

**AMENDED AND RESTATED
WASTE DISPOSAL CONTRACT
BETWEEN
BELL COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1
AND
CITY OF KILLEEN, TEXAS**

THE STATE OF TEXAS §

COUNTY OF BELL §

This **AMENDED AND RESTATED WASTE DISPOSAL CONTRACT** (herein called this “Contract”) is made and entered into as of this [] day of [] 2023, by and between Bell County Water Control and Improvement District No. 1, a conservation and reclamation district and a body politic and corporate, created and operating under the provisions of Article XVI, Section 59 of the Constitution of Texas and operating pursuant to the provisions of Chapter 9005, Texas Special District Local Laws Code, as amended, and Chapters 49 and 51, Texas Water Code, as amended (herein called the “District”), and the **CITY OF KILLEEN, TEXAS**, a municipal corporation and home-rule city situated in Bell County, Texas, organized and operating under the provisions of its charter and the Constitution and laws of the State of Texas (herein called the “City”).

W I T N E S S E T H:

RECITALS

The District owns and operates a regional waste disposal system (defined herein as the “System”) to receive, transport, treat and dispose of Waste (as defined herein) collected by the sanitary sewer systems of the City and the Fort Cavazos Military Reservation (formerly known as the Fort Hood Military Reservation) (“Fort Cavazos”).

The District and the City have previously entered into that certain Waste Disposal Contract, dated as of October 10, 1968, as amended by a First Supplement and Amendment to Waste Disposal Contract, dated as of June 13, 1978, a Second Supplement and Amendment to Waste Disposal Contract, dated as of September 30, 1980, a Third Supplement and Amendment to Waste Disposal Contract, dated as of October 22, 1984, a Fourth Supplement and Amendment to Waste Disposal Contract, dated as of July 3, 1986, a Fifth Supplement and Amendment to Waste Disposal Contract, dated as of August 24, 2004, a Sixth Supplement and Amendment to Waste Disposal Contract, dated as of August 1, 2007, a Seventh Supplement and Amendment to Waste Disposal Contract, dated as of September 28, 2010, and an Eight Supplement and Amendment to Waste Disposal Contract, dated August 26, 2014, each between the District and the City (as supplemented and amended, the “Prior Contract”).

Pursuant to the Prior Contract, the District has financed and constructed various Waste disposal, transmission and treatment facilities that comprise a portion of the System.

In the Prior Contract, the District agreed to operate the System initially for the sole benefit of the City and the United States of America (Fort Cavazos), provided, that the District retained the right to contract with other parties to render Waste disposal services from the operation of the System with the approval of the City and to enlarge the size and capacity of the System for the use and benefit of other parties.

The District and the City have determined to amend and restate the Prior Agreement to (i) provide for the addition of the City of Harker Heights ("Harker Heights") as a customer of the District with a contractual right to discharge Waste into the System and (ii) modify certain provisions of the Prior Agreement relating to maximum discharge quantities for the City and Harker Heights, the price of service, and the allocation of existing and future debt service on debt obligations issued or incurred by the District for the construction or improvement of System facilities.

The District and the City are authorized to enter into this Contract pursuant to the Constitution and laws of the State of Texas, including, Chapter 791, Texas Government Code, as amended and Chapter 30, Texas Water Code, as amended.

The District and the City have agreed to contract in such a manner that the City will make sufficient payments to the District to (i) pay the City's proportionate share of the operation and maintenance expenses of the System, (ii) pay the City's proportionate share of the principal of and interest on debt obligations of the District heretofore and hereafter issued or incurred to borrow funds to acquire, construct and improve the System, and (iii) establish and maintain necessary reserve and contingency funds.

AGREEMENT

For and in consideration of the mutual promises, obligations and benefits of this Contract, the District and the City contract and agree as follows:

Section 1. DEFINITIONS. Unless the context requires otherwise, the following terms and phrases used in this Contract shall have meanings as follows:

"Additional Customers" shall have the meaning assigned to such term in Section 11.

"Bond Order" shall mean the orders, resolutions or indentures adopted by the Board of Directors of the District authorizing the issuance of Bonds and providing for their security and payment, as such orders, resolutions or indentures may be amended or supplemented from time-to-time.

"Bonds" shall mean the issue or issues of bonds, notes or other obligations of the District heretofore or are hereafter issued to acquire or construct the System and any additions, extensions, enlargements, improvements, replacements or modifications thereto, and any issue or issues of refunding bonds, notes or other obligations issued in lieu thereof.

"City" shall have the meaning assigned to such term in the first paragraph hereof.

“City’s Sewer System” means the existing sanitary sewer system of the City, including the sewers, manholes, intercepting sewers, Waste pumping works and all other plants, works or equipment within and without the City, together with all extensions and enlargements thereto.

“Contract” shall have the meaning assigned to such term in the first paragraph hereof.

“Debt Service Requirements” shall mean (i) the principal, premium, if any, and interest due on the Bonds, including any amounts due under bond insurance policies or credit agreements relating thereto, and other obligations, (ii) any payments required by the Bond Orders to be made into debt service reserve funds, contingency funds and other funds or accounts established by the Bond Orders, and (iii) any rebate payments or trustee or paying agent/registrars fees and expenses relating to the Bonds.

“District” shall have the meaning assigned to such term in the first paragraph hereof.

“District’s Negotiated Sewage Service Contract” shall mean that certain utility service contract between the District and the United States of America, being Contract Number DAKF 48-74-C-0126, entitled “Department of the Army Negotiated Sewage Service Contract,” which is hereby incorporated by reference.

“Fixed Charges” shall have the meaning assigned to such term in Section 11.

“Fort Cavazos” shall have the meaning assigned to such term in the recitals hereof.

“Fort Cavazos Measurement Points” shall have the meaning assigned to such term in Section 6.

“Fort Cavazos Points of Entry” shall have the meaning assigned to such term in Section 6.

“Fort Cavazos Sewer System” means the existing sanitary sewer system of the United States of America that serves the Fort Cavazos Military Reservation, including the sewers, manholes, intercepting sewers, Waste pumping works and all other plants, works or equipment within and without Fort Cavazos, together with all extensions and enlargements thereto.

“Harker Heights” shall have the meaning assigned to such term in the recitals hereof.

“Harker Heights Measurement Points” shall have the meaning assigned to such term in Section 6.

“Harker Heights Points of Entry” shall have the meaning assigned to such term in Section 6.

“Industrial Waste” means the liquid and water carried substances resulting from industrial processes, as distinct from Sewage, collected by a sanitary sewer system.

“Infiltration Water” means water which leaks into a sanitary sewer system.

“MGD” means million gallons per day.

“Operating Charges” shall have the meaning assigned to such term in Section 11.

“Plant 1” shall have the meaning assigned to such term, and is more particularly described, in Section 2.

“Plant 1 Maximum Daily Discharge Quantity” means the maximum annual average daily quantity of Waste the City is authorized by this Contract to discharge into Plant 1, measured in MGD, as set forth in Schedule 1.

“Plant 1 Maximum Discharge Quantities” means, collectively, the Plant 1 Maximum Daily Discharge Quantity and the Plant 1 Two-hour Average Discharge Quantity, all as set forth in Schedule 1.

“Plant 1 Two-hour Average Discharge Quantity” means the maximum average quantity of Waste, measured in gallons per minute, that the City is authorized by this Contract to discharge into Plant 1 during any two-hour period, as set forth in Schedule 1.

“Plant 2” shall have the meaning assigned to such term, and is more particularly described, in Section 2.

“Plant 2 Maximum Daily Discharge Quantity” means the maximum annual average daily quantity of Waste the customer is authorized by this Contract to discharge into Plant 2, measured in MGD, as set forth in Schedule 1.

“Plant 2 Maximum Discharge Quantities” means, collectively, the Plant 2 Maximum Daily Discharge Quantity and Plant 2 Two-hour Average Discharge Quantity, as set forth in Schedule 1.

“Plant 2 Two-hour Average Discharge Quantity” means the maximum average quantity of Waste, measured in gallons per minute, that the City is authorized by this Contract to discharge into Plant 2 during any two-hour period, as set forth in Schedule 1.

“Prior Contract” shall have the meaning assigned to such term in the recitals hereof.

“Sewage” means the liquid and water carried waste discharged from sanitary conveniences of dwellings and buildings connected to a sanitary sewer system.

