

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 18, 2011

LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Re: H.E.B. Grocery Co., L.P.'s Application for an Order Authorizing Commencement
of Construction; TCEQ Docket No. 2011-0402-MWD; TCEQ Permit No.
WQ0014131001 (CN600282156; RN102806924)

Dear Ms. Castañuela:

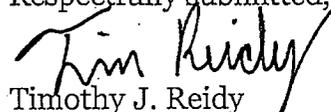
I am enclosing for filing with the Texas Commission on Environmental Quality (Commission or TCEQ) a request for an Order and a proposed Order to authorize H.E.B. Grocery Company, L.P. to commence construction of the Interim II Phase of SJWTX, Inc.'s domestic wastewater treatment facility (TCEQ Permit No. WQ001413001) under Chapter 26 of the Texas Water Code.

On February 9, 2011, H.E.B. submitted a request for authorization to construct the Interim II Phase of SJWTX, Inc.'s domestic wastewater treatment facility in Comal County, Texas. If granted by the Commission, this Order would allow H.E.B. to construct the Interim Phase II of SJWTX, Inc.'s domestic wastewater treatment facility before Commission consideration of SJWTX, Inc.'s application for a major amendment to its wastewater discharge permit; however the Order will not authorize the operation of the newly constructed facility.

The Executive Director respectfully requests that the Chief Clerk take all appropriate actions regarding this matter, including the following:

1. mail notice of Commission consideration of this matter not less than ten (10) days before the earliest available regularly scheduled Commission meeting, and
2. issue the appropriate Texas Register Notice.

Respectfully submitted,


Timothy J. Reidy
Staff Attorney, Environmental Law Division

cc: Mailing List

Enclosure

Texas Commission on Environmental Quality
INTEROFFICE MEMORANDUM

TO: *RM for*
Robert Martinez, Director, Environmental Law Division
Lynn Bumguardner, Manager, Water Section, Enforcement Division
Region 13 Office

THRU: *RM*
3/17/11
3/17/11
3/17/11
Chris Linendoll, Manager, Wastewater Permitting Section, Water Quality
Division
Firoj Vahora, Leader, Municipal Permitting Team, Wastewater Permitting
Section

FROM: Julian Centeno, Jr., Municipal Permitting Team, Wastewater Permitting
Section

DATE: 3/17/2011

SUBJECT: H.E.B. Grocery Co., L.P.'s Application for Authorization to Construct;
Docket No. 2011-0402-MWD; TCEQ Permit No. WQ0014131001
(CN600282156; RN102806924)

Attached please find a proposed Order to authorize H.E.B. Grocery Company, L.P. (H.E.B.) to commence construction of the Interim II Phase of SJWTX, Inc.'s domestic wastewater treatment facility (TCEQ Permit No. WQ001413001) under Chapter 26 of the Texas Water Code. Please review the proposed Order and supporting documents and provide your comments to me by close of business on March 17, 2011. You may contact me via email at Julian.Centeno@tceq.texas.gov or by phone at (512) 239-4608.

Attachments

Texas Commission on Environmental Quality
INTEROFFICE MEMORANDUM

TO: Texas Commission on Environmental Quality

THRU: *Rm* Robert Martinez, Division Director, Environmental Law Division
ATE Chris Ekoh, Water Quality Senior Attorney, Environmental Law Division

FROM: Tim Reidy, Staff Attorney, Environmental Law Division

DATE: 3/18/2011

SUBJECT: Agenda Summary for H.E.B. Grocery Co., L.P.'s Application for Authorization to Construct; Docket No. 2011-0402-MWD; TCEQ Permit No. WQ0014131001 (CN600282156; RN102806924)

DESCRIPTION OF MATTER:

H.E.B. Grocery Company, L.P. (H.E.B.) has applied to the Texas Commission on Environmental Quality (TCEQ or Commission) seeking authorization to expand SJWTX, Inc.'s, dba Canyon Lake Water Service Company, existing wastewater treatment facility to serve H.E.B.'s new retail shopping center (Attachment A). H.E.B. hopes to secure the authorization to construct (ATC) so that H.E.B. may begin leasing the available retail and commercial spaces and pad sites at the Descending Dove Hills Commercial Subdivision and its existing real estate development.

APPLICANT: H.E.B. Grocery Company, L.P.

TYPE: Authorization to Construct (ATC) a domestic wastewater treatment plant

BACKGROUND:

H.E.B. owns a real estate development in Bulverde, Texas. That real estate development is served by a wastewater treatment facility owned by SJWTX, Inc. that is currently authorized to dispose of treated domestic wastewater at a daily average flow not to exceed 20,000 gpd via surface irrigation of 7.4 acres of public access grassland pursuant to TCEQ Permit No. WQ0014131001. H.E.B. also owns approximately 31.8 acres of land adjacent to and contiguous with the existing real estate development, which it has developed into the Descending Dove Hills Commercial Subdivision. The first commercial occupant of the Descending Dove Hills Commercial Subdivision was H.E.B. *plus!* H.E.B. *plus!* consists of 8,400 square feet of retail space, a fuel station, and a car wash. H.E.B.

plus! replaced a smaller H.E.B. grocery store on the existing development. H.E.B. *plus!* currently receives wastewater services from SJWTX, Inc.'s existing facility. The Descending Dove Hills Commercial Subdivision also consists of build-out spaces and pad sites for other retail and commercial establishments.

At full build out and occupancy, it is estimated that the Descending Dove Hills Commercial Subdivision requires wastewater treatment services from a facility with the capacity to process and dispose treated domestic wastewater at a daily average flow of approximately 21,000 gpd.

On June 2, 2010, Bexar Metropolitan Water District submitted an application for a major amendment of TCEQ Permit No. WQ0014131001, seeking authorization to increase the disposal of treated domestic wastewater from a daily average flow not to exceed 20,000 gpd via surface irrigation of 7.4 acres of public access grassland to a daily average flow not to exceed 60,000 gpd via surface irrigation of public access grassland. On August 13, 2010, Diane Kelly filed a public comment with the TCEQ's Office of the Chief Clerk on Bexar Metropolitan Water District's application. (Attachment B). Ms. Kelly's comment expresses her opposition to Bexar Metropolitan Water District providing services in Comal County. On November 4, 2010, the Executive Director signed an order transferring TCEQ Permit No. WQ0014131001 from Bexar Metropolitan Water District to SJWTX, Inc. SJWTX, Inc. continued to pursue the major amendment of TCEQ Permit No. WQ0014131001. To date, Ms. Kelly's comment is the only public comment received on SJWTX, Inc.'s application for a major amendment to TCEQ Permit No. WQ0014131001.

The permit amendment seeks to expand the existing facility in two phases. The Interim II Phase would authorize the disposal of treated domestic wastewater at a daily average not to exceed 40,000 gpd via surface irrigation of 15.25 acres of public access grassland; while the Final Phase would authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 60,000 gpd via surface irrigation of public access grassland. The application was declared administratively complete on July 13, 2010, and the Notice of Receipt of Application and Intent to Obtain a Water Quality Permit Amendment (NORI) was published August 12, 2010. Though Executive Director staff has diligently processed this permit amendment application, it is currently undergoing technical review and a draft permit has not yet been developed. Executive Director staff has been working with SJWTX, Inc. to resolve issues related to wastewater storage capacity and land application area sizing.

H.E.B. seeks an ATC to begin construction of the Interim II Phase of SJWTX, Inc.'s facility so that H.E.B. may begin leasing the available retail and commercial spaces and pad sites at the Descending Dove Hills Commercial Subdivision and its existing real estate development. Pursuant to the wastewater utility service agreement entered into by SJWTX, Inc. and H.E.B. (Attachment C), H.E.B. is required to construct the facility expansion. Upon completion of the facility expansion, H.E.B. is required to convey the expanded facility and all easements

that are reasonably required for the operation of the facility, including any access easements reasonably required to provide access to and from public roads, to SJWTX, Inc. SJWTX, Inc. will operate the wastewater treatment facility, and provide wastewater services to the retail and commercial spaces and pad sites in the Descending Dove Hills Commercial Subdivision and the vacated grocery store at H.E.B.'s existing development.

COMPLIANCE HISTORY: H.E.B. has a compliance rating of 3.72, which is classified as "average," and a site rating of 3.01, which is classified as "average by default." SJWTX, Inc. has a compliance rating of 3.01, which is classified as "average," and a site rating of 0.0, which is classified as "high." See Compliance History Reports (Attachment D).

AUTHORITY: Texas Water Code (TWC) §§ 26.019 and 26.027(c). Under TWC § 26.027(c) a person may not commence construction of a treatment facility until the commission has issued a permit to authorize the discharge of waste from the facility, *except with the approval of the Commission*. TWC § 26.019 authorizes the Commission to issue orders and make determinations necessary to effectuate the purposes of TWC Chapter 26.

STAFF RECOMMENDATION: Since resolving issues related to appropriate wastewater storage capacity and land application area sizing may take a significant amount of time, Executive Director staff recommends that the proposed Order Authorizing Commencement of Construction of the Interim II Phase of SJWTX, Inc.'s domestic wastewater treatment facility be approved.

CONTACT: Julian D. Centeno, Jr., Municipal Permits Team, Wastewater Permitting Section (MC 148), Water Quality Division, TCEQ, (512) 239-4608

LEGAL: Timothy J. Reidy, Staff Attorney, Environmental Law Division (MC 173), TCEQ, (512) 239-0969

3. The existing domestic wastewater treatment facility and disposal area are located at 20475 State Highway 46 West, approximately 0.15 mile west of U.S. Highway 281, on the south side of State Highway 46, in Spring Branch, in Comal County, Texas 78070.
4. Pursuant to a wastewater utility service agreement entered into by H.E.B. and SJWTX, Inc., H.E.B. is required to construct the facility expansion corresponding to the Interim II Phase of SJWTX, Inc.'s permit application (TCEQ Permit No. WQ001413001). Upon completion of the facility expansion, H.E.B. is required to convey the expanded facility and all easements that are reasonably required for the operation of the facility, including any access easements reasonably required to provide access to and from public roads, to SJWTX, Inc. SJWTX, Inc. will operate the wastewater treatment facility, and provide wastewater services to the retail and commercial spaces and pad sites at H.E.B.'s Descending Dove Hills Commercial Subdivision and a recently vacated grocery store at its existing real estate development.
5. H.E.B. seeks an ATC to begin construction of the Interim II Phase of SJWTX, Inc.'s domestic wastewater treatment facility in order to minimize the time it must maintain vacant retail space and pad sites at the Descending Dove Hills Commercial Subdivision and "empty box" retail space at its existing real estate development.

CONCLUSIONS OF LAW

1. TWC § 26.027(c) prohibits a person from commencing construction of a treatment facility until the Commission has issued a permit authorizing the discharge of waste from the facility, unless the Commission has approved the construction.
2. TWC § 26.019 authorizes the Commission to issue orders and make determinations necessary to effectuate the purposes of TWC Chapter 26.
3. The Findings of Fact above provide sufficient justification to issue this Order under TWC § 26.027.
4. This Order will effectuate the purposes of TWC Chapter 26.
5. This Order does not authorize operation of, or a discharge from, the domestic wastewater treatment facility expansion to be constructed under this Order before obtaining a permit or other authorization from the Commission.

THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS THAT:

1. H.E.B. is authorized to commence construction of the Interim II Phase of SJWTX, Inc.'s wastewater treatment facility in Comal County, Texas.
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2. H.E.B. shall comply with the requirements of 30 TAC § 309.13(a) through (d). In addition, H.E.B. shall convey to SJWTX, Inc. evidence of sufficient legal restrictions prohibiting residential structures within the part of the buffer zone not owned by SJWTX, Inc., ensuring compliance with the requirements of 30 TAC 309.13(e).
 3. H.E.B. shall construct the facility expansion corresponding to the Interim II Phase of SJWTX, Inc.'s permit application (TCEQ Permit No. WQ001413001) in accordance with the plans and specifications conditionally approved by the Executive Director on August 13, 2010. The conditional approval of the plans and specifications by the Executive Director does not relieve H.E.B. or SJWTX, Inc. of any liability or responsibility with respect to obtaining a wastewater permit in accordance with TWC Chapter 26, and ensuring that its facility plans and specifications meet all design requirements in the associated wastewater permit. In the event that the conditional approval needs to be revised or updated, H.E.B. shall comply with all applicable sections of 30 TAC Chapter 217, as they relate to the submission and approval of plans and specifications for a domestic wastewater treatment plant. The plans and specifications for the waste collection and treatment works and disposal system authorized by this Order must be approved under state law, and failure to secure approval before commencing construction of such works or making a discharge is a violation of this Order, and each day of discharge is an additional violation until approval has been secured.
 4. SJWTX, Inc. authorizes H.E.B. to commence construction under this Order at SJWTX, Inc.'s own risk. Any draft permit limitations or constraints contained in TCEQ Permit No. WQ0014131001 may change during the internal review process, the public comment process, or the contested case process.
 5. SJWTX, Inc. shall not operate or dispose of effluent from the facility to be constructed under this Order until it obtains a permit from the Commission.
 6. This Order shall not constrain, bind, or commit the Commission in its decision on any proceeding or matter before the Commission relating to TCEQ Permit No. WQ0014131001.
 7. This Order does not convey any property rights in either real or personal property, or any exclusive privileges; nor does it obviate the necessity of: 1) complying with any applicable Federal, State, or local laws or regulations, and 2) obtaining Federal, State, or local permits or authorizations required by law for the activities otherwise authorized by this Order.
 8. The Chief Clerk of the Commission is directed to forward a copy of this Order to H.E.B., SJWTX, Inc., the Executive Director of the Commission, and the Public Interest Counsel of the Commission, and to issue the Order and cause it to be recorded in the files of the Commission.
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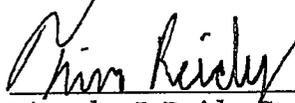
Issued this date:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., Chairman

CERTIFICATE OF SERVICE

I certify that on March 18, 2011, the original and seven copies of "H.E.B. Grocery Co., L.P.'s Application for an Order Authorizing Commencement of Construction" was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk, and a complete copy was transmitted by mail, facsimile, inter-agency mail, electronic mail, or hand-delivery to all persons on the attached mailing list.



Timothy J. Reidy, Staff Attorney
Environmental Law Division
State Bar No. 24058069

Mailing List

H.E.B. Grocery Co., L.P.'s Application for Authorization to Construct
TCEQ Docket No. 2011-0402-MWD
TCEQ Permit No. WQ0014131001

FOR THE APPLICANT:

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Vinson & Elkins, L.L.P.
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Kathy Strimple, P.E.
H.E.B. Grocery Company, L.P.
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San Antonio, Texas 78204-1210
Tel: 210/938-8892
Fax: 210/938-8091

FOR SWJTX, Inc., dba CANYON LAKE
WATER SERVICE COMPANY:

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Tel: 817/441-1300
Fax: 817/441-1033

Tom Hodge, P.E.
Canyon Lake Water Service Company
1399 Sattler Road
New Braunfels, Texas 78132

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FOR THE CHIEF CLERK:

LaDonna Castañuela, Chief Clerk
TCEQ Office of Chief Clerk,
MC 105
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INTERESTED PERSON(S):

Diane Kelly

3215 Stallion Lane

Bulverde, Texas 78163-4666

Tel: 830/438-6133

**Attachment A –
Application for Authorization to Construct**

Vinson & Elkins

Molly Cagle mcagle@velaw.com
Tel 512.542.8552 Fax 512.236.3280

February 9, 2011

Firoj Vahora
Texas Commission on Environmental Quality
Wastewater Permitting Section, MC-148
P.O. Box 13087
Austin, TX 78711-3087

Re: H.E.B. Grocery Co., L.P.
Application for Authorization to Construct under Texas Water Code § 26.027(c)
TCEQ Permit No. WQ 0014131-001

Dear Mr. Vahora:

Enclosed are the following:

1. The application of H.E.B. Grocery Co., L.P. ("H•E•B") for Authorization to Construct pursuant to Texas Water Code § 26.027(c) (the "ATC") and an attachment responsive to questions in the ATC (Attachment 1);
2. An affidavit executed by H•E•B Senior Civil Engineer Kathy Strimple, P.E., supporting the ATC (Attachment 2);
3. An affidavit executed by Tom Hodge, General Manager of Canyon Lake Water Service Company, the current holder of Wastewater Permit No. 0014131-001, in support of the ATC (Attachment 3); and,
4. WASTEWATER UTILITY SERVICE AGREEMENT BETWEEN SJWTX, INC., DBA CANYON LAKE WATER SERVICE COMPANY, AND H.E.B. GROCERY COMPANY, LP FOR DESCENDING DOVE HILLS COMMERCIAL SUBDIVISION (the "Agreement") (Attachment 4).

As explained in more detail below and in the enclosed materials, H•E•B desires to commence construction as soon as possible of a 20,000 gallon per day ("gpd") wastewater treatment plant expansion in Bulverde, Texas to serve its new retail shopping center. The wastewater permit amendment application associated with the plant expansion is still in processing with the Texas Commission on Environmental Quality ("TCEQ" or "Commission"). **H•E•B FULLY UNDERSTANDS THAT IF IT COMMENCES CONSTRUCTION OF THE WASTEWATER TREATMENT FACILITIES AS**

REQUESTED BEFORE FINAL CONSIDERATION AND ACTION ON THE AMENDMENT TO PERMIT NO. 0014131-001, IT DOES SO ENTIRELY AT ITS OWN RISK.

1. H•E•B DEVELOPMENT

H•E•B currently operates a grocery store in a real estate development owned by it in Bulverde, Texas. The existing real estate development is inside a certificated service area (a CCN), which until recently was held by Bexar Metropolitan Water District (“BexarMet”). H•E•B’s existing real estate development is served by a small wastewater treatment plant and land application system (20,000 gpd capacity) built by H•E•B slightly more than a decade ago. After construction by H•E•B, that system was dedicated to BexarMet; it has been (and is) operated pursuant to Wastewater Permit No. 0014131-001 (the “Permit”). On November 4, 2010, the Executive Director of the TCEQ signed an Order transferring the Permit from BexarMet to SJWTX, Inc., dba Canyon Lake Water Service Company (“CLWSC”).

For many years, H•E•B has been planning the development of the Descending Dove Hills Commercial Subdivision, a new retail development adjacent and contiguous to its existing real estate development. Among other retail establishments planned for the Descending Dove Hills Commercial Subdivision is a new **H•E•B plus!**, a store about twice the size of H•E•B’s existing grocery store that offers an expanded merchandise selection. Since the conception of the Descending Dove Hills Commercial Subdivision, H•E•B has planned to close down its existing grocery store when the **H•E•B plus!** opens to the public, and then reconfigure and/or re-lease that space to other tenants.

2. THE PERMIT & AMENDMENT APPLICATION

As noted, the Permit authorizes the treatment and land application of up to 20,000 gpd, a capacity sufficient for H•E•B’s existing real estate development. The existing H•E•B grocery store and surrounding commercial and retail establishments use approximately 60% of that capacity. When fully built out and occupied, the Descending Dove Hills Commercial Subdivision is expected to need approximately 21,000 gpd of wastewater service. Working closely with H•E•B, and anticipating the need for expanded wastewater facilities to serve the Descending Dove Hills Commercial Subdivision, BexarMet filed with the TCEQ on June 2, 2010, an application to amend the Permit (the “Amendment”). The Amendment seeks to expand the wastewater treatment facility in two phases—the first phase of the expansion (“Phase 1”), which is the one covered by the ATC, is designed to serve the Descending Dove Hills Commercial Subdivision. One public comment was filed when the Amendment was originally noticed—it expressed opposition to “any attempt of Bexar, San Antonio or any

quasi-government controlled or serving the urban area having jurisdiction in [Comal] county” (see Attachment 1).

The Amendment is now in the final stages of technical review. However, final paperwork on a draft permit for the Amendment is not yet ready, and second notice on the Amendment has not been published. Final action by the Commission on the Amendment is therefore still months away.

3. THE AGREEMENT

H•E•B plus! Bulverde is scheduled for its grand opening on February 11, 2011. Recognizing in advance that the time required to process the Amendment and subsequently build any authorized expanded treatment facilities would necessarily exceed the planned opening of the **H•E•B plus!**, H•E•B and CLWSC entered into a wastewater utility service agreement (the “Agreement”) to allow H•E•B to essentially “swap” wastewater service to the existing grocery store with service for the new **H•E•B plus!** (and 8,400 square feet of adjacent retail space plus a fuel station and car wash) provided that H•E•B leaves its soon-to-be-vacated existing grocery store closed to the public (see Attachment 4). Further, the additional wastewater treatment capacity requested in the Amendment as Phase 1 must be on-line before CLWSC will provide wastewater service to the remainder of the new retail and commercial space and pad sites in the Descending Dove Hills Commercial Subdivision and the soon-to-be-vacated grocery store space.

4. THE PLANT EXPANSION

Although H•E•B expected some delay in its ability to lease retail and pad site spaces and to allow re-occupancy of its former grocery store, it hoped that the Amendment process would be complete by early 2011 and that construction of Phase 1 of the wastewater facility expansion would be underway or about to begin. Amendment review has taken longer than anticipated and, as noted, the Amendment cannot be considered by the Commission for several months. Therefore, H•E•B submits the ATC in hopes of commencing construction of Phase 1 of the expansion to the wastewater facilities at the earliest possible date, and thereby minimize, to the extent possible, the time that it must maintain vacant retail space and pad sites at its new retail development and “empty box” retail space at its existing retail development.

H•E•B is required to undertake all construction and bear all financial obligations associated with expanding the wastewater facilities to accommodate the needs of the Descending Dove Hills Commercial Subdivision. This obligation requires H•E•B to add 20,000 gpd of treatment and effluent disposal capacity to the existing facilities (for a total

capacity of 40,000 gpd). H•E•B has already prepared and bid plans and specifications for this phase of the treatment facility expansion, although issues related to the sizing of the Phase 1 effluent tank are still under review with TCEQ staff. Based on current discussions, H•E•B fully expects all of those issues to be resolved shortly, and final plans and specifications to be ready and filed immediately thereafter.

H•E•B is prepared to begin construction of Phase 1 of the expansion as soon as final plans and specifications are approved by TCEQ. Construction of the Phase 1 expansion will require approximately nine months, including testing, inspection and turnover of all facilities to CLWSC. (Pursuant to the Agreement, upon completion of the Phase 1 expansion and upon CLWSC's acceptance of the expanded wastewater facilities, H•E•B will convey those facilities in fee to CLWSC and will also convey access to the land on which the Phase 1 expansion is built and easements for the associated effluent disposal property.)

For reasons discussed in this letter and described in the ATC, we ask the Executive Director to support H•E•B's ATC and to forward this letter and its attachments to the Commission requesting that H•E•B's ATC be placed on the Commission's agenda as soon as possible.

If you have any questions, please contact me at 512-542-8552.

Very truly yours,



Molly Cagle
Taylor Holcomb
Vinson & Elkins LLP

Attorneys for H•E•B

Enclosures

cc: Tim Reidy, TCEQ

Application for Authorization to Construct

Texas Water Code § 26.027 allows the construction of a wastewater treatment facility with the approval of the Commission. If the Commission approves this application, it will allow the construction of the facilities described in the permit application, subject to any limitations in the Commission Order. An Authorization to Construct does not authorize operation of the newly constructed facility, nor does it constitute any guarantee that a permit will be granted.

1. Applicant Name: **H.E.B. Grocery Co., L.P.**
2. Permit Number: **WQ 0014131-001**
3. Authorized Representative/Contact Person and Phone No.: **Kathy Strimple, (210) 938-8892**
4. Date Application for Wastewater Permit was Submitted: **June 2, 2010**
5. Date Application for Wastewater Permit was Administratively Complete: **July 13, 2010**
6. Have you received any notices of deficiency, requesting additional information that needed to be submitted for your application? Yes No

If Yes, please provide dates of notices of deficiency and dates you responded to notices of deficiency: **Please see Attachment 1.**

7. Please explain the reason you need authorization to construct before a final decision on your permit application has been made.

Please see Attachment 1.

8. Please explain the harm if this authorization is not granted.

Please see Attachment 1.

9. What stream segment will the proposed discharge flow into?

There will be no discharge.

10. Is this discharge into a water quality impaired segment (included in the State's 303(d) list? Yes No

11. Have you received any public comments, inquiries or hearing requests regarding the wastewater permit application? Yes No

Please see Attachment 1.

If Yes, have you contacted the interested person to attempt to resolve their concerns?

No.

If you have, please provide details regarding the possible resolution of those concerns.

12. Are you competing for a CCN with another provider, or are there other CCN issues of which you are aware? Yes No

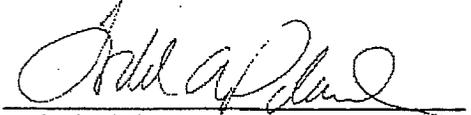
If Yes, please explain:

13. Do you understand that if a permit is issued, it may contain significantly different parameters than you have requested? Yes No
14. Is your plant designed in such a way that you can deal with a significant reduction in effluent limitations if the permit is issued with lower parameters than you are anticipating? Yes No
15. Do you understand that this is not a permit to operate your facility? Yes No
16. Do you understand that you may not receive a permit? Yes No
17. Do you understand that, in addition to public comment, the TNRCC may also receive comments from the EPA, US Fish & Wildlife, the Army Corps of Engineers, the Texas Historical Commission, National Marine Fisheries Service, and Texas Parks & Wildlife, and that these comments may result in changes to your draft permit? Yes No

CERTIFICATION

I certify that I understand that authorization to construct is not a permit to operate and does not guarantee that this facility will receive a permit. I understand that, during the application review, public comment, review by EPA and other state and federal agencies, and contested case hearing process, any proposed permit conditions may change, and that effluent limitations may become stricter, necessitating design changes in this facility. I also understand that the permit, if issued, may require a different location for wastewater facilities, a different location for the point of discharge, or may prohibit discharge entirely, requiring a different disposal method.

To the best of my knowledge, the information in this application is true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.


 Authorized Signature* KMS

Date 2/9/11

TODD A PILAND
 Printed Name

* This application must be signed by an authorized representative, as required under 30 TAC § 305.44.

ATTACHMENT I
H.E.B. GROCERY CO., L.P.'s ATC
TCEQ PERMIT No. WQ 0014131-001

Question 6: Have you received any notices of deficiency requesting additional information that needed to be submitted for your application? If yes, please provide the dates of the notices of deficiency and the dates you responded to notices of deficiency.

The engineer acting on behalf of the Applicant has received and responded to various requests for additional information, although none were specifically identified as Notices of Deficiency. Several inquiries were in writing, and others were via e-mail or via fax. A list of the dates of inquiry and responses following the declaration of administrative completeness is set forth below:

<u>Date of Request</u> <i>(Medium)</i>	<u>Date of Response</u> <i>(Medium)</i>	<u>Description of Information Provided</u>
June 15, 2010 <i>(Letter)</i>	July 13, 2010 <i>(Three letters)</i> July 14, 2010 <i>(One letter)</i>	<ul style="list-style-type: none"> • Lab data—revised pollutant analysis of treated effluent • Updated USGS and landowners map • USDA custom soil resource report • Proposed irrigation system design configuration • Revised site drawing
August 5, 2010 <i>(Letter)</i>	September 21, 2010 <i>(Letter)</i>	<ul style="list-style-type: none"> • Documentation of previous TNRCC approvals related to existing public water supply well • Water well reports • Technical information related to irrigation system and water balance
October 1, 2010 <i>(e-mail)</i>	October 14, 2010 <i>(Letter)</i>	<ul style="list-style-type: none"> • Lab data—documentation that wastewater effluent used for irrigation meets the effluent limitations of Type I reclaimed water • Well plugging reports
October 15, 2010 <i>(e-mail)</i>	October 19, 2010 <i>(Letter)</i>	<ul style="list-style-type: none"> • Lab data—soil testing samples • Irrigation zone maps
December 3, 2010 <i>(e-mail)</i>	January 3, 2011 <i>(Letter)</i>	<ul style="list-style-type: none"> • Lab data—influent biochemical oxygen demand • Flow derivation data • Technical information related to water balance

December 20, 2010 (e-mail)	December 30, 2010 (Letter)	<ul style="list-style-type: none"> • Lab data—effluent analysis • Technical information related to water balance and storage
January 14, 2011 (e-mail)	January 20, 2011 (Letter)	<ul style="list-style-type: none"> • Site and buffer zone maps • Water balance analysis report
January 26, 2011 (fax)	January 27, 2011 (Letter)	<ul style="list-style-type: none"> • Technical information related to water balance

Questions 7 & 8: Please explain the reason you need authorization to construct before a final decision on your permit application has been made and please explain the harm if this authorization is not granted.

