

RESOLUTION NO. R-09-2009

A RESOLUTION OF THE CITY OF WIMBERLEY, TEXAS AUTHORIZING THE MAYOR TO SIGN A FRANCHISE AGREEMENT WITH AQUA UTILITIES, INC. DBA AQUA TEXAS, INC.

WHEREAS, on March 19, 2009, the City Council approved Ordinance No. 2009-013, which authorized granting a franchise agreement to Aqua Texas, Inc. to use City right-of-way for water and sewer lines; and,

WHEREAS, Aqua Texas, Inc. has requested that the franchise be in the form of a contractual agreement and agrees to all terms and conditions in Ordinance No. 2009-013; and,

WHEREAS, by this Resolution the Mayor is authorized to sign a Franchise Agreement with Aqua Texas, Inc., incorporating the same terms and conditions as stated in Ordinance No. 2009-013; and such agreement is not intended to repeal such ordinance.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WIMBERLEY, COUNTY OF HAYS, STATE OF TEXAS:

I. FINDINGS OF FACT

All of the above premises are hereby found to be true and correct legislative and factual findings of the City of Wimberley and are hereby approved and incorporated into the body of this Resolution as if copied in their entirety.

II. RESOLUTION

THAT, the Mayor is authorized to sign a Franchise Agreement in the form on file with the City Secretary granting Aqua Texas, Inc. a franchise to use City right-of-way subject to the terms and conditions of the Agreement.

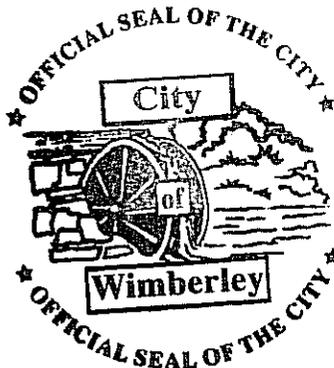
PASSED AND APPROVED this 21st day of May, 2009, by a 5 (Ayes) 0 (Nays) 0 (Abstain) vote of the City Council of the City of Wimberley, Texas.

CITY OF WIMBERLEY

By: Tom Haley
Tom Haley, Mayor

ATTEST:

Cara McPartland
Cara McPartland, City Secretary



FRANCHISE AGREEMENT

This FRANCHISE AGREEMENT dated as of the 15th day of June, 2009 (“Agreement”) by and between the CITY OF WIMBERLEY, TEXAS, a Type A general law municipality incorporated in Hays County, Texas (“City”), and AQUA UTILITIES, INC. DBA AQUA TEXAS, INC., a Texas Corporation, (“Grantee”) is effective on the date of the last of the signatures by the parties to this Agreement (“Effective Date”).

RECITALS

WHEREAS, Grantee operates a retail sewer system located partially in the corporate limits of the City of Wimberley pursuant to Wastewater Certificate of Convenience and Necessity Number 20453; and

WHEREAS, Grantee is a publicly traded corporation regulated by state authorities with appropriate jurisdiction, including the Texas Commission on Environmental Quality (“TCEQ”); and

WHEREAS, the City may adopt an order, act, law or regulation, not inconsistent with state law, that is necessary for the government, interest, welfare, or good order of the City; and

WHEREAS, the City may adopt ordinances, rules or police regulations that are for the good government, peace or order of the City or for the trade and commerce of the City, and that are necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, based on the City’s analysis of the law, it has exclusive control over the public grounds, highways, streets and alleys of the City pursuant to the Texas Local Government Code; and

WHEREAS, based on the City’s analysis of the law, an incorporated city or town may make a reasonable lawful charge for the use of a city street, alley, or public way by a public utility in the course of its business pursuant to the Texas Tax Code; and

WHEREAS, Grantee is willing to enter into an Agreement with City in order to avoid a dispute, if any, with City regarding compliance with the law and will pay the fees for customers within City’s boundaries in order to exercise the rights stated herein, but is not waiving the right to contest the terms of any City ordinance impacting Grantee’s rights under CCN Number 20453 or the original and exclusive jurisdiction of TCEQ over certain matters; the City’s remedies described herein are not exclusive, and the City is not waiving any of its rights to seek a remedy available under the law with an entity with jurisdiction over Grantee regarding Grantee’s performance under this Agreement; and

WHEREAS, the City Council approved the terms to this Agreement on May 21, 2009, by adopting Resolution No. R-09-2009, and believes it in the best interest of the City to offer the Grantee a franchise on the terms and conditions enumerated herein.

