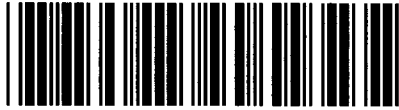


Control Number: 43585



Item Number: 47

Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83rd
Legislature, Regular Session, transferred the functions
relating to the economic regulation of water and sewer
utilities from the TCEQ to the PUC effective
September 1, 2014

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PUBLIC UTILITY COMMISSION
FILING CLERK

SETTLEMENT AGREEMENT

PREAMBLE

This Agreement is entered into October 20, 2003 by the City and Hornsby.

RECITALS

A. Hornsby currently has three CCN applications on file with TCEQ: (1) a wastewater CCN amendment application covering the 759 acres of the Austin Estates Limited Partnership tract and other tracts; (2) a water CCN amendment application for 350 acres related to properties already within or adjacent to its wastewater CCN (Austin's Colony and Forest Bluff); and (3) an amendment application for approximately 7,800 acres of water service area located south of FM 969 and approximately 26,000 acres of wastewater service area located east of FM 973, south of Highway 290, and north of the Colorado River.

B. The City currently has applications for water and wastewater CCNs on file with TCEQ, which encompass much of its eastern ETJ.

C. The Applications overlap in the areas generally located in the City's ETJ, south of US Highway 290 and north of the Colorado River. These areas are shown on Exhibit A as "Hornsby Bend's CCN Service Area" and "City's CCN Service Area."

D. The City's and Hornsby's protests of each other's Applications are consolidated in SOAH Docket No. 582-02-3056 and TCEQ Docket Nos. 2002-0189-UCR and 2000-0112-UCR.

E. The City and Hornsby enter this Agreement to resolve water and wastewater service area issues between the Parties and to divide the service area that is generally located south of US Highway 290, and north of the Colorado River. The intent of the Parties is that the agreed service areas will not overlap any existing CCNs held by other entities or the ETJs of other municipalities.

DEFINED TERMS

Unless specifically defined elsewhere by this Agreement, a word or term listed below has the meaning indicated in this Agreement.

1. "**Agreement**" shall mean this settlement agreement, its counterparts, and any attached exhibits.

2. "**ALJ**" shall mean the administrative law judge assigned to the consolidated proceeding described in Recital D.

3. "**Applications**" shall mean the City's Water and Wastewater Applications and Hornsby's Water and Wastewater Applications.

4. "**As-Built Plans**" shall mean Construction Plans showing facilities as actually constructed.

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5. "CCN" shall mean Certificate of Convenience and Necessity.
6. "City" shall mean, unless otherwise noted, the City of Austin's ~~Water~~ and Wastewater Utility.
7. "City Wastewater Application" shall mean the City's application for a wastewater CCN, Application No. 33563-C.
8. "City Water Application" shall mean the City's application for a water CCN, Application No. 33562-C.
9. "City's STM" shall mean the Sale, Transfer and Merger application filed by the City with TCEQ, requesting the transfer, on Hornsby's behalf, of the Transferred Area shown on Exhibit A.
10. "Commission" shall mean the body comprised of the TCEQ Commissioners.
11. "Construction Plans" or "Plans" shall mean plans for the construction of Offsite Improvements and Internal Lines constructed by Hornsby or on Hornsby's behalf within the City's ETJ. Construction Plans does not include plans for the construction of water or wastewater treatment plants and water wells.
12. "Design Criteria" shall mean the City's design criteria and standards, including standard products, as amended from time to time.
13. "Director" shall mean the City's Director or representative.
14. "ED" shall mean the Executive Director of TCEQ, who is also a party to the SOAH proceeding described in Recital D, but is not a party to this Agreement.
15. "Effective Date" shall mean the date the Agreement is executed as stated in the Preamble.
16. "Engineer" shall mean an engineer licensed in the State of Texas and mutually selected by the Parties.
17. "ETJ" shall mean extraterritorial jurisdiction.
18. "Force Majeure" shall mean acts of God, governmental action, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, arrests and restraint of government and people, civil disturbances, explosions, major breakage or accident of machinery, extreme and unforeseeable delays in transportation, and any other causes, whether of the kind enumerated or otherwise, not reasonably within the control of the Party claiming the Force Majeure.
19. "Hornsby" shall mean Hornsby Bend Utility Company, Inc., a Texas Corporation.
20. "Hornsby Wastewater Applications" shall mean Hornsby's applications to amend wastewater CCN No. 20650, Application Nos. 32800-C and 33989-C.

21. **"Hornsby Water Applications"** shall mean Hornsby's applications to amend water CCN No. 11978, Application Nos. 33738-C and 33988-C.