H•E•B has constructed a new shopping center—the Descending Dove Hills Commercial Subdivision—in the City of Bulverde. The shopping center includes a new **H•E•B plus!** and built out space and pad sites for other retail and commercial establishments (*see* attached site map). Although H•E•B has contractually secured wastewater treatment capacity for the **H•E•B plus!** (and 8,400 square feet of adjacent retail space plus a fuel station and car wash) by committing to leave vacant its soon-to-be-vacated existing Bulverde H•E•B grocery store, additional wastewater treatment capacity must be on-line before CLWSC will provide wastewater service to the remainder of the new retail and commercial space and pad sites in the Descending Dove Hills Commercial Subdivision and the soon-to-be-vacated grocery store space (*see* Attachment 3, Affidavit of Tom Hodge). There exists in the Bulverde area demand to occupy these spaces (*see* Attachment 2, Affidavit of Kathy Strimple). H•E•B desires to minimize, to the extent possible, the period of time that these retail spaces sit undeveloped and vacant.

Awaiting a final decision on the pending permit Amendment application will extend the vacancy period by at least nine months, the estimated time to complete construction, testing, inspection, and turnover of the needed expanded wastewater treatment facilities. H•E•B is willing to accept all risks associated with commencement of construction in advance of consideration of the pending permit Amendment application in order to bring the needed wastewater capacity on-line to lease its undeveloped retail and pad site spaces at the earliest possible date (*see* Attachment 2, Affidavit of Kathy Strimple).

Maintaining vacant pad sites and empty boxes—that is, retail space that cannot be occupied—will result in direct, adverse economic impact to H•E•B as the owner of the vacant spaces in the form of lost rent, extended disruption to operating businesses, and excess costs involved with remobilizing construction crews (*see* Attachment 2, Affidavit of Kathy Strimple). The tenants located in the shopping center adjacent to the existing H•E•B store will also be adversely impacted due to an extended period of time that the shopping center’s major anchor building will “sit dark”—those businesses need the synergy of a vibrant retail center to be successful economically (*see* Attachment 2,

Affidavit of Kathy Strimple). H•E•B is actively engaged in ongoing conversations to release its existing retail space to interested businesses that will provide services to the surrounding community, but cannot move forward with those leases under the circumstances.

Question 11: Have you received any public comments, inquiries or hearing requests regarding the wastewater permit application?

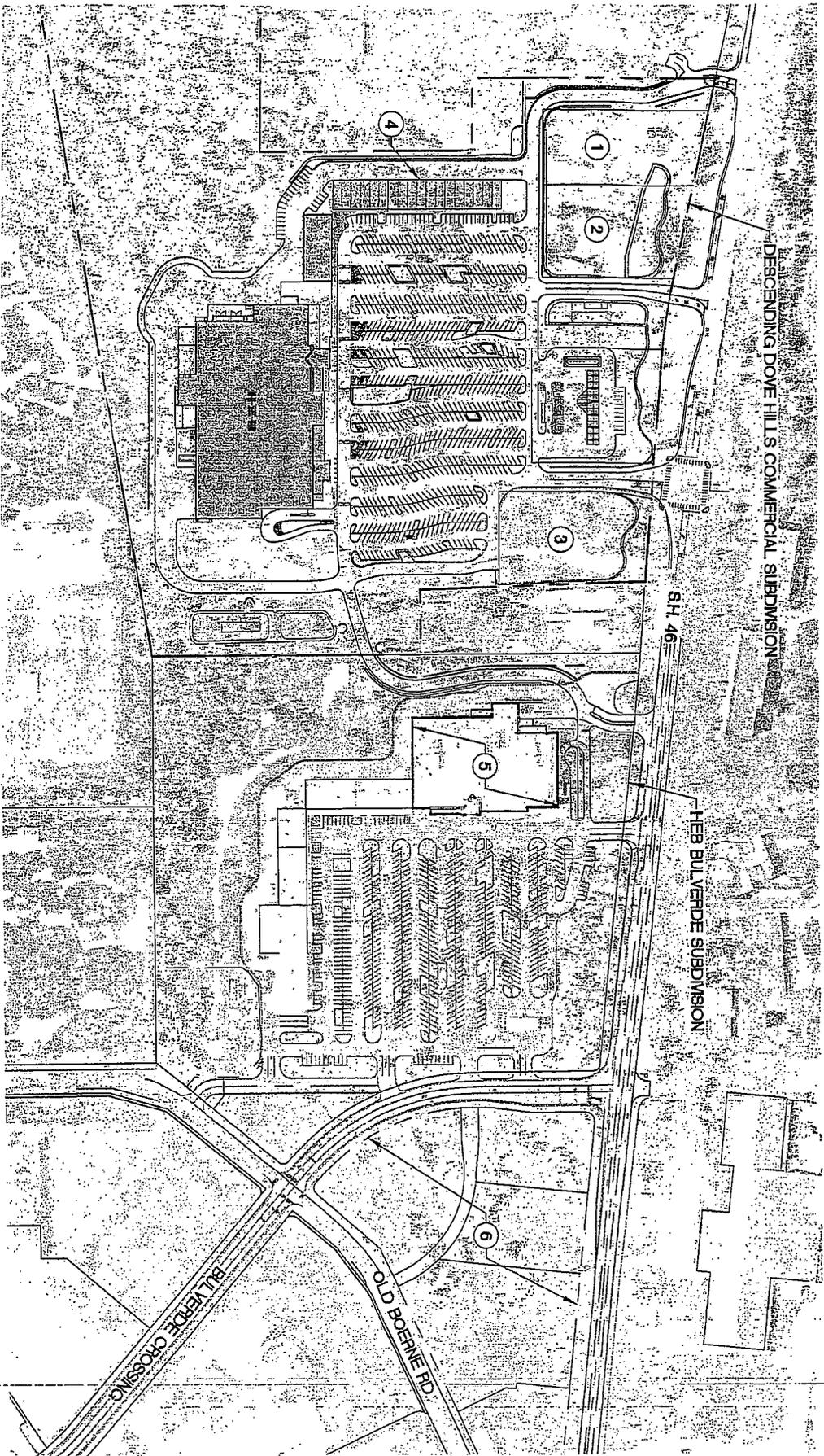
One public comment was submitted by Diane Kelly on August 13, 2010. Her comment reads:

“The laws passed in 1969 and the 70's have been completely disregarded by San Antonio/Bexar, the MPO and AACOG. Only because of Sunset do we, Comal and Bulverde, serve a public purpose. Our lands, skies, water, utilities, rivers, streets, right-of-ways are for our benefit. I oppose any attempt of Bexar, San Antonio or any quasi-government controlled or serving the urban area having jurisdiction in my county. Yes, I have viewed their North Sector Plans. My city, county or the state are my only administrative or fiscal agents. Historically and currently, we have been denied the active and continuous involvement required by the state and federal government. Any lands, infrastructure and assets purchased with public funds are for the benefit of Comal County or the City of Bulverde and ETJ. (NEPA maps reflect Comal is over 80% commercial) If evidence is provided this serves a public purpose, then the administration and fiscal responsibilities are Comal, City or the state (and retribution should be paid). Respectfully”

Attachment-1

*H.E.B. Grocery Co., L.P.'s ATC
TCEQ Permit No. WQ 0014131-001
US 728707v.9*

FUTURE HEB DEVELOPMENT PHASES REQUIRING WWTP EXPANSION



LEGEND

- 1. PAD #1
- 2. PAD #2
- 3. PAD #3
- 4. RETAIL SP. SPACE (21,600 SF)
- 5. RE-LEASE EXISTING HEB
- 6. ± 7 ACRES



ATTACHMENT 2
H.E.B. GROCERY Co., L.P.'s ATC
TCEQ PERMIT NO. WQ 0014131-001

AFFIDAVIT OF KATHY STRIMPLE, P.E.

STATE OF TEXAS

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BEXAR COUNTY

BEFORE ME, the undersigned notary, personally appeared Kathy Strimple, a person whose identity is known to me. After I administered an oath to her, upon her oath, she said:

1. "My name is Kathy Strimple. I am over the age of 21, am competent to make this affidavit, have personal knowledge of the facts herein, and affirm that those facts are true and correct."
2. "I am a registered Professional Engineer in the State of Texas and have been so for just over twenty years. I am currently employed by H.E.B. Grocery Co., L.P. ("H•E•B") in the capacity of Senior Civil Engineer. My current job responsibilities include management of planning and design of site engineering for shopping centers. I have been authorized by H•E•B to state the information herein."
3. "H•E•B owns an existing real estate development in Bulverde, Texas, which includes an H•E•B grocery store and various retail shops and commercial tenants. H•E•B also owns approximately 31.8 acres of land located adjacent and contiguous to H•E•B's existing real estate development. H•E•B has developed those 31.8 acres into the Descending Dove Hills Commercial Subdivision, with the first commercial occupant to be a new **H•E•B plus!** that will replace its smaller, existing grocery store. The new **H•E•B plus!** is scheduled for a grand opening on February 11, 2011."
4. "H•E•B's existing real estate development obtains wastewater service from Canyon Lake Water Service Company ("CLWSC") through a 20,000 gallon per day ("gpd") treatment plant and land application system originally constructed by H•E•B and operated by CLWSC pursuant to Permit No. WQ 0014131-001 (the "Permit"). H•E•B formerly held that Permit with Bexar Metropolitan Water District ("BexarMet")."
5. "During the development of the Descending Dove Hills Commercial Subdivision, H•E•B and BexarMet concluded that an additional 20,000 gpd treatment and land application system would need to be permitted and constructed to accommodate anticipated wastewater flows from the Descending Dove Hills Commercial Subdivision. Accordingly, and in conjunction with BexarMet, H•E•B caused to be prepared, and on June 2, 2010, BexarMet filed with the Texas Commission on Environmental Quality ("TCEQ"), an application to amend the Permit to add a total of 40,000 gpd of wastewater treatment capacity in two phases (the "Amendment"). Phase 1 would add the additional 20,000 gpd of treatment and effluent disposal capacity required for the Descending Dove

Hills Commercial Subdivision; Phase 2 would authorize an additional 20,000 gallons per day of treatment capacity for future needs in the service area.”

6. “After BexarMet filed the Amendment with TCEQ, and in response to a Wastewater Permit Transfer Application submitted by BexarMet and CLWSC, on November 4, 2010 the Executive Director of the TCEQ signed an Order transferring ownership of the Permit to CLWSC.”
7. “H•E•B and CLWSC executed a wastewater service agreement (the “Agreement”) that will allow H•E•B to obtain immediate service for its new H•E•B *plus!* (and 8,400 square feet of adjacent retail space plus a fuel station and car wash) in H•E•B’s Descending Dove Hills Commercial Subdivision. Under the Agreement, H•E•B will close its existing H•E•B grocery store upon the opening of the H•E•B *plus!*, and will not re-open that space to the public or lease additional new retail and commercial space or pad sites in the Descending Dove Hills Commercial Subdivision until the wastewater treatment capacity requested in the Amendment as Phase 1 is constructed by H•E•B (at H•E•B’s sole expense) and is operational and accepted by CLWSC.”
8. “H•E•B will construct the Phase 1 expansion on land that it currently owns and will bear all construction and financial obligations associated with this expansion of the wastewater facilities. Once the Phase 1 expansion is complete and upon CLWSC’s acceptance of the expanded wastewater facilities, H•E•B will convey the wastewater facilities to CLWSC, as well as access to the land on which the Phase 1 expansion is built and easements for the Phase 1 effluent disposal property.”
9. “Substantial retail and commercial space and pad sites owned by H•E•B will sit vacant until the Amendment is granted and the Phase 1 expansion is complete. This will result in direct, adverse economic impact to H•E•B as the owner of the vacant spaces and sites in the form of lost rent, extended disruption to operating businesses, and excess costs involved with remobilizing construction crews. The existing tenants located in the shopping center with the soon-to-be-vacated H•E•B store will also be adversely impacted due to an extended period of time that the shopping center’s major anchor building will ‘sit dark’—those businesses need the synergy of a vibrant retail center to be successful economically. H•E•B is engaged in ongoing conversations to re-lease its existing retail space to interested businesses that will provide services to the surrounding community. H•E•B desires to minimize, to the extent that it can, the amount of time that these retail and commercial spaces and pad sites sit vacant.”
10. “H•E•B is prepared to begin the Phase 1 expansion immediately upon TCEQ’s approval of the final plans and specifications for Phase 1 to ensure that its undeveloped pad sites, new retail and commercial spaces, and soon-to-be vacant existing grocery store can be leased and occupied as soon as possible. To that end, H•E•B has bid the Phase 1 expansion project and its contractor is ready to begin construction immediately.”
11. “I understand that the Permit applicant’s representative and the TCEQ have engaged in extensive discussions regarding the detailed design of Phase 1 and expect to complete

those discussions within the next few weeks, paving the way for preparation and submittal of final plans and specifications for Phase 1.”

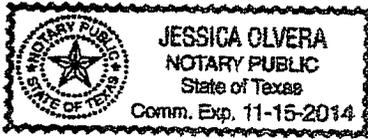
12. “H•E•B anticipates that the Phase 1 expansion—including construction, testing, inspection, and turnover of the expanded wastewater treatment facilities to CLWSC—will be complete within nine months of the commencement of construction.”

13. “H•E•B understands that approval of its Application for Authorization to Construct does not guarantee that the pending application to amend Permit No. WQ 0014131-001 will be granted and that it is therefore proceeding at its own risk.”

“Further affiant sayeth not.”

Kathy Strimple
Kathy Strimple, P.E., Affiant

Subscribed and sworn to before me on this 9 day of February, 2011, to certify of which witness my hand and seal of office.



Jessica Olvera
Notary Public in and for the State of Texas

Jessica Olvera
Printed or Typed Name of Notary Public

My Commission Expires: 11-15-2014

February 7, 2011

ATTACHMENT 3
H•E•B GROCERY COMPANY LP'S ATC
TCEQ PERMIT No. WQ 0014131-001

AFFIDAVIT OF Thomas A. Hodge, P.E.

STATE OF TEXAS

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COMAL COUNTY

BEFORE ME, the undersigned notary, personally appeared Thomas Hodge, a person whose identity is known to me. After I administered an oath to him, upon his oath, he said:

1. "My name is Thomas Hodge. I am over the age of 21, am competent to make this affidavit, have personal knowledge of the facts herein, and affirm that those facts are true and correct. I am authorized by SJWTX, Inc., dba Canyon Lake Water Service Company ("CLWSC"), to state the information herein."
2. "I am a registered Professional Engineer in the State of Texas and have been so for four years. I have been General Manager of Canyon Lake Water Service Company, since 2007."
3. "On November 17, 2009, BMWD and CLWSC entered into an agreement to transfer all the assets of BMWD to CLWSC by 2013. In order to better accommodate the needs of HEB to expand their retail center, CLWSC and BMWD amended that agreement on March 23, 2010 to, upon approval of TCEQ, immediately transfer the water and wastewater facilities serving the HEB retail center to CLWSC."
4. "By Order dated November 4, 2010, the Executive Director of the Texas Commission on Environmental Quality ("TCEQ") transferred Permit No. WQ 0014131-001 (the "Permit"), to SJWTX, Inc. Pursuant to the Permit, CLWSC operates a wastewater treatment plant and land application system to provide wastewater service in the maximum authorized treatment capacity of 20,000 gallons per day ("gpd"). The entire capacity of the existing wastewater treatment and effluent disposal capacity under the Permit is currently dedicated to H•E•B's existing real estate development, located at 20475 Texas 46 in Spring Branch, Texas."
5. "At the time of the Permit transfer, an application to amend the Permit (the "Amendment") was pending at TCEQ. CLWSC has adopted the Amendment and supports its issuance. If granted, the Amendment would authorize the construction and operation of an additional 40,000 gpd of wastewater treatment capacity in two phases. Phase 1 will add an additional 20,000 gallons per day of treatment and effluent disposal capacity; Phase 2 will add an additional 20,000 gallons per day of treatment capacity. If the Amendment is granted, the total authorized treatment capacity under the Permit would be 60,000 gpd."

February 7, 2011

6. "The Phase 1 expansion (an addition of 20,000 gpd) was sized to serve H•E•B's Descending Dove Hills Commercial Subdivision at full build out and occupancy. The additional wastewater treatment capacity provided by the Phase 1 expansion must be on-line before CLWSC will provide wastewater service to the majority of the new retail and commercial space in the Descending Dove Hills Commercial Subdivision and H•E•B's existing grocery store space."
7. "H•E•B desired to open its new **H•E•B plus!** in the Descending Dove Hills Commercial Subdivision as early as possible, and prior to completion of the Phase 1 expansion."
8. "CLWSC and H•E•B determined that CLWSC's existing 20,000 gpd wastewater facilities have sufficient capacity without any expansion or amendment to the Permit to immediately serve the new **H•E•B plus!** provided that H•E•B's existing grocery store at its existing development is closed to the public upon the opening of the **H•E•B plus!** and is not immediately reoccupied. CLWSC and H•E•B executed a wastewater service agreement (the "Agreement") under which CLWSC will immediately serve H•E•B's new **H•E•B plus!**. Under the Agreement, H•E•B must close its existing grocery store upon the opening of the **H•E•B plus!** and must not reoccupy that space or the majority of the new retail and commercial space in the Descending Dove Hills Commercial Subdivision until the wastewater treatment capacity requested as Phase 1 of the Amendment is constructed by H•E•B (at H•E•B's sole expense), accepted by CLWSC and permitted by TCEQ."
9. "CLWSC will not bear any construction or financial obligations associated with the Phase 1 expansion of the wastewater facilities. Once the Phase 1 expansion is complete and upon CLWSC's acceptance of the expanded wastewater facilities, H•E•B will convey the wastewater facilities to CLWSC, as well as access to the land on which the Phase 1 expansion is built and easements for the Phase 1 effluent disposal property."
10. "CLWSC and H•E•B's representatives are working with TCEQ staff to resolve all outstanding issues related to the Amendment."
11. "CLWSC supports H•E•B's request to commence construction of the Phase 1 expansion at the earliest possible date."
12. "CLWSC understands that approval of the Application for Authorization to Construct does not guarantee that the pending application to amend Permit No. WQ 0014131-001 will be granted."
13. "CLWSC also understands that it may not operate any additional wastewater treatment capacity that may be authorized and constructed in advance of the TCEQ's action on the Amendment."

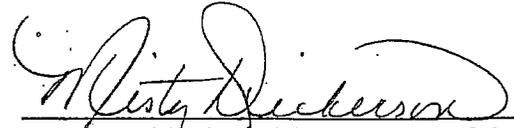
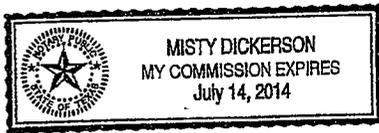
"Further affiant sayeth not."

February 7, 2011

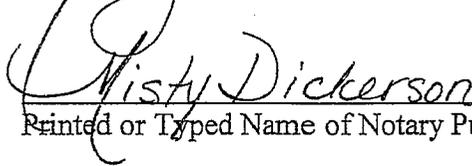


Thomas A. Hodge, P.E., Affiant

Subscribed and sworn to before me on this 7th day of February, 2011, to certify of which witness my hand and seal of office.



Notary Public in and for the State of Texas



Printed or Typed Name of Notary Public

My Commission Expires: 7/14/2014

**WASTEWATER UTILITY SERVICE AGREEMENT BETWEEN
SJWTX, INC., dba CANYON LAKE WATER SERVICE COMPANY, AND
HEB GROCERY COMPANY, LP
FOR
DESCENDING DOVE HILLS COMMERCIAL SUBDIVISION**

This Wastewater Utility Service Agreement (this "Agreement") is entered into as of January 12, 2011 (the "Effective Date") by and between SJWTX, Inc., a Texas corporation doing business as Canyon Lake Water Service Company ("CLWSC"), and HEB Grocery Company, LP, a Texas limited partnership ("Developer"). Individually CLWSC and Developer are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. CLWSC holds retail wastewater Certificate of Convenience and Necessity No. 20877 issued by the State of Texas (the "CCN"). CLWSC provides retail wastewater service to areas within its certificated service area, as it may be amended from time-to-time (the "Service Area"), and, under currently applicable state laws and regulations, may provide wastewater service to certain areas outside its Service Area.

B. CLWSC owns and, pursuant to Texas Commission on Environmental Quality ("TCEQ") Permit No. WQ 0014131-001 (the "WWTP Permit"), operates a wastewater treatment plant and land application system to provide wastewater service to Developer's existing real estate development that is in CLWSC's Service Area (the "Existing Development"). Such wastewater service has been and will continue to be provided to Developer under CLWSC's wastewater tariff approved by the TCEQ, as it may be amended from time-to-time (the "Tariff"). Developer's predecessor paid for, constructed and dedicated the wastewater treatment plant and land application system serving the Existing Development to Bexar Metropolitan Water District (predecessor of CLWSC) pursuant to that certain Agreement for Construction and Acceptance of Water and Sanitary Sewer System and Water and Sewer Utility Service between H.E. Butt Grocery Company (predecessor of Developer) and Bexar Metropolitan Water District dated May 26, 2000 ("Bexar Met Agreement").

C. An application is currently pending at the TCEQ to amend the WWTP Permit to add a total of 40,000 gallons per day ("GPD") of wastewater treatment capacity in two phases -- Phase 1 will add an additional 20,000 GPD treatment and effluent disposal capacity, and Phase 2 will add an additional 20,000 GPD of treatment capacity, so that the total authorized treatment capacity under the amended WWTP Permit will be 60,000 GPD. The plans and specifications for the Phase 1 facilities have already been prepared and submitted and to TCEQ. The Parties anticipate seeking expedited approval to commence construction from TCEQ so that Developer may commence construction of the Phase 1 expansion as soon as possible after the Effective Date.

D. Developer owns approximately 31.8 acres of land described in Exhibit A (the "New Property"). The New Property is located adjacent and contiguous to both the Existing Development and CLWSC's currently existing Service Area. Developer is developing the New

Property for commercial purposes (the "Project"). A preliminary land use plan for the Project is attached hereto as Exhibit B. The first commercial occupancy in the Project will be the HEB Expansion. Upon opening the HEB Expansion to the public, Developer will close the HEB Store in the Existing Development to the public.

E. Developer needs immediate wastewater service for the HEB Expansion and will subsequently need wastewater service for the remainder of the Project. Developer desires to acquire all such service from CLWSC. The Parties anticipate that the Project will ultimately require approximately eighty-seven (87) new Living Unit Equivalents of wastewater service (approximately 20,880 gallons per day ("GPD")), equivalent to the entire capacity of the Phase 1 expansion proposed under the application to amend the WWTP Permit, at full build out and occupancy.

F. CLWSC desires to provide wastewater service to the Project and to continue to serve the Existing Development in accordance with the Tariff. CLWSC also desires to amend its CCN to expand its Service Area to include the New Property.

G. Based on the Developer's representations to CLWSC regarding the additional wastewater to be transported to the Wastewater Treatment Plant and the Wastewater Effluent Disposal System that serve the Existing Development from the HEB Expansion, and Developer's obligation to close the HEB Store in the Existing Development to the public when the HEB Expansion is opened to the public, and not to reoccupy, sell or lease the HEB Store or otherwise allow it to be occupied except as provided herein, the Parties agree that CLWSC's existing Wastewater Treatment Plant and Wastewater Effluent Disposal System, which currently provide Developer wastewater treatment service for the Existing Development, have sufficient capacity without any expansion or amendment of the WWTP Permit to immediately serve the HEB Expansion portion of the Project while continuing to provide wastewater service to the Existing Development provided that the HEB Store is closed to the public. The proposed 20,000 gallons-per-day Phase 1 expansion must be built, and an amendment to the WWTP Permit granted to authorize treatment and disposal of a total of not less than 40,000 gallons per day, in order for CLWSC to provide wastewater service to both the Existing Development at full occupancy (including reoccupying, selling or releasing or otherwise allowing occupancy) of the HEB Store within the Existing Development and the entire Project (including the HEB Expansion) at full build out and occupancy.

H. The Parties desire to enter into this Agreement setting forth the terms and conditions pursuant to which Developer will develop additional wastewater treatment and disposal capacity and will convey the facilities associated with such additional capacity to CLWSC and to which CLWSC will reserve treatment and disposal capacity for and provide retail wastewater service to the Project and continue to serve the Existing Development.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

I. DEFINITIONS

When used in this Agreement, the following terms will have the meanings set forth below:

- 1.1 **"Agreement"** means this Wastewater Utility Service Agreement.
- 1.2 **"Closing"** means the execution and delivery by Developer, and the acceptance by CLWSC, of all documents conveying, selling, transferring or assigning the interests and property of Developer in any Interests to be Acquired to CLWSC, and the performance of all acts necessary to complete such execution and delivery and to comply with all of Developer's obligations thereunder.
- 1.3 **"Closing Date"** means the date or dates on which a Closing occurs.
- 1.4 **"CLWSC"** means SJWTX, Inc., a Texas corporation doing business as Canyon Lake Water Service Company, which is an investor-owned utility regulated by the Texas Commission on Environmental Quality ("TCEQ") that has its principal place of business in Comal County, Texas.
- 1.5 **"Contracts"** means the contracts, leases, Permits, franchises and licenses relating to or arising out of the acquisition, construction and operation of the Interests to be Acquired.
- 1.6 **"Developer"** means HEB Grocery Company, LP, a Texas limited partnership, its affiliates, successors and assigns.
- 1.7 **"Developer's Master Wastewater Plan"** means the description of the Wastewater Facilities that have been constructed by Developer, and the modifications to and expansions of those Wastewater Facilities and the additional Wastewater Facilities that are to be constructed by Developer under this Agreement. A copy of Developer's Master Wastewater Plan is attached hereto as Exhibit C.
- 1.8 **"Existing Development"** means the land abutting and contiguous to the New Property which has an existing sewerage collection system conveying flows to the existing Wastewater Treatment Plant.
- 1.9 **"Force Majeure"** means acts of God, strikes, lockouts or other industrial disturbances, acts of a public enemy or terrorist, orders or actions of any kind of the government of the United States, the State of Texas or any local government or political subdivision, or any civil or military authority, insurrections, riots, terrorist acts or incidents, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accident to the Wastewater Facilities and any inability of a Party to perform in accordance with the terms, conditions, standards and requirements of this Agreement due to any other cause not reasonably within the control of such Party and beyond events that should be anticipated by a Party in the ordinary course of business. Failure of Developer to timely make payments of any kind is not an event of Force Majeure.

1.10 "HEB Expansion" means the new HEB, with approximately 110,000 sq. feet of retail space and anticipated to open in February 2011, the adjacent retail space with approximately 8,400 sq. feet and the fuel station and car wash, all located on the New Property and part of the Project.

1.11 "HEB Store" means the existing HEB grocery in the Existing Development with approximately 62,000 sq. feet.

1.12 "Interests to be Acquired" means the portion of the Wastewater Facilities to be newly constructed by Developer, the sewer line and access easements, the rights, title and interest in the Contracts and all other interests, if any, that Developer will acquire, construct and convey to CLWSC as provided in this Agreement.

1.13 "Living Unit Equivalent" or "LUE" shall mean the quantity of wastewater service associated with one single-family residential connection which is not more than an average daily wastewater flow of 240 gallons/day nor more than the equivalent organic loading allocated to such volume from a single family residence in accordance with municipal and domestic wastewater industry standards.

1.14 "New Property" means that certain tract of real property more particularly described on Exhibit A hereto, and commonly referred to as the Descending Dove Hills Commercial Subdivision or the new HEB Shopping Center.

1.15 "Non Standard Service Obligations" means any service obligations of CLWSC to Developer other than those described in the Tariff.

1.16 "Party" or "Parties" means CLWSC and/or Developer, individually or collectively, as applicable.

1.17 "Plant Engineer" means that properly experienced and currently certified professional engineer licensed by the State of Texas designated by Developer to prepare the engineering plans and specifications for the Wastewater Facilities and to supervise the construction of same. Developer has designated Pape-Dawson Engineers, Inc. as the Plant Engineer.

1.18 "Plant Site" means that portion or portions of the Existing Development and the Project on which the Wastewater Facilities have been and will be constructed.

1.19 "Service Area" means the real property CLWSC serves with wastewater service pursuant to its Certificate of Convenience and Necessity No. 20877, as it may be amended from time-to-time, which Certificate is issued by the TCEQ.

1.20 "Service Commitment" means the LUEs of retail wastewater service that CLWSC agrees to reserve for and provide to Developer for the Existing Development and the New Property as set forth in this Agreement.

1.21 "Tariff" means the tariff approved by the TCEQ for CLWSC, as it may be amended and changed from time-to-time, that sets forth fees, rates and charges, rules and

policies relating to wastewater service by CLWSC. A copy of the Tariff is available at www.clwsc.com.