AGREEMENT

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

Section 1. Definitions.

1.1. For the purposes of this Agreement, when not inconsistent with the context, words, used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural, and the use of any gender shall be applicable to all genders whenever the sense requires. The words “shall” and “will” are mandatory and the word “may” is permissive. Words not defined in this Section 1 shall be given their common and ordinary meaning.

1.2. For the purposes of this Agreement, the following words, terms, phrases and their derivations shall have the meaning given in this Section 1.2.

1.2.1. “City Council” shall mean the governing body of the City of Wimberley.

1.2.2. “City Secretary” shall mean the City Secretary of the City of Wimberley.

1.2.3. “Consumer” shall mean any person or organization within the boundaries of City receiving and using retail sewer service from the Grantee for his or her own appliances or equipment, whether or not the retail sewer service is billed directly to him or her, or to a second party. (As an example, in the case of a rental unit where the cost of utilities is part of the rent, the landlord is a Customer and the tenant is a Consumer.)

1.2.4. “Customer” shall mean any person or organization within the boundaries of City billed for retail and sewer service by the Grantee whether used by him or her, or by others.

1.2.5. “Effective Date” shall mean the last date of the signatures by the parties to this Agreement.

1.2.6. “Emergency” shall mean an occurrence with a potential to endanger personal safety or health, or cause substantial damage to property, that calls for immediate action.

1.2.7. “Franchise” shall collectively mean this Agreement and all rights and obligations established herein or as it may be amended.

1.2.8. “Grantee” shall mean Aqua Texas Incorporated, a corporation authorized under Texas law to transact business in the State of Texas, its successors and assigns.

1.2.9. “Gross Receipts” shall mean the total amount collected by the Grantee for retail sewer service provided to Consumers by the Grantee within the corporate limits of the City. Gross Receipts shall not include charges for taxes or regulatory charges on services furnished by the Grantee herein that are imposed directly upon any Consumer or Customer by the State, the City or other governmental unit and collected by the Grantee on behalf of the governmental units (including, without limitation, Texas Limited Sales Tax), nor shall it include any amounts refunded to Customers or Consumers.

1.2.10. "Rights-of-Way" shall mean the area on, below or above all publicly owned, dedicated or maintained streets, avenues, easements, alleys, highways, sidewalks, bridges, and other similar means of public access in the City.

1.2.11. "System" shall mean the system of pipes, distribution and transmission lines, pumps and pump stations, storage facilities, equipment, treatment facilities, land, and other appurtenances used or necessary for the provision of retail sewer utility service to/for Consumers or Customers in the City, including, without limitation, those owned or used by the Grantee.

1.2.12. "TCEQ" shall mean the Texas Commission on Environmental Quality, or its successor agency.

1.2.13. "Uniform ROW Management Ordinance" shall mean section 90.01 et. seq., of the City's Code of Ordinances, titled Uniform Right-of-Way Management Subchapter, passed and approved by the City on May 17, 2001, and as may be subsequently amended.

1.2.14. "City" shall mean the City of Wimberley, Texas, a municipal corporation and a political subdivision of the State of Texas; and any area annexed thereto from time to time. For purposes of this Franchise, any annexation shall become effective within sixty (60) days of the City's written notification to Grantee of the annexation.

Section 2. Grant of Franchise and Term.

2.1. There is hereby granted to the Grantee a non-exclusive franchise to maintain, construct, equip, extend, replace, repair, alter and otherwise establish and operate in the City, as constituted as of the Effective Date, or as may hereafter be constituted, works, systems, plants, collection, distribution and transmission lines, treatment facilities and all related facilities (including those now in service and including all parts and portions of the System) necessary or appropriate to sell, collect, convey or otherwise conduct, serve or furnish the inhabitants of the City, and to the City, retail sewer service, and the Grantee is hereby granted passage and rights-of-way in, under, along and across the Rights-of-Way of the City and beneath the surface of same, and the right to occupy and use in any lawful way during the term of this Franchise said Rights-of-Way as they now or hereafter may exist, for every and any such service, use, effect, and lawful purpose as herein mentioned; provided that all such work, activity and undertakings by the Grantee shall be subject to the terms and provisions of this Franchise and the Uniform ROW Management Ordinance. Nothing herein shall be construed to require or authorize Grantee to exceed any rights granted herein or by the TCEQ, or its successor agency.

