

WASTEWATER SERVICE AGREEMENT

**BETWEEN THE CITY OF HUTTO
AND
KELLY LANE UTILITY COMPANY**

This Wastewater Service Agreement (the "Agreement") is entered into between the City of Hutto ("Hutto") and Kelly Lane Utility Company ("Kelly Lane") for the purposes and consideration set forth herein.

RECITALS

WHEREAS, Hutto is a general law municipal corporation organized in accordance with the laws of the State of Texas; and

WHEREAS, Kelly Lane is a Texas corporation; and

WHEREAS, HM456 is a Texas limited partnership which owns certain real property in Williamson County, Texas; and

WHEREAS, both Hutto and Kelly Lane are "retail public utilities" as that term is defined in section 13.002 of the Texas Water Code and Texas Natural Resource Conservation Commission ("TNRCC") rule 291.3; and

WHEREAS, Hutto holds a TNRCC Certificate of Convenience and Necessity ("CCN") for wastewater service within a portion of its current city limits (CCN No. 20122); and

WHEREAS, Hutto has applied to amend its wastewater CCN to expand its service area (Application No. 31060-C; TNRCC Docket No. 96-0654-UCR; SOAH Docket No. 582-96-0915); and

WHEREAS, Kelly Lane holds a TNRCC CCN for wastewater service within a portion of Travis County (CCN No. 20720); and

WHEREAS, Kelly Lane has applied to amend its wastewater CCN to expand its service area (Application No. 31780-C; TNRCC Docket No. 97-0906-UCR); and

WHEREAS, there is a partial overlap between the additional service areas requested by Hutto and Kelly Lane, which dispute is resolved by a September 16, 1998 Mediated Settlement Agreement; and

WHEREAS, there are and will be persons in Hutto's ETJ south of Brushy Creek who require or will require wastewater collection, transportation, treatment and disposal services; and

WHEREAS, Kelly Lane has entered into a contract with HM456, the owner of the land referred to as the "Jenkins Tract No. 1" and the "Jenkins Tract No. 2", which tracts are more particularly described in Exhibits "A" and "B", to provide wastewater to Jenkins Tract No. 1 and Jenkins Tract No. 2 (Jenkins Tract No. 1 and Jenkins Tract No. 2 are collectively referred to as the "Jenkins Tract"); and

WHEREAS, Kelly Lane is operating a wastewater collection and transportation system within the northern portion of Travis County and has a 15" sewer line approximately 60 feet south of the Jenkins Tract, at the existing manhole in The Ridge at Steeds Crossing (a subdivision located South of Jenkins Tract No. 1 across County Road 138) in Derby Day Drive located closest to County Road 138, a location also shown on Figure C1 of the preliminary plat submitted to Hutto on April 9, 1998; and

WHEREAS, the owner of the Jenkins Tract, while not a party to this Agreement, has been requested to approve this Agreement by Kelly Lane in order to acknowledge that HM456 understands and approves the effect of this Agreement on Kelly Lane's obligations under the Kelly Lane/HM456 Agreement. HM456 has specifically acknowledged that Kelly Lane has not breached its contract for service to the Jenkins Tract by entering into this Agreement with Hutto; and

WHEREAS, to make the investment required to provide wastewater treatment and disposal services as provided in this Agreement, Kelly Lane requires assurances that its investment will be protected; and

WHEREAS, Hutto believes that in keeping with State policy and in the best interest of Hutto that wastewater treatment and disposal services for land within the ETJ of Hutto be provided on an area-wide basis by Hutto as retail provider rather than through a number of smaller wastewater treatment and disposal facilities, with the sole exception of the Jenkins Tract No. 1.

WHEREAS, the parties and HM456 have agreed that Hutto should provide retail public utility service to the Jenkins Tract with Kelly Lane providing exclusive wholesale wastewater service to Hutto for the first 469 L.U.E.s on the Jenkins Tract No. 1.

WHEREAS, the City of Hutto is aware of the June 9, 1999 Amended and Restated Contract for Wastewater Service and Reservation Agreement between Kelly Lane and HM456 revising the rights and obligations of Kelly Lane and HM456 regarding wastewater service to the Jenkins Tract in light of this Agreement.

WHEREAS, Hutto has entered into a wastewater Service Agreement with HM456 as of June 9, 1999 ("Hutto - 456 Agreement") to provide Retail Service to the Jenkins Tract.

WHEREAS, in order to memorialize the agreements regarding the above-referenced recitals, the parties enter into this Agreement.