1.22 "TCEQ" means the Texas Commission on Environmental Quality, the Texas state agency that regulates CLWSC as a wastewater service provider and wastewater permit holder, and its successor state agencies.

1.23 "Warranty Period" means the period that is one (1) year after the date that CLWSC has accepted control and ownership of any phase of the Wastewater Facilities.

1.24 "Wastewater" means liquid and water-carried waste discharged from sanitary conveniences of dwellings and retail businesses, including garbage that has been shredded to such degree that all particles will be carried freely under flow conditions normally prevailing in public sewers, with no particle greater than one-half inch in any dimension.

1.25 "Wastewater Effluent Disposal System" means all lands and the existing land application and spray irrigation system currently utilized or required to dispose of treated effluent from the Wastewater Treatment Plant in conformance with TCEQ rules and regulations, and all additional lands and all modifications to and expansions of that land application and spray irrigation system required to dispose of 40,000 GPD of treated effluent from the Wastewater Treatment Plant in conformance with TCEQ rules and regulations. The design and specifications for the Phase 1 expansion of treated effluent disposal capacity required to increase the total treated effluent disposal capacity under the WWTP Permit to a total of 40,000 GPD has been submitted to the TCEQ. A copy of the list of drawings associated with the plans and specifications for the Phase 1 expansion of the treated effluent disposal capacity is attached as Exhibit E.

1.26 "Wastewater Facilities" means the wastewater storage facilities, collection, lifting and pumping facilities, the Wastewater Treatment Plant, other wastewater treatment facilities, wastewater collection and/or transmission main infrastructure, manholes, wastewater sample ports, the Wastewater Effluent Disposal System, other irrigation disposal facilities, recycling facilities, solids thickening and disposal facilities, a SCADA monitoring system, and other improvements located on the Existing Development and the New Property that have been and that will be constructed by or on behalf of Developer to provide retail wastewater service to Developer's stores, tenants, customers and purchasers of Developer's platted lots within the Existing Development and the New Property, which improvements are more particularly identified in Developer's Master Wastewater Plan. The Wastewater Facilities may be built in stages as provided in this Agreement and shall be constructed in conformance with all standards and requirements referenced in this Agreement. The Wastewater Facilities will include, without limitation, all lines, trunk lines, lift stations and other components necessary to collect and transport all wastewater from the Existing Development and the New Property to the Wastewater Treatment Plant and from the Wastewater Treatment Plant to the Wastewater Effluent Disposal System.

1.27 "Wastewater Treatment Permit" or "WWTP Permit" means the Permit No. WQ 0014131-001 issued by the TCEQ as it may be amended and/or renewed from time-to-time.

1.28 "Wastewater Treatment Plant" means the existing Wastewater Treatment Plant and all modifications to and expansions of that facility required to increase the wastewater treatment capacity under the WWTP Permit to a total of 40,000 GPD. The design and specifications for the Phase 1 expansion of the wastewater treatment capacity required to increase the wastewater treatment capacity under the WWTP Permit to a total of 40,000 GPD has been submitted to the TCEQ. A copy of a list of drawings associated with the plans and specifications for the Phase 1 expansion of wastewater treatment capacity is attached as Exhibit E.

II. WASTEWATER SERVICE

2.1 Wastewater Service Commitment for the Existing Development and the Project.

(a) The Parties agree that the Bexar Met Agreement is no longer in effect, and CLWSC is expressly released from any obligations arising from the Bexar Met Agreement, save and except the obligations repeated in this Agreement including, without limitation, the obligations set forth below in subsection (b) of this Section 2.1.

(b) CLWSC hereby confirms its reservation of and its wastewater Service Commitment to the Developer for wastewater discharged from the Existing Development and the Project in an amount equivalent to the treatment and disposal capacity of the current Wastewater Facilities. That current capacity is 83.33 LUEs. Commencing as of the Effective Date and based on Developer's obligation in Section 2.1(c), CLWSC shall be obligated to immediately provide 44 of such 83.33 LUEs of wastewater Service Commitment to the Developer for commercial connections for the portion of the Project consisting of the HEB Expansion, and CLWSC shall provide the remaining 39.33 of such 83.33 LUEs of wastewater Service Commitment to Developer for commercial connections within the Existing Development, all in accordance with CLWSC's Tariff. Developer may modify the allocation of such 83.33 LUEs between the Existing Development and the Project by giving notice to CLWSC of such change in allocation.

(c) Immediately upon opening the HEB Expansion to the public, Developer shall close the HEB Store in the Existing Development to the public and shall not reoccupy, sell or lease or otherwise allow to be occupied the HEB Store in the Existing Development unless and until the conditions set forth in Section 2.2 are met.

2.2 Wastewater Service Commitment for the Existing Development and the Project upon Completion of Phase 1 Expansion of Capacity. Subject to the terms and conditions set forth in this Agreement, CLWSC shall reserve for the benefit of Developer a total 166.67 LUEs of wastewater treatment and disposal capacity in the Wastewater Facilities for wastewater discharged from the Existing Development and the Project. Commencing upon completion of the Phase 1 expansion of treatment and disposal capacity of the Wastewater Facilities and subject to the other conditions set forth below in this Section 2.2, CLWSC shall provide 79.67 of such 166.67 LUEs of wastewater Service Commitment to Developer for all commercial connections within the Existing Development, and CLWSC shall provide the remaining 87 of such 166.67 LUEs of wastewater Service Commitment to Developer for all commercial connections within the Project, all in accordance with CLWSC's Tariff. Subject to

CLWSC's approval, which shall not be unreasonably withheld or delayed, Developer may modify the allocation of such 166.67 LUEs between the Existing Development and the Project by giving notice to CLWSC of such change in allocation. CLWSC's obligations to provide wastewater service to the Developer pursuant to this Section 2.2 shall be subject to satisfaction of all of the following conditions precedent and the continuing condition of service stated as 2.2(i) below:

(a) The issuance by TCEQ to CLWSC of an amendment to the WWTP Permit such that the WWTP Permit authorizes the disposal through land application of at least 40,000 gallons of effluent daily based on a 30 day average;

(b) The receipt of final platting on terms consistent with this Agreement of the unit or phase(s) of the Project for which the Developer seeks retail wastewater service and any required approvals of such platting by all governmental entities with jurisdiction;

(c) Construction by Developer in accordance with the terms of this Agreement and all applicable authorizations and written acceptance by CLWSC of the Phase 1 modifications to and/or expansions of the Wastewater Facilities. Acceptance of any such modifications to and/or expansions of the Wastewater Facilities by CLWSC shall be contingent on confirmation by the Plant Engineer that the modifications and/or expansions, as built, meet all TCEQ requirements and wastewater industry and CLWSC published standards applicable at the time of the conveyance of same to CLWSC;

(d) Dedication from Developer and acceptance by CLWSC of all additional sewer line and access easements (subject to matters of public record that do not materially affect the purpose of the easements) that are required for CLWSC to provide wastewater service to all connections within the Existing Development and the Project. Such additional easements are generally identified on Exhibit D to this Agreement and are a part of the Wastewater Facilities;

(e) Conveyance from Developer and acceptance by CLWSC of all right, title and interest to all personal property (subject to matters of public record that do not materially affect the purpose of the easements) that is a part of the Wastewater Facilities;

(f) [Left Blank Intentionally]

(g) Payment by Developer to CLWSC of all payments, fees and deposits required by this Agreement;

(h) Written subordination to the rights and title of CLWSC of all third-party claims, rights, liens or encumbrances (subject to matters of public record that do not materially affect the purpose of the easements) that in any way affect, diminish or are superior to the title of CLWSC in the Wastewater Facilities, including the easements that Developer dedicates or assigns to CLWSC, which subordination must be in a form that is reasonably acceptable to CLWSC; and

(i) Texas statutory and regulatory law allow the wastewater service to be provided legally and, assuming the Project is not in the Service Area, without undue economic

hardship arising due to the New Property not being in the Service Area.

2.3 **Water Service.** A separate agreement exists between CLWSC and Developer addressing CLWSC's provision of potable water service to the New Property.

2.4 **CLWSC Operations.**

(a) Commencing as of the Effective Date and continuing upon its acceptance of the conveyance of title to each modification to and/or expansion of the Wastewater Facilities required pursuant to this Agreement, CLWSC shall operate the Wastewater Facilities as they currently exist and as they are modified and/or expanded in compliance with all terms and conditions of the WWTP Permit, and shall be responsible for maintaining the Wastewater Facilities in good working order and for making all needed replacements, improvements and repairs required for the operation of the Wastewater Facilities in compliance with all terms and conditions of the WWTP Permit; for billing and collecting from all customers within the Service Area; and for performing all other usual and customary services and administrative functions associated with wastewater utility systems.

(b) Commencing on the Effective Date and continuing until CLWSC's acceptance of the conveyance of title to the modified and/or expanded Wastewater Facilities, in the event that CLWSC determines and notifies Developer in writing that the volume or quality of Wastewater from the HEB Expansion is interfering with CLWSC's ability to operate the Wastewater Facilities in compliance with the terms and conditions of the WWTP Permit, Developer shall immediately restrict operations at the HEB Expansion car wash and shall take such other measures satisfactory to CLWSC to ensure the wastewater volumes from the HEB Expansion and Existing Development do not interfere with CLWSC's ability to operate the Wastewater Facilities in compliance with the terms and conditions of the WWTP Permit.

(c) After CLWSC's acceptance of the conveyance of title to the modified and/or expanded Wastewater Facilities, in the event that CLWSC determines and notifies Developer in writing that the volume or the quality of Wastewater from the New Property and/or the Existing Development is interfering with CLWSC's ability to operate the Wastewater Facilities in compliance with the terms and conditions of the WWTP Permit, Developer shall immediately take such other measures satisfactory to CLWSC to ensure the wastewater volumes from the New Property and Existing Development do not interfere with CLWSC's ability to operate the Wastewater Facilities in compliance with the terms and conditions of the WWTP Permit.

2.5 **Permitting.**

(a) Within thirty (30) days of the Effective Date, CLWSC, at the sole cost and expense of Developer, will file with the TCEQ an application to modify the boundaries of its CCN to include the New Property in its Service Area.

(i) Developer expressly consents to inclusion of the New Property within CLWSC's CCN and Service Area. Developer agrees to cooperate fully with CLWSC in support of its application to secure TCEQ approval to modify the

boundaries of CLWSC's CCN to include the New Property in the Service Area. Developer agrees to provide to CLWSC all information it may reasonably require in conjunction with seeking such approval.

(ii) In the event CLWSC's CCN application is contested, CLWSC may, in consultation with Developer, modify or amend such application. CLWSC may compromise, settle or withdraw the application.

(iii) Both Parties agree that current Texas statutory and regulatory law allow CLWSC the right to provide wastewater service to the New Property even if the boundaries of CLWSC's CCN and Service Area are not modified to include the New Property. Accordingly, this Agreement and all rights and obligations under this Agreement shall remain in effect regardless of whether CLWSC is successful in its effort to so amend the CCN, unless Texas statutory and regulatory law are subsequently amended in such a way that such service can no longer be provided legally.

(b) Developer at its sole cost and expense will continue its efforts to support and CLWSC shall undertake all reasonably necessary actions to secure as expeditiously as possible the granting by the TCEQ of the pending application for an amendment to the WWTP Permit to increase the wastewater treatment capacity to 60,000 GPD. The Parties agree to diligently prosecute the application to completion. In the event that the WWTP Permit is not amended to increase the wastewater treatment and disposal capacity to some amount in excess of the currently permitted capacity of 20,000 GPD within two (2) years from the Effective Date, Developer or CLWSC may terminate all obligations and rights in this Agreement other than the obligations of CLWSC under Section 2.1 to reserve for Developer and provide to Developer 83.33 LUEs of wastewater Service Commitment for the Existing Development and the Project, and the obligation of Developer to pay for such service pursuant to the Tariff and to pay all other costs as provided by this Agreement. Any such termination by a Party shall be effected by providing written notice to the other Party, and any such termination by Developer shall be subject to Developer's obligation to reimburse CLWSC for its costs. If the WWTP Permit is amended to increase the wastewater treatment and disposal capacity to an amount greater than 20,000 GPD but less than 40,000 GPD, that entire capacity, and not 40,000 GPD, shall be reserved for and committed to Developer in accordance with the terms set forth in Section 2.2.

(c) Developer at its sole cost and expense shall apply for any permits, licenses or approvals in addition to the WWTP Permit that may be required for the construction of the modifications of and/or expansions to the Wastewater Facilities required pursuant to this Agreement or for the operation of the Wastewater Facilities as so modified and/or expanded. CLWSC shall cooperate fully in support of Developer's efforts to secure such permits, licenses or approvals. In the event Developer does not obtain any necessary and required permit, license or approval for such construction and operation to increase the wastewater treatment and disposal capacity of the Wastewater Facilities to some amount in excess of the currently-permitted capacity of 20,000 GPD within two (2) years from the Effective Date, Developer may terminate all obligations under this Agreement other than the obligations of CLWSC under Section 2.1 to reserve for Developer and provide to Developer 83.33 LUEs of wastewater

Service Commitment for the Existing Development and the Project, and the obligation of Developer to pay for such service pursuant to the Tariff and to pay all other costs as provided by this Agreement. Any such termination by the Developer shall be effected by providing written notice to CLWSC, and such termination shall be subject to Developer's obligation to reimburse CLWSC for its costs. If Developer is able to obtain the necessary and required Permits, licenses and approvals for such construction and operation to increase the wastewater treatment and disposal capacity of the Wastewater Facilities to an amount greater than 20,000 GPD but less than 40,000 GPD, that entire capacity, and not 40,000 GPD, shall be reserved for and committed to Developer in accordance with the terms set forth in Section 2.2.

2.6 Wastewater Effluent Disposal System. As required by Section 2.2 above and as a condition to the provision of wastewater service, Developer will dedicate to CLWSC all additional sewer line and access easements necessary for CLWSC to properly dispose of the treated wastewater effluent from the Project using the spray irrigation system as more fully described in the WWTP Permit Amendment Application.

2.7 Phase 2 Expansion of Wastewater Treatment Plant by CLWSC. In the event that CLWSC desires to implement the Phase 2 expansion of the Wastewater Treatment Plant (up to a total wastewater treatment capacity of 60,000 GPD) onto real property owned by Developer and on which the Wastewater Effluent Disposal System is authorized under either Wastewater Permit No. WQ001413-001, or pursuant to the pending application to amend Wastewater Permit No. WQ001413-001, such real property is depicted on Exhibit G as a dotted area, Developer agrees to execute appropriate conveyance documents to authorize CLWSC to expand the Wastewater Treatment Plant to such real property as may be required to accommodate such expansion so long as the real property is located within the area depicted on Exhibit G as a dotted area and CLWSC has secured an amendment to the WWTP Permit that assures to Developer's satisfaction that CLWSC will continue to reserve and be physically capable of providing 166.67 LUEs of wastewater treatment and disposal capacity to the Existing Development and New Property as required by this Agreement, and pays for all costs associated with the alternate disposal, including all costs associated with securing any required amendment to the WWTP Permit, designing and constructing any alternate disposal facility, designing, purchasing and constructing or relocating a wastewater effluent disposal system at the alternative site, relocating existing utilities and drainage improvements and access roads on such real property and acquiring all necessary rights to such alternate site.

III. RATES, FEES, AND CHARGES

3.1 Rates and Fees. All wastewater customers within the Service Area will pay CLWSC's standard fees, charges and rates for wastewater service to commercial customers as set forth in the Tariff. CLWSC specifically reserves the right to amend the Tariff from time-to-time.

3.2 Administrative Deposit.

(a) Developer agrees to reimburse CLWSC for the costs and expenses incurred by CLWSC for providing Non Standard Service Obligations under this Agreement,

including, for example, costs associated with this Agreement and with securing amendments to CLWSC's existing CCN and the WWTP Permit, including professional fees for legal and accounting support for such amendment applications, and costs for engineering review of Wastewater Facility designs and plans and specifications and construction inspections. For purposes of this Agreement, CLWSC's cost and expenses reimbursable under this Agreement shall include actual costs for expenses, labor, equipment and materials directly attributable to the Project, and/or the Wastewater Facilities, plus 6% of that total for overhead and indirect costs incurred prior to Closing.

(b) Within three (3) days of the Effective Date, Developer shall submit to CLWSC an Administrative Deposit of twenty-five thousand dollars (\$25,000) payable to CLWSC for the costs and expenses incurred by CLWSC related to Non Standard Service Obligations. CLWSC may reimburse itself for all costs and expenses incurred by CLWSC related to Non Standard Service Obligations that are not timely challenged by Developer. Prior to the Effective Date, CLWSC incurred sixteen thousand eight hundred and twenty dollars (\$16,820.00) in costs and expenses related to Non Standard Service Obligations. Developer agrees that such costs and expenses qualify as reimbursable costs and expenses and shall not challenge same.

(c) CLWSC shall provide Developer a detailed written invoice and accounting of all costs and expenses related to Non Standard Service Obligations performed by CLWSC and for which it seeks reimbursement. Developer shall notify CLWSC within twenty (20) business days of receipt of an invoice and accounting for costs and expenses related to Non Standard Service Obligations of any challenge regarding a cost or expense and the detailed basis for such challenge.

3.3 **Excess Costs.** Developer shall reimburse CLWSC for the costs and expenses related to Non Standard Service Obligations performed by CLWSC in excess of the Administrative Deposit. Developer shall remit payment for all unchallenged cost and expenses within thirty (30) days of receipt of a written detailed invoice and accounting from CLWSC for such excess. Challenged costs and expenses will be subject to the requirements of Section 10.3 of this Agreement.

3.4 **Other Expenses.** Developer shall be responsible for all costs associated with planning, engineering, permitting, constructing and pre- Closing testing associated with the Wastewater Facilities.

IV. WASTEWATER FACILITIES

4.1 Wastewater Facilities.

(a) Notwithstanding anything to the contrary herein, Developer may not commence construction of any modification to or expansion of the Wastewater Treatment Plant to increase the treatment capacity as provided by this Agreement until the TCEQ has issued an amendment to the WWTP Permit, except with the approval of the TCEQ and CLWSC, which approval shall not be unreasonably withheld or delayed.

(b) Developer has designed the modifications to and expansions of the Wastewater Facilities required for CLWSC to provide retail wastewater service to the Developer in accordance with this Agreement. All the Wastewater Facilities must be constructed in accordance with the plans and specifications approved in writing by TCEQ and approved by CLWSC before construction begins. Upon completion of construction of any portion of the modifications to and/or expansions of the Wastewater Facilities, CLWSC and Developer will agree upon a date to conduct the Closing for that portion of the Wastewater Facilities in accordance with the procedures set forth in Article VIII, at which time Developer will convey, or cause the conveyance of, title to such modifications of and/or expansions to the Wastewater Facilities required pursuant to this Agreement to CLWSC.

4.2 Design of the Wastewater Facilities. All physical facilities to be constructed or acquired as a part of the Wastewater Facilities will be designed by or under the supervision of the Plant Engineer. The design shall comply with all applicable TCEQ rules, regulations and requirements and the applicable criteria of any other governmental entity with jurisdiction and such other criteria reasonably required by CLWSC. The Wastewater Treatment Plant shall be designed to meet a 30-day average effluent quality meeting the following standards: (See Figure 1: 30 TAC § 210.33(1))

BOD ₅ or CBOD ₅	5 mg/l
Turbidity	3 NTU
Fecal Coliform	20 CFU/100 ml*
Fecal Coliform (not to exceed)	75 CFU/100 ml**

* geometric mean

** single grab sample

4.3 Engineering Review. Developer submitted a set of preliminary drawings for the Phase 1 modifications to and expansions of the Wastewater Facilities to CLWSC before Developer advertised for bids for construction of such modifications and/or expansions. After the Effective Date and upon submittal by Developer for approval by CLWSC of plans and specification for the Phase 1 modifications to and expansions of the Wastewater Facilities, CLWSC agrees to use its best efforts to review all plans and specifications and either to approve such plans and specifications or to provide written comments specifically identifying the required changes within twenty-one (21) calendar days of submittal. If no comments are furnished to Developer within the 21-calendar day period, the plans and specifications submitted pursuant to this Section 4.3 shall be deemed approved by CLWSC. Developer agrees that the engineering review or approval by CLWSC shall in no way relieve Developer of its responsibilities under this Agreement. The review of the plans for any modification to or expansion of the Wastewater Facilities and any lack of objection upon the completion of the review will not establish any liability of CLWSC for the engineering or design of the

modification or expansion. Once the plans for any modification or expansion are approved by CLWSC, the Developer shall not materially change the plans without the written consent of CLWSC. If applicable, Developer must obtain TCEQ approval of its plans and specifications before beginning construction.

4.4 Construction of Wastewater Facilities.

(a) The modifications to and expansions of the Wastewater Facilities required pursuant to this Agreement will be constructed, and all related easements, equipment, materials and supplies will be acquired by Developer in the name of Developer, and all construction contracts and other agreements will contain provisions to the effect that any contractor, material supplier or other party thereto will look solely to Developer for payment of all sums coming due thereunder and that CLWSC will have no obligation whatsoever to any such party. Contractors used to construct any modification to or expansion of the Wastewater Facilities shall be experienced in such construction and shall be approved by CLWSC, which approval shall not be unreasonably withheld or delayed. Developer shall submit to CLWSC a copy of all such contracts and agreements within three (3) business days of their execution.

(b) Notwithstanding anything in this Agreement to the contrary, Developer shall not be obligated to construct any modifications to and/or expansions of the Wastewater Facilities other than the Phase 1 modifications and/or expansions. During all construction, Developer will work with CLWSC's operations and engineering staff to minimize all interference during construction and operational interference that could be caused by the locations of piping and tanks and by normal site activities.

(c) Developer warrants to CLWSC that the modifications to and expansions of the Wastewater Facilities will be constructed in a good and workmanlike manner and that all material used in such construction will be new, not used, will be free from defects and fit for their intended purpose, and will be paid for in full before they are conveyed to CLWSC. All modifications to and expansions of the Wastewater Facilities will be constructed in compliance with industry standards and all requirements of the TCEQ, including, without limitation, all promulgated design and permit requirements. CLWSC and Developer agree to use one mutually agreeable firm or individual to conduct on-site inspections, at Developer's cost, to inspect and approve the construction, which approval will not be unreasonably withheld or delayed. CLWSC may also conduct independent inspections, which will be coordinated with Developer and will not unduly impede or interfere with construction. Inspections will be conducted in a timely manner and will not unreasonably delay or interfere with construction activities. CLWSC will notify Developer of any construction defects coming to its attention as soon as practicable.

(d) Developer shall hold a pre-construction conference prior to beginning construction of any modification to or expansion of the Wastewater Facilities under this Agreement and shall provide CLWSC notice of the date, time and location at least five (5) business days in advance of the pre-construction conference. Developer shall notify CLWSC when construction is completed. After notice of completion of construction, Developer and CLWSC shall hold a post-construction conference, after which CLWSC will conduct a final inspection, testing and operation of the constructed Wastewater Facilities to assure itself that they have been constructed to the proper standards and specifications, but that inspection shall in

no way relieve Developer of its responsibilities under this Agreement. As a part of CLWSC's final inspection, Developer will demonstrate to CLWSC that the Wastewater Facilities, including, without limitation, the Wastewater Effluent Disposal System, will treat and dispose of the design flows and loads by completing a stress test of the installed facilities. The elements of the performance and stress test and the testing procedure will be prepared by Developer and approved in advance by CLWSC.

(e) Developer agrees to cause its contractors to repair all defects in materials, equipment or workmanship appearing within one (1) year from the date of Closing for the Wastewater Facilities, or the applicable portion thereof. Upon receipt of written notice from CLWSC of the discovery of any defects, Developer shall promptly cause its contractors to remedy the defects and to replace any property damaged therefrom. In case of emergency where delay would cause serious risk of loss or damage to CLWSC or its customers or would result in violation of TCEQ regulations or the terms of the WWTP Permit, or if Developer, after notice, fails to cause the contractor to proceed promptly and to remedy within seven (7) days or within another period of time which has been agreed to in writing, in compliance with the terms of the warranty and guarantee, CLWSC may have the defects corrected and Developer and Developer's contractor shall be liable for all actual expenses incurred.

4.5 Cost of Wastewater Facilities. Developer will promptly pay in full, or cause to be paid, the costs of the Phase 1 modifications to and expansions of the Wastewater Facilities as such costs become due, including, without limitation, all costs of design, engineering, materials, labor, construction and inspection arising in connection with such modifications and expansions; all payments arising under any contracts entered into by Developer for the construction of such modifications and expansions; all costs incurred by Developer in connection with obtaining governmental approvals, certificates, Permits, easements, rights-of-way, or sites required as a part of the construction of such modifications and expansions; and all out-of-pocket expenses incurred in connection with the construction of such modifications and expansions, including, without limitation, all consumables used during the testing and start-up of the Wastewater Facilities. CLWSC will not be liable to any contractor, engineer, attorney, material supplier or other party employed or contracted with in connection with the construction of such modifications and expansions.

4.6 Excess Capacity of Facilities. To the extent that the Developer determines that it will not require all the reserved treatment and disposal capacity in the Wastewater Facilities under Section 2.1 and 2.2, or to the extent that Developer and CLWSC agree that there is otherwise excess capacity in the Wastewater Facilities, Developer agrees to negotiate in good faith to release that excess capacity to CLWSC. Without such release by Developer, CLWSC shall not provide wastewater service to any customer outside the Existing Development or New Property using the Wastewater Effluent Disposal System. Without such release by Developer, CLWSC shall continue to reserve for Developer, its tenants and assigns and/or provide wastewater service up to 166.7 LUEs as provided herein. The Parties anticipate that any release of capacity would include some reimbursement of Developer's costs and expenses associated with the establishment of such wastewater treatment and disposal capacity under this Agreement. Developer agrees that so long as CLWSC reserves for the Existing Development and the New Property 166.67 LUEs of capacity in the Wastewater Facilities, Developer shall not oppose any application by CLWSC to modify its Tariff so that all costs of operating and

maintaining 166.67 LUEs of capacity in the Wastewater Facilities are borne by Developer. Developer agrees to cooperate fully with CLWSC in support of its application to modify its Tariff in conformance with this Section 4.6.

4.7 [Left Blank Intentionally].

4.8 **Record Drawings and O&M Manuals.** Prior to acceptance of the modifications to and/or expansions of the Wastewater Facilities from its contractor(s) and prior to its final payment to its contractor(s), Developer will provide accurate record drawings of the constructed Wastewater Facilities to CLWSC in an electronic format and paper copy format acceptable to CLWSC as specified in its standards and specifications. Developer also will provide to CLWSC all operating and maintenance manuals supplied by the manufacturers of the equipment, fixtures or machinery that is a part of the Wastewater Facilities.

4.9 **Acceptance of the Wastewater Facilities.** Within thirty (30) days after substantial completion of construction of the modifications to and/or expansions of the Wastewater Facilities pursuant to this Agreement and CLWSC's approval based on final inspections, tests and system facility operations, Developer will provide to CLWSC the actual cost of construction of such modifications and/or expansions and a concurrence letter from the Plant Engineer certifying that the construction of such facilities has been completed in accordance with approved designs, plans and specifications and change orders approved by CLWSC, that the Wastewater Facilities have been tested and approved for use in accordance with the approved contract documents and CLWSC's specifications, the CLWSC-approved performance and stress test, the TCEQ regulations, and the laws, rules or regulations of any other governmental entity with jurisdiction, that all costs of such modifications and/or expansions have been paid in full as referenced in Paragraph 4.5 above, and that the Wastewater Facilities are properly located within utility easements or public rights-of-way fully accessible by CLWSC. CLWSC shall not withhold acceptance provided all such conditions are met. Upon the proper completion and full payment by Developer of and for such modifications and/or expansions and the written acceptance of same by CLWSC, CLWSC's receipt of the record drawings in the formats noted above, and receipt of the Plant Engineer's concurrence letter, Developer will convey full and complete title, free and clear of any and all liens, third-party claims or encumbrances, to such modifications to and/or expansions of the Wastewater Facilities, including all easements that are reasonably required for the operation of the Wastewater Facilities, including any access easements reasonably required to provide access to and from public roads, to CLWSC in a form of assignment reasonably acceptable to CLWSC. After CLWSC's written acceptance of each assignment, and subject to Developer's compliance with the requirements of Section 2.2, CLWSC will continue to operate, maintain and provide wastewater service through the Wastewater Facilities in accordance with CLWSC's Tariff and this Agreement. Only after the conveyance described in this Section may Developer release any retainage amounts for mechanic's and materialmen's liens and any other statutorily required retainage amounts that have not previously been authorized in writing by CLWSC; provided that CLWSC will not cause Developer to breach any contracts by its unreasonably delayed approval of the conveyance of such modifications to and/or expansions of the Wastewater Facilities.