2.2. The construction, maintenance, and operation of the System and property of the Grantee within the City shall be subject to the terms of this Franchise and all other applicable ordinances, rules and regulations adopted by the City, including the police powers of the City to adopt and enforce ordinances of general applicability necessary to the health, safety and welfare of the public that are not otherwise inconsistent with the terms and conditions of this Franchise.

2.3. In exercising its operations under this Franchise, the Grantee reserves the right to use affiliated entities or third party contractors or subcontractors.

2.4. The Grantee shall be allowed to operate and maintain all lines existing on the Effective Date within City parks, greenbelts, and similar property, or then existing on land hereinafter designated as a City park. Except in an Emergency, the Grantee shall not undertake a replacement of such lines or install new lines within said parks, greenbelts or similar property without the permission of the City Administrator. Such permission shall not be unreasonably withheld or delayed.

2.5. The term of this Franchise shall be for a period of ten (10) years from the Effective Date, unless terminated sooner pursuant to the terms herein; provided that this Franchise shall not be or become effective unless accepted by the Grantee as stated herein. The Franchise may be renewed in accordance with applicable law.

2.6. The Grantee shall have full authority to repair and replace pipes and facilities within any Rights-of-Way existing on the effective date of this Agreement and to expand and enlarge such facilities for the purpose of providing for growth and expansion both within and outside the City, subject to the terms of this Franchise and the Uniform ROW Management Ordinance.

2.7. This Franchise is non-exclusive, and the City retains the right and power, within its jurisdictional authority, to grant any other person, political subdivision, firm, or corporation a franchise to use its streets, highways, Rights-of-Ways, and City parks, greenbelts, or similar property.

2.8. Grantee shall be subject to applicable City ordinances governing rights-of-way construction permits for conducting land disturbing activities in the public rights-of-way, including but not limited to the Uniform ROW Management Ordinance, prior to the commencement of any construction in the Rights-of-Way. Such permits shall be issued only in compliance with applicable City ordinances.

2.9. As Built Plans. Upon the Effective Date of this Franchise, Grantee shall provide, without cost to the City a hard copy and electronic version of the existing System located within the Rights-of-Way. Within sixty (60) days of completion of each new permitted section of Grantee's facilities, Grantee shall supply the City with a complete set of "as built" plans of record for the new permitted section in a format used in the ordinary course of business, but excluding customer specific, proprietary or confidential information and as reasonably prescribed by City, and as allowed by law. The City may, at its discretion, accept any reasonable alternative to as built plans of record which provides adequate information as to the location of facilities in the Rights-of-Way.

Section 3. Use of Rights-of-Way.

3.1. The Grantee is hereby authorized, licensed and empowered to do any and all things necessary and proper to be done and performed in executing the powers and utilizing the privileges herein mentioned and granted by this Franchise, provided the same do not conflict with existing water or sewer lines, electric power lines, telephone lines, cable television lines and other authorized installations, and provided that all work done in said Rights-of-Way by the Grantee shall be done with reasonable diligence, without unreasonable interference to the public or individuals, and in compliance with any applicable City ordinances rules or regulations regarding the Rights-of-Way. In the event of unreasonable interference to the public or Rights-of-Way, such facilities shall be moved by Grantee, temporarily or permanently, as determined by the City Administrator or his

designee upon reasonable notice. The City shall take commercially reasonable precautions to avoid conflicting with Grantee's facilities in such Rights-of-Way. The City shall include as a requirement in all franchises that are granted or renewed after the Effective Date that all other franchised entities occupying Rights-of-Way shall also take commercially reasonable precautions to avoid conflicting with the Grantee's facilities in such Rights-of-Way. It is not the intention of either the City or the Grantee to create any liability, right or claim for the benefit of third parties and this Franchise is intended and shall be construed for the sole benefit of the City and the Grantee.

3.2. The City reserves the right to lay, and permit to be laid, sewer, cable television, water, telephone, electric, and other lines, cables and conduits, and to do and permit to be done any underground or overhead work that may be necessary or proper in, across, along, over or under any Rights-of-Ways or other public place occupied by the Grantee subject to the requirement of proper spacing between lines being laid.

3.3. Grantee shall restore the Rights-of-Way and provide notification of any repairs and Emergency work to the City in accordance with the Uniform ROW Management Ordinance.

Section 4. Modification and Relocation of Facilities.