22. **"Internal Lines"** shall mean a proposed subdivision's water distribution and wastewater collection mains and appurtenances that are directly connected to each structure's service lines. For the purposes of this definition, service lines are lines connecting the structures to the water distribution and/or wastewater collection system.

23. **"Manville"** shall mean Manville Water Supply Corporation.

24. **"Offsite Improvements"** shall mean infrastructure such as force mains, lift stations, water pump stations, water storage reservoirs/tanks, water distribution and wastewater collection system mains, and appurtenances that are connected to Internal Lines.

25. **"Parties"** shall mean both the City and Hornsby and their successors and permitted assigns.

26. **"Party"** shall mean either the City or Hornsby and their successors and permitted assigns.

27. **"SOAH"** shall mean the State Office of Administrative Hearings or such governmental authority as may succeed to SOAH's jurisdiction over administrative hearings.

28. **"TCEQ"** shall mean the Texas Commission on Environmental Quality or such governmental authority as may succeed to TCEQ's jurisdiction over CCNs.

ARTICLE 1

CCN PROTESTS AND CONTESTED CASE HEARING

Section 1.1 Withdrawal of Protests.

- (a) The Parties shall jointly seek the ED's written approval of the service area division shown on Exhibit A. The Parties shall seek this approval in as expeditious a manner as possible, recognizing that time is of the essence.
- (b) Within seven calendar days of the receipt of the ED's approval of the areas shown on Exhibit A, Hornsby and the City shall withdraw their protests to each other's Applications and request that the ALJ remand the Applications to TCEQ for administrative disposition by the Commission that confirms the terms of this Agreement.
- (c) If the Parties do not obtain the ED's approval of the service area division, the Parties shall be bound by the terms of this Agreement as set forth in Sections 1.3, 7.2 and 7.3.

Section 1.2 Amendment of Applications.

- (a) Hornsby and the City shall amend or otherwise modify their respective Applications to match the areas on Exhibit A designated as "Hornsby Bend's CCN Service Area" and the "City's CCN Service Area."
- (b) Hornsby and the City shall submit these modifications to the ED no later than 15 calendar days after the Effective Date regardless of whether the ALJ has issued an order remanding the Applications to TCEQ.

Section 1.3 Continuation of Contested Case Hearing.

If the ED does not agree to recommend the granting by the Commission of CCNs to the Parties as depicted on Exhibit A, or if the ALJ does not remand the Applications to TCEQ, Hornsby and the City agree to continue the contested case hearing described in Recital D as aligned parties, each at their own cost unless the Parties agree otherwise in writing. As aligned parties, Hornsby and the City shall diligently pursue the resolution of the service area issues in the manner described in this Agreement and shall not make arguments that are inconsistent with the service area positions expressed in this Agreement.

Section 1.4 Appearance before the Commission.

When the Parties appear before the Commission regarding the issuance of the Parties' CCNs, as they are described in Section 1.2(a), the Parties shall jointly seek the Commission's approval of the CCNs. The Parties' arguments, if any, before the Commission shall be consistent with the terms of this Agreement.

ARTICLE 2

SERVICE AREA

Section 2.1 Hornsby's CCN Service Area.

- (a) As provided by Section 1.2, the City shall request the ED to remove from the City's Water and Wastewater Applications tracts identified on Exhibit A as "Hornsby Bend's CCN Service Area." These tracts are generally located south of Gilleland Creek, north of the Colorado River, and east of proposed State Highway 130.
- (b) As provided by Section 1.2, the City shall also request the ED to remove from the City's Wastewater Application tracts identified on Exhibit A as "Hornsby Bend's CCN Service Area." These tracts are generally located east of Blake-Manor Road and north of Hog Eye Road.

Section 2.2 CCN Area Transferred from Hornsby to the City.

- (a) Hornsby agrees to transfer to the City:**
 - (i) Hornsby's existing CCN area east of FM 973, north of Decker Lane and south of Blake-Manor Road; and**
 - (ii) Hornsby's existing CCN area west of proposed State Highway 130 and north of FM 969.**
- (b) The tracts to be transferred from Hornsby to the City are shown on Exhibit A as "Transferred Area."**
- (c) The City shall file the City's STM no later than 15 calendar days after the Effective Date.**
 - (i) The City shall pay the filing fee for the City's STM; however, after payment of the filing fee by the City, each Party is responsible for its own costs related to the City's STM proceedings.**
 - (ii) Hornsby agrees to cooperate and provide all necessary information related to the City's STM within five business days of receipt of a written request by the City for such information.**
- (d) Hornsby agrees that the City may provide wastewater service to the Transferred Area as of the Effective Date.**
 - (i) Under this section, the right to provide wastewater service by the City includes all rights and actions necessary to effectuate such service.**
 - (ii) If the City provides service to the Transferred Area before the CCN for the Transferred Area is transferred to the City, Hornsby agrees that any infrastructure constructed by the City in the Transferred Area shall be owned, operated and maintained by the City unless the City agrees otherwise in writing. In addition, under such circumstances, all customers and revenue associated with the provision of wastewater service to the platted developments in the Transferred Area shall be retained by the City with no compensation to Hornsby other than that provided for in Section 5.1.**
- (e) If the City's STM is not approved by TCEQ, Hornsby and the City shall enter into all necessary agreements authorizing the City to provide retail service to the Transferred Area, and Hornsby agrees**