4.10 **Ownership of Wastewater Facilities.** After the conveyance of same by Developer to CLWSC, CLWSC will own all the Wastewater Facilities downstream of each point of connection with the retail customer's wastewater service line.

4.11 **Force Majeure.** If, for any reason of Force Majeure, either CLWSC or Developer shall be rendered unable, wholly or in part, to carry out their respective obligations under this Agreement, other than the obligation of the Parties to make the payments required under the terms of this Agreement, then if such Party shall give notice of the reasons in writing to the other Party within a reasonable time after the occurrence of the event or cause relied on, the obligation of the Party giving the notice, so far as it is affected by the Force Majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, on the condition that the Party giving notice will use its best efforts to remove that Force Majeure as soon as possible.

4.12 **INDEMNITY. TO THE FULLEST EXTENT AUTHORIZED BY APPLICABLE LAWS, DEVELOPER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS CLWSC, ITS OFFICERS, DIRECTORS, EMPLOYEES, CONSULTANTS, ATTORNEYS AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS, DEMAND, DEBTS, SUITS, CAUSES OF ACTION, LOSSES, DAMAGES, JUDGMENTS, FINES, PENALTIES, LIABILITIES, AND COSTS, INCLUDING REASONABLE ATTORNEY FEES AND DEFENSE COSTS INCURRED BY CLWSC ARISING OUT OF: A) THE BREACH OF ANY WARRANTY, REPRESENTATION OR TERM OF THIS AGREEMENT BY DEVELOPER; B) DEVELOPER'S NON-COMPLIANCE WITH APPLICABLE LAWS, ORDINANCES AND REGULATIONS; OR C) DEVELOPER'S FAILURE TO OBTAIN ANY REQUIRED PERMIT OR APPROVAL REQUIRED UNDER THIS AGREEMENT.**

This Indemnity shall equally apply to any permitted successor or assign of Developer and shall survive the termination of this Agreement.

V. [LEFT BLANK INTENTIONALLY]

VI. WARRANTY

Developer shall be required to post payment, performance and maintenance bonds in forms and by a surety acceptable to CLWSC. The bonds shall be submitted to and approved by CLWSC prior to the initiation of construction and installation of any modifications to and/or expansion of the Wastewater Facilities pursuant to this Agreement, and shall designate CLWSC as a beneficiary. Alternatively, upon prior approval of CLWSC, Developer may assign to CLWSC bonds posted by the contractor for such modification and/or expansion. The payment and performance bonds shall be posted in the amount of one hundred percent (100%) of the construction and installation costs (as set forth in the applicable construction contract) and shall provide that CLWSC may utilize the bond to complete or repair (as applicable) the Wastewater Facilities in the event of any default by Developer or Developer's contractor. The bonds must be

issued by an approved surety company holding a permit from the State of Texas, indicating it is authorized and admitted to write surety bonds in Texas. One original copy of the payment, performance and maintenance bonds shall be provided to CLWSC, and one shall be retained by Developer and Developer's contractor. Developer shall also require its contractors to remain responsible for defects in materials, construction or installation that occur within the Warranty Period, and either Developer or Developer's contractor must provide a maintenance bond acceptable to CLWSC in the amount of fifty percent (50%) of the final construction cost as a condition of CLWSC accepting such modifications and/or expansions. The contractor shall be responsible to replace, or pay for the replacement by CLWSC and, to the reasonable satisfaction of CLWSC, all defects in materials, construction or installation and work involving any part of the Wastewater Facilities that are found by CLWSC's consulting engineer to be reasonably necessary for continued operation of the Wastewater Facilities in compliance with the WWTP Permit during the Warranty Period. Developer shall obtain this warranty from its contractors prior to the initiation of construction. Upon receipt of written notice from CLWSC within the Warranty Period of the discovery of defects in the Wastewater Facilities, Developer's contractor shall thereafter have seven (7) calendar days to replace or pay for the replacement of the necessary materials construction or installation and work. In case of emergency where delay in such replacement would cause serious risk of loss or damage to CLWSC or its customers, CLWSC may have the defects corrected, and the contractor shall be liable for all expenses incurred. If the contractor fails to fulfill the warranty, CLWSC may call upon the bond to pay for such work needed to fulfill the warranty. After the Warranty Period, operation, maintenance and administration of the Wastewater Facilities shall be at CLWSC's sole cost and responsibility.

VII. OWNERSHIP OF EASEMENTS AND PLANT SITE

7.1 **Easements.** All modifications to and/or expansions of the Wastewater Facilities required by this Agreement shall be constructed within public rights-of-way, on lands owned by CLWSC or within easements that will be granted by Developer to CLWSC at no cost to CLWSC and pursuant to instruments reasonably acceptable to CLWSC. The location of all Wastewater Facilities and the terms of all easements shall be subject to CLWSC's review and approval, which approval shall not be unreasonably withheld or delayed.

7.2 **Temporary Construction Easements.** CLWSC shall grant or cause to be granted to Developer such temporary access, construction and other easements, rights and licenses in and to the Wastewater Facilities (other than any portion of the Wastewater Facilities to be constructed on the New Property), and the off-site property described in Section 7.3 below, as may be necessary or appropriate for Developer to construct the modifications and/or expansions of the Wastewater Facilities required by this Agreement and to allow Developer to perform its other obligations under this Agreement. The form(s) of agreement creating such easements, rights and licenses are subject to CLWSC's and Developer's approval, which approval shall not be unreasonably withheld, delayed or conditioned.

7.3 **Offsite Property.** CLWSC is responsible for securing, at its sole cost and expense, all off-site real property interests required for improvements to the CLWSC wastewater system serving the Service Area. If CLWSC desires to acquire additional off-site easements or real property, Developer agrees to reasonably cooperate and assist CLWSC in connection with its efforts to secure all necessary off-site real property interests required for the construction of

facilities to assist CLWSC in the operation of the CLWSC System, but Developer shall be under no obligation to incur any costs or expenses in connection therewith.

VIII. CLOSING

8.1 **Closing.** Subject to Developer's compliance with the requirements set forth in Section 2.2 above, the covenants made by Developer herein, and upon completion of construction of the modifications to and/or expansions to the Wastewater Facilities by Developer as required by this Agreement and acceptance by CLWSC, Developer and CLWSC shall agree upon a date to conduct a Closing in accordance with the procedures set forth in this Article VIII and subject to the requirements of Section 7.3 above, at which time Developer shall convey ownership of such modifications and/or expansions to CLWSC.

8.2 Manner of Transfer.

(a) Transfer by Developer to CLWSC of title to all real property that constitutes the Interests to be Acquired will be by a general warranty deed and shall be free of all liens and encumbrances (subject to matters of public record that do not materially affect the purposes for which the real property is conveyed). Transfer by Developer to CLWSC of title to all easements that constitute the Interest to be Acquired will be by a mutually agreed easement instrument and shall be free of all liens and encumbrances (subject to matters of public record that do not materially affect the purposes of the easements). Title to such property in the name of CLWSC will be insured by a title company acceptable to CLWSC, with no exceptions, conditions or restrictions that are not reasonably acceptable to CLWSC, and the policy will be in the amount of Ten Thousand and No/100 Dollars (\$10,000.00) (or any other value that the parties agree is reflective of the market value of the real property being insured) insuring title to the conveyed real property and the conveyed or dedicated easements and shall include all endorsements as may be requested by CLWSC. Developer will be responsible for all costs attributable to the title policy and endorsements.

(b) Transfer by Developer to CLWSC of all personal property that constitutes Interests to be Acquired will be by Bill of Sale and Assignment in a form reasonably approved by CLWSC and shall be free of all security interests, liens and encumbrances (subject to matters of public record that do not materially affect the purposes for which the personal property is conveyed). Developer will furnish a UCC search or other assurance acceptable to CLWSC to assure it that there are no such outstanding security interests, liens and encumbrances.

(c) Developer shall pay any ad valorem taxes of that portion of the Plant Site not currently owned by CLWSC for the period of time prior to Closing.

8.3 **Possession.** Possession of the applicable component of the Interests to be Acquired at a particular Closing will be delivered to CLWSC at the Closing.

8.4 **Costs and Expenses.** All costs and expenses in connection with the Closing under this Agreement will, except as otherwise expressly provided in this Agreement, be borne by Developer and CLWSC in the manner in which such costs and expenses are customarily

allocated between the parties at closings of the purchase and sale of real property in Comal County, Texas.

8.5 Risks Pending Closing.

(a) Developer agrees that, from the date of this Agreement to the final Closing Date under this Agreement, it will not, except as otherwise authorized by this Agreement or as approved by CLWSC, enter into contracts in connection with operation of the Interests to be Acquired unless such contracts can be terminated upon ninety (90) days written notice without liability to CLWSC or encumbrance on the Plant Site, the easements or the Wastewater Facilities.

(b) If, on the Closing Date, any proceeding is pending before any court or administrative agency of competent jurisdiction, challenging the legal right of either Developer or CLWSC to make and perform this Agreement, Developer and CLWSC, respectively, will have the right, at any time prior to the Closing Date, to suspend and postpone the Closing until such right will have been sustained by a final judgment of a court of competent jurisdiction, but the right to suspend and postpone will not affect any duty to pay provided in this Agreement.

(c) Developer agrees that, until the Closing, it will maintain, or cause to be maintained, insurance in such amounts as are reasonable and prudent, based on the nature of the Wastewater Facilities, on those components of the Interests to be Acquired that have not already been conveyed to CLWSC. If, between the Effective Date and the Closing, any part, whether substantial or minor, of the Interests to be Acquired to be conveyed are destroyed or rendered useless by fire, flood, wind, or other casualty, CLWSC will not be released from its obligations hereunder, but any delay in performance by CLWSC shall be excused during the period of time required by Developer to remedy the loss caused by the casualty; however, as to any portion of the Interests to be Acquired so damaged or destroyed, Developer will make repairs and replacements to restore the Interests to be Acquired to their prior condition, regardless of whether the insurance obtained by Developer covers such repair or replacement, at its expense.

IX. REPRESENTATIONS AND WARRANTIES

9.1 **Representations of Developer.** With respect to each of the Interests to be Acquired to be conveyed by it, Developer acknowledges, represents and agrees that:

(a) It is a Texas limited partnership qualified and in good standing to conduct business within the State of Texas;

(b) The contemplated transfer of the Interests to be Acquired to CLWSC will not violate any term, condition or covenant of any agreement to which Developer is a party;

(c) Execution of this Agreement and the consummation of the transactions contemplated hereunder will not constitute an event of default under any contract, covenant or agreement binding upon Developer;

(d) Developer has not previously entered into any agreement or caused or otherwise authorized any action that would diminish, eliminate or adversely affect CLWSC's contemplated ownership or use of the Interests to be Acquired;

(e) The execution, delivery and performance of this Agreement have been duly authorized by all necessary action on the part of Developer; and the person executing this Agreement on behalf of Developer has been fully authorized to bind Developer to the terms and provisions of this Agreement;

(f) All facilities proposed under this Agreement are reasonable and necessary to provide for demand requirements attributable to the New Property and the Existing Development and to comply with TCEQ minimum design criteria for facilities used in the transmission, pumping, treatment or disposal of wastewater via land application and any other applicable TCEQ minimum requirements;

(g) All costs to Developer under this Agreement are reasonable and necessary under the expected circumstances in regard to the Service Commitment contemplated by this Agreement;

(h) CLWSC's obligation under Section 2.2 to provide wastewater service to the Developer and all of Developer's customers within the Project (beyond and/or in addition to the wastewater service provided to the HEB Expansion) is expressly conditioned upon the satisfaction of the requirements set forth in Section 2.2; and

(i) Developer will use its best efforts to assist and support CLWSC in all of its efforts to expand its CCN No. 20877 to include the New Property.

CLWSC is executing this Agreement in reliance on each of the warranties and representations set forth above, and each such representation and warranty of Developer will survive the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement.

9.2 Representations of CLWSC. CLWSC represents and warrants to Developer that:

(a) CLWSC is an investor-owned utility operating under the authority of Chapter 13 of the Texas Water Code and has the requisite power and authority to take all necessary action to execute and deliver this Agreement, to obtain the Interests to be Acquired from Developer, and, subject to the satisfaction of each of the requirements set forth in Section 2.2, to perform all obligations hereunder;

(b) CLWSC is a Texas corporation in good standing and qualified in all respects to conduct business within the State of Texas;

(c) This Agreement does not contravene any law or any governmental rule, regulation or order applicable to CLWSC; and

(d) The execution and delivery of this Agreement, and the performance by CLWSC of its obligations hereunder, have been duly authorized by all necessary action on the part of CLWSC and the person executing this Agreement on behalf of CLWSC has been fully authorized to bind CLWSC to the terms and provisions of this Agreement.

Developer is executing this Agreement in reliance on each of the warranties and representations set forth above, and each such representation and warranty of CLWSC will survive the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement.

9.3 **Survival of Covenants.** The covenants contained in this Article will survive the conveyance, transfer and assignment of the Interests to be Acquired at all Closings and will continue to bind the CLWSC and Developer as provided herein.

X. REMEDIES

10.1 CLWSC's Remedies.

(a) If Developer fails or refuses to timely comply with any of its material obligations hereunder, or if, prior to a Closing, Developer's representations, warranties or covenants contained herein are not true or have been breached, CLWSC will have the right, along with any other remedy at law or in equity, to (i) enforce this Agreement by specific performance, injunction, or any other remedy available at law or in equity in a court of competent jurisdiction including but not limited to an action for actual damages, hereby waiving any claim for punitive or similar damages or penalties; or (ii) waive prior to or at Closing as applicable, the applicable objection or condition and to proceed to close the transaction in accordance with the remaining terms.

(b) If, after a Closing, CLWSC determines that any of Developer's representations, warranties or covenants is not true, then CLWSC may avail itself of any remedy at law or in equity to which it may be entitled, provided however that CLWSC waives any claim for punitive or similar damages or penalties.

10.2 Default in Payments.

All amounts due and owing by Developer to CLWSC shall, if not paid when due, bear interest at the Texas post-judgment interest rate as set out in V.T.C.A., Finance Code §304.002, or any successor statute, from the date when due until paid, provided that such rate shall never be usurious or exceed the maximum rate permitted by law. If any amount due and owing by Developer to CLWSC is placed with an attorney for collection, the prevailing party in any litigation or arbitration involving the collection shall be paid its costs and attorneys' fees by the non-prevailing party, and such payments shall be in addition to all other payments provided for in this Agreement, including interest.

For so long as there is any failure to provide a required payment or construction costs hereunder by Developer and that failure remains uncured by Developer, Developer agrees that CLWSC shall not be obligated to perform under this Agreement, including, without limitation, to

sign or to approve any additional final plats of the units of the subdivision within the New Property, or to issue any 'will serve letters' for units of the subdivision within the New Property, until payment in full is made to CLWSC. In such an event, Developer shall not take any actions to proceed with or to have any such plat approved by the county with jurisdiction, and CLWSC shall not be obligated to provide wastewater service to any such units of the subdivisions within the New Property until the monetary default is cured. Furthermore, any failure by Developer to provide timely payment that remains uncured by Developer for thirty (30) days after receipt of notice of default from CLWSC shall entitle CLWSC to retain all payments made previously by Developer, and Developer will at that time have forfeited all rights to the payments made by it earlier and any other rights under this Agreement with respect to the New Property for which payment has not been made in full.

10.3 Disputed Payment. If Developer at any time disputes the amount to be reimbursed or paid by it to CLWSC or to third parties, Developer shall nevertheless promptly make the disputed payment or payments or deposit it into a CLWSC-approved escrow account, but Developer shall thereafter have the right to seek a determination of whether the amount charged by CLWSC is in accordance with the terms of this Agreement and to seek a refund.

10.4 Developer's Remedies.

(a) If CLWSC fails or refuses to timely comply with CLWSC's obligations to Developer under this Agreement or is unable to do so as a result of CLWSC's acts or failure to act, Developer will have the following remedies: (i) to enforce this Agreement by specific performance, injunction, or any other remedy available at law or in equity in a court of competent jurisdiction including but not limited to an action for actual damages, hereby waiving any claim for punitive or similar damages or penalties, or (ii) to waive prior to or at Closing, as applicable, the applicable objection or condition and proceed to close the transaction in accordance with the remaining terms.

(b) If, after Closing, Developer determines that any of CLWSC's representations, warranties or covenants was not true, then Developer may avail itself of any remedy at law or in equity to which it may be entitled, provided however Developer waives any claim for punitive or similar damages or penalties.

10.5 Notice and Opportunity to Cure. If either Party (referred to herein as the "Defaulting Party") fails to comply with its obligations under this Agreement or is otherwise in breach or default under this Agreement (collectively, a "Default") then the other Party (referred to herein as the "Non-Defaulting Party") shall not have any right to invoke any rights or remedies with respect to any Default until and unless: (i) the Non-Defaulting Party delivers to the Defaulting Party a written notice (the "Default Notice") that specifies the particulars of the Default and specifies the actions necessary to cure the Default; and (ii) the Defaulting Party fails to cure, within thirty (30) days after the Defaulting Party's receipt of the Default Notice, any matters specified in the Default Notice that may be cured solely by the payment of money or the Defaulting Party fails to commence the cure of any matters specified in the Default Notice that cannot be cured solely by the payment of money within ten (10) days or such longer period of time approved in writing by CLWSC after the Defaulting Party's receipt of the Default Notice and fails to thereafter pursue curative action with reasonable diligence to completion.

10.6 **Transfers that are Unauthorized by CLWSC.** Under no circumstances will CLWSC be responsible to provide wastewater service of any kind to Developer or to any third party for the New Property beyond the additional eighty-seven (87) LUEs of wastewater treatment and disposal capacity in the Wastewater Facilities identified in this Agreement to be provided to the Developer for the New Property. Developer expressly disclaims, releases and will hold CLWSC harmless and defend it against any liability, damages, costs or fees associated with any action brought by a third-party seeking, over the objection of Developer, transfer of all or any portion of the additional eighty-seven (87) LUEs of wastewater treatment and disposal capacity to be provided to the Developer for the New Property in accordance with CLWSC's obligations to Developer under this Agreement.

XI. APPROVALS

Whenever the term "approve" or "approval" is used in this Agreement, the Party whose approval is required will not unreasonably withhold or delay it. Where approval is necessary, the Party seeking approval may request approval in writing, and the approving Party will have ten (10) business days to provide approval or request modification for the matter subject to approval.

XII. NOTICES

Subject to either party's right to change its address upon five (5) days' written notice to the other party, all notices required hereunder by either party to the other shall be in writing and shall be deemed to have been given upon receipt by the receiving party if sent in writing by certified mail, or upon transmission by e-mail or facsimile to the receiving party if sent during normal business hours or on the next business day if sent after normal business hours, when addressed and delivered to the following:

to CLWSC: Canyon Lake Water Service Company
ATTN: Tom Hodge, General Manager
P.O. Box 1742
Canyon Lake, Texas 78130
tom.hodge@clwsc.com
Facsimile: (830) 964-2779

with copy to: Suzy Papazian
SJWIX, Inc.
110 W. Taylor Street
San Jose, CA 95110
Suzy.Papazian@sjwater.com
Facsimile: (408) 279-7934

with 2nd copy to: Will C. Jones IV
The Jones Law Firm
1201 Rio Grande, Suite 100
Austin, Texas 78701
wjones@txcounselor.com
Facsimile: (866) 511-5961

To Developer: HEB Grocery Company, LP
Attn: Mary Rohrer, P.E.
P.O.Box 839999
San Antonio, Texas 78283-3999
Rohrer.mary@heb.com
Facsimile: (210) 938-7228

XIII. ASSIGNABILITY

13.1 **Assignment by Developer.** Developer may assign this Agreement to a purchaser of all or a part of the New Property provided that such assignee assumes all rights, duties and obligations of Developer under this Agreement and has supplied CLWSC any security or assurances of assignee's performance that CLWSC may reasonably require. Any such assignment will be effective only after notice to CLWSC of the assignment and provided that the assignee agrees to assume and perform any duties of Developer under this Agreement. The assignee shall execute an instrument evidencing its assumption of all terms and obligations of this Agreement in a form reasonably acceptable to CLWSC's counsel and shall provide such instrument to CLWSC immediately following such assignment.

13.2 **Assignment by CLWSC.** CLWSC may assign this Agreement if it sells or transfers all or substantially all of the Wastewater Facilities, and such assignee assumes all rights, duties and obligations of CLWSC under this Agreement and provided that any outstanding payment due to Developer by CLWSC is paid in full at, or prior to, the transfer. Any such assignment will be effective only after notice to Developer of the assignment and provided that the assignee agrees to assume and perform any duties and obligations of CLWSC under this Agreement and provided further that any outstanding reimbursement or payment due to Developer is paid in full at or prior to the transfer.

XIV. MISCELLANEOUS

14.1 **Execution.** This Agreement may be simultaneously executed in any number of counterparts, each of which will serve as an original and will constitute one and the same instrument.

14.2 **Costs and Expenses.** Except as otherwise expressly provided herein, each Party will be responsible for all reasonable costs and expenses incurred by such Party in connection with the transaction contemplated by this Agreement.

14.3 **Governing Law.** This Agreement will be governed by the Constitution and laws of the State of Texas, except as to matters exclusively controlled by the Constitution and statutes of the United States of America.

14.4 **Successors and Assigns.** Except as provided in Article XIII, the assignment of this Agreement by either Party is prohibited without the prior written consent of the other Party, which consent will not be unreasonably withheld. All of the respective covenants, undertakings, and obligations of each of the Parties will bind that Party and will apply to and bind any authorized successors or assigns of that Party.

14.5 **Headings.** The captions and headings appearing in this Agreement are inserted merely to facilitate reference and will have no bearing upon its interpretation.

14.6 **Partial Invalidity.** If any of the terms, covenants or conditions of this Agreement, or the application of any term, covenant, or condition, is held invalid as to any person or circumstance by any court with jurisdiction, the remainder of this Agreement, and the application of its terms, covenants, or conditions to other persons or circumstances, will not be affected.

14.7 **Waiver.** Any waiver by any Party of its rights with respect to a default or requirement under this Agreement will not be deemed a waiver of any subsequent default or other matter.

14.8 **Amendments.** This Agreement may be amended or modified only by written agreement executed by the duly authorized representatives of both Parties.

14.9 **Cooperation.** Each Party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.

14.10 **Venue.** All obligations of the Parties are performable in Comal County, Texas, and venue for any action arising hereunder will be in Comal County, Texas.

14.11 **Third Party Beneficiaries.** Except as otherwise expressly provided herein, nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties, any rights, benefits, or remedies under or by reason of this Agreement.

14.12 **Representations.** Unless otherwise expressly provided, the representations, warranties, and covenants, in this Agreement will be deemed to be material and continuing, will not be merged, and will survive the Closing and the conveyance and transfer of the Interests to be Acquired to CLWSC.

14.13 **Exhibits.** All exhibits attached to this Agreement are hereby incorporated in this Agreement as if the same were set forth in full in the body of this Agreement.

14.14 **Entire Agreement.** This Agreement, including the attached exhibits, contains the entire agreement between the Parties with respect to the Interests to be Acquired and supersedes

all previous communications, representations, or agreements, either verbal or written, between the Parties with respect to such matters.

14.15 **Time of the Essence.** Time is of the essence in all matters related to this Agreement.

14.16 **Interpretation.** The singular form of any word used herein shall include the plural, and vice-versa, unless the context requires otherwise. The use of a word of any gender herein shall include all other genders, unless the context requires otherwise. This Agreement and all of the terms and provisions hereof shall be construed so as to effectuate the purposes contemplated hereby and to sustain the validity hereof.

14.17 **Authorized Representatives.** Each person executing this Agreement represents that he is authorized to execute this Agreement on behalf of the undersigned Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be signed, sealed and attested in duplicate by their duly authorized officers, on the dates set forth below and is effective as of the Effective Date set forth above.

CLWSC: SJWTX, INC. dba CANYON LAKE WATER SERVICE COMPANY

By: Thomas A. Hodge 1-12-11
Thomas A. Hodge, Vice President

DEVELOPER: HEB GROCERY COMPANY, LP,
A Texas limited partnership

By: _____
Todd A. Piland, Executive Vice President of Real Estate

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CLWSC: **SJWTX, INC. dba CANYON LAKE WATER SERVICE COMPANY**

By: _____
Thomas A. Hodge, Vice President

DEVELOPER: **HEB GROCERY COMPANY, LP,**
A Texas limited partnership

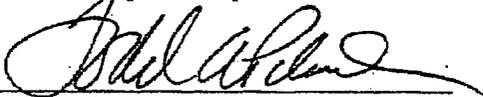
By:  _____
Todd A. Piland, Executive Vice President Of Real Estate

EXHIBIT "A"
(Legal Description of the New Property)

FIELD NOTES

FOR

A 31.806 acre, or 1,385,462 square feet more or less, tract of land being comprised of Lots 2 and 3 of the Descending Dove Hills subdivision, recorded in Volume 13, Page 16, of the Map and Plat Records of Comal County, Texas, a called 5.478 acre tract, conveyed to Robert T. Burns, III in Warranty Deed recorded in Document # 9906032784 of the Official Records of Comal County, Texas, a called 11.00 acre tract, conveyed to Robert T. Burns III in Warranty Deed recorded in Volume 1005, Pages 806-808 of the Official Records of Comal County, Texas, all of that called 1.500 acre tract conveyed to HEB Grocery Company, LP recorded in Document No. 200706050663 of the Official Public Records of Comal County, Texas, all of that certain called 10.459 acre tract conveyed to Robert T. Burns and Robert C. Trevino recorded in Document No. 200506014834 of the Official Public Records of Real Property of Comal County, Texas situated in the William Haas Survey No. 453, Abstract 238, and William Haas Survey No. 666, Abstract 280, Comal County Texas, partially in the City of Bulverde and in Comal County, Texas. Bearings are based on the Texas Coordinate system as established from the North American Datum of 1983 (CORS96) for the South Central Zone, said 31.806 acre tract being more fully described as follows:

BEGINNING: At a found $\frac{1}{2}$ " iron rod with yellow cap marked "Pape-Dawson", the northeast corner of said 11.00 acre tract, the northwest corner of Lot 6A of the Sonic - Bulverde Subdivision recorded in Volume 13, Page 329 of the Map and Plat Records of Comal County, Texas and a point on the south right-of-way line of State Highway 46, a variable width right of way, 100-foot minimum, 130.68 feet at this point;

THENCE: S $01^{\circ}59'12''$ E, departing the south right-of-way line of said State Highway 46, along and with the east line of said 11.00 acre tract, the west line of said Lot 6A, a distance of 464.86 feet to a found $\frac{1}{2}$ " iron rod with yellow cap marked "Pape-Dawson", the southwest corner of said Lot 6A and an angle point in said called 11.00 acre tract;

THENCE: N $89^{\circ}53'38''$ E, along and with the south line of said Lot 6A and a north line of said called 11.00 acre tract, a distance of 134.81 feet to a found $\frac{1}{2}$ " iron rod with yellow cap marked "Pape-Dawson", the southeast corner of said Lot 6A and a point in the west line of Lot 1, HEB Bulverde recorded in Volume 13, Page 92 of the Map and Plat Records of Comal County, Texas for an angle point in the tract herein described;

- THENCE: S 00°06'22"E, along and with the west line of said Lot 1 and the east line of said called 11.00 acre tract, a distance of 565.35 feet to a found ½" iron rod with yellow cap marked "Pape-Dawson" in a north line of Lot 1, Block 1 of the Bracken Christian School Subdivision recorded in Volume 11, Page 149 of the Map and Plat Records of Comal County, Texas and the southwest corner of said Lot 1, HEB Bulverde for the southeast corner of the tract herein described;
- THENCE: S 80°14'00"W, along and with the south line of said called 11.00 acre tract, a north line of said Lot 1, Block 1, a distance of 598.89 feet to a found ½" iron rod with yellow cap marked "Pape-Dawson", the southwest corner of said called 11.00 acre tract, a southeast corner of said called 5.478 acre tract and an angle point in the tract herein described;
- THENCE: S 79°54'37"W, along and with the south line of said 5.478 acre tract, the north line of said Bracken Christian School Subdivision, at a distance of 184.53 feet passing a found ½" iron rod, the northeast corner of Lot 1, Block 1 of the Lundgren Subdivision recorded in Volume 11, Page 23 of the Map and Plat Records of Comal County Texas, the northwest corner of said Lot 1, Block 1 of the Bracken Christian School Subdivision, continuing along and with north line of Lot 1 of said Lundgren Subdivision, the south line of said 5.478 acre tract, at a distance of 411.20 feet passing a found ½" iron rod marked "MDS", the southeast corner of said called 10.459 acre tract, the southwest corner of said called 5.478 acre tract, continuing along and with north line of Lot 1 of said Lundgren Subdivision, the south line of said called 10.459 acre tract, at a distance of 485.02 feet passing a found ½" iron rod, the northwest corner of Lot 1 of said Lundgren Subdivision, the northeast corner of a 3.000 acre tract recorded in Volume 349, Page 539 of the Deed Records of Comal County, Texas, continuing along and with north line of said 3.000 acre tract and the south line of said called 10.459 acre tract, for a total distance of 838.53 feet to a found ½" iron rod, in the east line of Lot 1 of the Cox Subdivision, Unit 1, recorded in Volume 11, Page 209 of the Map and Plat records of Comal County, Texas, the northwest corner of said 3.000 acre tract, the southwest corner of said called 10.456 acre tract;