If, during the period of this Franchise, the City, for a public purpose, use or convenience, reconstructs, improves or changes any Rights-of-Way including, but not limited to, changing the grade or alignment of the Rights-of-Way or any distribution or transmission line, or any overhead or underground structure within the corporate limits of the City, so as to conflict with the distribution or transmission lines, treatment facilities, equipment and appurtenances of the Grantee or the System, the Grantee shall remove or relocate, if requested by the City, as necessary, all of its distribution or transmission lines, equipment, and appurtenances at the Grantee's expense. Designated representatives of the Grantee and the City shall develop schedules for this work. If such representatives cannot agree on the schedules, the City, after consultation with the Grantee, shall establish a schedule which shall accommodate the Grantee's statutory obligation to obtain construction plan approval from the TCEQ, if required, prior to commencing any work. Additionally, if the City's plans require the Grantee to relocate its facilities, the City may, to the extent possible, identify Rights-of-Way to accommodate the Grantee's System.

Section 5. Franchise Fee.

5.1. The Rights-of-Way to be used by the Grantee in the operation of the System within the boundaries of the City as such boundaries exist as of the Effective Date, and as hereafter modified from time to time, are public properties acquired and maintained by the City at expense to its taxpayers. The Grantee will receive and obtain material benefits and operating efficiencies from this Franchise and the Grantee's rights to use the City Rights-of-Way. Without this Franchise, the Grantee would be required to invest in right-of-way cost and acquisition. The City will incur significant and material cost and expense in regulating, administering and carrying out actions necessary to give effect to this Franchise and thus, the Grantee shall, commencing on the Effective Date and continuing through the term of this Franchise, pay to the City a franchise fee based the Grantee's Gross Receipts collected from Customers and Consumers within the corporate limits of the City as a franchise fee. Such franchise fee shall be based on the following percentages of the gross receipts collected from Customers and Consumers within the corporate limits of this City for

the term of the franchise agreement, and paid as provided herein, as follows, two percent (2%) for the first three years, and three percent (3%) for the remaining term of the franchise agreement.

5.2. The franchise fee shall be payable quarterly to the City and delivered to the City Secretary, or successor in function, together with a statement indicating the derivation and calculation of such payment. Each such quarterly payment shall be due on the fifteenth (15th) day of the month following the end of the quarterly period for which said payment is due and shall be based upon the Gross Receipts during that same calendar year period. The statement shall be presented in the form of generally accepted accounting procedures. At all times, the Grantee shall cause accurate books and records of account to be maintained as are necessary to permit the verification of the amount of such franchise fee. For purposes of verifying the amount of such fee, the books and records of account of the Grantee concerning its Customers shall at all reasonable times be subject to inspection by the City and its duly authorized representatives. The Grantee shall file annually with the City Secretary, no later than four (4) months after the end of the Grantee's fiscal year, a statement of revenues attributable to the operations of the Grantee within the City.

5.3. If the franchise fee payment is not paid within seven (7) days after the due date specified herein, an interest charge shall be assessed at the rate of ten percent (10%) per year for each day that the franchise payment is late, and payment for the interest due shall accompany the late franchise fee payment.

5.4. The franchise fee shall be in lieu of any and all other City imposed rentals or compensation or franchise, license, privilege, instrument, occupation, excise or revenue taxes or fees and all other exactions or charges (except ad valorem property taxes, special assessments for local improvements, City sales tax, and such other charges for utility services imposed uniformly upon persons, firms or corporations then engaged in business within the City) or permits upon or relating to the business, revenue, franchise, collection lines, installations and systems, fixtures, and other facilities of the Grantee and all other property of the Grantee and its activities, or any part thereof, in the City which relate to the operations of the System.

5.5. No acceptance of any franchise fee shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount, nor shall such acceptance of any payment be construed as a release of any claim that the City may have for further additional sums payable under this Agreement. All amounts paid shall be subject to audit and recomputation by the City.

5.6. The period of recomputation for recovery of any franchise fee payable hereunder shall be five (5) years from the date on which payment is due from Grantee.

Section 6. Termination of Franchise.

6.1. Either party (provided such party is not then in material breach of this Franchise) may terminate this Franchise upon a material breach thereof by the other party (the "Breaching Party") by giving not less than forty-five (45) days prior written notice of such termination (containing reasonable detail of the material breach) to the Breaching Party; provided, however, in the event that the Breaching Party shall have cured the specified material breach within the above-referenced forty-five (45) day notice period (or, if the material breach is of a type which is not reasonably capable of being cured within such a period, and the Breaching Party has then commenced action to cure such breach), the above-referenced notice shall be of no further force or effect.