“South Sewer Plant” or “SSP” shall have the meaning assigned to such term, and is more particularly described, in Section 2.

“SSP Maximum Daily Discharge Quantity” means the maximum annual average daily quantity of Waste the City is authorized by this Contract to discharge in SSP, measured in MGD, as set forth in Schedule 1.

“SSP Maximum Discharge Quantities” means, collectively, the SSP Maximum Daily Discharge Quantity and SSP Two-hour Average Discharge Quantity, all as set forth in Schedule 1.

“SSP Measurement Points” shall have the meaning assigned to such term in Section 6.

“SSP Points of Entry” shall have the meaning assigned to such term in Section 5.

“SSP Trunk Sewer Facilities” shall have the meaning assigned to such term in Section 2.

“SSP Two-hour Average Discharge Quantity” means the maximum average quantity of Waste, measured in gallons per minute, that the City is authorized by this Contract to discharge into SSP during any two-hour period, as set forth in Schedule 1.

“System” means the facilities of the District for receiving, transporting, treating and disposing of Waste, consisting of existing facilities acquired or constructed by the District, together with any additions or extensions thereto, and enlargements, improvements, replacements or modifications thereof heretofore or hereafter acquired or constructed, including any of the foregoing as may be necessary to comply with requirements of regulatory agencies of the State of Texas and the United States of America. The System shall not, however, include existing or additional facilities of the District constructed or acquired to serve exclusively customers other than the City, Harker Heights and the United States of America (Fort Cavazos), as provided in Section 220, notwithstanding that such facilities may be physically connected with the System or located on properties of the System.

“System Maximum Discharge Quantities” means, collectively, the 38th Street Treatment Facilities Maximum Discharge Quantities and the SSP Maximum Discharge Quantities, as set forth in Schedule 1.

“TCEQ” means the Texas Commission on Environmental Quality and any successor thereto.

“38th Street Measurement Points” shall have the meaning assigned to such term in Section 6.

“38th Street Points of Entry” shall have the meaning assigned to such term in Section 5.

“38th Street Treatment Facilities” shall have the meaning assigned to such term, and is more particularly described, in Section 2.

“38th Street Treatment Facilities Maximum Daily Discharge Quantity” means the sum of Plant 1 Maximum Daily Discharge Quantity and Plant 2 Maximum Daily Discharge Quantity.

“38th Street Treatment Facilities Maximum Discharge Quantities” means, collectively, the Plant 1 Maximum Discharge Quantities and the Plant 2 Maximum Discharge Quantities, as set forth in Schedule 1.

“38th Street Trunk Sewer Facilities” shall have the meaning assigned to such term in Section 2.

“Trunk Sewer Facilities” means any sewer transmission facilities of the District in which Waste from collecting and lateral sewers is received and transported to the treatment and disposal facilities of the System.

“Waste” means Sewage and Industrial Waste collected by a sanitary sewer system, together with such Infiltration Water as may be present.

Section 2. GENERAL DESCRIPTION OF THE SYSTEM. The District owns and operates the System. The System is designed, by generally accepted criteria, to permit acceptance of an annual average flow rate of 30 MGD.

The System currently includes (i) three (3) Waste treatment plants located at two (2) different sites, such sites being the 38th Street facilities (the “38th Street Treatment Facilities”) and the South Sewer Plant (the “South Sewer Plant” or “SSP”) and (ii) Trunk Sewer Facilities serving the 38th Street Treatment Facilities (referred to herein as the “38th Street Trunk Sewer Facilities”) and the South Sewer Plant (referred to herein as the “SSP Trunk Sewer Facilities”).

The 38th Street Treatment Facilities include (i) the District’s plant no. 1 Waste treatment facility, operating pursuant to TPDES Permit No. WQ0010351-002 (“Plant 1”), which is designed, by generally accepted criteria, to permit acceptance of an annual average flow rate of 18 MGD, and (ii) the District’s plant no. 2 Waste treatment facility, operating pursuant to TPDES Permit No. WQ0010351-003 (“Plant 2”), which is designed, by generally accepted criteria, to permit acceptance of an annual average flow rate of 6 MGD.

The South Sewer Plant (operating pursuant to TPDES Permit No. WQ0014387-001) is designed, by generally accepted criteria, to permit acceptance of an annual average flow rate of 6 MGD.

Section 3. EASEMENTS AND RIGHTS-OF-WAY. If any sewer mains or lines, appurtenances or other facilities of the System should ever be located or need to be located on any land now or hereafter owned by the City or in any present or future roads, streets, alleys, highways, public ways or public places within the present or future corporate limits of the City or within the present or future extraterritorial jurisdiction of the City, the City hereby consents thereto and hereby grants or will grant to the District the right, privilege, easement and right-of-way over, under, along and across, and the franchise of using, such lands, roads, streets, alleys, highways, public ways or public places for the purpose of constructing, maintaining, operating, laying, repairing and removing such sewer mains or lines, appurtenances or other facilities comprising or connecting to the System, provided the District shall promptly restore any such lands, roads, streets, alleys, highways, public ways and public places to substantially their former condition of usefulness. Title to all such facilities shall be and remain in the District.

Section 4. OPERATION OF SYSTEM. While this Contract is in force and effect, the District will use reasonable diligence and care to operate the System in order to continuously hold itself ready, willing and able to render Waste disposal services to the City from the System as provided in this Contract. It is expressly understood and agreed that any obligation on the part of the District to operate the System shall be subject to (a) the District’s obtaining sufficient funds to pay the costs of improving, maintaining and operating the System, and to establish reserve funds, including the sale and delivery of Bonds from time to time upon terms satisfactory to the District; (b) the District’s ability to obtain all real estate, easements, labor, equipment and materials required for the operation of the System; and (c) the District’s obtaining all permits and licenses required to operate the System, including Waste discharge permits issued by TCEQ.

Section 5. QUANTITY AND RATE OF DELIVERY Subject to the terms and conditions of this Contract, the City shall be entitled to discharge into the System for treatment at the applicable points of entry for the 38th Street Treatment Facilities (the “38th Street Points of Entry”) and the South Sewer Plant (the “SSP Points of Entry”), as designated pursuant to Section 8(a), and the District agrees to receive and take at such points of entry, all Waste meeting the requirements of Section 9 which is collected by the City’s Sewer System up to but not to exceed (i) for Plant 1, the Plant 1 Maximum Discharge Quantities, (ii) for Plant 2, the Plant 2 Maximum Discharge Quantities, and (iii) for the South Sewer Plant, the SSP Maximum Discharge Quantities. Such maximum quantities of Waste collected by the City’s Sewer System shall be measured and determined as provided in Section 7. The City agrees to pay the District a surcharge as determined by the District pursuant to Section 11(c) in the event the quantity of Waste discharged by the City’s Sewer System and received and taken by the District’s System exceeds any of the quantities set forth in this Section 5.

The City acknowledges that, pursuant to the rules of the TCEQ, whenever the flow measurements at Plant 1, Plant 2 or the South Sewer Plant reaches 75% of the permitted average daily or annual average flow for such facility for three consecutive months, the District must initiate engineering and financial planning for expansion and upgrade of such facility, and whenever the daily average flow or annual average flow reaches 90% of the permitted average daily or annual flow for Plant 1, Plant 2 or the South Sewer Plant for three consecutive months, the District is obligated to obtain necessary authorization from the TCEQ to commence construction of additional treatment and collection facilities at such facility. The City further acknowledges that the costs incurred by the District for engineering and financial planning and for construction of additional treatment and collection facilities will either be reflected in the District’s Waste service rate or paid from Fixed Charges as provided for in Section 11.

The parties hereto recognize that the District has no obligation under this Contract to accept and treat Waste from the City Sewer System at any System facilities other than those for which discharge quantities are specified in Schedule 1, but in its sole discretion, may allow or provide for such Waste to be accepted and treated at other System facilities.

Section 6. MEASURING EQUIPMENT. The parties recognize that pursuant to the District’s Negotiated Sewage Service Contract the Waste collected by the Fort Cavazos Sewer System will be discharged in part into the City’s Sewer System and will be discharged in part into the Trunk Sewer Facilities of the System at such points of entry as are designated pursuant to Section 8(a) of this Contract (the “Fort Cavazos Points of Entry”). As provided in the District’s Negotiated Sewage Service Contract, the District will install, maintain and operate measuring equipment at each such Fort Cavazos Point of Entry, and each such Fort Cavazos Point of Entry shall also be designated as a Fort Cavazos measurement point (the “Fort Cavazos Measurement Points”) pursuant to Section 8(b) of this Contract.