NOW THEREFORE, for and in consideration of the above referenced recitals, all of which are true and correct, the mutual promises, covenants, obligations and benefits in this Agreement and incorporating all of the foregoing recitals herein by reference, then Hutto and Kelly Lane contract and agree as follows.

I.

DEFINITIONS AND INTERPRETATIONS

1.1 Definitions. Unless the context requires otherwise, and in addition to the terms defined above, the following terms and phrases used in this Agreement shall have the meanings set out below:

1.1.1 "Alternate Delivery Point" means a Delivery Point (other than the Primary Delivery Point) designated by mutual consent of the engineer for Kelly Lane, the Hutto City Engineer, and the engineer for HM456, and located within the boundaries of the ETJ of Hutto south of Brushy Creek where Hutto will deliver wastewater to Kelly Lane.

1.1.2 "Collection System" means the integrated wastewater collection system constructed and acquired or hereafter constructed and acquired within the Service Area of Hutto, consisting of all interconnected sanitary sewers, manholes, pumping works, intercepting sewers, equipment and all other works and appurtenances related thereto, including Hutto Inflow Lines, together with all extensions, substitutions, replacements and additions thereto, for the purpose, directly or indirectly, of collecting Waste generated in the Service Area of Hutto and transporting it to a Delivery Point or Points for delivery to Kelly Lane.

1.1.3 "Kelly Lane" means Kelly Lane Utility Company and any successors, representatives and assigns who may succeed at any time to the rights and obligations of Kelly Lane under the terms of this Agreement.

1.1.4 "Kelly Lane Inflow Lines" means any sewage line owned and/or constructed by Kelly Lane to transport Wastewater collected by Hutto in the Collection System and delivered to Kelly Lane under this Agreement from a Delivery Point to a Plant.

1.1.5 "Delivery Point" means a point designated by mutual consent of the engineer for Kelly Lane and the Hutto City Engineer, the engineer for HM456 to which a Hutto Inflow Line shall be constructed for delivery of Waste from the Collection System into a Kelly Lane Inflow Line, and refers, as applicable, to the Primary Delivery Point or an Alternate Delivery Point.

1.1.6 "HM456" means HM456, Ltd., a Texas Limited partnership, the owner of the Jenkins Tract.

1.1.7 "Hutto" means City of Hutto.

1.1.8 "Hutto Inflow Line" means a sewage line constructed by Hutto to deliver Wastewater collected by Hutto in the Collection System to a Delivery Point.

1.1.9 "Industrial Waste" means water-borne liquid, gaseous or solid substances that result from any process of industry, manufacturing, trade or business and includes the term "commercial wastes".

1.1.10 "Infiltration Water" means water that leaks into the Collection System.

1.1.11 "Interim Basis" means a period of time commencing on the date of this Agreement and ending on January 1, 2020.

1.1.12 "Jenkins Tract" means collectively the Jenkins Tract No. 1 which is described on Exhibit "A" and the Jenkins Tract No. 2 which is described on Exhibit "B".

1.1.13 "Jenkins Tract No. 1" means the real property owned by HM456 described on Exhibit "A".

1.1.14 "Jenkins Tract No. 2" means the real property owned by HM456 described on Exhibit "B".

1.1.15 "L.U.E." means living unit equivalent and is a measure of the estimated average daily volume of Wastewater generated by a single family residence.

1.1.16 "Party" means Hutto and Kelly Lane.

1.1.17 "Person" means any individual, public or private corporation, district, authority, political subdivision or other agency or entity of the State of Texas or the United States; any incorporated city or village, whether general law or home-rule; any partnership, joint venture, association, trust, firm, individual, or other entity whatsoever.

1.1.18 "Plant" means a wastewater treatment plant owned or operated by Kelly Lane or an affiliate of Kelly Lane, any licensed Wastewater treatment plant the owner of which has entered into an agreement with Kelly Lane to receive Waste from the Service Area of Hutto and all treatment works related to any such plant.

1.1.19 "Primary Delivery Point" means the Delivery Point designated by mutual consent of the engineer for Kelly Lane, the Hutto City Engineer and the engineer for HM456, which is the existing manhole in The Ridge at Steeds Crossing (a

subdivision located South of Jenkins Tract No. 1 across County Road 138) in Derby Day Drive located closest to County Road 138.

1.1.20 "Regulatory Requirements" means the requirements and provisions of any and all federal, state or local laws, rules, regulations, permits or other orders adopted from time to time concerning matters contained in this Agreement.

1.1.21 "Retail Service" means the provision of retail Wastewater collection and transportation service by Hutto to any party for land the party owns or occupies within the Service Area as defined below, including the transportation of the Wastewater to the Delivery Points.