6.2. The Grantee may terminate this Franchise at any time upon written notice to the City in the event the Grantee is then no longer providing service to Customers or Consumers as defined herein.

6.3. In the event this Franchise is terminated, easements and real property purchased and acquired by the Grantee, and held in the name of the Grantee, shall be and remain the property of the Grantee, according to the terms, conditions and limitations of the instruments conveying such property and interest in property to the Grantee.

6.4. The City retains the right to terminate this Franchise upon written notification to the Grantee, whenever the Grantee practices any fraud upon the City, or the Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt or a receiver is appointed to it.

Section 7. Severability.

If any section, paragraph, subdivision, clause, part or provision hereof shall be adjudged invalid, illegal or unconstitutional, the same shall not affect the validity hereof as a whole or any part or provision other than the part or parts held invalid or unconstitutional.

Section 8. Captions and Headings.

The use of captions or headings for the various sections of this Franchise are for convenience of parties only and do not reflect the intent of the parties. The rule of interpretation to resolve ambiguities in a contract against the party drafting such contract shall not apply to this Franchise.

Section 9. Open Meetings.

It is hereby officially found and determined by the City that the meeting at which this Agreement was passed was open to the public, and public notice of the time, place and purpose of said meeting was given, as required by the Open Meetings Act, Chapter 551, Texas Government Code.

Section 10. Intentionally Deleted.

Section 11. Endorsements and Records.

The City Secretary is hereby authorized and directed to make appropriate endorsements, for the public records and convenience of the citizens over her official hand and the seal of the City and on the form provided at the conclusion of this Franchise, of the date upon which this Agreement is adopted by the City Council; the date upon which the caption or notice of this Agreement is published in the local newspaper, the date upon which this Agreement shall expire if not first accepted by the Grantee and, if the Grantee shall accept this Franchise, the date of such acceptance by the Grantee.

Section 12. Entire Agreement; Amendments.

This Franchise contains the entire agreement between the parties with respect to the subject matter herein and all prior negotiations and agreements are merged herein and hereby superseded. This Franchise may not be amended or revised except upon agreement of both parties, which agreement shall be in writing signed by the parties after approval and formal action of the City.

Section 13. No Waiver.

13.1. The failure of the City or the Grantee, upon one or more occasions, to exercise a right or to require compliance or performance under this Franchise or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing.

13.2. Waiver of a particular breach of this Franchise shall not be construed as a waiver of any other breach. No provision of this Franchise shall operate as a waiver by the City or the Grantee of any right guaranteed by the federal or state constitutions or other applicable law.

Section 14. Assignment; Transfer; Sale or Conveyance by Grantee.

14.1. The Grantee shall not assign or transfer this Franchise or any of its rights and privileges granted hereunder to any person, without the prior written consent of the City expressed by Agreement, provided however, that City shall not unreasonably withhold approval of an assignment to any person or entity purchasing System from Grantee when such purchaser accepts in writing all of the obligations under this Agreement, or a new agreement is executed between the City and such purchaser.

14.2. Subject to the provisions in Section 15.1, this Franchise shall be binding upon and inure to the benefit of the City and the Grantee and their respective successors and permitted assigns, and nothing express or mentioned in this Franchise is intended or shall be construed to give any other person any legal or equitable right, remedy or claim under or in respect of this Franchise or any provisions of this Franchise, and conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of such persons and for the benefit of no other person.

Section 15. Notices.

15.1. Any notice, request, instruction or other document deemed by any party hereunder to be necessary or desirable to be given to any other party shall be deemed delivered three (3) days after deposit in the U.S. mail if such written notification is sent by registered mail or certified mail, postage prepaid, with return receipt requested, correctly addressed as follows:

If to City: City Administrator, City of Wimberley
 12111 RR12
 PO Box 2027
 Wimberley, Texas 78676

If to Grantee: Aqua Texas Inc.
 1106 Clayton Lane, Suite 400 W
 Austin, Texas 78723

or to the last address for notice, which the sending party has for the receiving party at the time of mailing. Either party may change its address for notice designating the new address in a written notice served upon the other party in the manner provided herein. Notices or other information delivered in any other manner will be deemed delivered if and when actually received.

Section 16. Force Majeure.