The parties further recognize that pursuant to the District’s Waste Disposal Contract with Harker Heights, a portion of the Waste collected by the Harker Heights sewer system will be discharged into the System at such points of entry as are designated pursuant to Section 8(a) of this Contract (the “Harker Heights Points of Entry”). As provided in the Harker Heights Contract, the District will install, maintain and operate measuring equipment at each such Harker Heights Point of Entry and each Harker Heights Point of Entry shall also be designated as a Harker Heights

measurement point (the “Harker Heights Measurement Points”) pursuant to Section 8(b) of this Contract.

The District will also furnish, install, operate, maintain and replace measuring equipment of a standard type for measuring properly the total of all Waste discharged into the System from the City’s Sewer System. Such measuring equipment shall be located at each point designated pursuant to Section 8(b) of this Contract as a measurement point for the 38th Street Treatment Facilities (the “38th Street Measurement Points”) and the South Sewer Plant (the “SSP Measurement Points”). All measuring equipment shall remain the property of the District, but the City shall have access thereto at all reasonable times for inspection and examination. The reading, calibration and adjustment of such measuring equipment shall be done only by the employees or independent contractors of the District. All readings of measuring equipment shall be entered upon the proper books and records to be maintained by the District and upon written request, the City may have access to such record books during reasonable business hours.

Not more than three times in each year of operation, the District shall, if requested in writing by the City to do so, calibrate its measuring equipment in the presence of a representative of the City, and the parties shall jointly observe any adjustments which are made to the measuring equipment in case any adjustment is found to be necessary.

The City may, at its option and its own expense, install and operate one or more check meters to check the measuring equipment of the District, but measurement of Waste for the purposes of this Contract shall be made by District’s measuring equipment, except in case of specific written consent by the District. All such check meters shall be of standard make and shall be subject at all reasonable times to inspection and examination by any employee or agent of the District, but the reading, calibration and adjustment thereof shall be made only by the City, except during any period when a check meter may be used under specific written consent by the District for measuring the amount of Waste discharged, in which case the reading, calibration and adjustment thereof shall be made by the District with like effect as if such check meter or meters had been furnished or installed by the District.

Section 7. MEASUREMENT OF WASTE. The quantity of Waste discharged by the City into the 38th Street Treatment Facilities during any period of time shall be computed by determining the total quantity of all Waste discharged into the 38th Street Treatment Facilities by the City, the United States of America and Harker Heights, if any (which shall be determined by the measuring equipment at the 38th Street Measurement Points), and subtracting therefrom (i) the total quantity of Waste discharged by the United States of America as determined by the measuring equipment at the Fort Cavazos Measurement Points and (ii) the total quantity of Waste discharged by Harker Heights as determined by measuring equipment at the Harker Heights Measurement Points for Waste being discharged into the 38th Street Treatment Facilities. The result shall be deemed to be the total quantity of Waste discharged by the City into the 38th Street Treatment Facilities under this Contract. The quantity of Waste discharged by the City into the South Sewer Plant during any period of time shall be computed by determining the total quantity of all Waste discharged into the South Sewer Plant by the City and Harker Heights (which shall be determined by the measuring equipment at the SSP Measurement Point) and subtracting therefrom the total quantity of Waste discharged by Harker Heights as determined by the measuring equipment at the Harker Heights Measurement Points for Waste being discharged into the South Sewer Plant. The result shall be deemed to be the total quantity of Waste discharged by the City into the South Sewer Plant.

The unit of measurement of Waste shall be 1,000 gallons, U.S. Standard Liquid Measure.

The maximum rate at which Waste is discharged into the 38th Street Treatment Facilities shall be determined at the 38th Street Measurement Points.

The maximum rate at which Waste is discharged into the South Sewer Plant shall be determined at the SSP Measurement Points.

Whenever the Waste meter located at any of the Fort Cavazos Measurement Points or the Harker Heights Measurement Points for Waste being discharged into the 38th Street Treatment Facilities is removed or inoperable, the method of determining the quantity of Sewage contributed by the City to the 38th Street Treatment Facilities shall be as follows:

$$K2 = \frac{K1P2}{P1}$$

Where:

P1 = Total Plant Metered Waste (Historical Data for Time in Question);

P2 = Total Plant Metered Waste (Actual Time in Question);

K1 = City Waste (Historical Data for Time in Question); and

K2 = City Waste (Time in Question)

Whenever the Waste meter located at the Harker Heights Measurement Points for Waste being discharged into the South Sewer Plant is removed or inoperable, the method of determining the quantity of Sewage contributed by the City to the South Sewer Plant shall be as follows:

$$K2 = \frac{K1P2}{P1}$$

Where:

P1 = Total Plant Metered Waste (Historical Data for Time in Question);

P2 = Total Plant Metered Waste (Actual Time in Question);

K1 = City Waste (Historical Data for Time in Question); and

K2 = City Waste (Time in Question)

For the purposes of this Section 7, "Historical Data" is defined as the same period of time one year previous to "Time in Question".

Section 8. POINTS OF ENTRY AND TITLE; MEASUREMENT POINTS; TESTING POINTS. (a) The initial points of entry at which Waste shall be discharged by the City into the System shall be the 38th Street Points of Entry and the SSP Points of Entry identified on Appendix B hereto. The City and the District may designate substitute or additional points of entry at any time by mutual agreement. Title to all Waste deliverable hereunder to the District shall remain in the City to the respective point of entry and upon passing through the point of entry, title thereto and to all effluents therefrom shall pass to the District. As between the City and the District, the City shall be in exclusive control and possession of, and solely responsible for, Waste deliverable hereunder until the same shall pass through a point of entry, after which delivery the District shall be in exclusive control and possession thereof and solely responsible therefor. The

initial points of entry at which Waste collected by the Fort Cavazos Sewer System shall be discharged into the System shall be the Fort Cavazos Points of Entry identified on Appendix B hereto. The initial points of entry at which Waste shall be discharged by Harker Heights into the System shall be the Harker Heights Points of Entry identified on Appendix B hereto.

(b) The initial points at which Waste discharged by the City into the System shall be measured shall be the 38th Street Measurement Points and SSP Measurement Points identified on Appendix C hereto. The City and the District may designate substitute or additional measurement points at any time by mutual agreement. The initial points at which Waste collected by the Fort Cavazos Sewer System and by Harker Heights shall be measured shall be the Fort Cavazos Measurement Points and the Harker Heights Measurement Points, respectively, identified on Appendix C hereto.

(c) The initial points at which Waste discharged into the 38th Street Treatment Facilities and the South Sewer Plant shall be tested for compliance with this Contract pursuant to Section 10 hereof shall be those points identified on Appendix D. The City and the District may designate substitute or alternate testing points to those identified on Appendix D or required pursuant to Section 10 hereof at any time by mutual agreement.

Section 9. REGULATION OF WASTE. In order to permit the District to properly treat and dispose of the City's Waste, to protect the public health and to permit cooperation with other entities for the protection of the physical, chemical and bacteriological quality of public waters and watercourses and to protect the properties of the System, the City and the District agree that the quality or strength of all Waste discharged by the City into the System must be regulated. The City agrees to regulate the quality and strength of the Waste to be discharged into the System as set forth in Appendix A. The parties further agree that the obligation of the District to receive Waste into the System shall depend upon compliance by the City with the provisions of Appendix A. The City further agrees that it will make such other and further regulations of the quality or strength of Waste discharged by the City into the System as may be required from time to time to permit the District to operate the System so as to treat and dispose of Waste in compliance with the order, rules, regulations or permits of any regulatory body.