- THENCE: N 00°07'02" W, along and with the east line of Lot 1 of said Cox Subdivision, the west line of said called 10.456 acre tract, a distance of 469.15 feet, to a found ½" iron rod, the southwest corner of a 6.30 acre tract, recorded in Document # 9706018586, of the Official Records of Comal County, Texas, the most southerly northwest corner of said called 10.459 acre tract;
- THENCE: N 89°52'58"E, along and with the south line of said 6.30 acre tract, a north line of said called 10.459 acre tract, a distance of 363.44 feet to a found ½" iron rod, the southeast corner of said 6.30 acre tract, an interior corner of said called 10.459 acre tract;
- THENCE: N 00°07'02" W, along and with the east line of said 6.30 acre tract, a west line of said called 10.459 acre tract, a distance of 451.00 feet to a found ½" iron rod, in the south line of a called 3.250 acre tract of land conveyed to 46E JV recorded in Document No. 200506013088 of the Official Public Records of Comal County, Texas, also know as the south line of said Lot 2 of Descending Dove Hills, the northwest corner of said called 10.459 acre tract, an angle point of said 6.30 acre tract;
- THENCE: S 89°52'58"W, along and with the south line of said called 3.250 acre tract of land, a north line of said 6.30 acre tract, a distance of 153.44 feet to a found ½" iron rod with yellow cap marked "Pape-Dawson", the southwest corner of said called 3.250 acre tract of land, an interior corner of said 6.30 acre tract;
- THENCE: N 00°07'02"W, along and with the east line of said 6.30 acre tract, the west line of said called 3.250 acre tract of land, a distance of 503.89 feet to a set ½" iron rod with yellow cap marked "Pape-Dawson", in the south right-of-way line of said State Highway 46, a 158.94 foot right-of-way at this point, the northeast corner of said 6.30 acre tract, the northwest corner of said called 3.250 acre tract of land;
- THENCE: Along and with the south right-of-way line of said State Highway 46, the north line of said called 3.250 acre tract of land, the north line of said called 3.000 acre tract of land and the north line of this tract the following calls and distances:

S 78°04'41" E, at a distance of 306.75 feet passing the northwest corner of a called 3.000 acre tract of land conveyed to Casey L. Boice and Carol A. Boice recorded in Document No. 9606024977 of the Official Public Records of Comal County, Texas, also know as said Lot 3 of Descending Dove Hills subdivision and the northeast corner of said called 3.250 acre tract of land, continuing in all a total distance of 417.60 feet to a found ½" iron rod with yellow cap marked "Pape-Dawson",

Southeasterly, along the north line of said called 3.000 acre tract, with a tangent curve to the left, said curve having a radius of 1482.39 feet, a central angle of 07°29'19", at a chord bearing and distance of S 81°49'20" E, 193.61 feet, for an arc length of 193.75 feet passing a found ½" iron rod with yellow cap marked "Pape-Dawson", the northeast corner of said called 3.000 acre tract of land and the most northerly, northwest corner of said called 10.459 acre tract, continuing along and with said tangent curve to the left, said curve having a total central angle of 08°17'54", a total chord bearing and distance of S 82°13'38" E, 214.51 feet, for a total arc length of 214.70 feet to a found ½" iron rod,

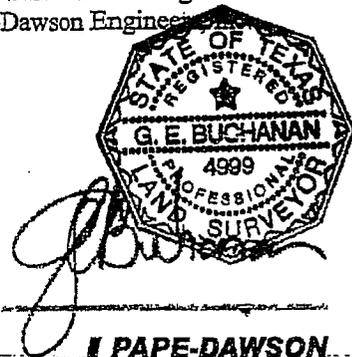
S 86°22'35" E, along the north line of said called 10.459 acre tract, a distance of 12.32 feet to a found ½" iron rod with yellow cap marked "Pape-Dawson",

S 85°28'20" E, continuing along the north line of said called 10.459 acre tract, a distance of 104.43 feet to a found ½" iron rod with yellow cap marked "Pape-Dawson", the northeast corner of said called 10.459 acre tract, the northwest corner of said called 5.478 acre tract,

S 85°09'10" E, a distance of 60.23 feet to a set ½" iron rod with yellow cap marked "Pape-Dawson", the northeast corner of said called 5.478 acre tract, the northwest corner of said HEB Grocery Company, LP tract;

S 86°16'09" E, along the north line of said HEB Grocery Company, LP tract, at a distance of 200.00 feet, passing the northeast corner of said HEB Grocery Company, LP tract and the northwest corner of said called 11.00 acre tract for a total distance of 259.73 feet to the POINT OF BEGINNING, and containing 31.806 acres partially in the City of Bulverde and partially in Comal County, Texas. Said tract being described in accordance with surveys prepared by Pape-Dawson Engineers

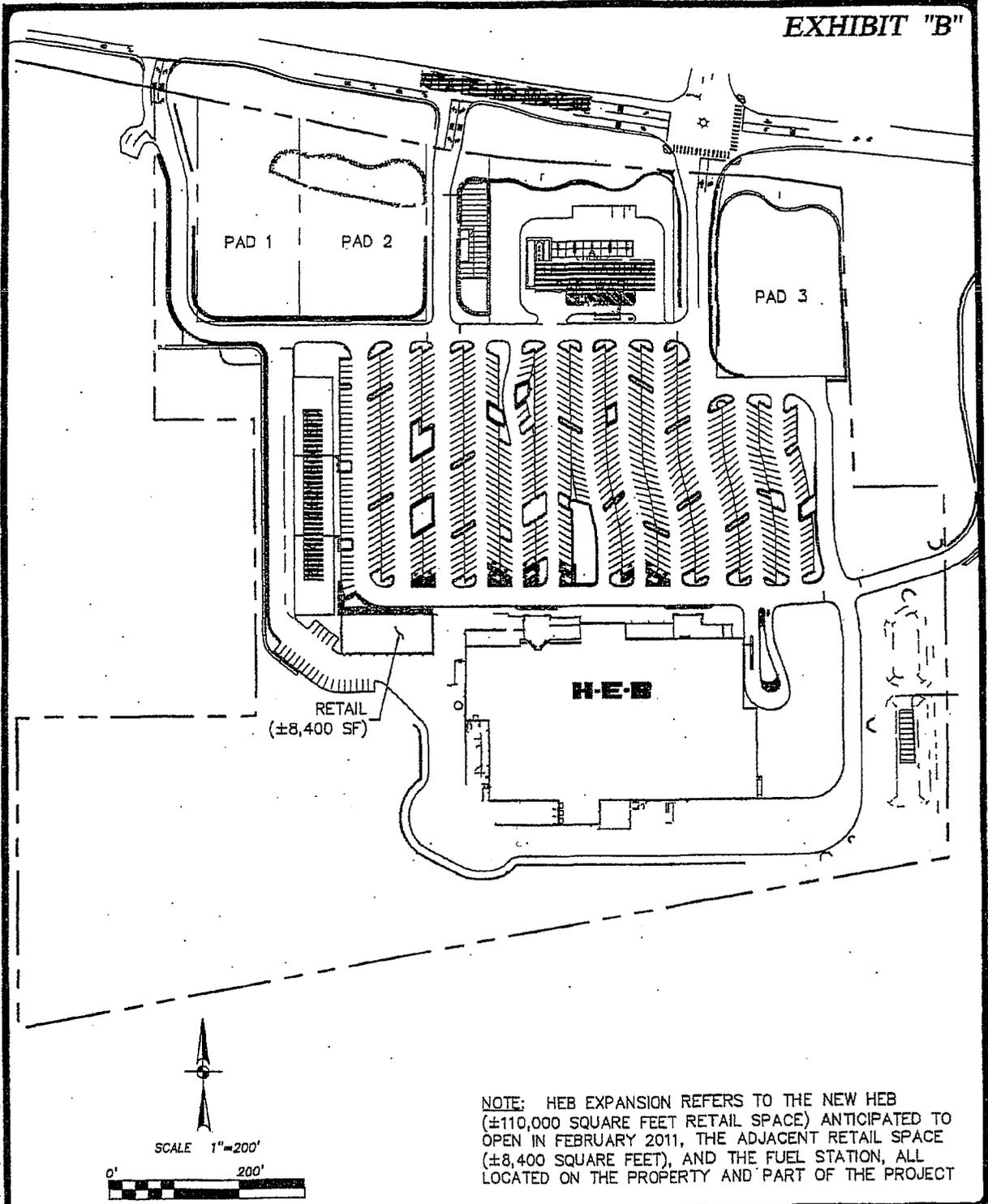
PREPARED BY: Pape-Dawson Engineers, Inc
JOB No.: 4645-45
DATE: February 10, 2010
DOC. ID.: N:\CIVIL\4645-45\WORD\31.806 AC FN.doc



**PAPE-DAWSON
ENGINEERS**

EXHIBIT "B"
(Preliminary Land Use Plan for the Project)

EXHIBIT "B"



NOTE: HEB EXPANSION REFERS TO THE NEW HEB (±110,000 SQUARE FEET RETAIL SPACE) ANTICIPATED TO OPEN IN FEBRUARY 2011, THE ADJACENT RETAIL SPACE (±8,400 SQUARE FEET), AND THE FUEL STATION, ALL LOCATED ON THE PROPERTY AND PART OF THE PROJECT

Date: Jan 10, 2011 3:23pm User: J. Amador
 File: M:\5476\98\Design\Exhibit\CLINSC\000120-B.dwg

JOB NO. 4244-AR
 DATE APRIL 2010
 DESIGNER CEI
 CHECKED CEL DRANN M.
 SHEET _____

H-E-B
 HEB BULVERDE
PRELIMINARY LAND USE PLAN

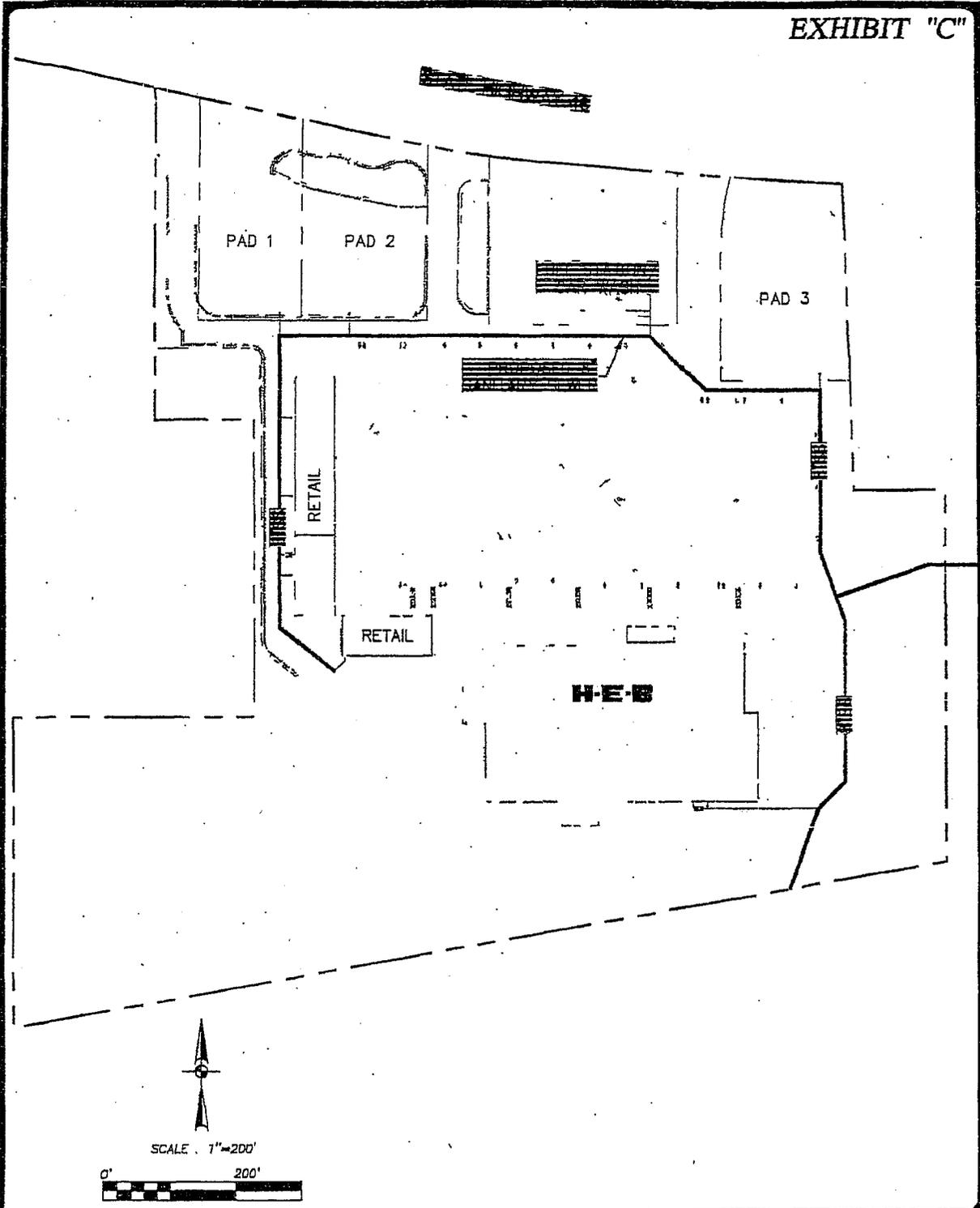
PAPE-DAWSON
ENGINEERS

555 EAST RAMSEY | SAN ANTONIO TEXAS 78216 | PHONE 210.375.9000
 FAX 210.375.5010
 TEXAS BOARD OF PROFESSIONAL ENGINEERS - FIRM REGISTRATION # 470

THIS DOCUMENT HAS BEEN PRODUCED FROM MATERIAL THAT WAS STORED AND/OR TRANSMITTED ELECTRONICALLY AND MAY HAVE BEEN INADEQUATELY ALIGNED. RELY ONLY ON FINAL HARD COPY MATERIALS BEARING THE CONSULTANT'S ORIGINAL SIGNATURE AND SEAL.

EXHIBIT "C"
(Developer's Master Wastewater Plan)

EXHIBIT "C"



Date: 07/20/11 1:47pm User: j...
 File: M:\1916\18\Drawings\Exhibit C\CLASCS\101027-SEWER-C.dwg

JOB NO. 4546-48
 DATE OCTOBER 2010
 DESIGNER CEL
 CHECKED CEL DRAWN ML
 SHEET _____

H-E-B
 HEB BULVERDE
 DEVELOPER'S MASTER
 WASTEWATER PLAN

Pape-Dawson
ENGINEERS

555 EAST RAMSEY | SAN ANTONIO TEXAS 78216 | PHONE 210.375.6000
 FAX 210.375.9010
 TEXAS BOARD OF PROFESSIONAL ENGINEERS FRM REGISTRATION # 420

EXHIBIT "D"
(Easements and New Property Required for Service)

EXHIBIT "E"
(Plans and Specifications for the Phase 1 Expansion of Treated Wastewater Effluent Disposal
Capacity)

EXHIBIT E
PHASE 1 EXPANSION OF THE TREATED EFFLUENT DISPOSAL CAPACITY

LIST OF DRAWINGS

- C400.1 RECYCLED WATER IRRIGATION PLAN (SHEET 1 OF 3)
- C400.2 RECYCLED WATER IRRIGATION PLAN (SHEET 2 OF 3)
- C400.3 RECYCLED WATER IRRIGATION PLAN (SHEET 3 OF 3)
- C400.4 IRRIGATION DETAILS

M:\546\50\WORD\MISC\EXHIBIT E.DOC

EXHIBIT "F"
(Plans and Specifications for the Phase 1 Expansion of Wastewater Treatment Capacity)

EXHIBIT F
PHASE 1 EXPANSION OF WASTEWATER TREATMENT CAPACITY

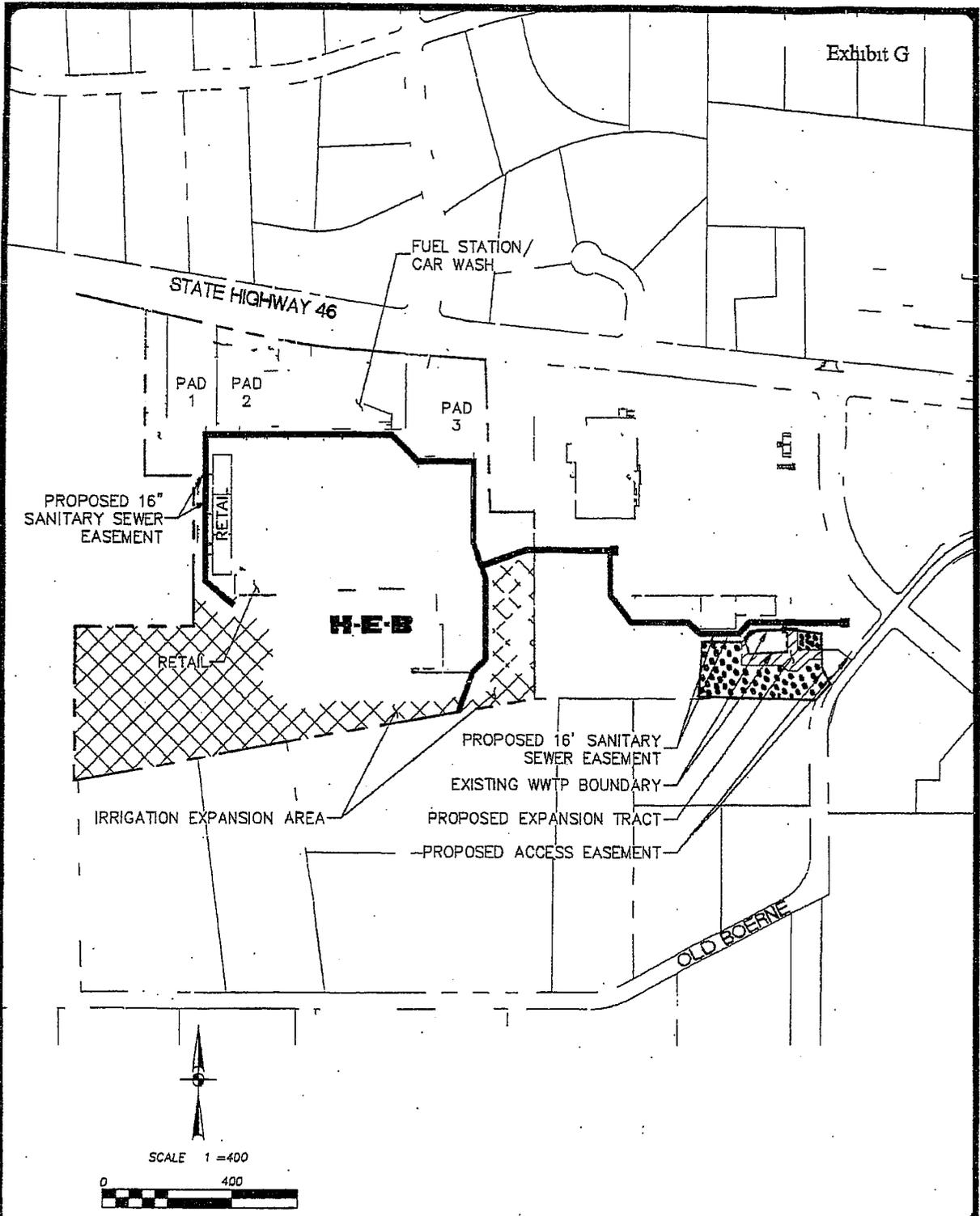
LIST OF DRAWINGS

1. DEMOLITION PLAN
2. SITE PLAN
3. YARD PIPING
4. PIPING DETAILS
5. FENCING PLAN
6. WWTP PLAN
7. WWTP ELEVATION
8. CONCRETE SLAB LAYOUT & DETAILS
9. EFFLUENT FILTER UNIT
10. EFFLUENT PUMP STATION
11. IRRIGATION PUMP STATION
12. METAL SHED DETAILS
13. SLUDGE FILTER PAD
14. SLUDGE FILTER PAD SHED DETAILS
15. ELECTRICAL LAYOUT PLAN

M: 4546-50\WORD MISC\EXHIBIT F.DOC

EXHIBIT "G"
(Potential Expanded Wastewater Treatment Plant Property)

Exhibit G



0 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100
 0 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100
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JOB NO. 4566-08
 DATE OCTOBER 2010
 DESIGNER CEL
 CHECKED CEL DRAWN ML
 SHEET _____

HEB
 HEB BULVERDE
 EASEMENTS AND PROPERTY
 REQUIRED FOR SERVICE

PAPE-DAWSON
ENGINEERS

**Attachment B –
Public Comment**

From: PUBCOMMENT-OPA
To: PUBCOMMENT-OCC2
Date: 8/13/2010 12:46 PM
Subject: Fwd: Public comment on Permit Number WQ0014131001
Place: PUBCOMMENT-OCC2

>>> PUBCOMMENT-OCC-8/13/2010.9:10 AM >>>

>>> <dkelly0000@aol.com> 8/12/2010 10:05 PM >>>

*MAWD
73747*

REGULATED ENTY NAMEBULVERDE 46 WATER RECYCLING CENTER

RN:NUMBER:RN102806924

PERMIT NUMBER:WQ0014131001

DOCKET NUMBER:

COUNTY:COMAL

PRINCIPAL NAME:BEAR METROPOLITAN WATER DISTRICT

CN NUMBER:CN600652739

FROM

NAME:Diane Kelly

E-MAIL:dkelly0000@aol.com

COMPANY:resident the BULVERDE Territory aka Bulverde/Spring Branch

ADDRESS:32153 STALLION LN

BULVERDE TX 78163-4666

PHONE:8304386133

FAX:

COMMENTS:The laws passed in 1969 and the 70's have been completely disregarded by San Antonio/Bexar, the MPO and AACOG. Only because of Sunset do we, Comal and Bulverde, serve a public purpose. Our lands, skies, water, utilities, rivers, streets, right-of-ways are for our benefit. I oppose any attempt of Bexar, San Antonio or any quasi-government controlled or serving the urban area having jurisdiction in my county. Yes, I have viewed their North Sector Plans. My city, county or the state are my only administrative or fiscal agents. Historically and currently, we have been denied the active and continuous involvement required by the state and federal government. Any lands, infrastructure and assets purchased with public funds are for the benefit of Comal County or the City of Bulverde and ETJ. (NEPA maps reflect Comal is over 80% commercial.) If evidence is provided this serves a public purpose, then the administration and fiscal responsibilities are Comal, City or the state (and retribution should be paid). Respectfully

MWD

**Attachment C –
Wastewater Utility Service Agreement**

**WASTEWATER UTILITY SERVICE AGREEMENT BETWEEN
SJWTX, INC., dba CANYON LAKE WATER SERVICE COMPANY, AND
HEB GROCERY COMPANY, LP
FOR
DESCENDING DOVE HILLS COMMERCIAL SUBDIVISION**

This Wastewater Utility Service Agreement (this "Agreement") is entered into as of January 12, 2011 (the "Effective Date") by and between SJWTX, Inc., a Texas corporation doing business as Canyon Lake Water Service Company ("CLWSC"), and HEB Grocery Company, LP, a Texas limited partnership ("Developer"). Individually CLWSC and Developer are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. CLWSC holds retail wastewater Certificate of Convenience and Necessity No. 20877 issued by the State of Texas (the "CCN"). CLWSC provides retail wastewater service to areas within its certificated service area, as it may be amended from time-to-time (the "Service Area"), and, under currently applicable state laws and regulations, may provide wastewater service to certain areas outside its Service Area.

B. CLWSC owns and, pursuant to Texas Commission on Environmental Quality ("TCEQ") Permit No. WQ 0014131-001 (the "WWTP Permit"), operates a wastewater treatment plant and land application system to provide wastewater service to Developer's existing real estate development that is in CLWSC's Service Area (the "Existing Development"). Such wastewater service has been and will continue to be provided to Developer under CLWSC's wastewater tariff approved by the TCEQ, as it may be amended from time-to-time (the "Tariff"). Developer's predecessor paid for, constructed and dedicated the wastewater treatment plant and land application system serving the Existing Development to Bexar Metropolitan Water District (predecessor of CLWSC) pursuant to that certain Agreement for Construction and Acceptance of Water and Sanitary Sewer System and Water and Sewer Utility Service between H.E. Butt Grocery Company (predecessor of Developer) and Bexar Metropolitan Water District dated May 26, 2000 ("Bexar Met Agreement").

C. An application is currently pending at the TCEQ to amend the WWTP Permit to add a total of 40,000 gallons per day ("GPD") of wastewater treatment capacity in two phases -- Phase 1 will add an additional 20,000 GPD treatment and effluent disposal capacity, and Phase 2 will add an additional 20,000 GPD of treatment capacity, so that the total authorized treatment capacity under the amended WWTP Permit will be 60,000 GPD. The plans and specifications for the Phase 1 facilities have already been prepared and submitted and to TCEQ. The Parties anticipate seeking expedited approval to commence construction from TCEQ so that Developer may commence construction of the Phase 1 expansion as soon as possible after the Effective Date.

D. Developer owns approximately 31.8 acres of land described in Exhibit A (the "New Property"). The New Property is located adjacent and contiguous to both the Existing Development and CLWSC's currently existing Service Area. Developer is developing the New

Property for commercial purposes (the "Project"). A preliminary land use plan for the Project is attached hereto as Exhibit B. The first commercial occupancy in the Project will be the HEB Expansion. Upon opening the HEB Expansion to the public, Developer will close the HEB Store in the Existing Development to the public.

E. Developer needs immediate wastewater service for the HEB Expansion and will subsequently need wastewater service for the remainder of the Project. Developer desires to acquire all such service from CLWSC. The Parties anticipate that the Project will ultimately require approximately eighty-seven (87) new Living Unit Equivalents of wastewater service (approximately 20,880 gallons per day ("GPD")), equivalent to the entire capacity of the Phase 1 expansion proposed under the application to amend the WWTP Permit, at full build out and occupancy.

F. CLWSC desires to provide wastewater service to the Project and to continue to serve the Existing Development in accordance with the Tariff. CLWSC also desires to amend its CCN to expand its Service Area to include the New Property.

G. Based on the Developer's representations to CLWSC regarding the additional wastewater to be transported to the Wastewater Treatment Plant and the Wastewater Effluent Disposal System that serve the Existing Development from the HEB Expansion, and Developer's obligation to close the HEB Store in the Existing Development to the public when the HEB Expansion is opened to the public, and not to reoccupy, sell or lease the HEB Store or otherwise allow it to be occupied except as provided herein, the Parties agree that CLWSC's existing Wastewater Treatment Plant and Wastewater Effluent Disposal System, which currently provide Developer wastewater treatment service for the Existing Development, have sufficient capacity without any expansion or amendment of the WWTP Permit to immediately serve the HEB Expansion portion of the Project while continuing to provide wastewater service to the Existing Development provided that the HEB Store is closed to the public. The proposed 20,000 gallons-per-day Phase 1 expansion must be built, and an amendment to the WWTP Permit granted to authorize treatment and disposal of a total of not less than 40,000 gallons per day, in order for CLWSC to provide wastewater service to both the Existing Development at full occupancy (including reoccupying, selling or releasing or otherwise allowing occupancy) of the HEB Store within the Existing Development and the entire Project (including the HEB Expansion) at full build out and occupancy.