Each party shall be excused for failures and delays in performance of its respective obligations under this Franchise due to any cause beyond the control and without the fault of such party, including without limitation, any act of God, war, riot or insurrection, law or regulation, strike, flood, fire, explosion or inability due to any of the aforementioned causes to obtain necessary labor, materials or facilities. This provision shall not, however, release such party from using its best efforts to avoid or remove such cause and such party shall continue performance hereunder with the utmost dispatch whenever such causes are removed. Upon claiming any such excuse or delay for non-performance, such party shall give prompt written notice thereof to the other party, provided that failure to give such notice shall not in any way limit the operation of this provision.

Section 17. Findings.

All of the recitals are hereby found to be true and correct legislative and factual findings of the City of Wimberley and are hereby approved and incorporated into the body of this Agreement as if copied in their entirety.

Section 18. Insurance and Bond.

18.1. The Grantee shall maintain throughout the term of the Franchise, and thereafter for a period of not less than twelve (12) months, general liability insurance with limits not less than:

- a. One Million and No/100 Dollars (\$1,000,000) primary; and,
- b. One Million and No/100 Dollars (\$1,000,000) umbrella, or other securities as acceptable to the City Administrator or his designee. Insurance policies and certificates must be issued from an insurance company licensed to do business in the State of Texas and acceptable to the City, insuring against claims for liability and damages for the benefit of the City. The insurance shall include the City as an additional insured; however, the policy must provide that insurers shall have no right of recovery against the City and no recourse against the City for payment of any premiums or assessments.

18.2. The Grantee shall maintain through the term of the Franchise the requisite statutory workers' compensation insurance.

18.3. A copy of the insurance policy, or policies, obtained by the Grantee in compliance with this section shall be provided to the City, and such insurance policy, along with written evidence of payment of required premiums, shall be filed and maintained with the City Secretary during the term of this Franchise, and shall be changed from time to time to reflect changing liability limits, as reasonably required by the City Council. The City shall be entitled, upon request, and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable requests for deletion or modification of particular terms, conditions, limitations, or

exclusions. If the City determines that a certificate of insurance is acceptable evidence for insurance coverage, a copy of the required endorsement shall be attached to the certificate of insurance.

18.4. The policy shall contain a provision that it may not be canceled, revoked or annulled by the insurer without giving the City ten days' prior written notice. The Grantee shall not surrender or release such policy without filing in lieu thereof another policy complying with the requirements of this section.

18.5. Neither the City or any officer or employee thereof shall be liable for the financial responsibility of any insurer, or in any manner become liable for any claim, act or omission, relating the Grantee's use of the public right-of-way.

18.6. The Grantee shall immediately advise the City of any significant litigation, actual or potential, that may develop and would affect this insurance.

18.7. Grantee shall annually obtain, maintain and file with the City Secretary, a corporate surety bond with a surety company authorized to do business in the State of Texas, and found acceptable by the City Attorney, in the amount of Seventy-Five Thousand and No/100 Dollars (\$75,000), or of the estimated amount of the value of work anticipated to be completed that year, whichever is greater, to guarantee the restoration of the Rights-of-Way in the event Grantee leaves a job site unfinished, incomplete, unsafe or unreasonably delays the completion of the construction. Grantee shall provide this corporate bond within thirty (30) days of the issuance of a permit under this Franchise but prior to commencement of construction. Should Grantee without a bond in place leave a job site in the Rights-of-Way unfinished, incomplete, unsafe or unreasonably delays the completion of the construction, Grantee shall pay the actual cost of restoring the Rights-of-Way, plus any administrative fee to reimburse the City's cost of overseeing any such restoration.

18.8. The rights reserved to the City with respect to the insurance or bond are in addition to all other rights of the City, whether reserved by this Franchise or authorized by law; and no action, proceeding or exercise of a right with respect to such insurance or bond shall affect any other right the City may have.

Section 19. Indemnification and Hold Harmless.

19.1. The Grantee shall, at its sole cost and expense, indemnify, defend and hold harmless the City, board, its agents, officers and employees, against and from any and all claims, demands, causes of actions, suits, proceedings, damages, liabilities and judgments of every kind by or on behalf of any person, firm, corporation or other entity, arising from or due to the Grantee's construction or operation of the System, or arising from any act of negligence of the Grantee, or any of its agents, contractors, servants, employees or licensees, and from and against all costs, attorneys fees, expenses and liability incurred in or about any such claim or proceeding brought thereon, and from any and all claims arising from any breach or default on the part of the Grantee to be performed pursuant to the terms of this Franchise.