Section 10. TESTING. (a) For the purposes of determining compliance with this Contract, the District will sample and test the quality of Waste discharged from the City to the 38th Street Treatment Facilities and the South Sewer Plant at the respective testing points designated pursuant to Section 8(c) for the 38th Street Treatment Facilities and the South Sewer Plant (the "Existing Sampling Locations") in accordance with the District's standard sampling and testing procedures. At the request of the City, the District will provide the results of such sampling and testing to the City on a monthly basis. If, at any time, the results of the District's sampling and testing of Waste at one of the Existing Sampling Locations indicates that the quality of the Waste discharged from the City to the 38th Street Treatment Facilities or the South Sewer Plant is not in compliance with the Waste quality requirements set forth in this Contract: (i) the District will, as soon as practicable, provide such sampling and testing results to the City; (ii) it shall be the obligation of the City to require the offending originator of such noncompliant materials to undertake remedial pretreatment before discharge into the City's Sewer System; and (iii) upon the request of and at the cost of the City, the District shall establish an additional mutually agreeable permanent sampling location (the "Alternate Sampling Location") to allow both the City and the

District the ability to obtain a representative sample of the Waste discharged from the City to the 38th Street Treatment Facilities or the South Sewer Plant (as applicable). The Alternate Sampling Location will include equipment necessary for both the District and the City to obtain a representative sample of the Waste being discharged into the 38th Street Treatment Facilities or the South Sewer Plant (as applicable) and will utilize sampling equipment as may be mutually agreeable to the District and the City. At the request of and at the cost of the City, Waste samples from the Alternate Sampling Location shall be tested and analyzed by a mutually agreeable third party certified laboratory and the results shall be provided to both the District and the City.

Section 11. PRICE OF WASTE DISPOSAL SERVICES. The District and the City hereby recognize that because the expenses of operation, maintenance and repair of the System and the Debt Service Requirements on Bonds issued to provide the System with which to serve the City and other customers will vary from time-to-time that it is neither practical nor possible to fix a schedule of specific rates in this Contract which will control the price paid by the City to the District for receiving, transporting, treating and disposing of Waste discharged by the City into the District's System throughout the term of this Contract. The parties further recognize, however, that the District is not organized for profit and that its rates for such receiving, transporting, treating and disposing of Waste should at all times be the lowest possible rates which are consistent with good business management on the part of the District and with the commitment which the District must make to its bondholders in order to borrow funds with which to acquire or construct additions and extensions, enlargements, improvements replacements or modifications to the System to provide Waste disposal services. The District further recognizes its obligations, as a public utility, to serve all customers of the same class without discrimination, either as to rates or types of service.

The District will establish rates for two classes of Waste disposal service customers: (1) the United States of America, with charges as prescribed in the District's Negotiated Sewage Service Contract, to which reference is made for full particulars; and (2) the civilian customers of the System, which are currently the City and Harker Heights. The charges to be paid by the civilian customers of the System shall include (a) fixed charges (herein called "Fixed Charges"), (b) annual operation, maintenance and repair charges (herein called "Operating Charges"), and (c) certain surcharges.

A. **Fixed Charges.** Fixed Charges to be paid by the City shall be a monthly amount equal to one-twelfth (1/12th) of the annual Debt Service Requirements of the Bonds for each respective year. The City shall commence monthly payments of Fixed Charges to the District under this provision as of the first day of the month or months after any such Bonds are delivered. Such payments shall be due commencing on such date irrespective of the actual date of completion of construction of the additions, extensions, enlargements, improvements, replacements or modifications of the System financed with such Bonds.

Fixed Charges shall include the following:

- (1) **Fixed Charges (38th Street Treatment Facilities).** Any portions of the costs of the modification or expansion of the 38th Street Treatment Facilities allocated to the United States of America shall be charged as prescribed in the District's Negotiated Sewage Service Contract. Fixed Charges (38th Street Treatment Facilities) to be charged to the District's civilian customers shall include the entire Debt Service Requirements on Bonds hereafter issued for the following

purposes: (i) construct modifications to the 38th Street Treatment Facilities and (ii) construct facilities for the expansion of the 38th Street Treatment Facilities.

Apportionment of such charges with respect to Debt Service Requirements on Bonds hereafter issued shall be made among the civilian customers by the following methods:

- (a) Plant 1 Modifications. The amount of Debt Service Requirements on that portion of Bond moneys used to construct additions, extensions, enlargements, improvements, replacements or modifications to Plant 1 that do not increase any civilian customer's Maximum Daily Discharge Quantity shall be shared by all civilian customers with a contractual right to discharge Waste into Plant 1. The amount to be paid by a particular civilian customer shall be determined by multiplying the total Debt Service Requirements (less any credit to such amount which may result from payments received from any additional customers the District may contract with pursuant to Section 18 (hereinafter referred to as "Additional Customers")) by a fraction, the numerator of which shall be the civilian customer's Plant 1 Maximum Daily Discharge Quantity, as it exists on the issuance date of the related Bonds, and the denominator of which shall be the aggregate of all civilian customers' Plant 1 Maximum Daily Discharge Quantities, as they exist on the issuance date of the related Bonds.
- (b) Plant 1 Expansions. The amount of Debt Service Requirements on that portion of Bond moneys used to acquire or construct additions, extensions, enlargements, improvements, replacements or modifications to Plant 1 that increase any civilian customer's Maximum Daily Discharge Quantity shall be shared by all civilian customers with a contractual right to discharge Waste into Plant 1. The amount to be paid by a particular civilian customer shall be determined by multiplying the total Debt Service Requirements (less any credit to such amount which may result from payments received from Additional Customers) by a fraction, the numerator of which shall be such civilian customer's incremental increase in Plant 1 Maximum Daily Discharge Quantity as a result of such expansion and the denominator of which is the aggregate of all civilian customers' incremental increases in Plant 1 Maximum Daily Discharge Quantity as a result of such expansion.
- (c) Plant 2 Modifications. The amount of Debt Service Requirements on that portion of Bond moneys used to construct additions, extensions, enlargements, improvements, replacements or modifications to Plant 2 that do not increase any civilian customer's Maximum Daily Discharge Quantity shall be shared by all civilian customers with a contractual right to discharge Waste into Plant 2.

The amount to be paid by a particular civilian customer shall be determined by multiplying the total Debt Service Requirements (less any credit to such amount which may result from payments received from Additional Customers) by a fraction, the numerator of which shall be the civilian customer's Plant 2 Maximum Daily Discharge Quantity, as it exists on the issuance date of the related Bonds, and the denominator of which shall be the aggregate of all civilian customers' Plant 2 Maximum Discharge Quantities, as they exist on the issuance date of the related Bonds.

- (d) Plant 2 Expansions. The amount of Debt Service Requirements on that portion of Bond moneys used to acquire or construct additions, extensions, enlargements, improvements, replacements or modifications to Plant 2 that increase any civilian customer's Maximum Daily Discharge Quantity shall be shared by all civilian customers with a contractual right to discharge Waste into Plant 2. The amount to be paid by a particular civilian customer shall be determined by multiplying the total Debt Service Requirements (less any credit to such amount which may result from payments received from Additional Customers) by a fraction, the numerator of which shall be such civilian customer's incremental increase in Plant 2 Maximum Daily Discharge Quantity as a result of such expansion and the denominator of which is the aggregate of all civilian customers' incremental increases in Plant 2 Maximum Daily Discharge Quantity as a result of such expansion.

- (2) Fixed Charges (38th Street Trunk Sewer Facilities). Fixed Charges (38th Street Trunk Sewer Facilities) shall include the entire Debt Service Requirements on Bonds issued for the following purposes: (i) construct modifications to the 38th Street Trunk Sewer Facilities and (ii) acquire or construct new 38th Street Trunk Sewer Facilities.

Apportionment of such charges with respect to Debt Service Requirements on Bonds hereafter issued shall be made among the civilian customers by the following methods:

- (a) The amount of Debt Service Requirements on that portion of Bond moneys used to construct additions, extensions, enlargements, improvements, replacements or modifications to then existing 38th Street Trunk Sewer Facilities or to acquire or construct new 38th Street Trunk Sewer Facilities that service all 38th Street Treatment Facilities civilian customers shall be shared by all civilian customers with a contractual right to discharge Waste into the 38th Street Treatment Facilities. The amount to be paid by a particular civilian customer shall be determined by multiplying the total Debt Service Requirements (less any credit to such amount which may result from payments received from Additional Customers) by a fraction, the

numerator of which shall be the customers 38th Street Treatment Facilities Maximum Daily Discharge Quantity, as it exists on the issuance date of the related Bonds, and the denominator of which shall be the aggregate of all civilian customers' 38th Street Treatment Facilities Maximum Daily Discharge Quantities, as they exist on the issuance date of the related Bonds.

