, that party shall commence to cure any matters specified in the Notice by pursuing curative action with reasonable diligence to completion.

18. **Remedies.** If any Party fails to comply with its obligations under this Agreement or fails to correct any default after notice and opportunity to cure as described in paragraph 17, the other Party or Parties may exercise any remedy authorized at law or in equity, including filing suit in a court of competent jurisdiction. Because the damages for breach of this Agreement would not be easily quantified, the Parties agree that the remedies for breach of this Agreement shall be limited to specific performance of this Agreement, and such remedies may only be sought if the

required Notice has been timely given and the alleged non-compliance that is the basis of the action is not cured within a reasonable time; accordingly, no monetary damages other than attorneys' fees may be sought. Should any litigation be commenced between the Parties concerning any provision of this Agreement, the substantially prevailing party in such litigation will be entitled, in addition to such other relief as may be granted, to reimbursement of its reasonable and necessary attorneys' fees and expenses and expert witness fees, which amounts, if not agreed to by the Parties, will be determined in the same action.

19. This Agreement is not assignable without first obtaining the written consent of all Parties.

20.. This Agreement contains the entire agreement of the Parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by mutual written agreement of the Parties hereto or their respective permitted and approved successors and assigns.

21. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Hays County, Texas and hereby submit to the jurisdiction of the courts of that County , and hereby agree that any such court shall be a proper forum for the determination of any dispute arising hereunder.

22. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective permitted and approved successors and assigns.

23. The individuals executing this Agreement on behalf of the respective Parties below represent to each other and to others that all appropriate and necessary action has been taken and authorize the individuals executing this Agreement to do so for and on behalf of the Party for which his or her signature appears, that there are no other Parties or entities required to execute this Agreement in order for the same to be an authorized agreement on the Party for whom the individual is signing this Agreement, and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof. The Parties agree to provide the other Parties with written evidence that the individual affixing his or her signature to this Agreement is authorized to do so.

24. This Agreement is executed by the Parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed. Each signatory represents that this Agreement has been read by the Party for which this Agreement is executed, and that such Party has had an opportunity to confer with its counsel.

25. Any notice provided for under the terms of this Agreement by any Party to the Agreement shall be in writing and may be effected by registered or certified mail, return receipt requested, addressed and delivered to the following:

To City: City Administrator of the City of Wimberley
City of Wimberley
PO Box 2027
Wimberley, TX 78676

To BRCCWA: Gail Pigg
2212 Flite Acres Rd.
Wimberley, TX 78676

To PVPOA: PVPOA
c/o Erik Wollam
Lucero Wollam PLLC
13590 Ranch Road 12
Wimberley, TX 78676

To KKP3237, LLC: KKP3237, LLC
13320 Ranch Road 12, Building C
Wimberley, TX 78676

To Rocky River Ranch, Inc.: Rocky River Ranch, Inc.
c/o Erik Wollam
Lucero Wollam PLLC
13590 Ranch Road 12
Wimberley, TX 78676

Each party may change the address to which notice may be sent by giving notice of such change to the other parties in accordance with the provisions of this Agreement.

26. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

27. This Agreement is indivisible and non-severable. If any provision of this Agreement fails to receive any required regulatory approval or is held to be invalid, illegal, or unenforceable by a court or other tribunal of competent jurisdiction, the Parties shall resume negotiations in an effort to reach a new agreement.

28. This Agreement shall be deemed drafted equally by all Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply. Headings in the Agreement are for the convenience of the Parties and are not intended to be used in construing this document.

29. Each Party will be responsible for their own fees and expenses including attorney fees in connection with preparation of this Agreement, and in connection with all documents submitted to the TCEQ or SOAH.

IN WITNESS WHEREOF, the Parties have executed this Agreement and caused this Agreement to be effective as of the Effective Date, as reflected by the signatures below

CITY OF WIMBERLEY, TEXAS



Steve Thurber, Mayor
City of Wimberley, Texas

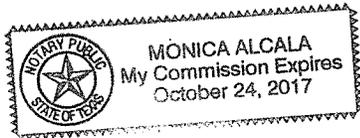
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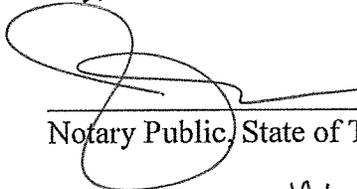
ACKNOWLEDGEMENT

STATE OF TEXAS §
 §
COUNTY OF HAYS §

THIS INSTRUMENT was acknowledged before me on this 30th day of September, 2015, by Steve Thurber, as Mayor of City of Wimberley, on behalf of the City.

(SEAL)





Notary Public, State of Texas
Monica Alcala
Printed/Typed Name of Notary

My Commission Expires: 10/24/17

KKP3237, LLC

Gina Fulkerson, President

Gina Fulkerson, President
KKP3237, LLC

Date: 9-28-2015

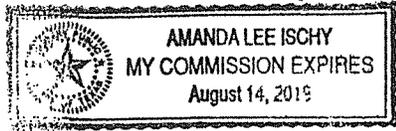
ACKNOWLEDGEMENT

STATE OF TEXAS §
 §
COUNTY OF HAYS §

THIS INSTRUMENT was acknowledged before me on this 28th day of SEPTEMBER, 2015, by Gina Fulkerson, as President of KKP3237, LLC, on behalf of the corporation.

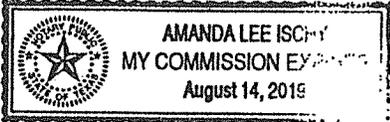
(SEAL)

Amanda Lee Ischy
Notary Public, State of Texas



Printed/Typed Name of Notary

My Commission Expires: _____



ROCKY RIVER RANCH, INC.

Rue Hatfield
Rue Hatfield, Executive Director and Co-Owner
Rocky River Ranch, Inc.

Date: 9-28-15

ACKNOWLEDGEMENT

STATE OF TEXAS

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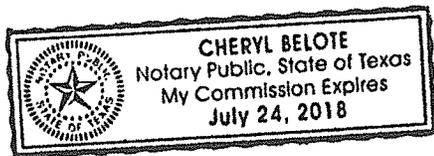
COUNTY OF HAYS

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THIS INSTRUMENT was acknowledged before me on this 28th day of Sept, 2015, by Rue Hatfield, as the Executive Director and Co-Owner of Rocky River Ranch, Inc., on behalf of the corporation.

(SEAL)



Cheryl Belote

Notary Public, State of Texas

Cheryl Belote

Printed/Typed Name of Notary

My Commission Expires: 7.24.18