not to enforce its CCN rights with TCEQ, or any other agency or in any court of law as against the City.

Section 2.3 City's CCN Service Area.

- (a) As provided by Section 1.2, Hornsby shall request the ED to remove from Hornsby's Water and Wastewater Applications tracts identified as on Exhibit A "City's CCN Service Area." These tracts are generally located west of proposed State Highway 130.
- (b) As provided by Section 1.2, Hornsby shall request the ED to remove from Hornsby's Wastewater Applications tracts identified as on Exhibit A "City's CCN Service Area." These tracts are generally located east of FM 973, north of Decker Lane, FM 969 and Gilleland Creek and south of Blake-Manor and Hog Eye Roads.

ARTICLE 3

DESIGN CRITERIA

Section 3.1 General.

Article 3 shall apply only to Design Criteria, plan review, and inspection requirements of the City's Water and Wastewater Utility. This Agreement does not address any other development requirements, review, permits, or inspections required by other City of Austin departments.

Section 3.2 Design Criteria.

- (a) All new and replacement Offsite Improvements constructed by Hornsby or on Hornsby's behalf within the City of Austin's ETJ shall comply with the Design Criteria that exist at the time Hornsby or its agent submits Construction Plans for Offsite Improvements to the City for review and approval in accordance with Section 3.3.
- (b) Water or wastewater treatment plants and wells constructed by Hornsby are not required to meet the Design Criteria.
- (c) Internal Lines within the City of Austin's ETJ, constructed by Hornsby on behalf of a landowner or developer, shall be constructed to meet the Design Criteria.
- (d) Hornsby is not required to use the type of telemetry used by the City, but Hornsby shall provide sufficient space within its infrastructure for the addition of the telemetry required by the City at the time the Construction Plans or any revisions are submitted to the City in accordance with Section 3.3.

- (e) Hornsby may request an exception to the Design Criteria. Such requests shall be submitted in writing and shall articulate the reason for the exception. The final decision as to whether an exception will be granted is at the sole discretion of the City.

Section 3.3 Review of Plans.

- (a) Hornsby shall submit Construction Plans and any revisions to Construction Plans for facilities described in Sections 3.2(a) and 3.2(c) for review and approval by the City before initiating construction and installation of these facilities.
- (b) The City shall complete the review of Hornsby's Construction Plans and any revisions no later than 30 calendar days after the date of receipt of the Plans or revisions to the Plans.
 - (i) Within this 30 day period, the City shall provide written comments to Hornsby regarding those portions of the Construction Plans that do not comply with the Design Criteria.
 - (ii) If the Construction Plans submitted by Hornsby meet all the Design Criteria, the City shall approve the Plans within the 30 day period.
 - (iii) The City is not required to approve Hornsby's Construction Plans until all portions of the Plans comply with the Design Criteria or any agreed exceptions.
 - (iv) If the City fails to provide written comments to Hornsby regarding its Construction Plans or approval of its Plans within the 30 day period, the provisions of Article 6 shall apply.

Section 3.4 Retrofitting.

The City may not require Hornsby to retrofit to the Design Criteria any infrastructure that is installed and operating on the Effective Date. In addition, the City may not require Hornsby to retrofit future infrastructure to accommodate changes in the Design Criteria that were not in effect at the time Hornsby's Construction Plans for such infrastructure were submitted to the City for approval.

Section 3.5 Inspection.

- (a) Approval of Hornsby's Construction Plans by the City constitutes notice to the City to assign an inspector to the project.