19.2. The Grantee shall, at the sole risk and expense of the Grantee, upon demand of the City, appear in and defend any and all suits, actions, or other legal proceedings, whether judicial, quasi-judicial, administrative, or otherwise brought or instituted or had by third persons or duly

constituted authorities, against or affecting the City, its officers, board, agents or employees arising out of or due to the Grantee's construction or operation of the System in the City.

19.3. The Grantee shall pay and satisfy and shall cause to be paid and satisfied any judgment, decree, order, directive, or demand, rendered made or issued, against the Grantee, the City, its officers, board, agents or employees, for the foregoing; and such indemnity shall exist and continue without reference to or limitation by the amount of any policy of insurance, or other assurance required hereunder or otherwise.

Section 20. Interpretation.

Each of the parties has been represented by legal counsel of their choosing in the negotiation and preparation of this Franchise. Regardless of which party prepared the initial draft of this Franchise, this Franchise shall, in the event of any dispute, however its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any party.

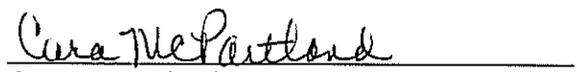
Section 21. Governmental Function.

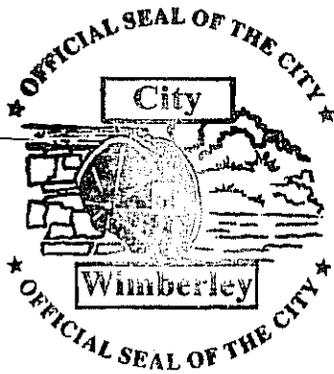
It is the City's contention and belief, that all of the lawful regulations and activities by the City are determined to be governmental for the health, safety and welfare of the general public.

CITY OF WIMBERLEY:


Tom Haley
Mayor

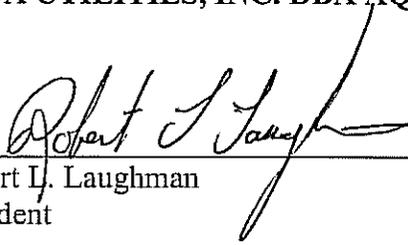
ATTEST:


Cara McPartland
City Secretary



GRANTEE:

AQUA UTILITIES, INC. DBA AQUA TEXAS, INC.

RL


Robert L. Laughman
President

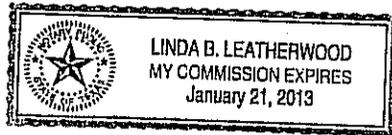
Date: May 14, 2009

STATE OF TEXAS §
COUNTY OF Travis §

This instrument was acknowledged before me on the 14th day of May, 2009, by Robert L. Laughman, as President of Aqua Utilities, Inc. dba Aqua Texas, Inc.



Notary Public, State of Texas



Valley Spring Communications, Inc. dba: Holly Media Group

Wimberley View • Kyle-Buda Eagle • Dripping Springs Century-News
P.O. Box 49, Wimberley, Texas 78676
(512) 847-2202

State of Texas
County of Hays

Before me, the undersigned authority, on this day personally appeared Mary V. Saunders, who being by me here and now duly sworn, upon oath says:

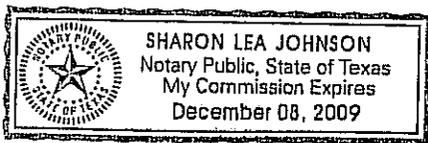
My name is Mary Saunders, and I am the Publisher, of the Wimberley View, Kyle/Buda Eagle, & Dripping Springs Century News, a newspaper of general circulation in Hays County, Texas, and a newspaper which has been regularly and continuously published in Wimberley, Hays County, Texas, for a period of more than one year immediately preceding the date of publications of the following, and that the said notice, a copy of which follows, was published in the regular edition of said newspaper for a period of one week on the following dates:

May 27, 2009
____ 2009
____ 2009
____ 2009

The said Publisher, Mary V. Saunders further states that the rate charged for this publication is the lowest rate charged to commercial advertisers for the same class as advertising for a like amount of space.

Mary V. Saunders
Signature of Affiant

Subscribed and Sworn to me, by the said Publisher, Mary V. Saunders, this 28 day of May 2009 to certify which witness my hand and seal of office.