1.1.22 "Service" means Retail Service and Wholesale Service.

1.1.23 "Service Area" means the first 469 L.U.E.s on the portion of the Jenkins Tract No. 1 south of the dam, shown on plats currently pending before the City of Hutto and also as shown on Exhibit "A".

1.1.24 "Wholesale Service" means the treatment and disposal by a Plant, on a wholesale basis, of all Waste delivered through the Collection System of Hutto to Kelly Lane that is generated in or arising out of activities and processes within the Service Area.

1.1.25 "Waste" or "Wastewater" means sewage and industrial, municipal, agricultural, recreational and other waste (as those terms are defined in §26.001 of the Texas Water Code) collected by the Collection System, together with such infiltration water as may be present and permitted.

1.2 Other Terms. Other terms used herein shall be given their normal meanings unless defined in Chapters 13 or 26 of the Texas Water Code or in the Rules of the Texas Natural Resource Conservation Commission, in which event the definitions used in said Code and Rules shall apply.

1.3 Convenience and Context. The titles and headings of the articles and sections of this Agreement have been inserted for convenience of reference only; are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof; and shall never be considered or given any effect in construing this Agreement or any provision hereof or in ascertaining intent, if any question of intent should arise. Unless the context requires otherwise, words of the masculine gender shall be construed to include correlative words of the plural number and vice versa.

1.4 Interpretations. This Agreement and all the terms and provisions herein shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of this Agreement. The parties agree that this Agreement shall not be construed in favor of or against either party on the basis that the party did or did not author the Agreement.

Nothing in this Agreement shall be construed to violate nor shall either party hereto be required by the terms and provisions of this Agreement to violate any Regulatory Requirements, and all acts done pursuant to this Agreement shall be performed in such a manner as to conform thereto.

II.

SERVICE AND OPERATION OBLIGATIONS

2.1 Interim Service. Hutto and Kelly Lane agree that Hutto will provide Retail Service to the Jenkins Tract.

2.1.1 Jenkins Tract No. 1. Hutto agrees that Kelly Lane will provide exclusive Wholesale Service to Hutto on an Interim Basis for 469 L.U.E.s of wastewater that is generated and collected in the Jenkins Tract No. 1 by means of the Collection System and transported thereby to the Primary Delivery Point. Subject to the Hutto - 456 Agreement and Section 2.7.3 of this Agreement, Hutto will grant Retail Service to and authorize connection to Hutto's Collection System by any party requesting such service for land that party owns or occupies within the boundaries of the Service Area.

2.1.2 Jenkins Tract No. 2. Hutto's agreement to provide wastewater service to any person requesting Retail Service for land in the service area specifically includes, without limitation, the Jenkins Tract No. 2. Such service will be provided in accordance with the Hutto - 456 Agreement and Section 2.7.3 of this Agreement.

2.2 Private Sewage Facilities Prohibited. Hutto agrees that, to the extent authorized by law, unless Kelly Lane consents in writing thereto, Hutto will not allow the use of private sewage facilities, as defined in 30 T.A.C. §213.3 (such as septic tanks), on any developed lots in the Service Area.

2.3 Planning for Growth. To assure orderly and progressive development of the land in the Service Area and the efficient and economical operation and management of the Collection System and the Plants, the parties agree to cooperate and coordinate their efforts in identifying, planning and constructing additions to the Collection System and the Plants that may be required from time to time to meet the then existing and reasonably projected needs and demands for Service in the Service Area. In furtherance of this objective, the parties agree to engage in a free and open exchange of information and communication on their respective wastewater operations and requirements so that the need for planning and construction of additions to their respective facilities can be identified far enough in advance for the parties to obtain additional governmental authorizations, make financing arrangements and take such other actions as may be available and operations in a timely manner. The parties agree to pursue all such actions expeditiously to accomplish the necessary additions in a timely manner.

2.4 Delivery and Transfer of Waste. Hutto will cause the Waste collected in the Collection System to be transported in the Collection System to the Delivery Point or Points as designated by mutual consent of Kelly Lane's engineer, the City of Hutto engineer and the engineer for HM456 for each such line. Upon payment to Kelly Lane of the requisite capital recovery fees and obtaining all approvals (including but not limited to easements to provide service) Kelly Lane agrees to construct, if necessary and upon payment of the costs of such Inflow Line(s) by the property developer or customer, a Kelly Lane Inflow Line or Lines to connect to Hutto's Inflow Line or Lines at the Delivery Point or Points and to receive the Waste delivered thereto by Hutto, transport the Waste to a Plant or Plants, and treat and dispose of the Waste received from Hutto. The property developer or customer will be responsible for paying for the costs of off-site improvements needed to transport the waste to a Kelly Lane Delivery Point; Hutto is not obligated to pay any costs for off-site improvements.