- (b) Only construction projects and facilities the plans for which are subject to City approval under Sections 3.2 and 3.3 shall be inspected by the City.
- (c) Except as otherwise set forth in this Agreement, Hornsby shall follow the City's administrative procedures regarding submission of Construction Plans, in existence at the time Hornsby submits its Construction Plans.
- (d) Hornsby is not required to pay inspection costs required by the City's policies for construction projects of Offsite Improvements totaling less than \$100,000.
 - (i) To establish that a construction project is below the \$100,000 threshold requirement, Hornsby shall submit a copy of the executed construction contract between Hornsby and its contractor to the City along with a written "waiver" request.
 - (ii) Hornsby acknowledges that construction projects for Internal Lines are not covered by Section 3.5(d) or 3.5(e).
- (e) Hornsby agrees to pay one-half of the inspection costs, as established by City policies, for Offsite Improvements construction projects that total \$100,000 or greater.
- (f) The City shall inspect Hornsby's construction projects as soon as is practicable given the magnitude of the project and the availability of Hornsby representatives. The Parties shall use best efforts to coordinate scheduling of inspections in a timely manner. The Parties recognize that timeliness under this section will vary with the type of project. Disputes over timeliness shall be resolved in good faith between the Parties. Hornsby shall provide all required information for the inspection to the City. Hornsby shall provide written notice of the failure to inspect to the City. The City shall have 10 business days, after the date of receipt of Hornsby's notice, to complete or waive inspection. If the City does not inspect or waive inspection within 10 business days, the City will be subject to liquidated damages under Section 6.2, and Hornsby may continue construction, in accordance with the Plans previously approved by the City; if a project is complete, Hornsby may commence use of the infrastructure.
- (g) If the City's inspector determines that Hornsby's infrastructure is or has not been constructed in accordance with the Design Criteria, the inspector shall review the matter with the Director before notifying Hornsby of the deficiency. The City shall notify Hornsby of the nature of the deficiency within five business days of the discovery of the deficiency.

- (i) If Hornsby disagrees with the City's notice of deficiency, Hornsby shall provide written notice and explanation to the City of the points upon which it disagrees within five business days of receipt of the City's notice of deficiency. The City shall have 10 business days after the receipt of Hornsby's notice to evaluate Hornsby's response and explanation. The City shall provide a written response communicating its final conclusion within five business days of receipt of Hornsby's response.
- (ii) If there is a continued dispute between the Parties as to whether Hornsby's construction complies with the Design Criteria, the Parties shall retain an Engineer under the process provided in Section 3.5(g)(iv) to resolve the dispute. If the Engineer determines that Hornsby has not fully complied with the Design Criteria, then Hornsby shall pay the Engineer's fees and costs for performing this determination and damages in accordance with Sections 6.2 and 3.5(g)(iii). If the Engineer determines that Hornsby has fully complied with the Design Criteria, then the City shall pay the Engineer's fees and costs for performing this determination and damages in accordance with Sections 6.2 and 3.5(g)(iii).
- (iii) Liquidated damages under this section shall begin to accrue upon the date that Hornsby notifies the City that it desires to hire the Engineer. Liquidated damages shall stop accruing upon the date the Engineer completes the written determination. Payments for damages incurred under this section shall be made within 90 calendar days of the receipt of the Engineer's written decision by the Party owing damages.
- (iv) To select the Engineer, each Party shall submit a list of five independent engineers that are acceptable to that Party. The Parties shall continue to submit names until a name is common to both lists or the Parties otherwise reach agreement.
- (h) Hornsby shall replace or repair, at its sole cost, infrastructure that is determined to be in non-compliance with the Design Criteria, within a mutually agreed upon time period, which shall not exceed 180 calendar days after the date of mutual agreement regarding non-compliance or receipt of the Engineer's written decision.
- (i) Hornsby shall provide the City, in accordance with the City's procedures, one set of As-Built Plans no later than 30 calendar days after construction is complete. The As-Built Plans shall be certified, by an engineer licensed in Texas, that the constructed

facilities have been built in accordance with approved Construction Plans.

ARTICLE 4

MISCELLANEOUS ISSUES RELATING TO THE PROVISION OF SERVICE AND SERVICE AREAS

Section 4.1 Wholesale Service.

Hornsby and the City agree to negotiate in good faith any future wholesale water and wastewater agreements between the Parties, with the recognition that any such agreement shall be subject to review by the Water and Wastewater Commission and approval by the Austin City Council.

Section 4.2 Discharge Permits.

- (a) The City agrees not to protest Hornsby's discharge permit applications, within "Hornsby Bend's CCN Service Area" as shown on Exhibit A, as long as those applications provide for effluent to be discharged to the Colorado River or its tributaries.
- (b) Hornsby agrees not to protest the City's discharge permit applications, within the "City's CCN Service Area" as shown on Exhibit A, as long as those applications provide for effluent to be discharged to the Colorado River or its tributaries.

Section 4.3 Manville's Water Service Area.

Hornsby shall not protest the sale and transfer of any water CCN area from Manville to the City, and the City shall not protest the sale and transfer of any water CCN area from Manville to Hornsby for the areas on Exhibit A designated as "Hornsby Bend's CCN Service Area," "City's CCN Service Area," "Transferred Area," and "Hornsby Bend Utility Co., Inc." area.