- (b) The amount of Debt Service Requirements on that portion of Bond moneys used to construct additions, extensions, enlargements, improvements, replacements or modifications to then existing 38th Street Trunk Sewer Facilities or to acquire or construct new 38th Street Trunk Sewer Facilities that service only one civilian customer with a contractual right to discharge Waste into the 38th Street Treatment Facilities shall be allocated entirely to such civilian customer.

- (3) Fixed Charges (South Sewer Plant). Fixed Charges (South Sewer Plant) to be charged to the District's civilian customers shall include the entire Debt Service Requirements on Bonds hereafter issued for the following purposes: (i) construct modifications to the South Sewer Plant and (ii) construct facilities for the expansion of the South Sewer Plant.

Apportionment of such charges with respect to Debt Service Requirements on Bonds hereafter issued shall be made among the civilian customers by the following methods:

- (a) South Sewer Plant Modifications. The amount of Debt Service Requirements on that portion of Bond moneys used to construct additions, extensions, enlargements, improvements, replacements or modifications to the South Sewer Plant that do not increase any civilian customer's Maximum Daily Discharge Quantity shall be shared by all civilian customers with a contractual right to discharge Waste into the South Sewer Plant. The amount to be paid by a particular civilian customer shall be determined by multiplying the total Debt Service Requirements (less any credit to such amount which may result from payments received from Additional Customers) by a fraction, the numerator of which shall be the civilian customer's SSP Maximum Daily Discharge Quantity, as it exists on the issuance date of the related Bonds, and the denominator of which shall be the aggregate of all civilian customers' SSP Maximum Daily Discharge Quantities, as they exist on the issuance date of the related Bonds.
- (b) South Sewer Plant Expansions. The amount of Debt Service Requirements on that portion of Bond moneys used to acquire or construct additions, extensions, enlargements, improvements,

replacements or modifications to the South Sewer Plant that increase any civilian customer's Maximum Daily Discharge Quantity shall be shared by all civilian customers with a contractual right to discharge Waste into the South Sewer Plant. The amount to be paid by a particular civilian customer shall be determined by multiplying the total Debt Service Requirements (less any credit to such amount which may result from payments received from Additional Customers) by a fraction, the numerator of which shall be such civilian customer's incremental increase in SSP Maximum Daily Discharge Quantity as a result of such expansion and the denominator of which is the aggregate of all civilian customers' incremental increases in SSP Maximum Daily Discharge Quantity as a result of such expansion.

- (4) Fixed Charges (SSP Trunk Sewer Facilities). Fixed Charges (SSP Trunk Sewer Facilities) shall include the entire Debt Service Requirements on Bonds issued for the following purposes: (i) construct modifications to the SSP Trunk Sewer Facilities and (ii) acquire or construct new SSP Trunk Sewer Facilities.

Apportionment of such charges with respect to Debt Service Requirements on Bonds hereafter issued shall be made among the civilian customers by the following methods:

- (a) The amount of Debt Service Requirements on that portion of Bond moneys used to construct additions, extensions, enlargements, improvements, replacements or modifications to then existing SSP Trunk Sewer Facilities or to acquire or construct new SSP Trunk Sewer Facilities that service all South Sewer Plant civilian customers shall be shared by all civilian customers with a contractual right to discharge Waste into the South Sewer Plant. The amount to be paid by a particular civilian customer shall be determined by multiplying the total Debt Service Requirements (less any credit to such amount which may result from payments received from Additional Customers) by a fraction, the numerator of which shall be the civilian customer's SSP Maximum Daily Discharge Quantity, as it exists on the issuance date of the related Bonds, and the denominator of which shall be the aggregate of all civilian customers' SSP Maximum Daily Discharge Quantities, as they exist on the issuance date of the related Bonds.
- (b) The amount of Debt Service Requirements on that portion of Bond moneys used to construct additions, extensions, enlargements, improvements, replacements or modifications to then existing SSP Trunk Sewer Facilities or to acquire or construct new SSP Trunk Sewer Facilities that service only one civilian customer with a

contractual right to discharge Waste into the South Sewer Plant shall be allocated entirely to such civilian customer.

- (5) Fixed Charges (Previously Issued Bonds). The District and the City acknowledge that the District had previously issued and has outstanding its Sanitary Sewer System Revenue and Refunding Bonds, Series 2014 (the “2014 Bonds”), issued in part to finance improvements to the South Sewer Plant. As consideration, for the execution and delivery of this Contract and the addition of Harker Heights as an Additional Customer of the System with an initial contractual right to discharge Waste into the South Sewer Plant, the entire outstanding Debt Service Requirements on the 2014 Bonds shall be allocated as Fixed Charges to Harker Heights under its Waste Disposal Contract with the District and shall constitute Fixed Charges under this Contract only if and only to the extent such Fixed Charges remain unpaid, and the City will receive a one-time payment from Harker Heights in the amount of \$1,039,777.46.

B. Operating Charges. Effective October 1, 2023 and each October 1 thereafter, a Waste disposal rate order will be adopted by the District that will reflect both the Fixed Charges as described in the preceding paragraph and the Operating Charges as provided in the following paragraphs. The Operating Charges will be established based upon the estimated total Waste to be treated for the coming budget year and a budget adopted by the District on or before October 1 of each year. At least thirty (30) calendar days prior to each October 1, the rate established in the budget will be used until such time as the budget is adopted by the District. The budget may be based on the following factors:

- (a) the reasonable and actual cost incurred by the District for the prior fiscal year in the operation and maintenance of its facilities, including, without limitation, wages and salaries, chemicals, the purchase and carrying of stores, materials and supplies, power, supervision, testing, engineering, auditing, claims, insurance, payments, and all other items and expenses of a like or different nature reasonably required for the efficient maintenance and operation thereof and the performance of the provisions of this Contract and also including the amount required to complete the establishment of and to maintain the \$[] contingency fund (previously established as a “maintenance, operation, repair and replacement reserve fund”), such contingency fund to be used for unusual expenditures of maintenance, operation, repair, and replacement of the System when money available in the District’s System Fund is insufficient for such requirements, such amount not to exceed \$[] to be contributed to the contingency fund annually by the United States of America (Fort Cavazos), the City and Harker Heights until the contingency fund contains [] and as necessary thereafter to maintain such level; and
- (b) Anticipated cost increases due to inflation and other factors; and

- (c) An operating reserve fund, not to exceed two (2) months' estimated operation and maintenance costs.

The Waste disposal rate for Operating Charges will be determined by dividing the total budget for the year in question by the estimated total Waste to be treated for all customers of the System. If there is a substantial increase or decrease in operating or maintenance costs from the amounts included in the budget during any fiscal year, the Operating Charges for the then current year shall be adjusted accordingly.

Operating Charges shall be apportioned on a pro-rata basis among the District's customers, including the United States of America (Fort Cavazos), on the basis of the measured quantity of Waste discharged into the System by each customer during each billing period.

C. Surcharges. The City recognizes that, in addition to this Contract, the District has entered into waste disposal contracts with the United States of America and Harker Heights and that under such contracts the entire design capacity of Plant 1, Plant 2 and the South Sewer Plant available for use by the City, the United States of America and Harker Heights, as applicable, has been allocated among them. Consequently, the City recognizes that its contract maximum discharge quantities set forth in Schedule 1 of this Contract cannot be exceeded without encroaching upon the maximum discharge quantities of other System customers in such facilities, and the City hereby agrees not to exceed such maximum discharge quantities. The District, in its sole discretion, may charge the City a reasonable surcharge, in an amount not to exceed \$20,000 per occurrence, for (i) exceeding any of the maximum discharge quantities set forth in Schedule 1 or (ii) for failing to comply with the provisions of Appendix A with respect to the quality or strength of Waste discharged by the City's Sewer System and received and taken by the District's System. The amount of any surcharge actually received by the District shall be applied in any manner as the District deems appropriate under the circumstances, including, but not limited to, as a credit to the payments which the United States of America or Harker Heights is required to make under its waste disposal contract with the District. The provisions of this Section 11(C) shall not apply to excess quantities of Waste received by the District's System during emergency periods, which shall mean periods during which the delivery of Waste in excess of the contracted maximum rates set forth herein is justified because of danger to life or property.

