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**WHOLESALE  
WASTEWATER SERVICE AGREEMENT**

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

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

**RECITALS**

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

*WHEREAS, Kelly Lane is a Texas corporation; and*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

**I.**

**DEFINITIONS AND INTERPRETATIONS**

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

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

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

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

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

1.1.5 "Delivery Point" means a point designated by mutual consent of the engineer for Kelly Lane, the City Engineer for Hutto, and the engineer for HM456 to which a

*Hutto Inflow Line shall be constructed for delivery of Waste from the Collection System into a Kelly Lane Inflow Line, and refers, as applicable, to the Primary Delivery Point or an Alternate Delivery Point.*

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

*1.1.7 "Hutto" means City of Hutto.*

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

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

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

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

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

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

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

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

*1.1.16 "Party" means Hutto and Kelly Lane.*

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

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

1.1.19 "Primary Delivery Point" means the Delivery Point designated by mutual consent of the engineer for Kelly Lane, the Hutto City Engineer and the engineer for HM456, which is the existing manhole in The Ridge at Steeds Crossing (a subdivision located South of Jenkins Tract No. 1 across County Road 138) in Derby Day Drive located closest to County Road 138.

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

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

1.1.22 "Service" means Retail Service and Wholesale Service.

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

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

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

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

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

1.4 Interpretations. This Agreement and all the terms and provisions herein shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of this Agreement. The parties agree that this Agreement shall not be construed in favor of or against either party on the basis that the party did or did not author the Agreement. Nothing in this Agreement shall be construed to violate nor shall either party hereto be required by the terms and provisions of this Agreement to violate any Regulatory Requirements, and all acts done pursuant to this Agreement shall be performed in such a manner as to conform thereto.

## II.

### SERVICE AND OPERATION OBLIGATIONS

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

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

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

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

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

*make financing arrangements and take such other actions as may be available and operations in a timely manner. The parties agree to pursue all such actions expeditiously to accomplish the necessary additions in a timely manner.*

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

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

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

*2.7 Rates, Fees and Billings.*

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

*2.7.2 As to the Service Area, Hutto shall collect, and share equally with Kelly Lane, an L.U.E. fee (or impact fee) as established by the Amended and Restated Contract for Wastewater Service and Reservation Agreement ("Amended Contract") between*

*Kelly Lane and HM456 for each connection to the Collection System for which Kelly Lane provides Wholesale Service and Hutto provides Retail Service; provided, however, this requirement does not apply to the first 284 L.U.E.'s in the Service Area, because L.U.E. fees have already been paid. As to L.U.E. fees collected by Hutto (beyond the first 284), Hutto agrees to collect all L.U.E. fees for all lots in any Phase or section of the Jenkins Tract No. 1, upon approval of a final plat for such Phase or section. The L.U.E. fee for a multifamily or non-residential customer shall be determined on an L.U.E. equivalent basis, e.g., \$1,500.00 for each L.U.E. equivalent in accordance with City of Hutto criteria, and absent such criteria, based on City of Austin L.U.E. equivalency criteria. Kelly Lane shall have no obligation to provide Wholesale Service for any Phase or Section (beyond the first 284) to the Collection System until Kelly Lane is paid its share of the L.U.E. fees for the Phase or Section. The Wholesale Service commitment (beyond the first 284) of Kelly Lane to Hutto and the Retail Service commitment of Hutto to the party seeking Service shall become effective only when Hutto pays the L.U.E. fee to Kelly Lane for such Phase or Section to be served. .*

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

#### *2.7.4 Monthly Charges*

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

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

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

2.7.4.4 Beginning with the calendar year 2010, the Monthly Rate is subject to adjustment, at the option of either party, in the manner set forth in subsection 2.7.4.5, based on the operation and maintenance costs incurred by Kelly Lane in providing Wholesale Service to Hutto for the calendar year preceding the calendar year in which a party requests an adjustment in the Monthly Rate.

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

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

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

2.9 Certificates and Permits. Kelly Lane agrees to submit from time to time and in a timely manner, as and if necessary, all appropriate applications to the Texas Natural Resource Conservation Commission under Chapters 13 and 26 and other applicable provisions of the Texas Water Code and under the Commission's rules, and to prosecute the same with due diligence and in good faith to a conclusion as required to become and remain authorized to provide Wholesale Service throughout the Service Area. Hutto agrees to approve and actively support the applications provided they are consistent with the terms and provisions of this Agreement. Kelly Lane also agrees to acquire and maintain in force and effect throughout the term of this Agreement all other certificates, permits and authorizations required for its operations hereunder, and to comply with all Regulatory Requirements. The parties mutually agree to actively support each other in any undertakings in connection with any certifications, permits or authorizations, including