Section 4.4 State Highway 130.

The Parties acknowledge that the center line of the final alignment of proposed State Highway 130 may change in the future. The Parties agree that the eastern right of way of proposed State Highway 130 as finally determined by the State constitutes the boundary of the certificated areas between the Parties. No further compensation shall be paid by either Party as a result of changes in the final alignment of proposed State Highway 130.

ARTICLE 5
COMPENSATION

Section 5.1 Connections.

- (a) The City agrees to pay fees to Hornsby for wastewater connections in the areas identified on Exhibit A as "Transferred Area" and "AELP Property" under the terms of the provisions of this Article. The payment shall be \$400 per new wastewater connection up to a maximum of 3,000 wastewater connections for a total payment of \$1,200,000. Hornsby agrees that the City shall not be obligated to pay more than \$400,000 in any given fiscal year. Any amount due to Hornsby in excess of \$400,000 shall be paid by the City on October 1 of the next fiscal year. For example, if in Year One 1,500 connections are made, the City shall pay Hornsby for 1,000 connections for a total of \$400,000. Then, in Year Two, if 100 connections are made, the City shall pay Hornsby for 100 connections for Year Two plus 500 connections that are carried over from Year One, for a total payment of \$240,000. If, however, 1,500 connections are made in Year Two, the City shall again pay \$400,000 for Year Two, and the 500 connections from Year One and 500 connections from Year Two will roll over, this time into the payment for Year Three.
- (b) The City shall pay such wastewater connection fees on an annual basis on October 1 or the next business day. The City shall also provide a report that details the address of each wastewater connection. The City shall provide additional information reasonably requested by Hornsby to verify the number of wastewater connections.

Section 5.2 Transferred Area.

- (a) Upon receipt of the TCEQ order transferring the CCN for the Transferred Area, the City will pay Hornsby \$200,000, but this payment shall occur no sooner than October 1, 2004. In consideration for delaying this payment until October 1, 2004 or thereafter, the City shall pay Hornsby an additional \$3,000 on the date that the \$200,000 payment is made. The City shall also pay Hornsby \$100,000 on October 1, 2005.
- (b) If the TCEQ order is not received until after October 1, 2004, the City shall pay Hornsby the first payment within 30 calendar days after the City's receipt of the TCEQ order.
- (c) The City shall not be obligated to make the payments described in Section 5.2(a) until the order transferring the Transferred Area from Hornsby to the City is issued by the Commission.

- (d) Hornsby represents and warrants that there are no customers within the Transferred Area as of the Effective Date.
- (e) Hornsby represents and warrants that the only existing agreement concerning the Transferred Area is the "Agreement to Provide Wastewater Service" between Hornsby Bend Utility Company, Inc. and Austin Estates Limited Partnership executed on February 2, 2000. Hornsby assigns to the City, pursuant to Exhibit B, all rights and obligations of the Agreement to Provide Wastewater Service.
- (f) Hornsby represents and warrants that it has received a total of \$25,000 from Austin Estates Limited Partnership. Within ten calendar days of issuance of the TCEQ order transferring the CCN for the Transferred Area, Hornsby shall pay the City \$25,000, but this payment shall occur no sooner than October 1, 2004. If it is determined after October 1, 2004 that Hornsby has received more than \$25,000 from Austin Estates Limited Partnership, Hornsby shall pay the City the amount in excess of \$25,000, within 30 calendar days of such determination.

ARTICLE 6

DEFAULT AND DAMAGES

Section 6.1 Default by a Party, Notice and Cure.

- (a) In the event of a default by either Party under this Agreement, the non-defaulting Party shall have the right to give written notice to the defaulting Party specifying the nature of the default and demanding that the same be remedied within 30 calendar days after receipt of such notice by the defaulting Party unless otherwise provided by this Agreement. Upon receipt of notice of default, the defaulting Party shall promptly initiate curative action and continue diligently and expeditiously to cure the default within the shortest reasonable period of time to do so.
- (b) If the defaulting Party in its reasonable judgment determines that the default cannot be cured within the 30 day period, the defaulting Party shall promptly give written notice to the non-defaulting Party of the circumstances and reasons why the default cannot be cured within 30 days and the time by which the defaulting Party reasonably expects to be able to remedy the default with continuous effort and diligence. The non-defaulting Party acting in good faith and based on its reasonable determination of the circumstances shall not be bound by the defaulting Party's determination of the grounds for the extension of time in which to cure the default. If the non-defaulting Party disagrees with the defaulting Party's assessment of the time period necessary to cure

the default, the non-defaulting Party shall promptly notify the defaulting Party, and the Parties shall proceed according to Section 6.1(c).