2.5 Capital Costs. Kelly Lane will pay all capital costs for the construction and acquisition of the Plants and subject to paragraph 2.4, the Kelly Lane Inflow Lines. As provided in Section 2.4, Hutto will be responsible for ensuring that the capital costs of the Hutto Inflow Lines and the capital costs incident or relating to the acquisition, construction, extension and enlargement of the Collection System are paid by the property developer or customer.

2.6 Operation and Maintenance Expenses. Kelly Lane shall be responsible for and shall pay all operation and maintenance expenses for the Plants and the Kelly Lane Inflow Lines. Hutto shall pay and shall be responsible for all operation and maintenance expenses of Hutto's Collection System and the Hutto Inflow Lines.

2.7 Rates, Fees and Billings.

2.7.1 Unless the parties agree otherwise in writing, individual users to whom Retail Service is provided pursuant to this Agreement are and will be individual retail customers of Hutto. Hutto will establish rates and charges for Retail Service to its customers in the Service Area, except that the monthly retail rate to Hutto customers may not exceed \$40. Hutto is a wholesale customer of Kelly Lane in the Service Area. Kelly Lane will charge and Hutto will pay Kelly Lane a Monthly Rate for Wholesale Service for any customer or person receiving Retail Service from Hutto in the Service Area as provided in Section 2.7.4 below. Hutto is responsible for billing and collecting the rates and charges from its customers.

2.7.2 As to the Service Area, Hutto shall collect, and share equally with Kelly Lane, an L.U.E. fee (or impact fee) as established by the Amended and Restated Contract for Wastewater Service and Reservation Agreement ("Amended Contract") between Kelly Lane and HM456 for each connection to the Collection System for which Kelly Lane provides Wholesale Service and Hutto provides Retail Service; provided, however, this requirement does not apply to the first 284 L.U.E.'s in the Service Area, because L.U.E. fees have already been paid. As to L.U.E. fees collected by

1750
Hutto (beyond the first 284), Hutto agrees to collect all L.U.E. fees for all lots in any Phase or section of the Jenkins Tract No. 1, upon approval of a final plat for such Phase or section. The L.U.E. fee for a multifamily or non-residential customer shall be determined on an L.U.E. equivalent basis, e.g., \$1,500.00 for each L.U.E. equivalent in accordance with City of Hutto criteria, and absent such criteria, based on City of Austin L.U.E. equivalency criteria. Kelly Lane shall have no obligation to provide Wholesale Service for any Phase or Section (beyond the first 284) to the Collection System until Kelly Lane is paid its share of the L.U.E. fees for the Phase or Section. The Wholesale Service commitment (beyond the first 284) of Kelly Lane to Hutto and the Retail Service commitment of Hutto to the party seeking Service shall become effective only when Hutto pays the L.U.E. fee to Kelly Lane for such Phase or Section to be served.

2.7.3 As a pre-condition to Hutto's signing or approving a proposed plat or collecting L.U.E. fees for any property for which Kelly Lane provides Wholesale Service and Hutto provides Retail Service, Hutto shall provide Kelly Lane with the reasonable projections of the developer for the development of and the growth over time in the need for Service to the land for which a Service commitment has been requested.

2.7.4 Monthly Charges

2.7.4.1 Hutto agrees to pay Kelly Lane a rate for Wholesale Service to Hutto each month (the "Monthly Rate") established in the manner and in accordance with the procedure hereafter provided in this subsection 2.7.4. The Monthly Rate shall be based on the number of connections to the Collection System.

2.7.4.2 The Monthly Rate for the calendar years, 1998 through 2010 and thereafter until changed as hereafter provided is \$30.00 per month for each single-family residence, each living unit in a multi-family residential structure, and each L.U.E. of service attributable to a commercial and industrial customer that is connected to the Collection System.

2.7.4.3 Hutto agrees to pay Kelly Lane the required Monthly Rate and Kelly Lane's share of any L.U.E. and tap fees within thirty (30) days after the date Kelly Lane sends a statement to Hutto. Hutto agrees that it will provide Kelly Lane timely and accurate information regarding the date each structure was connected to the Hutto Collection System, and will allow Kelly Lane to inspect and copy its records to verify the dates of each connection to the Hutto Collection System, and collection of L.U.E. and tap fees.