H. The Parties desire to enter into this Agreement setting forth the terms and conditions pursuant to which Developer will develop additional wastewater treatment and disposal capacity and will convey the facilities associated with such additional capacity to CLWSC and to which CLWSC will reserve treatment and disposal capacity for and provide retail wastewater service to the Project and continue to serve the Existing Development.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

I. DEFINITIONS

When used in this Agreement, the following terms will have the meanings set forth below:

- 1.1 **"Agreement"** means this Wastewater Utility Service Agreement.
- 1.2 **"Closing"** means the execution and delivery by Developer, and the acceptance by CLWSC, of all documents conveying, selling, transferring or assigning the interests and property of Developer in any Interests to be Acquired to CLWSC, and the performance of all acts necessary to complete such execution and delivery and to comply with all of Developer's obligations thereunder.
- 1.3 **"Closing Date"** means the date or dates on which a Closing occurs.
- 1.4 **"CLWSC"** means SJWTX, Inc., a Texas corporation doing business as Canyon Lake Water Service Company, which is an investor-owned utility regulated by the Texas Commission on Environmental Quality ("TCEQ") that has its principal place of business in Comal County, Texas.
- 1.5 **"Contracts"** means the contracts, leases, Permits, franchises and licenses relating to or arising out of the acquisition, construction and operation of the Interests to be Acquired.
- 1.6 **"Developer"** means HEB Grocery Company, LP, a Texas limited partnership, its affiliates, successors and assigns.
- 1.7 **"Developer's Master Wastewater Plan"** means the description of the Wastewater Facilities that have been constructed by Developer, and the modifications to and expansions of those Wastewater Facilities and the additional Wastewater Facilities that are to be constructed by Developer under this Agreement. A copy of Developer's Master Wastewater Plan is attached hereto as Exhibit C.
- 1.8 **"Existing Development"** means the land abutting and contiguous to the New Property which has an existing sewerage collection system conveying flows to the existing Wastewater Treatment Plant.
- 1.9 **"Force Majeure"** means acts of God, strikes, lockouts or other industrial disturbances, acts of a public enemy or terrorist, orders or actions of any kind of the government of the United States, the State of Texas or any local government or political subdivision, or any civil or military authority, insurrections, riots, terrorist acts or incidents, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accident to the Wastewater Facilities and any inability of a Party to perform in accordance with the terms, conditions, standards and requirements of this Agreement due to any other cause not reasonably within the control of such Party and beyond events that should be anticipated by a Party in the ordinary course of business. Failure of Developer to timely make payments of any kind is not an event of Force Majeure.

1.10 "HEB Expansion" means the new HEB, with approximately 110,000 sq. feet of retail space and anticipated to open in February 2011, the adjacent retail space with approximately 8,400 sq. feet and the fuel station and car wash, all located on the New Property and part of the Project.

1.11 "HEB Store" means the existing HEB grocery in the Existing Development with approximately 62,000 sq. feet.

1.12 "Interests to be Acquired" means the portion of the Wastewater Facilities to be newly constructed by Developer, the sewer line and access easements, the rights, title and interest in the Contracts and all other interests, if any, that Developer will acquire, construct and convey to CLWSC as provided in this Agreement.

1.13 "Living Unit Equivalent" or "LUE" shall mean the quantity of wastewater service associated with one single-family residential connection which is not more than an average daily wastewater flow of 240 gallons/day nor more than the equivalent organic loading allocated to such volume from a single family residence in accordance with municipal and domestic wastewater industry standards.

1.14 "New Property" means that certain tract of real property more particularly described on Exhibit A hereto, and commonly referred to as the Descending Dove Hills Commercial Subdivision or the new HEB Shopping Center.

1.15 "Non Standard Service Obligations" means any service obligations of CLWSC to Developer other than those described in the Tariff.

1.16 "Party" or "Parties" means CLWSC and/or Developer, individually or collectively, as applicable.

1.17 "Plant Engineer" means that properly experienced and currently certified professional engineer licensed by the State of Texas designated by Developer to prepare the engineering plans and specifications for the Wastewater Facilities and to supervise the construction of same. Developer has designated Pape-Dawson Engineers, Inc. as the Plant Engineer.

1.18 "Plant Site" means that portion or portions of the Existing Development and the Project on which the Wastewater Facilities have been and will be constructed.

1.19 "Service Area" means the real property CLWSC serves with wastewater service pursuant to its Certificate of Convenience and Necessity No. 20877, as it may be amended from time-to-time, which Certificate is issued by the TCEQ.

1.20 "Service Commitment" means the LUEs of retail wastewater service that CLWSC agrees to reserve for and provide to Developer for the Existing Development and the New Property as set forth in this Agreement.

1.21 "Tariff" means the tariff approved by the TCEQ for CLWSC, as it may be amended and changed from time-to-time, that sets forth fees, rates and charges, rules and

policies relating to wastewater service by CLWSC. A copy of the Tariff is available at www.clwsc.com.

1.22 **"TCEQ"** means the Texas Commission on Environmental Quality, the Texas state agency that regulates CLWSC as a wastewater service provider and wastewater permit holder, and its successor state agencies.

1.23 **"Warranty Period"** means the period that is one (1) year after the date that CLWSC has accepted control and ownership of any phase of the Wastewater Facilities.

1.24 **"Wastewater"** means liquid and water-carried waste discharged from sanitary conveniences of dwellings and retail businesses, including garbage that has been shredded to such degree that all particles will be carried freely under flow conditions normally prevailing in public sewers, with no particle greater than one-half inch in any dimension.

1.25 **"Wastewater Effluent Disposal System"** means all lands and the existing land application and spray irrigation system currently utilized or required to dispose of treated effluent from the Wastewater Treatment Plant in conformance with TCEQ rules and regulations, and all additional lands and all modifications to and expansions of that land application and spray irrigation system required to dispose of 40,000 GPD of treated effluent from the Wastewater Treatment Plant in conformance with TCEQ rules and regulations. The design and specifications for the Phase 1 expansion of treated effluent disposal capacity required to increase the total treated effluent disposal capacity under the WWTP Permit to a total of 40,000 GPD has been submitted to the TCEQ. A copy of the list of drawings associated with the plans and specifications for the Phase 1 expansion of the treated effluent disposal capacity is attached as Exhibit E.

1.26 **"Wastewater Facilities"** means the wastewater storage facilities, collection, lifting and pumping facilities, the Wastewater Treatment Plant, other wastewater treatment facilities, wastewater collection and/or transmission main infrastructure, manholes, wastewater sample ports, the Wastewater Effluent Disposal System, other irrigation disposal facilities, recycling facilities, solids thickening and disposal facilities, a SCADA monitoring system, and other improvements located on the Existing Development and the New Property that have been and that will be constructed by or on behalf of Developer to provide retail wastewater service to Developer's stores, tenants, customers and purchasers of Developer's platted lots within the Existing Development and the New Property, which improvements are more particularly identified in Developer's Master Wastewater Plan. The Wastewater Facilities may be built in stages as provided in this Agreement and shall be constructed in conformance with all standards and requirements referenced in this Agreement. The Wastewater Facilities will include, without limitation, all lines, trunk lines, lift stations and other components necessary to collect and transport all wastewater from the Existing Development and the New Property to the Wastewater Treatment Plant and from the Wastewater Treatment Plant to the Wastewater Effluent Disposal System.

1.27 **"Wastewater Treatment Permit"** or **"WWTP Permit"** means the Permit No. WQ 0014131-001 issued by the TCEQ as it may be amended and/or renewed from time-to-time.

1.28 "Wastewater Treatment Plant" means the existing Wastewater Treatment Plant and all modifications to and expansions of that facility required to increase the wastewater treatment capacity under the WWTP Permit to a total of 40,000 GPD. The design and specifications for the Phase 1 expansion of the wastewater treatment capacity required to increase the wastewater treatment capacity under the WWTP Permit to a total of 40,000 GPD has been submitted to the TCEQ. A copy of a list of drawings associated with the plans and specifications for the Phase 1 expansion of wastewater treatment capacity is attached as Exhibit E.

II. WASTEWATER SERVICE

2.1 Wastewater Service Commitment for the Existing Development and the Project.

(a) The Parties agree that the Bexar Met Agreement is no longer in effect, and CLWSC is expressly released from any obligations arising from the Bexar Met Agreement, save and except the obligations repeated in this Agreement including, without limitation, the obligations set forth below in subsection (b) of this Section 2.1.

(b) CLWSC hereby confirms its reservation of and its wastewater Service Commitment to the Developer for wastewater discharged from the Existing Development and the Project in an amount equivalent to the treatment and disposal capacity of the current Wastewater Facilities. That current capacity is 83.33 LUEs. Commencing as of the Effective Date and based on Developer's obligation in Section 2.1(c), CLWSC shall be obligated to immediately provide 44 of such 83.33 LUEs of wastewater Service Commitment to the Developer for commercial connections for the portion of the Project consisting of the HEB Expansion, and CLWSC shall provide the remaining 39.33 of such 83.33 LUEs of wastewater Service Commitment to Developer for commercial connections within the Existing Development, all in accordance with CLWSC's Tariff. Developer may modify the allocation of such 83.33 LUEs between the Existing Development and the Project by giving notice to CLWSC of such change in allocation.

(c) Immediately upon opening the HEB Expansion to the public, Developer shall close the HEB Store in the Existing Development to the public and shall not reoccupy, sell or lease or otherwise allow to be occupied the HEB Store in the Existing Development unless and until the conditions set forth in Section 2.2 are met.

2.2 **Wastewater Service Commitment for the Existing Development and the Project upon Completion of Phase 1 Expansion of Capacity.** Subject to the terms and conditions set forth in this Agreement, CLWSC shall reserve for the benefit of Developer a total 166.67 LUEs of wastewater treatment and disposal capacity in the Wastewater Facilities for wastewater discharged from the Existing Development and the Project. Commencing upon completion of the Phase 1 expansion of treatment and disposal capacity of the Wastewater Facilities and subject to the other conditions set forth below in this Section 2.2, CLWSC shall provide 79.67 of such 166.67 LUEs of wastewater Service Commitment to Developer for all commercial connections within the Existing Development, and CLWSC shall provide the remaining 87 of such 166.67 LUEs of wastewater Service Commitment to Developer for all commercial connections within the Project, all in accordance with CLWSC's Tariff. Subject to

CLWSC's approval, which shall not be unreasonably withheld or delayed, Developer may modify the allocation of such 166.67 LUEs between the Existing Development and the Project by giving notice to CLWSC of such change in allocation. CLWSC's obligations to provide wastewater service to the Developer pursuant to this Section 2.2 shall be subject to satisfaction of all of the following conditions precedent and the continuing condition of service stated as 2.2(i) below:

(a) The issuance by TCEQ to CLWSC of an amendment to the WWTP Permit such that the WWTP Permit authorizes the disposal through land application of at least 40,000 gallons of effluent daily based on a 30 day average;

(b) The receipt of final platting on terms consistent with this Agreement of the unit or phase(s) of the Project for which the Developer seeks retail wastewater service and any required approvals of such platting by all governmental entities with jurisdiction;

(c) Construction by Developer in accordance with the terms of this Agreement and all applicable authorizations and written acceptance by CLWSC of the Phase 1 modifications to and/or expansions of the Wastewater Facilities. Acceptance of any such modifications to and/or expansions of the Wastewater Facilities by CLWSC shall be contingent on confirmation by the Plant Engineer that the modifications and/or expansions, as built, meet all TCEQ requirements and wastewater industry and CLWSC published standards applicable at the time of the conveyance of same to CLWSC;

(d) Dedication from Developer and acceptance by CLWSC of all additional sewer line and access easements (subject to matters of public record that do not materially affect the purpose of the easements) that are required for CLWSC to provide wastewater service to all connections within the Existing Development and the Project. Such additional easements are generally identified on Exhibit D to this Agreement and are a part of the Wastewater Facilities;

(e) Conveyance from Developer and acceptance by CLWSC of all right, title and interest to all personal property (subject to matters of public record that do not materially affect the purpose of the easements) that is a part of the Wastewater Facilities;

(f) [Left Blank Intentionally]

(g) Payment by Developer to CLWSC of all payments, fees and deposits required by this Agreement;

(h) Written subordination to the rights and title of CLWSC of all third-party claims, rights, liens or encumbrances (subject to matters of public record that do not materially affect the purpose of the easements) that in any way affect, diminish or are superior to the title of CLWSC in the Wastewater Facilities, including the easements that Developer dedicates or assigns to CLWSC, which subordination must be in a form that is reasonably acceptable to CLWSC; and

(i) Texas statutory and regulatory law allow the wastewater service to be provided legally and, assuming the Project is not in the Service Area, without undue economic

hardship arising due to the New Property not being in the Service Area.

2.3 **Water Service.** A separate agreement exists between CLWSC and Developer addressing CLWSC's provision of potable water service to the New Property.

2.4 **CLWSC Operations.**

(a) Commencing as of the Effective Date and continuing upon its acceptance of the conveyance of title to each modification to and/or expansion of the Wastewater Facilities required pursuant to this Agreement, CLWSC shall operate the Wastewater Facilities as they currently exist and as they are modified and/or expanded in compliance with all terms and conditions of the WWTP Permit, and shall be responsible for maintaining the Wastewater Facilities in good working order and for making all needed replacements, improvements and repairs required for the operation of the Wastewater Facilities in compliance with all terms and conditions of the WWTP Permit; for billing and collecting from all customers within the Service Area; and for performing all other usual and customary services and administrative functions associated with wastewater utility systems.

(b) Commencing on the Effective Date and continuing until CLWSC's acceptance of the conveyance of title to the modified and/or expanded Wastewater Facilities, in the event that CLWSC determines and notifies Developer in writing that the volume or quality of Wastewater from the HEB Expansion is interfering with CLWSC's ability to operate the Wastewater Facilities in compliance with the terms and conditions of the WWTP Permit, Developer shall immediately restrict operations at the HEB Expansion car wash and shall take such other measures satisfactory to CLWSC to ensure the wastewater volumes from the HEB Expansion and Existing Development do not interfere with CLWSC's ability to operate the Wastewater Facilities in compliance with the terms and conditions of the WWTP Permit.

(c) After CLWSC's acceptance of the conveyance of title to the modified and/or expanded Wastewater Facilities, in the event that CLWSC determines and notifies Developer in writing that the volume or the quality of Wastewater from the New Property and/or the Existing Development is interfering with CLWSC's ability to operate the Wastewater Facilities in compliance with the terms and conditions of the WWTP Permit, Developer shall immediately take such other measures satisfactory to CLWSC to ensure the wastewater volumes from the New Property and Existing Development do not interfere with CLWSC's ability to operate the Wastewater Facilities in compliance with the terms and conditions of the WWTP Permit.

2.5 **Permitting.**

(a) Within thirty (30) days of the Effective Date, CLWSC, at the sole cost and expense of Developer, will file with the TCEQ an application to modify the boundaries of its CCN to include the New Property in its Service Area.

(i) Developer expressly consents to inclusion of the New Property within CLWSC's CCN and Service Area. Developer agrees to cooperate fully with CLWSC in support of its application to secure TCEQ approval to modify the

boundaries of CLWSC's CCN to include the New Property in the Service Area. Developer agrees to provide to CLWSC all information it may reasonably require in conjunction with seeking such approval.

(ii) In the event CLWSC's CCN application is contested, CLWSC may, in consultation with Developer, modify or amend such application. CLWSC may compromise, settle or withdraw the application.

(iii) Both Parties agree that current Texas statutory and regulatory law allow CLWSC the right to provide wastewater service to the New Property even if the boundaries of CLWSC's CCN and Service Area are not modified to include the New Property. Accordingly, this Agreement and all rights and obligations under this Agreement shall remain in effect regardless of whether CLWSC is successful in its effort to so amend the CCN, unless Texas statutory and regulatory law are subsequently amended in such a way that such service can no longer be provided legally.

(b) Developer at its sole cost and expense will continue its efforts to support and CLWSC shall undertake all reasonably necessary actions to secure as expeditiously as possible the granting by the TCEQ of the pending application for an amendment to the WWTP Permit to increase the wastewater treatment capacity to 60,000 GPD. The Parties agree to diligently prosecute the application to completion. In the event that the WWTP Permit is not amended to increase the wastewater treatment and disposal capacity to some amount in excess of the currently permitted capacity of 20,000 GPD within two (2) years from the Effective Date, Developer or CLWSC may terminate all obligations and rights in this Agreement other than the obligations of CLWSC under Section 2.1 to reserve for Developer and provide to Developer 83.33 LUEs of wastewater Service Commitment for the Existing Development and the Project, and the obligation of Developer to pay for such service pursuant to the Tariff and to pay all other costs as provided by this Agreement. Any such termination by a Party shall be effected by providing written notice to the other Party, and any such termination by Developer shall be subject to Developer's obligation to reimburse CLWSC for its costs. If the WWTP Permit is amended to increase the wastewater treatment and disposal capacity to an amount greater than 20,000 GPD but less than 40,000 GPD, that entire capacity, and not 40,000 GPD, shall be reserved for and committed to Developer in accordance with the terms set forth in Section 2.2.

(c) Developer at its sole cost and expense shall apply for any permits, licenses or approvals in addition to the WWTP Permit that may be required for the construction of the modifications of and/or expansions to the Wastewater Facilities required pursuant to this Agreement or for the operation of the Wastewater Facilities as so modified and/or expanded. CLWSC shall cooperate fully in support of Developer's efforts to secure such permits, licenses or approvals. In the event Developer does not obtain any necessary and required permit, license or approval for such construction and operation to increase the wastewater treatment and disposal capacity of the Wastewater Facilities to some amount in excess of the currently-permitted capacity of 20,000 GPD within two (2) years from the Effective Date, Developer may terminate all obligations under this Agreement other than the obligations of CLWSC under Section 2.1 to reserve for Developer and provide to Developer 83.33 LUEs of wastewater

Service Commitment for the Existing Development and the Project, and the obligation of Developer to pay for such service pursuant to the Tariff and to pay all other costs as provided by this Agreement. Any such termination by the Developer shall be effected by providing written notice to CLWSC, and such termination shall be subject to Developer's obligation to reimburse CLWSC for its costs. If Developer is able to obtain the necessary and required Permits, licenses and approvals for such construction and operation to increase the wastewater treatment and disposal capacity of the Wastewater Facilities to an amount greater than 20,000 GPD but less than 40,000 GPD, that entire capacity, and not 40,000 GPD, shall be reserved for and committed to Developer in accordance with the terms set forth in Section 2.2.

2.6. Wastewater Effluent Disposal System. As required by Section 2.2 above and as a condition to the provision of wastewater service, Developer will dedicate to CLWSC all additional sewer line and access easements necessary for CLWSC to properly dispose of the treated wastewater effluent from the Project using the spray irrigation system as more fully described in the WWTP Permit Amendment Application.

2.7. Phase 2 Expansion of Wastewater Treatment Plant by CLWSC. In the event that CLWSC desires to implement the Phase 2 expansion of the Wastewater Treatment Plant (up to a total wastewater treatment capacity of 60,000 GPD) onto real property owned by Developer and on which the Wastewater Effluent Disposal System is authorized under either Wastewater Permit No. WQ001413-001, or pursuant to the pending application to amend Wastewater Permit No. WQ001413-001, such real property is depicted on Exhibit G as a dotted area, Developer agrees to execute appropriate conveyance documents to authorize CLWSC to expand the Wastewater Treatment Plant to such real property as may be required to accommodate such expansion so long as the real property is located within the area depicted on Exhibit G as a dotted area and CLWSC has secured an amendment to the WWTP Permit that assures to Developer's satisfaction that CLWSC will continue to reserve and be physically capable of providing 166.67 LUEs of wastewater treatment and disposal capacity to the Existing Development and New Property as required by this Agreement, and pays for all costs associated with the alternate disposal, including all costs associated with securing any required amendment to the WWTP Permit, designing and constructing any alternate disposal facility, designing, purchasing and constructing or relocating a wastewater effluent disposal system at the alternative site, relocating existing utilities and drainage improvements and access roads on such real property and acquiring all necessary rights to such alternate site.

III. RATES, FEES, AND CHARGES

3.1 Rates and Fees. All wastewater customers within the Service Area will pay CLWSC's standard fees, charges and rates for wastewater service to commercial customers as set forth in the Tariff. CLWSC specifically reserves the right to amend the Tariff from time-to-time.

3.2 Administrative Deposit.

(a) Developer agrees to reimburse CLWSC for the costs and expenses incurred by CLWSC for providing Non Standard Service Obligations under this Agreement,

including, for example, costs associated with this Agreement and with securing amendments to CLWSC's existing CCN and the WWTP Permit, including professional fees for legal and accounting support for such amendment applications, and costs for engineering review of Wastewater Facility designs and plans and specifications and construction inspections. For purposes of this Agreement, CLWSC's cost and expenses reimbursable under this Agreement shall include actual costs for expenses, labor, equipment and materials directly attributable to the Project, and/or the Wastewater Facilities, plus 6% of that total for overhead and indirect costs incurred prior to Closing.

(b) Within three (3) days of the Effective Date, Developer shall submit to CLWSC an Administrative Deposit of twenty-five thousand dollars (\$25,000) payable to CLWSC for the costs and expenses incurred by CLWSC related to Non Standard Service Obligations. CLWSC may reimburse itself for all costs and expenses incurred by CLWSC related to Non Standard Service Obligations that are not timely challenged by Developer. Prior to the Effective Date, CLWSC incurred sixteen thousand eight hundred and twenty dollars (\$16,820.00) in costs and expenses related to Non Standard Service Obligations. Developer agrees that such costs and expenses qualify as reimbursable costs and expenses and shall not challenge same.

(c) CLWSC shall provide Developer a detailed written invoice and accounting of all costs and expenses related to Non Standard Service Obligations performed by CLWSC and for which it seeks reimbursement. Developer shall notify CLWSC within twenty (20) business days of receipt of an invoice and accounting for costs and expenses related to Non Standard Service Obligations of any challenge regarding a cost or expense and the detailed basis for such challenge.

3.3 **Excess Costs.** Developer shall reimburse CLWSC for the costs and expenses related to Non Standard Service Obligations performed by CLWSC in excess of the Administrative Deposit. Developer shall remit payment for all unchallenged cost and expenses within thirty (30) days of receipt of a written detailed invoice and accounting from CLWSC for such excess. Challenged costs and expenses will be subject to the requirements of Section 10.3 of this Agreement.

3.4 **Other Expenses.** Developer shall be responsible for all costs associated with planning, engineering, permitting, constructing and pre-Closing testing associated with the Wastewater Facilities.

IV. WASTEWATER FACILITIES

4.1 Wastewater Facilities.

(a) Notwithstanding anything to the contrary herein, Developer may not commence construction of any modification to or expansion of the Wastewater Treatment Plant to increase the treatment capacity as provided by this Agreement until the TCEQ has issued an amendment to the WWTP Permit, except with the approval of the TCEQ and CLWSC, which approval shall not be unreasonably withheld or delayed.

(b) Developer has designed the modifications to and expansions of the Wastewater Facilities required for CLWSC to provide retail wastewater service to the Developer in accordance with this Agreement. All the Wastewater Facilities must be constructed in accordance with the plans and specifications approved in writing by TCEQ and approved by CLWSC before construction begins. Upon completion of construction of any portion of the modifications to and/or expansions of the Wastewater Facilities, CLWSC and Developer will agree upon a date to conduct the Closing for that portion of the Wastewater Facilities in accordance with the procedures set forth in Article VIII, at which time Developer will convey, or cause the conveyance of, title to such modifications of and/or expansions to the Wastewater Facilities required pursuant to this Agreement to CLWSC.

4.2 **Design of the Wastewater Facilities.** All physical facilities to be constructed or acquired as a part of the Wastewater Facilities will be designed by or under the supervision of the Plant Engineer. The design shall comply with all applicable TCEQ rules, regulations and requirements and the applicable criteria of any other governmental entity with jurisdiction and such other criteria reasonably required by CLWSC. The Wastewater Treatment Plant shall be designed to meet a 30-day average effluent quality meeting the following standards: (See Figure 1: 30 TAC § 210.33(1))

BOD ₅ or CBOD ₅	5 mg/l
Turbidity	3 NTU
Fecal Coliform	20 CFU/100 ml*
Fecal Coliform (not to exceed)	75 CFU/100 ml**

* geometric mean

** single grab sample

4.3 **Engineering Review.** Developer submitted a set of preliminary drawings for the Phase 1 modifications to and expansions of the Wastewater Facilities to CLWSC before Developer advertised for bids for construction of such modifications and/or expansions. After the Effective Date and upon submittal by Developer for approval by CLWSC of plans and specification for the Phase 1 modifications to and expansions of the Wastewater Facilities, CLWSC agrees to use its best efforts to review all plans and specifications and either to approve such plans and specifications or to provide written comments specifically identifying the required changes within twenty-one (21) calendar days of submittal. If no comments are furnished to Developer within the 21-calendar day period, the plans and specifications submitted pursuant to this Section 4.3 shall be deemed approved by CLWSC. Developer agrees that the engineering review or approval by CLWSC shall in no way relieve Developer of its responsibilities under this Agreement. The review of the plans for any modification to or expansion of the Wastewater Facilities and any lack of objection upon the completion of the review will not establish any liability of CLWSC for the engineering or design of the

modification or expansion. Once the plans for any modification or expansion are approved by CLWSC, the Developer shall not materially change the plans without the written consent of CLWSC. If applicable, Developer must obtain TCEQ approval of its plans and specifications before beginning construction.

4.4 Construction of Wastewater Facilities.

(a) The modifications to and expansions of the Wastewater Facilities required pursuant to this Agreement will be constructed, and all related easements, equipment, materials and supplies will be acquired by Developer in the name of Developer, and all construction contracts and other agreements will contain provisions to the effect that any contractor, material supplier or other party thereto will look solely to Developer for payment of all sums coming due thereunder and that CLWSC will have no obligation whatsoever to any such party. Contractors used to construct any modification to or expansion of the Wastewater Facilities shall be experienced in such construction and shall be approved by CLWSC, which approval shall not be unreasonably withheld or delayed. Developer shall submit to CLWSC a copy of all such contracts and agreements within three (3) business days of their execution.

(b) Notwithstanding anything in this Agreement to the contrary, Developer shall not be obligated to construct any modifications to and/or expansions of the Wastewater Facilities other than the Phase 1 modifications and/or expansions. During all construction, Developer will work with CLWSC's operations and engineering staff to minimize all interference during construction and operational interference that could be caused by the locations of piping and tanks and by normal site activities.

(c) Developer warrants to CLWSC that the modifications to and expansions of the Wastewater Facilities will be constructed in a good and workmanlike manner and that all material used in such construction will be new, not used, will be free from defects and fit for their intended purpose, and will be paid for in full before they are conveyed to CLWSC. All modifications to and expansions of the Wastewater Facilities will be constructed in compliance with industry standards and all requirements of the TCEQ, including, without limitation, all promulgated design and permit requirements. CLWSC and Developer agree to use one mutually agreeable firm or individual to conduct on-site inspections, at Developer's cost, to inspect and approve the construction, which approval will not be unreasonably withheld or delayed. CLWSC may also conduct independent inspections, which will be coordinated with Developer and will not unduly impede or interfere with construction. Inspections will be conducted in a timely manner and will not unreasonably delay or interfere with construction activities. CLWSC will notify Developer of any construction defects coming to its attention as soon as practicable.

(d) Developer shall hold a pre-construction conference prior to beginning construction of any modification to or expansion of the Wastewater Facilities under this Agreement and shall provide CLWSC notice of the date, time and location at least five (5) business days in advance of the pre-construction conference. Developer shall notify CLWSC when construction is completed. After notice of completion of construction, Developer and CLWSC shall hold a post-construction conference, after which CLWSC will conduct a final inspection, testing and operation of the constructed Wastewater Facilities to assure itself that they have been constructed to the proper standards and specifications, but that inspection shall in

no way relieve Developer of its responsibilities under this Agreement. As a part of CLWSC's final inspection, Developer will demonstrate to CLWSC that the Wastewater Facilities, including, without limitation, the Wastewater Effluent Disposal System, will treat and dispose of the design flows and loads by completing a stress test of the installed facilities. The elements of the performance and stress test and the testing procedure will be prepared by Developer and approved in advance by CLWSC.

(e) Developer agrees to cause its contractors to repair all defects in materials, equipment or workmanship appearing within one (1) year from the date of Closing for the Wastewater Facilities, or the applicable portion thereof. Upon receipt of written notice from CLWSC of the discovery of any defects, Developer shall promptly cause its contractors to remedy the defects and to replace any property damaged therefrom. In case of emergency where delay would cause serious risk of loss or damage to CLWSC or its customers or would result in violation of TCEQ regulations or the terms of the WWTP Permit, or if Developer, after notice, fails to cause the contractor to proceed promptly and to remedy within seven (7) days or within another period of time which has been agreed to in writing, in compliance with the terms of the warranty and guarantee, CLWSC may have the defects corrected and Developer and Developer's contractor shall be liable for all actual expenses incurred.