- (c) The Parties agree that they shall use good faith and reasonable efforts to resolve any dispute by agreement, which may include engaging in non-binding arbitration or mediation, before initiating any lawsuit to enforce their respective rights under this Agreement.
- (d) Should the defaulting Party fail to cure the default within the 30 day period (or such period mutually agreed to under Section 6.1(b) or 6.1(c)), or should the Parties be unable to reach agreement regarding the time reasonably necessary to cure if the defaulting Party asserts that the default cannot be cured within 30 days, the non-defaulting Party shall be entitled to exercise its remedies against the defaulting Party under Section 6.2.

Section 6.2 Damages and Remedies.

- (a) Except as noted in Sections 3.5(f) and 3.5 (g)(iii), after receiving notice and the opportunity to cure in accordance with Section 6.1 and after failing to cure within the designated time, the defaulting Party shall be liable for damages in the amount of \$500 per business day until the default is cured or the Parties agree otherwise.
- (b) In addition, the non-defaulting Party may pursue all additional remedies, at law or in equity, including payment of reasonable attorneys' fees, that it deems appropriate to redress such default.
- (c) Nothing in this Agreement shall be construed to limit any Party's right to recover damages or seek other appropriate curative remedies if a non-defaulting Party files a breach of contract action relating to this Agreement. Nothing herein shall be construed as a waiver of a Party's right to seek emergency relief in the event of an emergency, nor waiver of the rights of a Party existing under the laws of the State of Texas.

ARTICLE 7

TCEQ APPROVAL AND REGULATIONS

Section 7.1 Regulations.

The Parties agree that this Agreement is subject to governing statutes and TCEQ regulations promulgated pursuant to those statutes, especially 30 TAC Chapter 291, and no terms shall be construed to contradict these statutes or regulations.

Section 7.2 Commission Approval of Service Areas Agreed to by the Parties.

The Parties anticipate that the ED will recommend that CCNs be granted to the Parties that match the areas depicted on Exhibit A. If CCNs are not granted to the Parties in accordance with Exhibit A, the other terms of this Agreement relating to the Transferred Area, Design Criteria, etc., shall survive. In addition, if the Parties are not granted CCNs that match Exhibit A, the Parties agree that they shall not: (1) apply for CCNs in areas designated as the other Party's service area on Exhibit A, unless agreed by the Parties in writing; and (2) protest each other's CCN applications as long as those applications are for area within the applicant's service area as it is depicted on Exhibit A.

Section 7.3 Provision of Service Before Commission Approval of Service Areas Agreed to by the Parties.

The Parties agree that, as of the Effective Date and to the extent allowed by law, they may each provide service within their respective service areas, as shown on Exhibit A, and that they shall not protest the provision of service by the other Party in those agreed areas.

ARTICLE 8

MISCELLANEOUS

Section 8.1 Section Headings.

Section and other headings contained in this Agreement are for reference purposes only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of any provision.

Section 8.2 Governing Law and Venue.

This Agreement, and the obligations of the Parties, shall be governed by and be construed in accordance with the laws of the State of Texas. Venue for all disputes involving this Agreement shall be in the appropriate District Court in Travis County, Texas.

Section 8.3 Severability.

Every provision of this Agreement is intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement. If any term or provision of this Agreement is found to be void or unenforceable by a court or agency of competent jurisdiction or by agreement of the Parties: (1) the Agreement shall remain in full force and effect as to all other terms and purposes and shall be construed as if such invalid portion had never been contained in the Agreement; and (2) the

Parties will negotiate new terms to replace the invalid one(s), and such terms will be drafted to preserve the intent of the invalid terms.

Section 8.4 Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

Section 8.5 Parties in Interest.

Each and all of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the undersigned Parties and the legal representatives, successors and permitted assigns of such Parties. Whenever a reference to any Party is made in this Agreement such reference shall be deemed to include a reference to the legal representatives, successors and permitted assigns of such Party.

Section 8.6 Time.

(a) Time is of the essence in the performance of the Parties' obligations under this Agreement.

(b) Time shall be computed under this Agreement as follows: The Parties shall begin counting the day after the period starts. The day the time period begins (e.g., the date of receipt) is not counted. For example, if a Party must fulfill an obligation under the Agreement within 15 calendar days of the Effective Date, and the Effective Date is September 10, September 11 counts as the first day of the 15-day period. Legal holidays shall not count in the computation of time.

Section 8.7 Force Majeure.

