

Texas Water Development Board

P.O. Box 13231, 1700 N. Congress Ave.
Austin, TX 78711-3231, www.twdb.texas.gov
Phone (512) 463-7847, Fax (512) 475-2053

October 9, 2018

The Honorable Susan Jagers
Mayor of Wimberley
City of Wimberley
221 Stillwater
Wimberley, Texas 78676

Re: City of Wimberley
TWDB Project No. 73653
Request for change of project scope

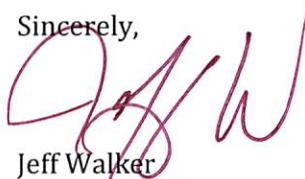
Dear Mayor Jagers:

The City of Wimberley's (City) September 12, 2018 request to change the scope of the City's Clean Water State Revolving Fund (CWSRF) project is under review by the Executive Administrator staff and any recommendation for action remains subject to approval by the Texas Water Development Board (TWDB).

To adequately evaluate the City's requested project scope change, additional information related to the City's bonds currently held by the TWDB as well as additional engineering and environmental information is required. Please provide a complete response addressing each of the attached questions/items as soon as possible but no later than October 31, 2018.

I suggest that you meet with my staff soon to ensure your understanding of the requested information and to answer any questions you may have. Please email or contact Dain Larsen at dain.larsen@twdb.texas.gov, or (512) 463-1618 to set up a meeting and/or if you have any questions or need additional information.

Sincerely,



Jeff Walker
Executive Administrator
Texas Water Development Board

Attachment

cc: Mike McCullough, Place One Council Member
Craig Fore, Place Two Council Member
Allison Davis, Place Three Council Member
Gary Barchfeld, Place Four Council Member
Patricia Cantu Kelly, Place Five Council Member

Our Mission

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

Board Members

Peter M. Lake, Chairman | Kathleen Jackson, Board Member | Brooke T. Paup, Board Member
Jeff Walker, Executive Administrator

LEGAL

The change in scope request as submitted could require amendments to various sections of the bonds currently held by the TWDB in accordance with Section 8.10 of the Ordinance issuing Wimberley's bonds.

Additional information is required to complete a legal review of the request for a change of scope for the proposed project, including the following:

1. Please submit a bond counsel opinion on whether the elimination of the wastewater treatment plant and changing the scope of the bonds would constitute a re-issuance of the bonds under current Federal Tax Law.
2. Please submit a bond counsel opinion detailing whether the City's intent to contract with Aqua Texas, a private entity, affects the tax-exempt status of the bonds.
3. The City sought and received a declaratory judgment related to the validity of the bonds. Please submit written documentation related to the communications the City has had with the Attorney General (AG) regarding the effect of the proposed scope change on the opinion the AG issued regarding the bonds, and submit information regarding whether the transcript for the transaction would be resubmitted to the AG for additional review.
4. Please submit the federal procurement completed for professional services related to the City's engagement of a bond counsel for the opinion letter requested, if the City intends to use TWDB funds for bond counsel services.
5. Please have the City's attorney address whether the City's intent to transport effluent to Aqua Texas for treatment violate any side or settlement agreements that it entered into in the course of resolving litigation related to the declaratory judgment action on the bonds.

ENGINEERING

Additional information is required to complete an engineering review of the request for a change of scope for the proposed project. Please submit the following:

1. A statement sealed by a Texas P.E. (with firm number) that supplements and supports the engineering feasibility report with respect to implementing the Aqua Texas alternative in lieu of the wastewater treatment plant alternative.
2. Assurance from Aqua Texas that it has the capacity (both physically and by permit) to accept the proposed wastewater flow from the City.
3. Additional project schedule dates:
 - a. Execution of change order for collection system contract (CID 02)
 - b. Project completion
 - c. Service with Aqua Texas start date
4. Revised project budget that includes:
 - a. Where funds have been released (CID 01, CID 02, Planning, Design, etc.)
 - b. A sufficiency of Funds statement; the statement should:
 - a. state clearly the sources of all project funds (provide information on the sources of funds and amount from each source),
 - b. certify that the City has access to those funds,
 - c. assure that the City has the funds available to cover what the TWDB funds will not cover, and
 - d. confirm the project budget
5. Because of the revised engineering fees in the budget, we need:
 - a. A copy of a draft or executed amendment to the engineering services agreement to show any additional services and associated costs related to the proposed project changes;
 - b. Updated Disadvantaged Business Enterprise forms that show new contract amounts (City - TWDB-0373; Engineer - TWDB-0217 and TWDB-0216 and -0373 if subconsultants);
 - c. For the capacity buy-in fee, the City's letter dated 9/12/18 indicates that Aqua Texas is a sole-source provider, if approved by the TWDB DBE Coordinator, we need DBE form TWDB-0217 from Aqua Texas, TWDB-0216 and 0373 from the City.

ENVIRONMENTAL

An environmental review is required for the proposed change in project scope. To make that determination, we need a map with additional detail. The required details are:

1. The map needs to show clearly the location of the project with all current and proposed project components overlain on an aerial photograph background. Attachment D – TWDB Contract Update Figure map is adequate, if it is overlain on an aerial photograph and the point of connection is added with a narrative to clearly identify who will be constructing the proposed directional drill under the creek, Aqua Texas or the City of Wimberly.
2. Clearly label all features such as roads, property boundaries, easements, point of contact, creeks, and all project elements. This is the map that will be used in the final environmental finding.
3. Provide a KMZ file that identifies the alignment of the collection system being constructed.

You will also need to coordinate with the Texas Parks and Wildlife Department, Texas Historical Commission, and the United States Army Corps of Engineers. Please submit a revised project schedule that includes the following milestones:

- Submission of complete environmental finding request form
- Issuance of environmental finding

When this information is received we'll determine if the proposed change of scope would be issued as one of three possible environmental findings:

- a) Categorical Exclusion
- b) Addendum to the existing Finding of No Significant Impact
- c) Full environmental review

If we determine that the change would be issued as a Categorical Exclusion, then you must complete a **Categorical Exclusion/Determination of No Effect (CE/DNE) Request Form**, and submit the completed form and supplemental information, including coordination with the agencies listed previously. The form can be found at:

<http://www.twdb.texas.gov/financial/instructions/doc/TWDB-0803.pdf>.

Once the CE is issued, you will be provided with instructions to publish in a local newspaper of general circulation within the project area. The environmental review process will be complete when the CE has been issued and published, and a publisher's affidavit and tear sheet has been received by the TWDB.

If we determine that the change requires a full environmental review, then we'll ask you to submit the Environmental Information Document. The form and instructions are located here:

<http://www.twdb.texas.gov/financial/instructions/doc/TWDB-0801.docx>.