*without limitation waste discharge permit renewals and amendments, and CCN proceedings required of either of them in the exercise of their respective rights, duties and obligations under this Agreement, provided such undertakings and the purposes and objectives thereof are consistent with the terms, provisions and purposes of this Agreement. However, the support required herein shall not obligate the supporting party to become a designated party to any such application or proceeding, to pay any of the costs and expenses incurred by the party that initiates or is the subject of the application or proceeding, or to develop and present evidence or testimony in or for the application or proceeding other than evidence or testimony expressing the supporting party's support for the other party.*

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

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

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

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

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

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

*2.11.1 Within a reasonably prompt time after the effective date of this Agreement, Kelly Lane will amend its application No. 31780-C to delete the overlap area from its requested CCN service area.*

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

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



2.12.1 *Within a reasonably prompt time after the effective date of this Agreement, Hutto will submit a written withdrawal of its protest of Kelly Lane's application to amend Kelly Lane's CCN. The withdrawal letter will be submitted to the TNRCC, and as necessary, the State Office of Administrative Hearings ("SOAH").*

### **III.**

#### **QUANTITY, MEASUREMENT OF WASTE; TITLE**

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

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

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

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

### **IV.**

#### **REGULATION OF QUALITY OF WATER DELIVERED AND WASTES RECEIVED**

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

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

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

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

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

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

4.7 Independent Contractors. Kelly Lane and Hutto are independent contractors in fulfilling their respective obligations under this Agreement, and nothing herein shall be

*interpreted as changing or modifying the relationship of the parties. Any such change or modification must be in writing and signed by both parties.*

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

## **V.**

### **COLLECTION SYSTEM**

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

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

## VI.

### MISCELLANEOUS PROVISIONS

6.1 Term. This Agreement shall continue in full force and effect until the year January 1, 2020. It shall then be renewed for additional periods of ten (10) years if both parties give written notice to the other party within six (6) months in advance of the termination date advising that the parties desire to renew this Agreement. In the event that either party does not elect to renew this Agreement, Kelly Lane shall incur no cost regarding the diversion of the wastewater generated within areas served by Kelly Lane in the ETJ of Hutto. All such costs of termination and diversion of wastewater shall be borne by Hutto. After the termination of this Agreement, Kelly Lane shall retain all of its property and assets and Hutto shall retain all of its property and assets.

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

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

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

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

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

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

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

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

6.10 Arbitration. Except as otherwise expressly provided in this Agreement, any controversy, dispute or claim arising out of or relating to this Agreement, or any breach thereof, shall be settled by arbitration in accordance with the Commercial Rules of Arbitration of the American Arbitration Association; provided, however, the arbitrator to whom any controversy, which is subject to arbitration under the terms of this Agreement, is submitted in accordance with the provisions hereof, shall (1) reside in Travis or Williamson Counties, Texas; (2) the arbitrator must be an attorney, engineer or accountant; and (3) who is familiar with water and sewer utilities and has at least ten (10) years of experience in this area. The arbitrator has jurisdiction and authority to interpret and apply the applicable provisions of this Agreement in accordance with the laws of the State of Texas. Such application or interpretation of the provisions of this Agreement must be in accordance with the spirit and letter of this Agreement. No arbitrator shall have the jurisdiction or authority to add to, take from, nullify, or modify any of the terms of this Agreement, directly or indirectly, under the guise of interpretation. The arbitrator shall be bound by the facts and evidence submitted in the hearing and may not go beyond the terms of this Agreement in rendering the award. It is further understood and agreed that the power of the arbitrator shall be strictly limited to determining the meaning and interpretation of the explicit terms of this Agreement as herein expressly set forth and that no arbitrator shall have the power to base any award on any alleged practices or oral understandings not incorporated herein. Any award rendered in arbitration proceedings under this Agreement shall be subject to judicial review at the instance of either party for the purpose of determining whether the arbitrator exceeded the power as herein limited, and neither party shall be deemed to have waived its right to such review by proceeding to arbitration. Within the power as herein limited, the arbitrator may enter an award based upon any remedy available to the parties as provided in Section 6.3 of this Agreement. The arbitrator shall issue his award within 180 days after the demand for arbitration is made. Judgment upon the award may be entered in any court having jurisdiction thereof. Any such arbitration proceeding shall be held at the municipal offices of Hutto, or such other place in Williamson County as may be designated by the parties, and any expenses incurred by any party in connection with any such arbitration proceeding shall constitute an operation and maintenance expense of that party. Each party represents that this Agreement was concluded upon the advice of counsel. The provisions of this section are subject to and shall not be considered as attempting to exclude the jurisdiction of the Texas Natural Resource Conservation Commission or any other governmental authority having jurisdiction to arbitrate or settle disputes, hold hearings or enter orders relating to the subject matter of this Agreement.