In the event of either Party being rendered unable, wholly or in part, by reason of Force Majeure, to carry out its obligations under this Agreement, it is agreed that, on such Party giving notice and full particulars of such Force Majeure in writing to the other Party within a reasonable time after the occurrence of the cause relied on, the obligations of the Party giving such notice, so far as they are affected by such Force Majeure, shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall so far as possible be remedied as quickly as possible. The Parties shall use their reasonable efforts to mitigate the effects of such Force Majeure and to cooperate to develop and implement a plan of remedial and reasonable alternative measures.

Section 8.8 Third Party Beneficiary.

No person other than the Parties may rely on or be a beneficiary of this Agreement.

Section 8.9 Assignment.

This Agreement and the rights of the Parties hereunder may not be assigned in whole or in part to any third party without the written consent of the Parties. Neither Party shall unreasonably withhold consent to the assignment of this contract or rights to a third party.

Section 8.10 Entire Agreement.

This Agreement constitutes the entire Agreement between the City and Hornsby and supercedes any prior understanding or oral or written agreements respecting the subject matter of this Agreement.

Section 8.11 Good Faith Dealings.

The Parties undertake to act in good faith in relation to the performance and implementation of this Agreement and to take such other reasonable measures as may be necessary for the realization of its purposes and objectives. Each Party agrees that it will not initiate a dispute against the other Party unless the Party raising the dispute in good faith believes its position is legitimate. The Parties agree to attempt to resolve all disputes arising hereunder promptly, equitably, and in a good faith manner. The Parties further agree to provide each other with reasonable access during normal business hours to any and all non-privileged records, information, and data pertaining to any such dispute.

Section 8.12 Notice.

- (a) Any notice required or permitted to be delivered hereunder may be given to the other Party via hand delivery or U.S. Postal Service, postage prepaid, to the address of the other Party shown below or at such other physical address as that Party may specify writing:

Hornsby:
Hornsby Bend Utility Company, Inc.
c/o Armbrust & Brown, L.L.P.
100 Congress Avenue
Suite 1300
Austin, TX 78701

Michael Quinn
c/o Southwest Utility Group
1 Wilshire Building
624 S. Grand Avenue, Suite 2900
Los Angeles, CA 90017

Latius Prikryl
Phillips & Prikryl
515 Congress, Suite 2600
Austin, TX 78701

and

Bill Jasura
Hornsby Bend Utility Company, Inc.
c/o Eco Resources
9511 Ranch Road 620 North
Austin, Texas 78726

City:
City of Austin
Water & Wastewater Utility
P.O. Box 1088
Austin, TX 78701
Attention: Director

- (b) Notice shall be deemed given by one Party to the other Party upon either of the following dates:
 - (i) The date of the mailing, as shown by a United States Postal Service receipt, if mailed to the other Party by registered or certified mail; or
 - (ii) The date of the receipt by such other Party, if personally delivered.

Section 8.13 No Presumption Against Drafter.

The Parties understand, agree and acknowledge that:

- (a) This Agreement has been freely negotiated by the Parties; and
- (b) In any dispute or controversy over the meaning, validity or enforceability of this Agreement or any of its terms and conditions, there shall be no interference, presumption, or conclusion drawn whatsoever against any Party by virtue of that Party having drafted the document or any portion thereof.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective for all purposes as of the date first written above.