Section 12. BILLING. The District shall read meters monthly and shall promptly render monthly bills to the City based upon such readings for Operating Charges and monthly bills for Fixed Charges as required in Section 11. The District shall, until further notice, render such bills on or before the 5th day of each month and such bills shall be due and payable on the 25th day of each month or twenty (20) days after the date the same are deposited in the United States mail, properly stamped and addressed to the City, whichever is later, and thereafter interest shall accrue thereon at the rate of seven percent (7%) per annum until paid in full. The District may, however, from time to time by sixty (60) days' written notice change the monthly date by which it shall render bills and all bills shall then be due and payable twenty (20) days after such date as herein provided. The City shall make payment of each bill to the District at its office in the City of Killeen, Bell County, Texas, or at such other place as the District may from time to time designate by written notice, and the City shall make payment in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

Section 13. DELINQUENCY IN PAYMENT. In the event that the City fails to pay any bills when due and payable, the District may give written notice of such delinquency to the City and if all bills due and unpaid, including interest thereon, are not paid within forty-five (45) days after delivery of such notice, then the City agrees that the District shall be authorized, at its option, to institute suit for collection hereof and to collect any amounts due and unpaid, together with interest thereon and reasonable attorney's fees, and the City further agrees that the District may, at its option, discontinue receiving, transporting, treating and disposing of Waste of the City until all amounts due and unpaid are paid in full with interest as herein specified. Any such discontinuation of service shall not, however, relieve the City of its unconditional obligation to make the payments required under Section 11.

Section 14. OPERATING EXPENSE. The parties agree, and the City represents and covenants, that all moneys required to be paid by the City under this Contract shall constitute an operating expense of the City's Sewer System as part of its combined waterworks and sewer system, as authorized by the Constitution and laws of the State of Texas, including Chapter 791, Texas Government Code. For the purposes of Chapter 791, Texas Government Code, the City agrees not to obtain Waste treatment services from any source other than the District during the term of this Contract without having first obtained the written consent of the District.

Section 15. SOURCE OF PAYMENTS. All payments required to be made by the City to the District under this Contract shall be payable from the income of the City's combined waterworks and sewer system. The District shall never have the right to demand payment by the City of any obligations assumed by or imposed upon it under or by virtue of this Contract from any funds raised or to be raised by taxation and the City's obligations under this Contract shall never be construed to be a debt of the City of such kind as to require it under the Constitution and laws of the State of Texas to levy and collect a tax to discharge such obligation.

Section 16. PAYMENTS BY CITY UNCONDITIONAL. The City and the District recognize that the Bonds will be payable from, and secured by a pledge of the net revenues from the operation of the System, including sums of money to be received by the District under this Contract and that in order to make the Bonds marketable at the lowest available interest rate, it is to the mutual advantage of the City and the District that the City's obligation to make the payments required hereunder be, and the same is hereby, made unconditional. All sums payable hereunder to or on behalf of the District shall, as long as any part of the Bonds are outstanding and unpaid, be paid by the City without set-off, counterclaim, abatement, suspension or diminution except as otherwise expressly provided herein; and so long as any part of the Bonds are outstanding and unpaid, this Contract shall not terminate nor shall the City have any right to terminate this Contract or be entitled to the abatement of any payment or any reduction thereof, nor shall the obligations hereunder of the City be otherwise affected for any reason, it being the intention of the parties that so long as any part of the Bonds are outstanding and unpaid, that said amounts required to be paid by the City to the District shall continue to be payable in all events and the obligations of the City hereunder shall continue unaffected, unless the requirement to pay the same shall be reduced or terminated pursuant to an express provision of this Contract under Section 24.

Section 17. INDEPENDENT CONTRACTOR. As between the parties hereto, the District shall be solely responsible for operation of the System to transport, treat and dispose of all Waste received from the City pursuant to this Contract and the District shall operate the System

as an independent contractor. The obligation of the District to render such Waste disposal services shall be subject, however, to all present and future valid laws, orders, rules and regulations of the United States of America, the State of Texas, and any regulatory body having jurisdiction. The parties agree to cooperate to make such applications and to take such action as may be necessary to obtain compliance therewith.

Section 18. ADDITIONAL CUSTOMERS. The District agrees to operate the System initially for the sole use and benefit of the City, the United States of America and Harker Heights. The District, however, shall have the right to contract with other parties to render Waste disposal services from the operation of the System with the approval of the City. The District shall have the further right to enlarge the size and the capacity of the System for the use and benefit of other parties, but such enlargements in size and capacity shall not impair the right of the City to discharge the maximum annual quantities of Waste as set forth in Schedule 1 to this Contract. Further, any such contract shall require such a customer or person to pay the Debt Service Requirements on any Bonds which are issued to enlarge, extend, improve or modify the System to provide such Waste disposal services and an equitable share of the Fixed Charges and Operating Charges described in Section 11.

Section 19. CONTRACTS BY CITY. If the City and the District determine that the City is not fully utilizing its contracted Plant 1 Maximum Discharge Quantities, Plant 2 Maximum Discharge Quantities or SSP Maximum Discharge Quantities, the City shall have the right to enter into subcontracts with other parties under which such unused amounts may be used by such other party, with the approval of the District. The consideration as between or among the City and such other parties may be determined by the contracting parties, but no such transaction shall relieve the City of its primary obligation to the District under the terms of this Contract nor shall the approval of the District of such subcontracts ever be construed to do so.

Section 20. FACILITIES TO SERVE EXCLUSIVELY OTHER CUSTOMERS. The parties recognize that the District may hereafter be called upon to finance, construct, acquire and equip facilities to collect, transport, treat and dispose of Waste exclusively for parties other than the City, the United States of America and Harker Heights. In such event, such facilities shall not constitute a part of the System, notwithstanding that they may be physically connected with the System or located on properties of the System, and the revenues received by the District from the use, ownership, operation, lease or sale of such facilities shall not constitute revenues received by the District from the ownership or operation of the System, but shall be available to pay the annual cost of operating and maintaining such facilities and may be pledged and applied to the payment of revenue bonds or other obligations to be issued by the District to construct or acquire and equip such facilities and acquire the sites therefor.

The District expressly agrees, however, that it will not issue any revenue bonds or other obligations payable in whole or in part from revenues to be received by the District from such facilities which are connected with the System, unless consulting engineers shall certify to the District that in their opinion such facilities are necessary to enable to District to collect, transport, treat and dispose of Waste of such party. Nothing herein contained, however, shall be construed to release the City from its unconditional obligation to make the payments as provided in Section 11 of this Contract.

Section 21. DATA. To permit the District to accumulate statistical data which would enable it to render better service and facilitate plans for betterment and future expansion of the System, the City agrees to furnish to the District, prior to commencement of operation of the System and annually thereafter, such information as the District may from time to time request concerning the City's Sewer System, including the number of domestic connections, commercial and business connections, and the specific industrial connections to be served.

Section 22. ADDITIONAL CAPACITY AND FACILITIES. (a) In the event additional capacity required to receive, transport, treat and dispose of all Waste collected by the City's Sewer System or in the event additional facilities or modifications to existing facilities are required to adequately treat and dispose Waste in accordance with the orders, rules, regulations or permits of any regulatory body, the District and the City will co-operate to determine the improvements or additional facilities which are needed (such improvements, additional facilities or modifications to existing facilities being hereinafter referred to as a "Project" or collectively as "Projects").

(b) Upon determination by the City and the District that a Project is needed, the District will use its best efforts to issue and deliver its Bonds to obtain the necessary capital funds to finance the Project and, upon satisfaction of conditions set forth in Subsection (c)(6) below, the District will construct the Project. With respect to each issue of Bonds hereafter issued to finance a Project as contemplated by Section 11(A), there shall be attached hereto an addendum setting forth the following information:

- (i) a description of the purpose(s) for the bonds (i.e., Plant 1 Modifications, Plant 1 Expansions, Plant 2 Modifications, Plant 2 Expansions, New 38th Street Trunk Sewer Facilities, South Sewer Plant Modifications, South Sewer Plant Expansions and/or New SSP Trunk Sewer Facilities, as applicable);
- (ii) the aggregate principal amount and series designation (if applicable) of the Bonds being issued by the District and a percentage allocation of the Debt Service Requirements on such Bonds to the purposes for which they are being issued, as determined by the District in consultation with the District's engineers and financial advisors, and as provided for in Section 11(A); provided, that upon completion of all Projects to be constructed with the proceeds of any such Bonds, the District shall reconcile the actual expenditures of Bond proceeds to the indicated purposes for which such Bonds were issued and shall make any necessary adjustments to the allocation of Debt Service Requirements to such purposes; and
- (iii) for each stated purpose for which the Bonds are being issued, the aggregate incremental increase in maximum daily discharge quantity for the appropriate customer group as a result of an expansion and a breakout (if applicable) of the incremental increase in maximum daily discharge quantity for each member of the customer group as a result of such expansion; provided, that in the case of modifications to the then existing facilities that do not result in or are not accompanied by an incremental increase in the maximum daily discharge quantity, the addendum shall specify the appropriate ratios to be

used in allocating Debt Service Requirements to the District's customers, as provided for in Section 11(A).