Sharon Johnson
NOTARY PUBLIC in and for
Hays County, Texas

THE CLASSIFIED

Wednesday, May 27, 2009

Email your ads to: classifieds@wimberleyview.com

★ LEGAL & PUBLIC NOTICES

NOTICE OF ENACTMENT OF RESOLUTION NO. R-09-2009

A Resolution of the City of Wimberley, Texas, authorizing the Mayor to sign a Franchise Agreement with Aqua Utilities, Inc. dba Aqua Texas, Inc. [The subject Agreement grants a non-exclusive franchise to construct, operate and maintain a retail wastewater utility system within the rights-of-way of the City of Wimberley for a period of ten (10) years with renewal provisions.] (04838/1A/2)

NOTICE OF PUBLIC HEARING

(Request for Zoning) Notice is hereby given that the Planning & Zoning Commission of the City of Wimberley will hold a public hearing at the Wimberley City Hall on **Thursday, June 11, 2009, at 6:30 p.m.** to consider the following: ZA-09-015 an application for initial zoning of Neighborhood Services (NS) at 108 S. Valley View Dr. Upon recommendation of the Planning & Zoning Commission, the City Council will also hold a public hearing on **Thursday, June 18,**

case of ambiguity or lack of clarity and state of compliance in the proposal. Dripping Springs Independent School District reserves the right to consider the most advantageous interpretation thereof or to reject the proposal. (04832/2a/42 & 44)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

NOTICE OF APPLICATION AND PRELIMINARY DECISION FOR WATER QUALITY LAND APPLICATION PERMIT FOR MUNICIPAL WASTEWATER AMENDMENT

PERMIT NO. WQ0013748001

APPLICATION AND PRELIMINARY DECISION. Dripping Springs Independent School District, P.O. Box 479, Dripping Springs, Texas 78620-0479, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to Permit No. WQ0013748001, to authorize an increase in the daily average flow from 15,000 gallons per day to 50,000 gallons per day and to increase the corresponding subsurface drip irrigation disposal site from 150,000 square feet of non-public access land to

A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING

After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision. A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name; address, phone; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected

final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

MAILING LIST: If you submit public comments a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

All written public comments and public meeting requests must be submitted to the Office of the Chief Clerk, P.O. 105, TCEQ, MC. Box 13087, Austin, TX 78711-3087 or electronically at www.tceq.state.tx.us/about/comments.htm within 30 days from the date of newspa-

One 1996 Chevrolet 3500 4x4 single wheel one ton truck with utility bed 15.7 V8, standard transmission with 180,715 miles, power steering and power brakes, A/C not blowing cold, red in color. Minimum bid \$ 2,500

RESCUE TOOL (MINIMUM BID \$2,500)

Hurst/Honda Simo power unit Model 24 full size spreaders Comb-tool model M a v e r l i c k Ram R-30 Cutters model 150

SCBA's:

ISI pneumatic #23 not functional missing parts (NO MINIMUM BID)
ISI pneumatic Henly #2 broke back frame for parts only (NO MINIMUM BID)
ISI digital #33 no mask (MINIMUM BID \$500)
ISI digital #40 no mask (MINIMUM BID \$500)
ISI pneumatic #21 no pass (MINIMUM BID \$1000)
ISI pneumatic #22 complete no pass (MINIMUM BID \$1000)
ISI pneumatic #24 complete no pass (MINIMUM BID \$1000)
ISI digital #39 no mask (MINIMUM BID \$500)
ISI digital #5 not functional parts only (NO MINIMUM BID)
ISI Henly #1 pneumatic complete (MINIMUM BID \$1000)
ISI #5 pneumatic no mask (MINIMUM BID \$500)

Woodcreek City Hall 41 Champions Circle Woodcreek, Texas 78676 Telephone (512) 847-9390

A job walk will be conducted for all interested bidders on Tuesday, May 26, 2009 departing from Woodcreek City Hall at 10:00 A.M.

Sealed bids must be received at the Woodcreek City Hall by 3:00 P.M., Friday June 5, 2009. At that time and place bids will be publicly opened and read aloud. Bids received after the specified time of closing will be returned unopened.

Bidders must have or be willing to obtain liability insurance in the minimum amount of \$1,000,000.00.

The city reserves the right to accept the bid which, in its judgment, is the lowest, most responsive and best bid or to reject any or all bids. (04794/2a/42)

PUBLIC NOTICE

By order of the Hays County Commissioners' Court, notice is hereby given that on Tuesday June 2, 2009 at 9 a.m. in the Hays County Courthouse, 111 San Antonio Street, the Hays County Commissioners Court will hold a public hear-

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