2.7.4.4 Beginning with the calendar year 2010, the Monthly Rate is subject to adjustment, at the option of either party, in the manner set forth in subsection 2.7.4.5, based on the operation and maintenance costs incurred

by Kelly Lane in providing Wholesale Service to Hutto for the calendar year preceding the calendar year in which a party requests an adjustment in the Monthly Rate.

2.7.4.5 After 2010, the Monthly Rate is subject to adjustment no earlier than the second calendar year following the calendar year in which the Monthly Rate was last established or adjusted.

2.7.4.6 The party seeking a review and adjustment of the Monthly Rate must so notify the other party in writing between January 1 and March 31 of the calendar year for which the adjustment is sought. The adjustment shall be worked out through consultations and negotiations between Hutto and Kelly Lane. If the parties are unable to reach agreement, in whole or in part, regarding adjustments to the Monthly Rate through consultations and negotiations, then the adjustments which are in dispute shall be resolved through rate setting proceedings in arbitration under paragraph 6.10 herein.

2.8 New Taps. Hutto shall be responsible for making all taps to the Collection System but may contract with Kelly Lane or any other entity to perform this service. Hutto agrees that it will not authorize a tap to be made or accept Wastewater from a new tap to the Collection System unless and until Kelly Lane and Hutto have received all L.U.E. fees, connection fees, charges and other costs to which they are entitled under their respective tariffs or under this Agreement. Hutto may charge and collect appropriate tap fees for connecting any improvements to the Collection System, except (1) that the tap fee per connection on the Service Area shall be \$400.00. The tap fees for the first 284 L.U.E.s in the Service Area are to be paid by HM456 to 685 Ltd to be applied to the note of to Kelly Lane, and the tap fees for L.U.E.'s 285-469 in the Service Area are to be shared equally between Hutto and Kelly Lane. Hutto will collect the tap fees, and remit Kelly Lane its portion within 30 days after receipt.

2.9 Certificates and Permits. Kelly Lane agrees to submit from time to time and in a timely manner, as and if necessary, all appropriate applications to the Texas Natural Resource Conservation Commission under Chapters 13 and 26 and other applicable provisions of the Texas Water Code and under the Commission's rules, and to prosecute the same with due diligence and in good faith to a conclusion as required to become and remain authorized to provide Wholesale Service throughout the Service Area. Hutto agrees to approve and actively support the applications provided they are consistent with the terms and provisions of this Agreement. Kelly Lane also agrees to acquire and maintain in force and effect throughout the term of this Agreement all other certificates, permits and authorizations required for its operations hereunder, and to comply with all Regulatory Requirements. The parties mutually agree to actively support each other in any undertakings in connection with any certifications, permits or authorizations, including without limitation waste discharge permit renewals and amendments, and CCN proceedings required of either of them in the exercise of their respective rights, duties and obligations under this Agreement, provided such undertakings and the purposes and

objectives thereof are consistent with the terms, provisions and purposes of this Agreement. However, the support required herein shall not obligate the supporting party to become a designated party to any such application or proceeding, to pay any of the costs and expenses incurred by the party that initiates or is the subject of the application or proceeding, or to develop and present evidence or testimony in or for the application or proceeding other than evidence or testimony expressing the supporting party's support for the other party.

2.10 Service Areas. As part of the consideration for the execution of this Agreement, except as set forth in this Agreement:

2.10.1 Neither party will provide Service, directly, indirectly or through cooperation with third person's in any part of the other party's CCN, without the express written approval of the other party.

2.10.2 Neither party will apply for a wastewater CCN (or any other type of authorization) to provide Service in any part of the other party's CCN, without the express written approval of the other party.

2.10.3 Neither party will support a third person's efforts to provide Service, or obtain a CCN (or other type of authorization) in any part of the other party's CCN, without the express written approval of the other party.

2.10.4 Hutto and Kelly Lane agree to make reasonable efforts to oppose any third person's efforts to provide Service or obtain authorization to provide Service in any part of the other party's CCN.

2.11 Kelly Lane agrees that it will cooperate with Hutto to implement the mediated Settlement Agreement dated September 16, 1998.

2.11.1 Within forty-five (45) days after the effective date of this Agreement, Kelly Lane will amend its application No. 31780-C to delete the overlap area from its requested CCN service area.

2.11.2 Within forty-five (45) days after the effective date of this Agreement, Kelly Lane will submit a written withdrawal of its protest of Hutto's application to amend Hutto's CCN. The withdrawal letter will be submitted to the TNRCC, and as necessary, the State Office of Administrative Hearings ("SOAH").