CITY OF AUSTIN

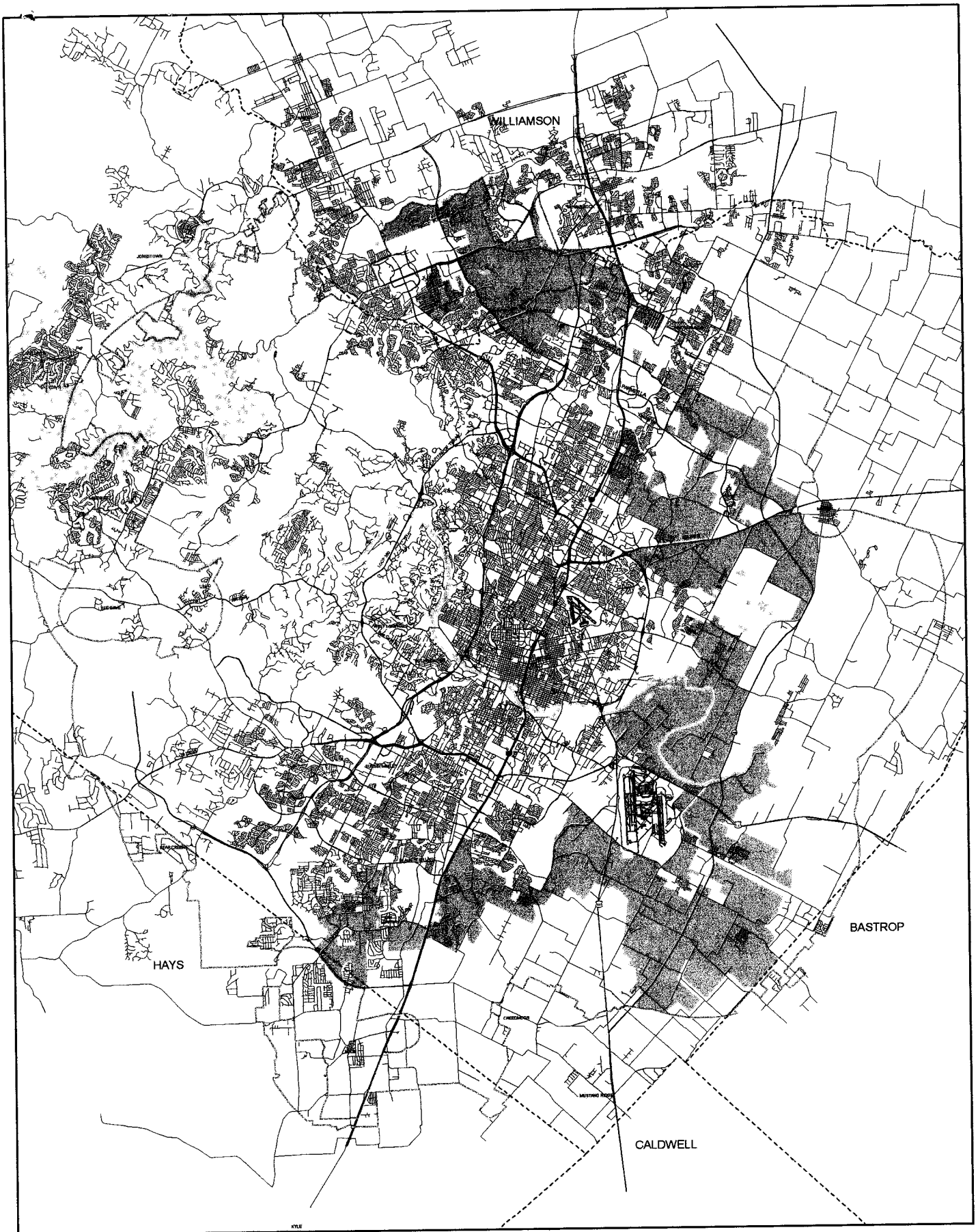
By: _____








José E. Canales
Deputy City Manager

HORNSBY BEND UTILITY COMPANY, INC.

By: _____


Michael Quinn
President



-  Austin Water Service Area
-  Austin City Limits
-  Austin 5-mile Extraterritorial Jurisdiction (ETJ)
-  Other City Limits
-  Other City ETJ
-  County Line



6000 0 6000 12000 Feet

City of Austin Water Service Area



City of Austin
Water and Wastewater Utility
Wholesale Services Division
August 18, 2003



SETTLEMENT AGREEMENT MAP

.5" = 12,000'
1" = 24,000'
1:288,000

From: <Bart.Jennings@ci.austin.tx.us>
To: <mjacobs@bracepatt.com>
Date: 8/20/03 12:16PM
Subject: FW: CCN map change

> -----Original Message-----

> From: Campman, Philip
> Sent: Wednesday, August 20, 2003 8:19 AM
> To: Jennings, Bart
> Cc: Cooke, Cara
> Subject: CCN map change

>

> Hi Bart,

> Attached is an updated water CCN PDF file. I have three copies of it
> printed out and on my desk for you to pick up at your convenience.

> -Philip

>

> <<coa_w_ccn_8-2003_pc.pdf>>

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>

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From: Geoffrey Kirshbaum
To: Adhikari, Kamal; Howell, Mike
Date: 8/25/03 9:42AM
Subject: Fwd: FW: CCN map change

** Confidential **

Mike/Kamal,

Here is the second e-mail I received today from Monica Jacobs regarding the water CCN map the parties have agreed to in the City of Austin/Hornsby Bend matter. Again, let me know if you have any questions. Thank you.

Geoffrey P. Kirshbaum, Staff Attorney ((512) 239-6257)
TCEQ Environmental Law Division

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OUTSIDE OF THE COMMISSION EXCEPT WITH THE EXPRESS PERMISSION OF THE OFFICE OF
LEGAL SERVICES

OVERSIZED MAP(S)

TO VIEW OVERSIZED MAP(S)
PLEASE GO TO
CENTRAL RECORDS

FOR ANY QUESTIONS
PLEASE CALL **CR** MAIN LINE
(512) 936-7180