Notwithstanding the foregoing, neither an addendum to this Contract or any other action on the part of the City is required in connection with the issuance of Bonds by the District for any purpose, including the refunding or refinancing of previously issued Bonds; provided that the issuance of such Bonds does not result in an increase in the aggregate Debt Service Requirements payable as Fixed Charges by the City.

(c) The following provisions shall be applicable to each Project financed with Bonds issued by the District:

- (i) Preparation Of Project Plans. The District's consulting engineers for System matters, shall prepare plans and specifications and contract documents for construction of the Project and shall submit same to the District's General Manager for approval by the District. The plans and specifications and contract documents shall also be submitted to the City for review and approval. Specifically, throughout the design phase of the Project the District shall submit plans and specifications to the City at the 30%, 60% and 90% design level for review and comment. Comments shall be provided to the District in writing within thirty (30) days of receipt of the plans and specifications for each design level. The design phase for the Project shall be considered complete as of the date the District's consulting engineer has responded to the City's comments on the 90% complete plans and specifications for the Project. The District will furnish to the City one hard copy set of final bidding documents for the Project prior to releasing the Project for bid.
- (ii) Acquisition Of Real Estate And Easements. The City hereby grants to the District the right, privilege, easement and right-of-way over, under, along and across all streets, alleys and public ways within the City for the purpose of constructing, repairing, maintaining and operating all sewer conveyance lines as shown on the engineering plans for the Project approved by the City, provided the District shall promptly restore any such streets, alleys, and public ways to substantially their former condition of usefulness.
- (iii) Cost of Construction. The "cost of construction of the Project" shall include all costs of constructing and equipping the Project, together with the costs of acquisition of real estate and easements, the cost of preparing the plans and specifications, the fiscal, legal, advertising, engineering and material-testing costs, interest during construction, and all other costs and expenses relating to the foregoing or to the issuance and sale of the related Bonds.
- (iv) Construction Of Project. The District shall obtain competitive bids for the construction of the Project provided it determines sufficient funds are or will be available to finance such construction. If the District determines that sufficient funds are or will be available and the District is satisfied with the

bids received, the District may award such contracts. The District shall then proceed to construct the Project substantially as provided in the final plans, specifications and contract documents, subject to any change orders issued during construction; provided, however, that if the District's consulting engineers estimate at the time of issuance thereof that any change order (including any written order for extra work) will, individually or in the aggregate with all previous change orders, increase the cost of construction of the Project in an amount greater than five percent (5%), such change order shall not be issued except with the approval of the City. Following the receipt of bids and the award of the contract for construction of the Project, the City may have a representative attend monthly construction progress meetings relating to the Project.

- (v) Inspection By City. The City's representatives shall have access at all times to construction in progress and may make such inspections thereof as deemed necessary or desirable and shall call to the attention of the General Manager of the District, or his designee, any deviations from the final plans and specifications as approved by the City. The City shall also have full access to all contracts, books, records, accounts and physical properties of, or relating to, the construction of the Project.
- (vi) Conditions To Construction. It is expressly understood and agreed that any obligation on the part of the District to construct and complete the Project shall be subject to (a) the District's obtaining sufficient funds to pay the cost of construction of the Project, and to establish reserve funds, including the sale and delivery of the Bonds upon terms satisfactory to the District; (b) the District's obtaining all real estate, easements, labor, equipment and materials required for the construction of the Project; (c) the District's obtaining all permits and licenses required to construct the Project; and (d) the District's obtaining all permits and licenses required to operate the System as modified and improved by the Project, including any required waste discharge permits issued by the TCEQ.
- (vii) Completion Of Project. The District will use reasonable diligence to construct and to complete the Project.

Section 23. MILITARY CAPACITY. The City recognizes that, in connection with an expansion of the System, part of the design capacity of the System may be contracted by the United States of America for the use and benefit of Fort Cavazos; provided, that the United States of America bears the cost of its expanded capacity.

Section 24. TERM. This Contract shall continue in force and effect for a period of 40 years from its date and for any time in addition thereto until all of the Bonds have been fully paid, both to principal and interest; provided, however, at any time after the Bonds have been fully paid, both as to principal and interest, the City or the District may, upon twelve (12) months' written notice to the other party, terminate this Contract. After the Bonds shall have been fully paid and

until termination of this Contract, the City shall continue to be entitled to receive the services as provided in this Contract upon payment of the Operating Charges.

Section 25. COVENANT TO MAINTAIN SUFFICIENT INCOME. The City agrees to fix and maintain such rates and collect such charges for the facilities and service provided by its waterworks and sewer system as will be adequate to permit the City to make prompt payment of all expenses of operating and maintaining such systems, including payments under this Contract, make prompt payment of the interest on and principal of the bonds or other obligations of the City payable, in whole or in part, from the revenues of its combined waterworks or its sewer system, or both. The City further agrees to comply with all of the provisions of the ordinances or indentures authorizing its bonds or other obligations which are payable, in whole or in part, from the revenues of its combined waterworks system and sewer system.

Section 26. WATER CONSERVATION PLAN. To the extent it has not already done so, the City agrees to adopt a water conservation plan within 270 days from the date of this Contract. Such water conservation plan shall meet the requirements of Texas Administrative Code Section 363.15, as in effect on the date of this Contract.

Section 27. FINANCIAL INFORMATION. To the extent and only during such time as the City is considered to be an “obligated person” (within the meaning of the United States Securities and Exchange Commission Rule 15c2-12 (the “Rule”)) with respect to any of the Bonds issued to modify, improve, or expand the System, the City agrees, for the benefit of the holders of any such Bonds, to provide annually to the Municipal Securities Rulemaking Board, within 180 days after the end of each fiscal year of the City ending in or after the year 2023, financial information and operating data with respect to the City of the general type included in the City’s financial statement. Any financial statements of the City to be so provided shall be (i) prepared in accordance with the accounting principles the city may be required to employ from time to time pursuant to Texas law and (ii) audited, if the City commissions an audit of such statements and the audit is completed within the required time. If the audit is not completed within the required time, then the City shall provide the audit when and if it becomes available.

Section 28. REDEMPTION OF BONDS. At such time or times as the Bonds, or any of them, are subject to optional redemption by the District, the District agrees to redeem such Bonds or any part thereof in accordance with the Bond Order authorizing their issuance upon receipt of a timely written request from the City and upon the City’s timely providing the funds to the District necessary to pay the principal and accrued interest on such Bonds to the date of prior redemption, together with any premium required in the Bond Order, prior to the date on which the District calls such Bonds for redemption.

Section 29. APPROVAL BY THE CITY. Whenever this Contract requires or permits approval or consent to be hereafter given by the City, the City agrees that such approval or consent shall not be unreasonably withheld. Such approval or consent by the City may be evidenced by an ordinance or resolution adopted by the governing body of the City or by an appropriate certificate executed by a person, firm or entity authorized to determine and give approval or consent on behalf of the City pursuant to an ordinance or resolution adopted by the governing body of the City. Such approval or consent shall be effective without regard to whether given before or

after the time required herein and that no approval or consent of the City shall be required as a condition to any action by District except as expressly required in this Contract.

Section 30. 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 Contract (except the unconditional obligation of the City to make the payments required in Section 11(A)), 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 thereby 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 include, without limitation of the generality thereof, acts of God, strikes, lockouts, or the industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery pipelines or canals, partial or entire failure of water supply, and inability on part of City to provide water necessary for operation of its water and sewer system hereunder, or of District to receive Waste, and any other incapacities of either party, whether similar to those enumerated or otherwise, which are not within the control of the party claiming such inability, 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 demand of the opposing party or parties when such settlement is unfavorable to it in the judgment of the party having the difficulty.