2.12 Hutto will cooperate with Kelly Lane to implement the September 16, 1998 Mediated Settlement Agreement.

2.12.1 Within forty-five (45) days after the effective date of this Agreement, Hutto will submit a written withdrawal of its protest of Kelly Lane's application to amend

Kelly Lane's CCN. The withdrawal letter will be submitted to the TNRCC, and as necessary, the State Office of Administrative Hearings ("SOAH").

III.

QUANTITY, MEASUREMENT OF WASTE; TITLE

3.1 Quantity of Waste Discharged. During the term of this Agreement, Hutto shall transport and discharge from the Hutto Inflow Lines into Kelly Lane Lines at the Point of Delivery all Waste collected in the Service Area by the Collection System, subject to the terms of this Agreement. Kelly Lane shall receive at the Point of Delivery all Waste meeting the requirements of Articles III and IV hereof; provided, however, such Waste shall not be discharged at a rate or rates of flow in excess of the actual hydraulic capacity of Kelly Lane Inflow Lines receiving the Waste or at a quality in violation of the terms of this Agreement.

3.2 Title. Title to all Waste deliverable under this Agreement to Kelly Lane shall remain in Hutto until it reaches the Delivery Point, and upon passing through the Delivery Point, title thereto shall pass to Kelly Lane. It is specifically agreed that Hutto shall have exclusive control and possession of and be solely responsible for all Waste collected by the Collection System until the same passes through the Delivery Point; thereafter, Kelly Lane shall have exclusive control and possession thereof and be solely responsible therefor.

3.3 Conservation Measures. Hutto will require all of its users to install water conservation devices as contained in the water conservation policy of Kelly Lane, provided such policy is reasonable and consistent with the state's water conservation policy and requirements.

3.4 Irrigation. In the interest of water conservation and protection of water quality, the parties agree to consider development of a mutually agreeable plan for the reuse of Wastewater collected by Hutto and treated by Kelly Lane, for irrigation of parkland and other lands in the Service Area of Hutto, as and where appropriate, and to the extent economically feasible. Any plan developed and the implementation thereof shall be in compliance with applicable Regulatory Requirements.

IV.

REGULATION OF QUALITY OF WATER DELIVERED AND WASTES RECEIVED

4.1 Quality of Waste Delivered. The Waste to be delivered by Hutto to Kelly Lane shall be comparable in quality to municipal waste.

4.2 Regulation of Quality of Waste. In order to permit Kelly Lane to properly treat and dispose of the Waste delivered by Hutto to Kelly Lane in compliance with all regulatory

requirements, to protect the public health, preserve and protect the physical, chemical and bacteriological quality of public water and watercourses, and protect the properties and components of any Plant used by Kelly Lane for treatment of waste from the Collection System, Hutto and Kelly Lane agree that the quality and strength of Waste collected by the Collection System must be regulated. Hutto agrees to regulate such quality and strength of the Waste to be discharged into the Collection System as provided in this Agreement. The parties further agree that the obligation of Kelly Lane to receive Waste from Hutto shall depend upon compliance by Hutto with the terms of this Agreement.

4.3 Admissible Waste. Waste discharged into the Collection System for delivery to Kelly Lane shall consist only of Waste which is amenable to biological treatment at the Plant used by Kelly Lane for treatment of Waste from the Collection System, and consistent with the standards specified in Sections 4.1 and 4.4 herein.

4.4 Non-Municipal Waste. Hutto agrees to pass and strictly enforce a pre-treatment order which will apply to all industrial, recreational, agricultural, and other waste (as these terms are defined in §26.001, Texas Water Code, collectively called herein "non-municipal waste") entering the Collection System. Hutto will not permit or allow any non-municipal waste to enter into the Collection System that is in violation of the pre-treatment ordinance.

4.5 Testing of Waste. Kelly Lane shall be entitled to collect samples of the Waste at each Delivery Point hereunder and cause the same to be analyzed by a laboratory in accordance with the appropriate methods to determine if such Waste is within the qualities specified in Sections 4.1 and 4.4 above. If the analysis discloses that the Waste does not comply with the qualities specified, Kelly Lane will immediately notify Hutto and Hutto shall require the offending originator either to cease discharging such Waste into the Collection System or to pre-treat such Waste.

4.6 Damages. If at least once during each week for four (4) consecutive weeks, the samples taken pursuant to Section 4.5 herein indicate that the Waste is not of the quality required by this Agreement, Kelly Lane shall notify Hutto and shall have the right to bill Hutto for all costs of laboratory testing and analysis. Provided, however, that if the Waste is not of the quality required by this Agreement at least once during each week for any eight (8) consecutive weeks, then Kelly Lane shall have the right to charge Hutto not only the costs of the laboratory testing and analysis for each sample that indicates a violation of this Agreement, but also Kelly Lane's reasonable costs in collecting such sample and any additional costs and expenses incurred by Kelly Lane attributable to such violation, including reasonable attorney's and engineering fees, and penalties and assessments levied by governmental authorities having jurisdiction.