4.5 Cost of Wastewater Facilities. Developer will promptly pay in full, or cause to be paid, the costs of the Phase 1 modifications to and expansions of the Wastewater Facilities as such costs become due, including, without limitation, all costs of design, engineering, materials, labor, construction and inspection arising in connection with such modifications and expansions; all payments arising under any contracts entered into by Developer for the construction of such modifications and expansions; all costs incurred by Developer in connection with obtaining governmental approvals, certificates, Permits, easements, rights-of-way, or sites required as a part of the construction of such modifications and expansions; and all out-of-pocket expenses incurred in connection with the construction of such modifications and expansions, including, without limitation, all consumables used during the testing and start-up of the Wastewater Facilities. CLWSC will not be liable to any contractor, engineer, attorney, material supplier or other party employed or contracted with in connection with the construction of such modifications and expansions.

4.6 Excess Capacity of Facilities. To the extent that the Developer determines that it will not require all the reserved treatment and disposal capacity in the Wastewater Facilities under Section 2.1 and 2.2, or to the extent that Developer and CLWSC agree that there is otherwise excess capacity in the Wastewater Facilities, Developer agrees to negotiate in good faith to release that excess capacity to CLWSC. Without such release by Developer, CLWSC shall not provide wastewater service to any customer outside the Existing Development or New Property using the Wastewater Effluent Disposal System. Without such release by Developer, CLWSC shall continue to reserve for Developer, its tenants and assigns and/or provide wastewater service up to 166.7 LUEs as provided herein. The Parties anticipate that any release of capacity would include some reimbursement of Developer's costs and expenses associated with the establishment of such wastewater treatment and disposal capacity under this Agreement. Developer agrees that so long as CLWSC reserves for the Existing Development and the New Property 166.67 LUEs of capacity in the Wastewater Facilities, Developer shall not oppose any application by CLWSC to modify its Tariff so that all costs of operating and

maintaining 166.67 LUEs of capacity in the Wastewater Facilities are borne by Developer. Developer agrees to cooperate fully with CLWSC in support of its application to modify its Tariff in conformance with this Section 4.6.

4.7 [Left Blank Intentionally].

4.8 **Record Drawings and O&M Manuals.** Prior to acceptance of the modifications to and/or expansions of the Wastewater Facilities from its contractor(s) and prior to its final payment to its contractor(s), Developer will provide accurate record drawings of the constructed Wastewater Facilities to CLWSC in an electronic format and paper copy format acceptable to CLWSC as specified in its standards and specifications. Developer also will provide to CLWSC all operating and maintenance manuals supplied by the manufacturers of the equipment, fixtures or machinery that is a part of the Wastewater Facilities.

4.9 **Acceptance of the Wastewater Facilities.** Within thirty (30) days after substantial completion of construction of the modifications to and/or expansions of the Wastewater Facilities pursuant to this Agreement and CLWSC's approval based on final inspections, tests and system facility operations, Developer will provide to CLWSC the actual cost of construction of such modifications and/or expansions and a concurrence letter from the Plant Engineer certifying that the construction of such facilities has been completed in accordance with approved designs, plans and specifications and change orders approved by CLWSC, that the Wastewater Facilities have been tested and approved for use in accordance with the approved contract documents and CLWSC's specifications, the CLWSC-approved performance and stress test, the TCEQ regulations, and the laws, rules or regulations of any other governmental entity with jurisdiction, that all costs of such modifications and/or expansions have been paid in full as referenced in Paragraph 4.5 above, and that the Wastewater Facilities are properly located within utility easements or public rights-of-way fully accessible by CLWSC. CLWSC shall not withhold acceptance provided all such conditions are met. Upon the proper completion and full payment by Developer of and for such modifications and/or expansions and the written acceptance of same by CLWSC, CLWSC's receipt of the record drawings in the formats noted above, and receipt of the Plant Engineer's concurrence letter, Developer will convey full and complete title, free and clear of any and all liens, third-party claims or encumbrances, to such modifications to and/or expansions of the Wastewater Facilities, including all easements that are reasonably required for the operation of the Wastewater Facilities, including any access easements reasonably required to provide access to and from public roads, to CLWSC in a form of assignment reasonably acceptable to CLWSC. After CLWSC's written acceptance of each assignment, and subject to Developer's compliance with the requirements of Section 2.2, CLWSC will continue to operate, maintain and provide wastewater service through the Wastewater Facilities in accordance with CLWSC's Tariff and this Agreement. Only after the conveyance described in this Section may Developer release any retainage amounts for mechanic's and materialmen's liens and any other statutorily required retainage amounts that have not previously been authorized in writing by CLWSC; provided that CLWSC will not cause Developer to breach any contracts by its unreasonably delayed approval of the conveyance of such modifications to and/or expansions of the Wastewater Facilities.

4.10 **Ownership of Wastewater Facilities.** After the conveyance of same by Developer to CLWSC, CLWSC will own all the Wastewater Facilities downstream of each point of connection with the retail customer's wastewater service line.

4.11 **Force Majeure.** If, for any reason of Force Majeure, either CLWSC or Developer shall be rendered unable, wholly or in part, to carry out their respective obligations under this Agreement, other than the obligation of the Parties to make the payments required under the terms of this Agreement, then if such Party shall give notice of the reasons in writing to the other Party within a reasonable time after the occurrence of the event or cause relied on, the obligation of the Party giving the notice, so far as it is affected by the Force Majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, on the condition that the Party giving notice will use its best efforts to remove that Force Majeure as soon as possible.

4.12 **INDEMNITY. TO THE FULLEST EXTENT AUTHORIZED BY APPLICABLE LAWS, DEVELOPER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS CLWSC, ITS OFFICERS, DIRECTORS, EMPLOYEES, CONSULTANTS, ATTORNEYS AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS, DEMAND, DEBTS, SUITS, CAUSES OF ACTION, LOSSES, DAMAGES, JUDGMENTS, FINES, PENALTIES, LIABILITIES, AND COSTS, INCLUDING REASONABLE ATTORNEY FEES AND DEFENSE COSTS INCURRED BY CLWSC ARISING OUT OF: A) THE BREACH OF ANY WARRANTY, REPRESENTATION OR TERM OF THIS AGREEMENT BY DEVELOPER; B) DEVELOPER'S NON-COMPLIANCE WITH APPLICABLE LAWS, ORDINANCES AND REGULATIONS; OR C) DEVELOPER'S FAILURE TO OBTAIN ANY REQUIRED PERMIT OR APPROVAL REQUIRED UNDER THIS AGREEMENT.**

This Indemnity shall equally apply to any permitted successor or assign of Developer and shall survive the termination of this Agreement.

V. [LEFT BLANK INTENTIONALLY]

VI. WARRANTY

Developer shall be required to post payment, performance and maintenance bonds in forms and by a surety acceptable to CLWSC. The bonds shall be submitted to and approved by CLWSC prior to the initiation of construction and installation of any modifications to and/or expansion of the Wastewater Facilities pursuant to this Agreement, and shall designate CLWSC as a beneficiary. Alternatively, upon prior approval of CLWSC, Developer may assign to CLWSC bonds posted by the contractor for such modification and/or expansion. The payment and performance bonds shall be posted in the amount of one hundred percent (100%) of the construction and installation costs (as set forth in the applicable construction contract) and shall provide that CLWSC may utilize the bond to complete or repair (as applicable) the Wastewater Facilities in the event of any default by Developer or Developer's contractor. The bonds must be

issued by an approved surety company holding a permit from the State of Texas, indicating it is authorized and admitted to write surety bonds in Texas. One original copy of the payment, performance and maintenance bonds shall be provided to CLWSC, and one shall be retained by Developer and Developer's contractor. Developer shall also require its contractors to remain responsible for defects in materials, construction or installation that occur within the Warranty Period, and either Developer or Developer's contractor must provide a maintenance bond acceptable to CLWSC in the amount of fifty percent (50%) of the final construction cost as a condition of CLWSC accepting such modifications and/or expansions. The contractor shall be responsible to replace, or pay for the replacement by CLWSC and, to the reasonable satisfaction of CLWSC, all defects in materials, construction or installation and work involving any part of the Wastewater Facilities that are found by CLWSC's consulting engineer to be reasonably necessary for continued operation of the Wastewater Facilities in compliance with the WWTP Permit during the Warranty Period. Developer shall obtain this warranty from its contractors prior to the initiation of construction. Upon receipt of written notice from CLWSC within the Warranty Period of the discovery of defects in the Wastewater Facilities, Developer's contractor shall thereafter have seven (7) calendar days to replace or pay for the replacement of the necessary materials construction or installation and work. In case of emergency where delay in such replacement would cause serious risk of loss or damage to CLWSC or its customers, CLWSC may have the defects corrected, and the contractor shall be liable for all expenses incurred. If the contractor fails to fulfill the warranty, CLWSC may call upon the bond to pay for such work needed to fulfill the warranty. After the Warranty Period, operation, maintenance and administration of the Wastewater Facilities shall be at CLWSC's sole cost and responsibility.

VII. OWNERSHIP OF EASEMENTS AND PLANT SITE

7.1 **Easements.** All modifications to and/or expansions of the Wastewater Facilities required by this Agreement shall be constructed within public rights-of-way, on lands owned by CLWSC or within easements that will be granted by Developer to CLWSC at no cost to CLWSC and pursuant to instruments reasonably acceptable to CLWSC. The location of all Wastewater Facilities and the terms of all easements shall be subject to CLWSC's review and approval, which approval shall not be unreasonably withheld or delayed.

7.2 **Temporary Construction Easements.** CLWSC shall grant or cause to be granted to Developer such temporary access, construction and other easements, rights and licenses in and to the Wastewater Facilities (other than any portion of the Wastewater Facilities to be constructed on the New Property), and the off-site property described in Section 7.3 below, as may be necessary or appropriate for Developer to construct the modifications and/or expansions of the Wastewater Facilities required by this Agreement and to allow Developer to perform its other obligations under this Agreement. The form(s) of agreement creating such easements, rights and licenses are subject to CLWSC's and Developer's approval, which approval shall not be unreasonably withheld, delayed or conditioned.

7.3 **Offsite Property.** CLWSC is responsible for securing, at its sole cost and expense, all off-site real property interests required for improvements to the CLWSC wastewater system serving the Service Area. If CLWSC desires to acquire additional off-site easements or real property, Developer agrees to reasonably cooperate and assist CLWSC in connection with its efforts to secure all necessary off-site real property interests required for the construction of

facilities to assist CLWSC in the operation of the CLWSC System, but Developer shall be under no obligation to incur any costs or expenses in connection therewith.

VIII. CLOSING

8.1 **Closing.** Subject to Developer's compliance with the requirements set forth in Section 2.2 above, the covenants made by Developer herein, and upon completion of construction of the modifications to and/or expansions to the Wastewater Facilities by Developer as required by this Agreement and acceptance by CLWSC, Developer and CLWSC shall agree upon a date to conduct a Closing in accordance with the procedures set forth in this Article VIII and subject to the requirements of Section 7.3 above, at which time Developer shall convey ownership of such modifications and/or expansions to CLWSC.

8.2 Manner of Transfer.

(a) Transfer by Developer to CLWSC of title to all real property that constitutes the Interests to be Acquired will be by a general warranty deed and shall be free of all liens and encumbrances (subject to matters of public record that do not materially affect the purposes for which the real property is conveyed). Transfer by Developer to CLWSC of title to all easements that constitute the Interest to be Acquired will be by a mutually agreed easement instrument and shall be free of all liens and encumbrances (subject to matters of public record that do not materially affect the purposes of the easements). Title to such property in the name of CLWSC will be insured by a title company acceptable to CLWSC, with no exceptions, conditions or restrictions that are not reasonably acceptable to CLWSC, and the policy will be in the amount of Ten Thousand and No/100 Dollars (\$10,000.00) (or any other value that the parties agree is reflective of the market value of the real property being insured) insuring title to the conveyed real property and the conveyed or dedicated easements and shall include all endorsements as may be requested by CLWSC. Developer will be responsible for all costs attributable to the title policy and endorsements.

(b) Transfer by Developer to CLWSC of all personal property that constitutes Interests to be Acquired will be by Bill of Sale and Assignment in a form reasonably approved by CLWSC and shall be free of all security interests, liens and encumbrances (subject to matters of public record that do not materially affect the purposes for which the personal property is conveyed). Developer will furnish a UCC search or other assurance acceptable to CLWSC to assure it that there are no such outstanding security interests, liens and encumbrances.

(c) Developer shall pay any ad valorem taxes of that portion of the Plant Site not currently owned by CLWSC for the period of time prior to Closing.

8.3 **Possession.** Possession of the applicable component of the Interests to be Acquired at a particular Closing will be delivered to CLWSC at the Closing.

8.4 **Costs and Expenses.** All costs and expenses in connection with the Closing under this Agreement will, except as otherwise expressly provided in this Agreement, be borne by Developer and CLWSC in the manner in which such costs and expenses are customarily

allocated between the parties at closings of the purchase and sale of real property in Comal County, Texas.

8.5 Risks Pending Closing.

(a) Developer agrees that, from the date of this Agreement to the final Closing Date under this Agreement, it will not, except as otherwise authorized by this Agreement or as approved by CLWSC, enter into contracts in connection with operation of the Interests to be Acquired unless such contracts can be terminated upon ninety (90) days written notice without liability to CLWSC or encumbrance on the Plant Site, the easements or the Wastewater Facilities.

(b) If, on the Closing Date, any proceeding is pending before any court or administrative agency of competent jurisdiction, challenging the legal right of either Developer or CLWSC to make and perform this Agreement, Developer and CLWSC, respectively, will have the right, at any time prior to the Closing Date, to suspend and postpone the Closing until such right will have been sustained by a final judgment of a court of competent jurisdiction, but the right to suspend and postpone will not affect any duty to pay provided in this Agreement.

(c) Developer agrees that, until the Closing, it will maintain, or cause to be maintained, insurance in such amounts as are reasonable and prudent, based on the nature of the Wastewater Facilities, on those components of the Interests to be Acquired that have not already been conveyed to CLWSC. If, between the Effective Date and the Closing, any part, whether substantial or minor, of the Interests to be Acquired to be conveyed are destroyed or rendered useless by fire, flood, wind, or other casualty, CLWSC will not be released from its obligations hereunder, but any delay in performance by CLWSC shall be excused during the period of time required by Developer to remedy the loss caused by the casualty; however, as to any portion of the Interests to be Acquired so damaged or destroyed, Developer will make repairs and replacements to restore the Interests to be Acquired to their prior condition, regardless of whether the insurance obtained by Developer covers such repair or replacement, at its expense.

IX. REPRESENTATIONS AND WARRANTIES

9.1 **Representations of Developer.** With respect to each of the Interests to be Acquired to be conveyed by it, Developer acknowledges, represents and agrees that:

(a) It is a Texas limited partnership qualified and in good standing to conduct business within the State of Texas;

(b) The contemplated transfer of the Interests to be Acquired to CLWSC will not violate any term, condition or covenant of any agreement to which Developer is a party;

(c) Execution of this Agreement and the consummation of the transactions contemplated hereunder will not constitute an event of default under any contract, covenant or agreement binding upon Developer;

(d) Developer has not previously entered into any agreement or caused or otherwise authorized any action that would diminish, eliminate or adversely affect CLWSC's contemplated ownership or use of the Interests to be Acquired;

(e) The execution, delivery and performance of this Agreement have been duly authorized by all necessary action on the part of Developer, and the person executing this Agreement on behalf of Developer has been fully authorized to bind Developer to the terms and provisions of this Agreement;

(f) All facilities proposed under this Agreement are reasonable and necessary to provide for demand requirements attributable to the New Property and the Existing Development and to comply with TCEQ minimum design criteria for facilities used in the transmission, pumping, treatment or disposal of wastewater via land application and any other applicable TCEQ minimum requirements;

(g) All costs to Developer under this Agreement are reasonable and necessary under the expected circumstances in regard to the Service Commitment contemplated by this Agreement;

(h) CLWSC's obligation under Section 2.2 to provide wastewater service to the Developer and all of Developer's customers within the Project (beyond and/or in addition to the wastewater service provided to the HEB Expansion) is expressly conditioned upon the satisfaction of the requirements set forth in Section 2.2; and

(i) Developer will use its best efforts to assist and support CLWSC in all of its efforts to expand its CCN No. 20877 to include the New Property.

CLWSC is executing this Agreement in reliance on each of the warranties and representations set forth above, and each such representation and warranty of Developer will survive the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement.

9.2 Representations of CLWSC. CLWSC represents and warrants to Developer that:

(a) CLWSC is an investor-owned utility operating under the authority of Chapter 13 of the Texas Water Code and has the requisite power and authority to take all necessary action to execute and deliver this Agreement, to obtain the Interests to be Acquired from Developer, and, subject to the satisfaction of each of the requirements set forth in Section 2.2, to perform all obligations hereunder;

(b) CLWSC is a Texas corporation in good standing and qualified in all respects to conduct business within the State of Texas;

(c) This Agreement does not contravene any law or any governmental rule, regulation or order applicable to CLWSC; and

(d) The execution and delivery of this Agreement, and the performance by CLWSC of its obligations hereunder, have been duly authorized by all necessary action on the part of CLWSC and the person executing this Agreement on behalf of CLWSC has been fully authorized to bind CLWSC to the terms and provisions of this Agreement:

Developer is executing this Agreement in reliance on each of the warranties and representations set forth above, and each such representation and warranty of CLWSC will survive the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement.

9.3 **Survival of Covenants.** The covenants contained in this Article will survive the conveyance, transfer and assignment of the Interests to be Acquired at all Closings and will continue to bind the CLWSC and Developer as provided herein.

X. REMEDIES

10.1. CLWSC's Remedies.

(a) If Developer fails or refuses to timely comply with any of its material obligations hereunder, or if, prior to a Closing, Developer's representations, warranties or covenants contained herein are not true or have been breached, CLWSC will have the right, along with any other remedy at law or in equity, to (i) enforce this Agreement by specific performance, injunction, or any other remedy available at law or in equity in a court of competent jurisdiction including but not limited to an action for actual damages, hereby waiving any claim for punitive or similar damages or penalties; or (ii) waive prior to or at Closing as applicable, the applicable objection or condition and to proceed to close the transaction in accordance with the remaining terms.

(b) If, after a Closing, CLWSC determines that any of Developer's representations, warranties or covenants is not true, then CLWSC may avail itself of any remedy at law or in equity to which it may be entitled, provided however that CLWSC waives any claim for punitive or similar damages or penalties.

10.2 Default in Payments.

All amounts due and owing by Developer to CLWSC shall, if not paid when due, bear interest at the Texas post-judgment interest rate as set out in V.T.C.A., Finance Code §304.002, or any successor statute, from the date when due until paid, provided that such rate shall never be usurious or exceed the maximum rate permitted by law. If any amount due and owing by Developer to CLWSC is placed with an attorney for collection, the prevailing party in any litigation or arbitration involving the collection shall be paid its costs and attorneys' fees by the non-prevailing party, and such payments shall be in addition to all other payments provided for in this Agreement, including interest.

For so long as there is any failure to provide a required payment or construction costs hereunder by Developer and that failure remains uncured by Developer, Developer agrees that CLWSC shall not be obligated to perform under this Agreement, including, without limitation, to

sign or to approve any additional final plats of the units of the subdivision within the New Property, or to issue any 'will serve letters' for units of the subdivision within the New Property, until payment in full is made to CLWSC. In such an event, Developer shall not take any actions to proceed with or to have any such plat approved by the county with jurisdiction, and CLWSC shall not be obligated to provide wastewater service to any such units of the subdivisions within the New Property until the monetary default is cured. Furthermore, any failure by Developer to provide timely payment that remains uncured by Developer for thirty (30) days after receipt of notice of default from CLWSC shall entitle CLWSC to retain all payments made previously by Developer, and Developer will at that time have forfeited all rights to the payments made by it earlier and any other rights under this Agreement with respect to the New Property for which payment has not been made in full.

10.3 Disputed Payment. If Developer at any time disputes the amount to be reimbursed or paid by it to CLWSC or to third parties, Developer shall nevertheless promptly make the disputed payment or payments or deposit it into a CLWSC-approved escrow account, but Developer shall thereafter have the right to seek a determination of whether the amount charged by CLWSC is in accordance with the terms of this Agreement and to seek a refund.

10.4 Developer's Remedies.

(a) If CLWSC fails or refuses to timely comply with CLWSC's obligations to Developer under this Agreement or is unable to do so as a result of CLWSC's acts or failure to act, Developer will have the following remedies: (i) to enforce this Agreement by specific performance, injunction, or any other remedy available at law or in equity in a court of competent jurisdiction including but not limited to an action for actual damages, hereby waiving any claim for punitive or similar damages or penalties, or (ii) to waive prior to or at Closing, as applicable, the applicable objection or condition and proceed to close the transaction in accordance with the remaining terms.

(b) If, after Closing, Developer determines that any of CLWSC's representations, warranties or covenants was not true, then Developer may avail itself of any remedy at law or in equity to which it may be entitled, provided however Developer waives any claim for punitive or similar damages or penalties.

10.5 Notice and Opportunity to Cure. If either Party (referred to herein as the "Defaulting Party") fails to comply with its obligations under this Agreement or is otherwise in breach or default under this Agreement (collectively, a "Default") then the other Party (referred to herein as the "Non-Defaulting Party") shall not have any right to invoke any rights or remedies with respect to any Default until and unless: (i) the Non-Defaulting Party delivers to the Defaulting Party a written notice (the "Default Notice") that specifies the particulars of the Default and specifies the actions necessary to cure the Default; and (ii) the Defaulting Party fails to cure, within thirty (30) days after the Defaulting Party's receipt of the Default Notice, any matters specified in the Default Notice that may be cured solely by the payment of money or the Defaulting Party fails to commence the cure of any matters specified in the Default Notice that cannot be cured solely by the payment of money within ten (10) days or such longer period of time approved in writing by CLWSC after the Defaulting Party's receipt of the Default Notice and fails to thereafter pursue curative action with reasonable diligence to completion.

10.6 **Transfers that are Unauthorized by CLWSC.** Under no circumstances will CLWSC be responsible to provide wastewater service of any kind to Developer or to any third party for the New Property beyond the additional eighty-seven (87) LUEs of wastewater treatment and disposal capacity in the Wastewater Facilities identified in this Agreement to be provided to the Developer for the New Property. Developer expressly disclaims, releases and will hold CLWSC harmless and defend it against any liability, damages, costs or fees associated with any action brought by a third-party seeking, over the objection of Developer, transfer of all or any portion of the additional eighty-seven (87) LUEs of wastewater treatment and disposal capacity to be provided to the Developer for the New Property in accordance with CLWSC's obligations to Developer under this Agreement.

XI. APPROVALS

Whenever the term "approve" or "approval" is used in this Agreement, the Party whose approval is required will not unreasonably withhold or delay it. Where approval is necessary, the Party seeking approval may request approval in writing, and the approving Party will have ten (10) business days to provide approval or request modification for the matter subject to approval.

XII. NOTICES

Subject to either party's right to change its address upon five (5) days' written notice to the other party, all notices required hereunder by either party to the other shall be in writing and shall be deemed to have been given upon receipt by the receiving party if sent in writing by certified mail, or upon transmission by e-mail or facsimile to the receiving party if sent during normal business hours or on the next business day if sent after normal business hours, when addressed and delivered to the following:

to CLWSC: Canyon Lake Water Service Company
ATTN: Tom Hodge, General Manager
P.O. Box 1742
Canyon Lake, Texas 78130
tom.hodge@clwsc.com
Facsimile: (830) 964-2779

with copy to: Suzy Papazian
SJWIX, Inc.
110 W. Taylor Street
San Jose, CA 95110
Suzy.Papazian@sjwater.com
Facsimile: (408) 279-7934

with 2nd copy to: Will C. Jones IV
The Jones Law Firm
1201 Rio Grande, Suite 100
Austin, Texas 78701
wjones@txcounselor.com
Facsimile: (866) 511-5961

To Developer: HEB Grocery Company, LP
Attn: Mary Rohrer, P.E.
P.O.Box 839999
San Antonio, Texas 78283-3999
Rohrer.mary@heb.com
Facsimile: (210) 938-7228

XIII. ASSIGNABILITY

13.1 **Assignment by Developer.** Developer may assign this Agreement to a purchaser of all or a part of the New Property provided that such assignee assumes all rights, duties and obligations of Developer under this Agreement and has supplied CLWSC any security or assurances of assignee's performance that CLWSC may reasonably require. Any such assignment will be effective only after notice to CLWSC of the assignment and provided that the assignee agrees to assume and perform any duties of Developer under this Agreement. The assignee shall execute an instrument evidencing its assumption of all terms and obligations of this Agreement in a form reasonably acceptable to CLWSC's counsel and shall provide such instrument to CLWSC immediately following such assignment.

13.2 **Assignment by CLWSC.** CLWSC may assign this Agreement if it sells or transfers all or substantially all of the Wastewater Facilities, and such assignee assumes all rights, duties and obligations of CLWSC under this Agreement and provided that any outstanding payment due to Developer by CLWSC is paid in full at, or prior to, the transfer. Any such assignment will be effective only after notice to Developer of the assignment and provided that the assignee agrees to assume and perform any duties and obligations of CLWSC under this Agreement and provided further that any outstanding reimbursement or payment due to Developer is paid in full at or prior to the transfer.

XIV. MISCELLANEOUS

14.1 **Execution.** This Agreement may be simultaneously executed in any number of counterparts, each of which will serve as an original and will constitute one and the same instrument.

14.2 **Costs and Expenses.** Except as otherwise expressly provided herein, each Party will be responsible for all reasonable costs and expenses incurred by such Party in connection with the transaction contemplated by this Agreement.

14.3 **Governing Law.** This Agreement will be governed by the Constitution and laws of the State of Texas, except as to matters exclusively controlled by the Constitution and statutes of the United States of America.

14.4 **Successors and Assigns.** Except as provided in Article XIII, the assignment of this Agreement by either Party is prohibited without the prior written consent of the other Party, which consent will not be unreasonably withheld. All of the respective covenants, undertakings, and obligations of each of the Parties will bind that Party and will apply to and bind any authorized successors or assigns of that Party.

14.5 **Headings.** The captions and headings appearing in this Agreement are inserted merely to facilitate reference and will have no bearing upon its interpretation.

14.6 **Partial Invalidity.** If any of the terms, covenants or conditions of this Agreement, or the application of any term, covenant, or condition, is held invalid as to any person or circumstance by any court with jurisdiction, the remainder of this Agreement, and the application of its terms, covenants, or conditions to other persons or circumstances, will not be affected.

14.7 **Waiver.** Any waiver by any Party of its rights with respect to a default or requirement under this Agreement will not be deemed a waiver of any subsequent default or other matter.

14.8 **Amendments.** This Agreement may be amended or modified only by written agreement executed by the duly authorized representatives of both Parties.

14.9 **Cooperation.** Each Party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.

14.10 **Venue.** All obligations of the Parties are performable in Comal County, Texas, and venue for any action arising hereunder will be in Comal County, Texas.

14.11 **Third Party Beneficiaries.** Except as otherwise expressly provided herein, nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties, any rights, benefits, or remedies under or by reason of this Agreement.

14.12 **Representations.** Unless otherwise expressly provided, the representations, warranties, and covenants, in this Agreement will be deemed to be material and continuing, will not be merged, and will survive the Closing and the conveyance and transfer of the Interests to be Acquired to CLWSC.

14.13 **Exhibits.** All exhibits attached to this Agreement are hereby incorporated in this Agreement as if the same were set forth in full in the body of this Agreement.

14.14 **Entire Agreement.** This Agreement, including the attached exhibits, contains the entire agreement between the Parties with respect to the Interests to be Acquired and supersedes

all previous communications, representations, or agreements, either verbal or written, between the Parties with respect to such matters.

14.15 **Time of the Essence.** Time is of the essence in all matters related to this Agreement.

14.16 **Interpretation.** The singular form of any word used herein shall include the plural, and vice-versa, unless the context requires otherwise. The use of a word of any gender herein shall include all other genders, unless the context requires otherwise. This Agreement and all of the terms and provisions hereof shall be construed so as to effectuate the purposes contemplated hereby and to sustain the validity hereof.

14.17 **Authorized Representatives.** Each person executing this Agreement represents that he is authorized to execute this Agreement on behalf of the undersigned Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be signed, sealed and attested in duplicate by their duly authorized officers, on the dates set forth below and is effective as of the Effective Date set forth above.