Section 31. REMEDIES UPON DEFAULT. It is not intended hereby to specify (and this Contract shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies (other than termination) existing at law or in equity may be availed of by either party and shall be cumulative. Recognizing, however, that the District’s undertaking to provide and maintain services as provided herein is an obligation, failure in the performance of which cannot be adequately compensated in money damages alone, the District agrees, in the event of any default on its part, that the City shall have available to it the equitable remedy of specific performance in addition to any other legal or equitable remedy (other than termination) which may also be available to the City, and further that in such event the City shall have available to it the right, but not the obligation, to take immediate possession of the System of any part thereof and to operate, maintain and keep the same in good repair until District demonstrates its ability and willingness to discharge its obligations hereunder.

Section 32. 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.

Section 33. ADDRESSES AND NOTICE. Unless otherwise provided in this Contract, 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 (except bills) must be in writing and may be given or to be served by depositing the same in the United States mail postpaid and 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 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 Contract, from and after the expiration of three days after 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 follows:

If to the District, to:

President
Bell County Water Control &
Improvement District No. 1
201 South 38th Street
Killeen, Texas 76543

If to the City, to:

Mayor and City Manager
City of Killeen
City Hall
Killeen, Texas 76541

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 days' written notice to the other party.

Section 34. MODIFICATION. This Contract shall be subject to change or modification only with the mutual consent of the governing bodies of each of the parties hereto, but the City recognizes that the Bond Order may contain covenants by the District not to consent to certain changes or modifications of this Contract.

Section 35. ASSIGNABILITY. This Contract shall not be assignable by the District without the prior written agreement of the governing body of the City and shall not be assignable by the City without the prior written agreement of the Board of Directors of the District.

Section 36. PARTIES IN INTEREST. This Contract shall be for the sole and exclusive benefit of the District, the City and the owners and holders of the Bonds. The District is hereby granted the specific right to assign, mortgage, transfer in trust; pledge or otherwise hypothecate or encumber the City's obligations to make payments under this Contract.

Section 37. FINANCING STATEMENTS. The City agrees that at the request of the District it shall execute a financing statement meeting the requirements of the Texas Uniform Commercial Code and in a form satisfactory to the District to perfect any security interest created hereby. The City further agrees to execute such continuation statements or other documents as may be necessary to maintain such security interest.

Section 38. CAPTIONS. The captions appearing in the first of each numbered section or paragraph of this Contract are inserted and included solely for convenience and shall never be considered or given any effect in construing this Contract, or any provision hereof, or in connection with the duties, obligations, or liabilities of the respective parties hereto or in ascertaining intent, if any question of intent should arise.

Section 39. SEVERABILITY. The provisions of this contract are severable, and if any provision or part of this Contract or the application thereof to any person or circumstance shall ever be held in any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Contract and the application of such provision or part of this Contract to other persons or circumstances shall not be affected thereby.

Section 40. MERGER. This Contract embodies the entire agreement between the parties relative to the subject matter thereof.

Section 41. PRIOR CONTRACT. This Contract amends and restates the Prior Contract. Accordingly, from and after the date hereof the Prior Contract shall be of no further force or effect.

Section 42. CHOICE OF LAW. THIS CONTRACT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Contract in seven copies, each of which shall be deemed to be an original, as of the date and year first written in this Contract.

BELL COUNTY WATER CONTROL AND
IMPROVEMENT DISTRICT NO. 1

By:

President, Board of Directors

ATTEST:

Secretary, Board of Directors

(SEAL)

CITY OF KILLEEN, TEXAS

By:

Mayor, City of Killeen, Texas

ATTEST:

City Clerk, City of Killeen, Texas

(SEAL)

APPROVED AS TO FORM AND
LEGALITY

City Attorney, City of Killeen, Texas

EXAMINED AND APPROVED:

Director of Finance, City of Killeen, Texas

THE STATE OF TEXAS §
 §
COUNTY OF BELL §

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared _____, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said BELL COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1, and that he executed the same as the act of such District for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, ____.

Notary Public in and for Bell County, Texas

THE STATE OF TEXAS §
 §
COUNTY OF BELL §

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared _____, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the City of Killeen, Texas, a municipal corporation, and that he executed the same as the act of such municipal corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, ____.

Notary Public in and for Bell County, Texas

SCHEDULE 1

MAXIMUM DISCHARGE QUANTITIES

APPENDIX A

QUALITY OF WASTE

1. **DEFINITIONS.** As used in this Appendix A, the following terms and phrases shall have meanings as follows:

(a) The term “Properly Shredded Garbage” means garbage that has been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half inch in any dimension.

(b) The term “B.O.D.” (denoting biochemical oxygen demand) means the quantity of oxygen utilized in biochemical oxidation of organic matter under standard laboratory procedure in five days at 20° Centigrade expressed in milligrams per liter.

(c) The term “Suspended Solids” means solids that either float on the surface or are in suspension in water, waste, sewage or other liquids and which are removable by laboratory filtering expressed in milligrams per liter.

(d) The term “pH” means the common logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

(e) The term “Greases” means fats, waxes, oils, and other similar non-volatile material in waste which are extracted by hexane from an acidified sample using the Soxhlet method.

2. **DISCHARGE INTO THE DISTRICT’S SYSTEM.** Discharges into the District’s System shall consist only of sewage, Industrial Waste, Properly Shredded Garbage and other wastes which are amenable to biological treatment and are free from the prohibited constituents listed in Section 3 below and limited in B.O.D., suspended solids, dissolved sulfides and pH as follows: (a) the B.O.D. of waste delivered to District’s Systems, as determined by standard methods, shall not exceed 250 mg/l; (b) Suspended Solids delivered to the District’s System, as determined by standard methods, shall not exceed 300 mg/l; and (c) the pH of waste delivered to District’s System shall be not lower than 6.0 nor higher than 10.0. No acids shall be discharged into District’s System unless neutralized to a pH of 6 or more; and dissolved sulfides in waste at the point of delivery to the District’s System shall not exceed 0.1 mg/l.

3. **WASTE NOT ADMISSIBLE.** The following shall not be admissible into the District’s System: gasoline, cleaning solvents, oils, Greases, mineral oils, ashes, cinders, sand, gravel, tar, asphalt, ceramic wastes, plastics, other viscous substances, feathers, hair, rags, metal, metal filings, glass, wood shavings, sawdust, unshredded garbage, toxic, corrosive, explosive or malodorous gases, acetylene generation sludge; cyanides or cyanogen compounds capable of liberating hydrocyanic gas or acidification in excess of 2 mg/l by weight as CN; radioactive materials which will permit a transient concentration higher than 100 microcuries per liter; emulsified oil and Grease, exclusive of soaps, exceeding on analysis an average of 100 mg/l of ether-soluble matter; acids or alkalis having a pH value lower than 6 or higher than 10.0; salts of the heavy metals in solution or suspension exceeding 3 mg/l of the following metals: Chromium as CR, Copper as CU, Zinc as Zn, Nickel as Ni, and Cadmium as Cd.

4. **INDUSTRIAL WASTES.** The effect of certain types of Industrial Waste upon sewers and waste treatment processes are such as to require that careful and special consideration be made of each industrial connection. This is a matter of concern both to the District and to the City. Accordingly, the City will regulate the discharge of Industrial Waste into the City's Sewer System, and in turn into the System, including requirements for pre-treatment before discharge into the City's Sewer System if necessary to meet the quality requirements for admissible waste listed above subject to the filing by applicant industry of a statement, a copy of which shall be forwarded to District, containing the following information:

- (i) Name and address of applicant;
- (ii) Type of industry;
- (iii) Quantity of plant waste;
- (iv) Typical analysis of the waste;
- (v) Type of pre-treatment proposed;

and such other information as to the District may from time-to-time request by written notice. To facilitate inspection and control of Industrial Waste, the City will require industries to separate Industrial Waste from sewage until such Industrial Waste has passed through an inspection manhole which shall be located so as to be accessible at all times to inspectors of City and the District. If inspection indicates that damage might result from the discharge, the permit shall be revoked unless and until the industry promptly establishes acceptable remedial measures.

APPENDIX B
POINTS OF ENTRY
[TO COME]

APPENDIX C
MEASUREMENT POINTS
[TO COME]

APPENDIX D
TESTING POINTS
[TO COME]