4.7 Independent Contractors. Kelly Lane and Hutto are independent contractors in fulfilling their respective obligations under this Agreement, and nothing herein shall be interpreted as changing or modifying the relationship of the parties. Any such change or modification must be in writing and signed by both parties.

4.8 Regulatory Action. The parties recognize that the obligations of Kelly Lane and Hutto as provided in this Agreement are subject to all present and future Regulatory Requirements, and the parties agree to cooperate in making any applications, obtaining permits and approvals as necessary and doing such other things and taking such other actions as may be desirable in order to comply with all Regulatory Requirements and accomplish the purposes of this Agreement.

V.

COLLECTION SYSTEM

5.1 Acquisition, Construction and Maintenance of the Portion of Hutto's Collection System used for wastewater that is delivered to Kelly Lane. Hutto will, at its sole cost and expense, design, acquire, construct, maintain, and operate the Collection System appropriate for collecting waste in accordance with sound engineering principles, all Regulatory Requirements and the pre-treatment ordinance. The Collection System shall include all manholes, lift stations and other pertinent facilities adequate to take and gather waste within the Service Area of Hutto and deliver the same to Kelly Lane at the Delivery Point or Points. Hutto will operate and maintain the Collection System in good condition and shall promptly repair any leaks or breaks therein and shall undertake such action as may be required to control infiltration water to the extent that such infiltration water can reasonable be limited. If a break or leak occurs which allows abnormal infiltration water into the Collection System, and such break or leak is not repaired within thirty (30) days after notice by Kelly Lane to Hutto, Kelly Lane may, at its option, repair the same and charge Hutto the actual cost of repairing the same plus twenty percent (20%) of the actual cost of the repairs. Such sum shall be due and payable within thirty (30) days following receipt of a statement therefor by Hutto.

5.2 Plumbing Code and Pre-Treatment. Hutto and Kelly Lane agree that the establishment of a plumbing code and pre-treatment requirements by Hutto is a vital part of the proper operation of the Collection System. Thus, to the extent authorized by law, Hutto agrees to adopt effective plumbing code and pre-treatment requirements. Hutto shall require all persons connected to the Collection System from the date of this Agreement to conform fully to Hutto's plumbing code and pre-treatment requirements. Hutto agrees to serve only those persons that comply with Hutto's plumbing code and pre-treatment requirements and to take appropriate action to enforce the provisions of this Section.

VI.

MISCELLANEOUS PROVISIONS

6.1 Term. This Agreement shall continue in full force and effect until the year January 1, 2020. It shall then be renewed for additional periods of ten (10) years if both parties give written notice to the other party within six (6) months in advance of the termination date advising that the parties desire to renew this Agreement. In the event that either party

does not elect to renew this Agreement, Kelly Lane shall incur no cost regarding the diversion of the wastewater generated within areas served by Kelly Lane in the ETJ of Hutto. All such costs of termination and diversion of wastewater shall be borne by Hutto. After the termination of this Agreement, Kelly Lane shall retain all of its property and assets and Hutto shall retain all of its property and assets.

6.2 Force Majeure. In the event either party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, then the obligations of such party, to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. As soon as reasonably possible after the occurrence of the force majeure relied upon, the party whose contractual obligations are affected shall give notice and full particulars of such force majeure to the other party. Such cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure", as used herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the policy or enemy, orders of any kind of government of the United States, the State of Texas, the City of Hutto or any other entity other than a party to this contract, or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of water supply, and any other incapacities of either party, similar to those enumerated, which are not within the control of the party claiming such inability and which such party could not have avoided by the exercise of due diligence and care. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable to it in the judgment of the party having the difficulty.

6.3 Remedies upon Default. It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default, but all remedies existing at law or in equity may be availed of by either party and shall be cumulative; provided, however, in this Agreement, the only manner of proceeding to settle any controversy, claim or dispute arising out of or relating to this Agreement, or any breach thereof, shall be by arbitration as provided in Section 6.10 of this Agreement.

6.4 No Additional Waiver Implied. No waiver or waivers of any breach or default (or any breaches or defaults) by either party hereto of any term, covenant, condition, or liability hereunder, or of performance by the other party of any duty or obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind under any circumstances.