CLWSC: SJWTX, INC. dba CANYON LAKE WATER SERVICE COMPANY

By: Thomas A. Hodge 1-12-11
Thomas A. Hodge, Vice President

DEVELOPER: HEB GROCERY COMPANY, LP,
A Texas limited partnership

By: _____
Todd A. Piland, Executive Vice President of Real Estate

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CLWSC: SJWTX, INC. dba CANYON LAKE WATER SERVICE COMPANY

By: _____
Thomas A. Hodge, Vice President

DEVELOPER: HEB GROCERY COMPANY, LP,
A Texas limited partnership

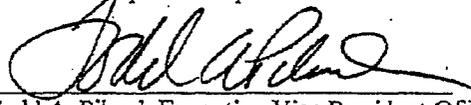
By: 
Todd A. Piland, Executive Vice President Of Real Estate

EXHIBIT "A"
(Legal Description of the New Property)

FIELD NOTES

FOR

A 31.806 acre, or 1,385,462 square feet more or less, tract of land being comprised of Lots 2 and 3 of the Descending Dove Hills subdivision, recorded in Volume 13, Page 16, of the Map and Plat Records of Comal County, Texas, a called 5.478 acre tract, conveyed to Robert T. Burns, III in Warranty Deed recorded in Document # 9906032784 of the Official Records of Comal County, Texas, a called 11.00 acre tract, conveyed to Robert T. Burns III in Warranty Deed recorded in Volume 1005, Pages 806-808 of the Official Records of Comal County, Texas, all of that called 1.500 acre tract conveyed to HEB Grocery Company, LP recorded in Document No. 200706050663 of the Official Public Records of Comal County, Texas, all of that certain called 10.459 acre tract conveyed to Robert T. Burns and Robert C. Trevino recorded in Document No. 200506014834 of the Official Public Records of Real Property of Comal County, Texas situated in the William Haas Survey No. 453, Abstract 238, and William Haas Survey No. 666, Abstract 280, Comal County Texas, partially in the City of Bulverde and in Comal County, Texas. Bearings are based on the Texas Coordinate system as established from the North American Datum of 1983 (CORS96) for the South Central Zone, said 31.806 acre tract being more fully described as follows:

BEGINNING: At a found ½" iron rod with yellow cap marked "Pape-Dawson", the northeast corner of said 11.00 acre tract, the northwest corner of Lot 6A of the Sonic - Bulverde Subdivision recorded in Volume 13, Page 329 of the Map and Plat Records of Comal County, Texas and a point on the south right-of-way line of State Highway 46, a variable width right of way, 100-foot minimum, 130.68 feet at this point;

THENCE: S 01°59'12"E, departing the south right-of-way line of said State Highway 46, along and with the east line of said 11.00 acre tract, the west line of said Lot 6A, a distance of 464.86 feet to a found ½" iron rod with yellow cap marked "Pape-Dawson", the southwest corner of said Lot 6A and an angle point in said called 11.00 acre tract;

THENCE: N 89°53'38"E, along and with the south line of said Lot 6A and a north line of said called 11.00 acre tract, a distance of 134.81 feet to a found ½" iron rod with yellow cap marked "Pape-Dawson", the southeast corner of said Lot 6A and a point in the west line of Lot 1, HEB Bulverde recorded in Volume 13, Page 92 of the Map and Plat Records of Comal County, Texas for an angle point in the tract herein described;

- THENCE: S 00°06'22"E, along and with the west line of said Lot 1 and the east line of said called 11.00 acre tract, a distance of 565.35 feet to a found ½" iron rod with yellow cap marked "Pape-Dawson" in a north line of Lot 1, Block 1 of the Bracken Christian School Subdivision recorded in Volume 11, Page 149 of the Map and Plat Records of Comal County, Texas and the southwest corner of said Lot 1, HEB Bulverde for the southeast corner of the tract herein described;
- THENCE: S 80°14'00"W, along and with the south line of said called 11.00 acre tract, a north line of said Lot 1, Block 1, a distance of 598.89 feet to a found ½" iron rod with yellow cap marked "Pape-Dawson", the southwest corner of said called 11.00 acre tract, a southeast corner of said called 5.478 acre tract and an angle point in the tract herein described;
- THENCE: S 79°54'37"W, along and with the south line of said 5.478 acre tract, the north line of said Bracken Christian School Subdivision, at a distance of 184.53 feet passing a found ½" iron rod, the northeast corner of Lot 1, Block 1 of the Lundgren Subdivision recorded in Volume 11, Page 23 of the Map and Plat Records of Comal County Texas, the northwest corner of said Lot 1, Block 1 of the Bracken Christian School Subdivision, continuing along and with north line of Lot 1 of said Lundgren Subdivision, the south line of said 5.478 acre tract, at a distance of 411.20 feet passing a found ½" iron rod marked "MDS", the southeast corner of said called 10.459 acre tract, the southwest corner of said called 5.478 acre tract, continuing along and with north line of Lot 1 of said Lundgren Subdivision, the south line of said called 10.459 acre tract, at a distance of 485.02 feet passing a found ½" iron rod, the northwest corner of Lot 1 of said Lundgren Subdivision, the northeast corner of a 3.000 acre tract recorded in Volume 349, Page 539 of the Deed Records of Comal County, Texas, continuing along and with north line of said 3.000 acre tract and the south line of said called 10.459 acre tract, for a total distance of 838.53 feet to a found ½" iron rod, in the east line of Lot 1 of the Cox Subdivision, Unit 1, recorded in Volume 11, Page 209 of the Map and Plat records of Comal County, Texas, the northwest corner of said 3.000 acre tract, the southwest corner of said called 10.456 acre tract;

- THENCE: N 00°07'02" W, along and with the east line of Lot 1 of said Cox Subdivision, the west line of said called 10.456 acre tract, a distance of 469.15 feet, to a found ½" iron rod, the southwest corner of a 6.30 acre tract, recorded in Document # 9706018586, of the Official Records of Comal County, Texas, the most southerly northwest corner of said called 10.459 acre tract;
- THENCE: N 89°52'58"E, along and with the south line of said 6.30 acre tract, a north line of said called 10.459 acre tract, a distance of 363.44 feet to a found ½" iron rod, the southeast corner of said 6.30 acre tract, an interior corner of said called 10.459 acre tract;
- THENCE: N 00°07'02" W, along and with the east line of said 6.30 acre tract, a west line of said called 10.459 acre tract, a distance of 451.00 feet to a found ½" iron rod, in the south line of a called 3.250 acre tract of land conveyed to 46E JV recorded in Document No. 200506013088 of the Official Public Records of Comal County, Texas, also know as the south line of said Lot 2 of Descending Dove Hills, the northwest corner of said called 10.459 acre tract, an angle point of said 6.30 acre tract;
- THENCE: S 89°52'58"W, along and with the south line of said called 3.250 acre tract of land, a north line of said 6.30 acre tract, a distance of 153.44 feet to a found ½" iron rod with yellow cap marked "Pape-Dawson", the southwest corner of said called 3.250 acre tract of land, an interior corner of said 6.30 acre tract;
- THENCE: N 00°07'02"W, along and with the east line of said 6.30 acre tract, the west line of said called 3.250 acre tract of land, a distance of 503.89 feet to a set ½" iron rod with yellow cap marked "Pape-Dawson", in the south right-of-way line of said State Highway 46, a 158.94 foot right-of-way at this point, the northeast corner of said 6.30 acre tract, the northwest corner of said called 3.250 acre tract of land;
- THENCE: Along and with the south right-of-way line of said State Highway 46, the north line of said called 3.250 acre tract of land, the north line of said called 3.000 acre tract of land and the north line of this tract the following calls and distances:

S 78°04'41" E, at a distance of 306.75 feet passing the northwest corner of a called 3.000 acre tract of land conveyed to Casey L. Boice and Carol A. Boice recorded in Document No. 9606024977 of the Official Public Records of Comal County, Texas, also know as said Lot 3 of Descending Dove Hills subdivision and the northeast corner of said called 3.250 acre tract of land, continuing in all a total distance of 417.60 feet to a found ½" iron rod with yellow cap marked "Pape-Dawson",

Southeasterly, along the north line of said called 3.000 acre tract, with a tangent curve to the left, said curve having a radius of 1482.39 feet, a central angle of 07°29'19", at a chord bearing and distance of S 81°49'20" E, 193.61 feet, for an arc length of 193.75 feet passing a found ½" iron rod with yellow cap marked "Pape-Dawson", the northeast corner of said called 3.000 acre tract of land and the most northerly, northwest corner of said called 10.459 acre tract, continuing along and with said tangent curve to the left, said curve having a total central angle of 08°17'54", a total chord bearing and distance of S 82°13'38" E, 214.51 feet, for a total arc length of 214.70 feet to a found ½" iron rod,

S 86°22'35" E, along the north line of said called 10.459 acre tract, a distance of 12.32 feet to a found ½" iron rod with yellow cap marked "Pape-Dawson",

S 85°28'20" E, continuing along the north line of said called 10.459 acre tract, a distance of 104.43 feet to a found ½" iron rod with yellow cap marked "Pape-Dawson", the northeast corner of said called 10.459 acre tract, the northwest corner of said called 5.478 acre tract,

S 85°09'10" E, a distance of 60.23 feet to a set ½" iron rod with yellow cap marked "Pape-Dawson", the northeast corner of said called 5.478 acre tract, the northwest corner of said HEB Grocery Company, LP tract;

S 86°16'09" E, along the north line of said HEB Grocery Company, LP tract, at a distance of 200.00 feet, passing the northeast corner of said HEB Grocery Company, LP tract and the northwest corner of said called 11.00 acre tract for a total distance of 259.73 feet to the POINT OF BEGINNING, and containing 31.806 acres partially in the City of Bulverde and partially in Comal County, Texas. Said tract being described in accordance with surveys prepared by Pape-Dawson Engineers,

PREPARED BY: Pape-Dawson Engineers, Inc
JOB No.: 4645-45
DATE: February 10, 2010
DOC. ID.: N:\CIVIL\4645-45\WORD\31.806 AC FN.doc

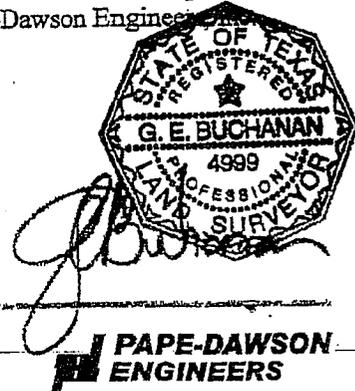
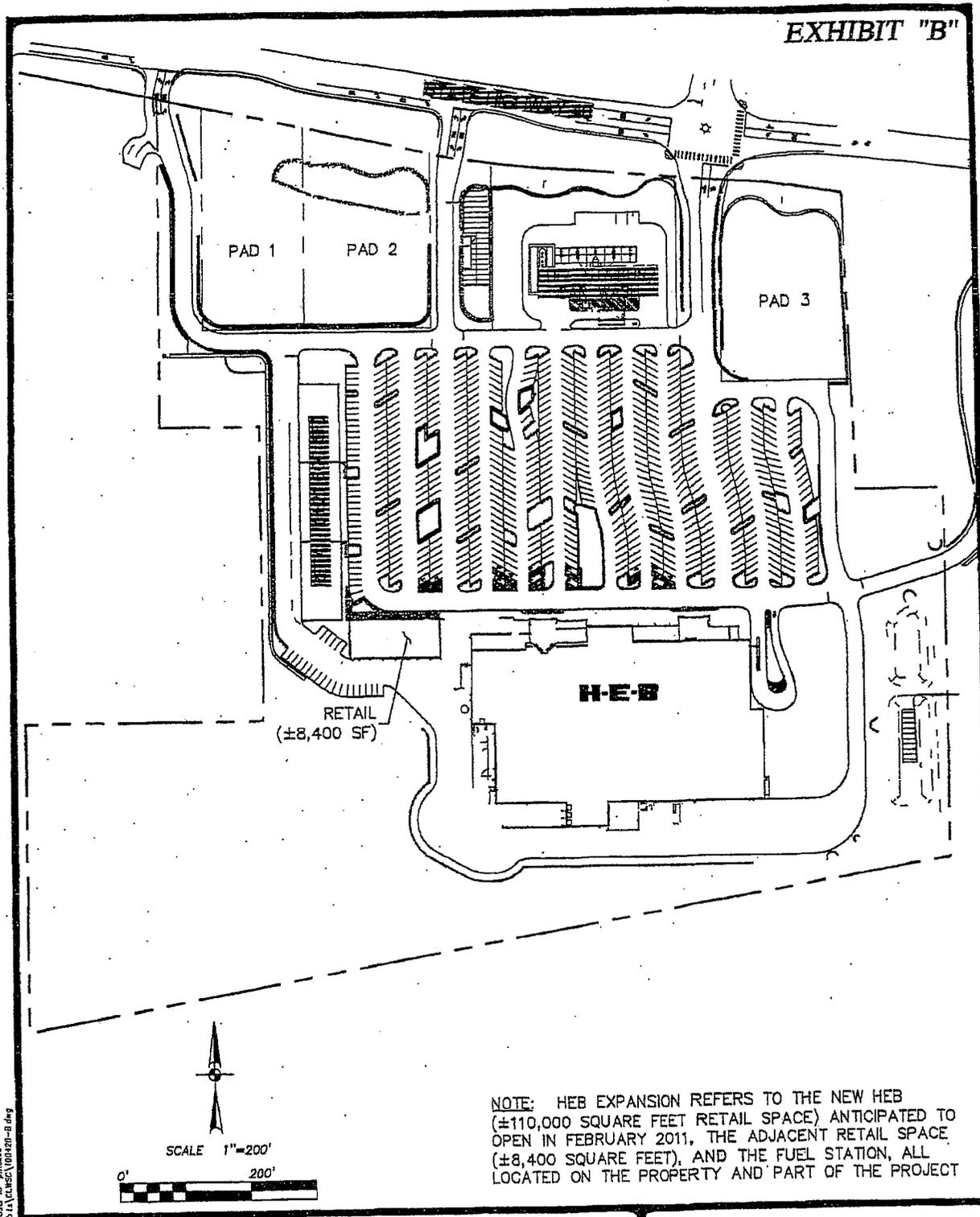


EXHIBIT "B"
(Preliminary Land Use Plan for the Project)

EXHIBIT "B"



NOTE: HEB EXPANSION REFERS TO THE NEW HEB (±110,000 SQUARE FEET RETAIL SPACE) ANTICIPATED TO OPEN IN FEBRUARY 2011, THE ADJACENT RETAIL SPACE (±8,400 SQUARE FEET), AND THE FUEL STATION, ALL LOCATED ON THE PROPERTY AND PART OF THE PROJECT

Date: Apr 10 2011 3:22pm User ID: pmaxce
 File: M:\4516\40\Drawings\Exhibits\100420-0.dwg

JOB NO. 4540-44
 DATE APRIL 2010
 DESIGNER CEL
 CHECKED CEL DRAWN ML
 SHEET

H-E-B
 HEB BULVERDE
PRELIMINARY LAND USE PLAN

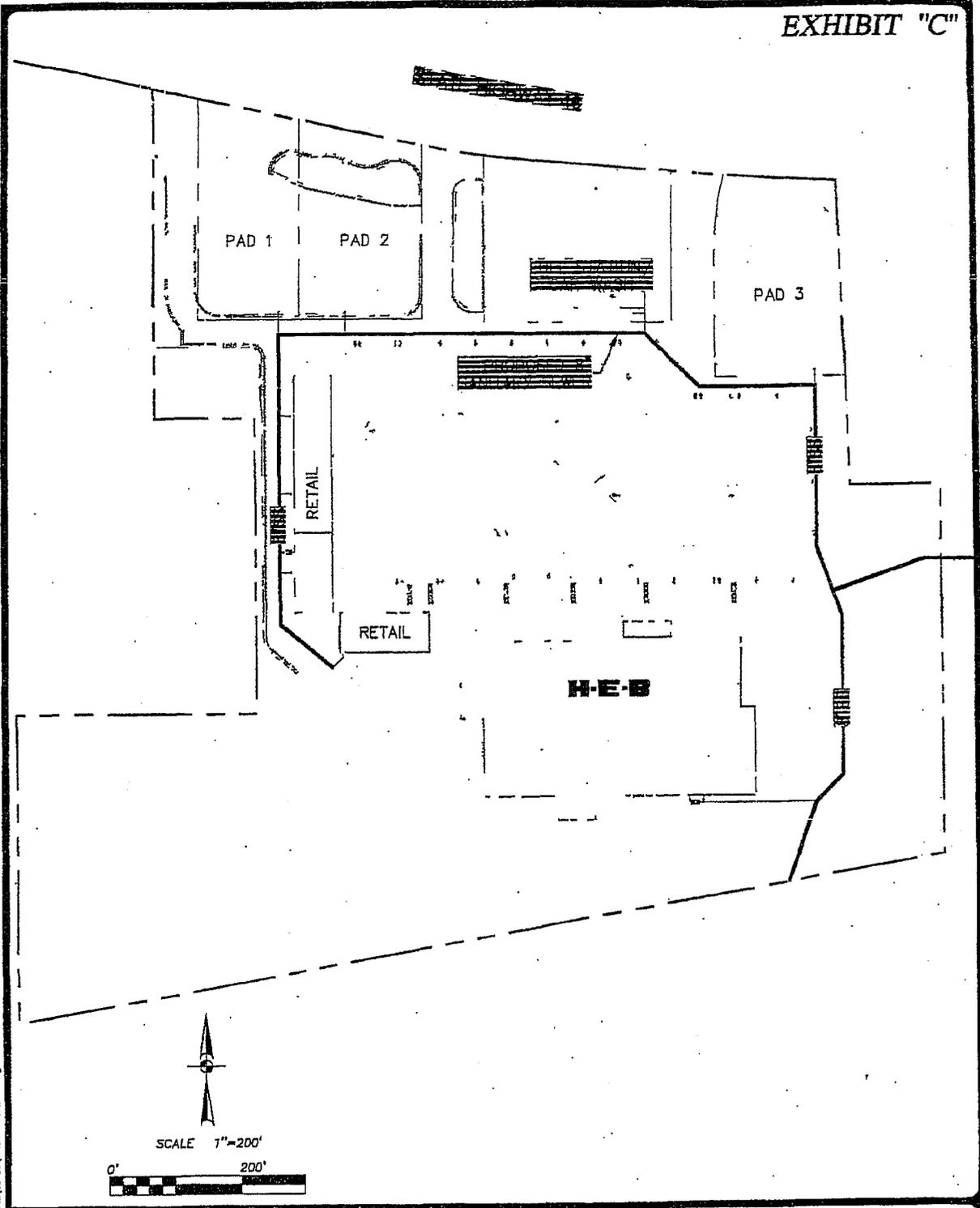

PAPE-DAWSON ENGINEERS

555 EAST RAHWAY | SAN ANTONIO TEXAS 78216 | PHONE 210.375.9000
 FAX 210.375.5010
 TEXAS BOARD OF PROFESSIONAL ENGINEERS FIRM REGISTRATION # 470

THIS DOCUMENT HAS BEEN PRODUCED FROM MATERIAL THAT WAS STORED AND/OR TRANSMITTED ELECTRONICALLY AND MAY HAVE BEEN INADEQUATELY ALIGNED. RELY ONLY ON FINAL HAND-COPY MATERIALS BEARING THE CONSULTANT'S ORIGINAL SIGNATURE AND SEAL.

EXHIBIT "C"
(Developer's Master Wastewater Plan)

EXHIBIT "C"



Date: Jan 07 2011, 1:47pm User: D: pmds
 File: M:\1518\18\04a.pn\cadd\18\1827-SEWER-C.dwg

SCALE 1"=200'



JOB NO	4546-18
DATE	OCTOBER 2000
DESIGNER	CSE
CHECKED	CSE DRAWN
SHEET	

H-E-B
 HEB BULVERDE
 DEVELOPER'S MASTER
 WASTEWATER PLAN

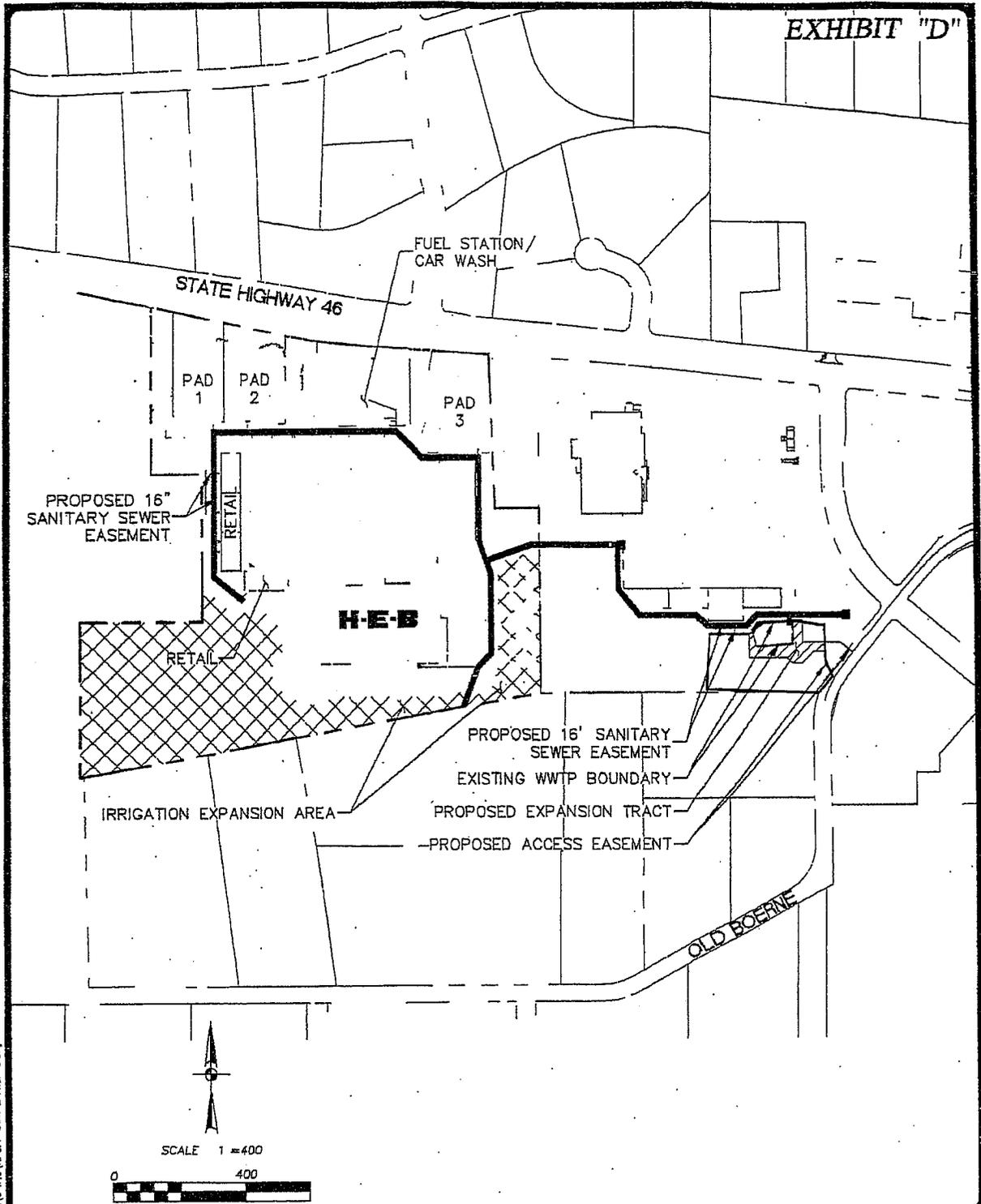
PAPE-DAWSON
ENGINEERS

555 EAST RAMSEY | SAN ANTONIO TEXAS 78216 | PHONE 210.375.9000
 FAX 210.375.9010
 TEXAS BOARD OF PROFESSIONAL ENGINEERS FIRM REGISTRATION # 470

THIS DOCUMENT HAS BEEN PRODUCED FROM MATERIAL THAT MAY STORED AND/OR TRANSMITTED ELECTRONICALLY AND MAY HAVE BEEN INADEQUATELY REPRODUCED. RELY ONLY ON FINAL HARD COPY MATERIALS BEARING THE CONTRACTOR'S ORIGINAL SIGNATURE AND SEAL.

EXHIBIT "D"
(Easements and New Property Required for Service)

EXHIBIT "D"



15 12 10 4 2mm line 0.5mm dots
 F. 11-15-16 10:00am p.d. b. MAC 10:10 077 EXHIBIT & PROP. D.dwg

JOB NO 4588-48
 DATE OCTOBER 2010
 DESIGNER CEL
 CHECKED CEL DRAWN ME
 SHEET _____

H-E-B
HEB BULVERDE
EASEMENTS AND PROPERTY
REQUIRED FOR SERVICE

PAPE-DAWSON
ENGINEERS

15 12 10 4 2mm line 0.5mm dots
 F. 11-15-16 10:00am p.d. b. MAC 10:10 077 EXHIBIT & PROP. D.dwg

EXHIBIT "E"
(Plans and Specifications for the Phase I Expansion of Treated Wastewater Effluent Disposal
Capacity)

EXHIBIT E
PHASE 1 EXPANSION OF THE TREATED EFFLUENT DISPOSAL CAPACITY

LIST OF DRAWINGS

- C400.1 RECYCLED WATER IRRIGATION PLAN (SHEET 1 OF 3)
- C400.2 RECYCLED WATER IRRIGATION PLAN (SHEET 2 OF 3)
- C400.3 RECYCLED WATER IRRIGATION PLAN (SHEET 3 OF 3)
- C400.4 IRRIGATION DETAILS

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EXHIBIT "F"
(Plans and Specifications for the Phase 1 Expansion of Wastewater Treatment Capacity)

EXHIBIT F
PHASE 1 EXPANSION OF WASTEWATER TREATMENT CAPACITY

LIST OF DRAWINGS

1. DEMOLITION PLAN
2. SITE PLAN
3. YARD PIPING
4. PIPING DETAILS
5. FENCING PLAN
6. WWTP PLAN
7. WWTP ELEVATION
8. CONCRETE SLAB LAYOUT & DETAILS
9. EFFLUENT FILTER UNIT
10. EFFLUENT PUMP STATION
11. IRRIGATION PUMP STATION
12. METAL SHED DETAILS
13. SLUDGE FILTER PAD
14. SLUDGE FILTER PAD SHED DETAILS
15. ELECTRICAL LAYOUT PLAN

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EXHIBIT "G"
(Potential Expanded Wastewater Treatment Plant Property)

**Attachment D –
Compliance History Reports**

Compliance History

Customer/Respondent/Owner-Operator:	CN600282156 H. E. Butt Grocery Company	Classification: AVERAGE	Rating: 3.72
Regulated Entity:	RN102806924 BULVERDE 46 WATER RECYCLING CENTER	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	WASTEWATER PERMIT	WQ0014131001	
Location:	LOCATED BETWEEN MANNING AND BRONCO RD, APPROX .5 MILE N OF HWY 44, JUST W OF THE CORPUS CHRISTI AIRPORT.		Rating Date: 9/1/2010 Repeat Violator: NO
TCEQ Region:	REGION 13 - SAN ANTONIO		
Date Compliance History Prepared:	March 16, 2011		
Agency Decision Requiring Compliance History:	Permit - issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit.		
Compliance Period:	February 09, 2006 to March 16, 2011		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	T. Reidy	Phone:	512-239-1000

Site Compliance History Components

- | | |
|--|--|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | Yes |
| 3. If Yes, who is the current owner? | <u>SJWTX , Inc.</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>Bexar Metropolitan Water District Public Facility Corporation</u> |
| 5. When did the change(s) in ownership occur? | <u>11/02/2010</u> |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 01/27/2010 (785067)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

Compliance History

Customer/Respondent/Owner-Operator:	CN602989396 SJWTX, Inc.	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN102806924 BULVERDE 46 WATER RECYCLING CENTER	Classification: HIGH	Site Rating: 0.00
ID Number(s):	WASTEWATER PERMIT		WQ0014131001
Location:	LOCATED BETWEEN MANNING AND BRONCO RD, APPROX .5 MILE N OF HWY 44, JUST W OF THE CORPUS CHRISTI AIRPORT.		
TCEQ Region:	REGION 13 - SAN ANTONIO		
Date Compliance History Prepared:	March 10, 2011		
Agency Decision Requiring Compliance History:	Permit - Issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit.		
Compliance Period:	June 02, 2005 to March 10, 2011		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	T. Reidy	Phone:	512-239-1000

Site Compliance History Components

- | | |
|--|--|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | Yes |
| 3. If Yes, who is the current owner? | <u>SJWTX, Inc.</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>Bexar Metropolitan Water District Public Facility Corporation</u> |
| 5. When did the change(s) in ownership occur? | <u>11/02/2010</u> |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the state of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 01/27/2010 (785067)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A