6.5 Addresses and Notices. Unless otherwise provided in this Agreement, any notice, communication, request, reply, or advice (herein severally and collectively, for

convenience, called "notice") herein provided or permitted to be given, made, or accepted by either party to the other must be in writing and may be given or be served by depositing the same in the United States mail, postpaid, registered, or certified, and addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party or by facsimile transmission or prepaid telegram, when appropriate, addressed to the party to be notified. Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated in this Agreement, on the second mail delivery day after the day it is so deposited. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as shown on the signature page of this Agreement. The parties shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address by at least fifteen (15) days' written notice to the other party.

6.6 Modification. This Agreement shall be subject to change or modification only by the execution of a writing signed by authorized representatives of each of the parties hereto.

6.7 Notice of Proceedings Pertaining to Agreement. Kelly Lane shall notify Hutto of all applications, hearings, enforcement actions and other proceedings to which Kelly Lane is a party, affecting or pertaining to this Agreement or the subject matter hereof, at or before the Texas Natural Resource Conservation Commission or any other agency having jurisdiction as soon as practical after any such application, activity or proceeding is initiated or commenced.

6.8 Parties in Interest. This Agreement shall be for the sole and exclusive benefit of Hutto and Kelly Lane and their successors and assigns.

6.9 Severability. The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section or other part of this Agreement or the application thereof to any person or circumstances shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section or other part of this Agreement to other persons or circumstances shall not be affected thereby.

6.10 Arbitration. Except as otherwise expressly provided in this Agreement, any controversy, dispute or claim arising out of or relating to this Agreement, or any breach thereof, shall be settled by arbitration in accordance with the Commercial Rules of Arbitration of the American Arbitration Association; provided, however, the arbitrator to whom any controversy, which is subject to arbitration under the terms of this Agreement, is submitted in accordance with the provisions hereof, shall (1) reside in Travis or Williamson Counties, Texas; (2) the arbitrator must be an attorney, engineer or accountant; and (3) who is familiar with water and sewer utilities and has at least ten (10) years of experience in this area. The arbitrator has jurisdiction and authority to interpret and apply

the applicable provisions of this Agreement in accordance with the laws of the State of Texas. Such application or interpretation of the provisions of this Agreement must be in accordance with the spirit and letter of this Agreement. No arbitrator shall have the jurisdiction or authority to add to, take from, nullify, or modify any of the terms of this Agreement, directly or indirectly, under the guise of interpretation. The arbitrator shall be bound by the facts and evidence submitted in the hearing and may not go beyond the terms of this Agreement in rendering the award. It is further understood and agreed that the power of the arbitrator shall be strictly limited to determining the meaning and interpretation of the explicit terms of this Agreement as herein expressly set forth and that no arbitrator shall have the power to base any award on any alleged practices or oral understandings not incorporated herein. Any award rendered in arbitration proceedings under this Agreement shall be subject to judicial review at the instance of either party for the purpose of determining whether the arbitrator exceeded the power as herein limited, and neither party shall be deemed to have waived its right to such review by proceeding to arbitration. Within the power as herein limited, the arbitrator may enter an award based upon any remedy available to the parties as provided in Section 6.3 of this Agreement. The arbitrator shall issue his award within 180 days after the demand for arbitration is made. Judgment upon the award may be entered in any court having jurisdiction thereof. Any such arbitration proceeding shall be held at the municipal offices of Hutto, or such other place in Williamson County as may be designated by the parties, and any expenses incurred by any party in connection with any such arbitration proceeding shall constitute an operation and maintenance expense of that party. Each party represents that this Agreement was concluded upon the advice of counsel. The provisions of this section are subject to and shall not be considered as attempting to exclude the jurisdiction of the Texas Natural Resource Conservation Commission or any other governmental authority having jurisdiction to arbitrate or settle disputes, hold hearings or enter orders relating to the subject matter of this Agreement.

6.11 Merger. This Agreement, together with the exhibits attached hereto and made a part hereof for all purposes, constitutes the entire agreement between the parties relative to the subject matter hereof.

6.12 Binding. This Agreement shall be binding on and inure to the benefit of the respective parties, their successors and assigns.

6.13 Attorneys' Fees. The prevailing party in any legal proceeding, including litigation, arbitration or other alternative dispute resolution process, as determined by the decision maker, shall be entitled to receive from the other party reasonable attorneys' fees and costs.

EXECUTED as of the 9TH day of JUNE, 1999.

CITY OF HUTTO

KELLY LANE UTILITY COMPANY

By: 

Glenn Pierce, Mayor
P.O. Box 266
Hutto, Texas 78634-0266

By: 

Kenneth W. Durr, President
205 East 43rd Street
Austin, Texas 78751-3805