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

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

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

CITY OF HUTTO

KELLY LANE UTILITY COMPANY

By: 

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

By: 

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

# Exhibit "A"

## LINE TABLE

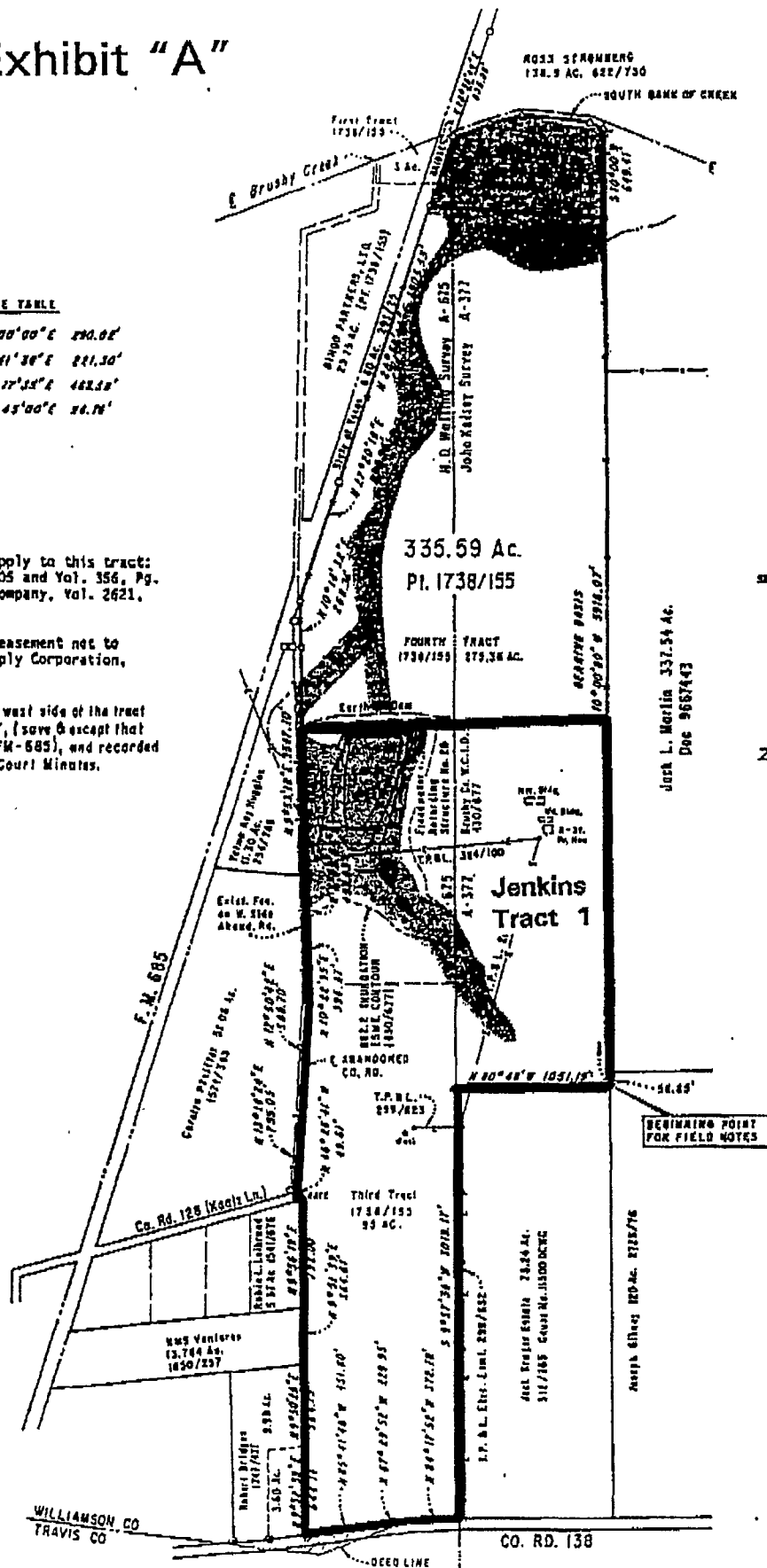
L-1 N 78°00'00"E 290.02'  
L-2 N 85°41'30"E 221.50'  
L-3 S 70°17'12"E 462.28'  
L-4 S 34°45'00"E 20.76'

## NOTES

g easements do not apply to this tract:  
any, Vol. 801, Pg. 305 and Vol. 356, Pg.  
HC; to TU Electric Company, Vol. 2621,  
C.

subject to a blanket easement net to  
n Manville Water Supply Corporation,  
. 468, DRMC.

county road along the west side of the tract  
was vacated 9-18-97, (save & except that  
d road within 300' of FM-885), and recorded  
. 193, Commissioners Court Minutes.



SEE FIELD NOTES ATTACH

- CORO. R.G.
- IRON ROD
- IRON ROD
- ⊙ IRON PIPE
- POWER POL
- ||||| WREN COAT
- △ MEASURER
- SHADED AREA DE

Jack L. Martin 337.54 Ac.  
Doc 9687443

BEGINNING POINT  
FOR FIELD NOTES

WILLIAMSON CO  
TRAVIS CO

CO. RD. 138



## Exhibit "B"

### LINE TABLE

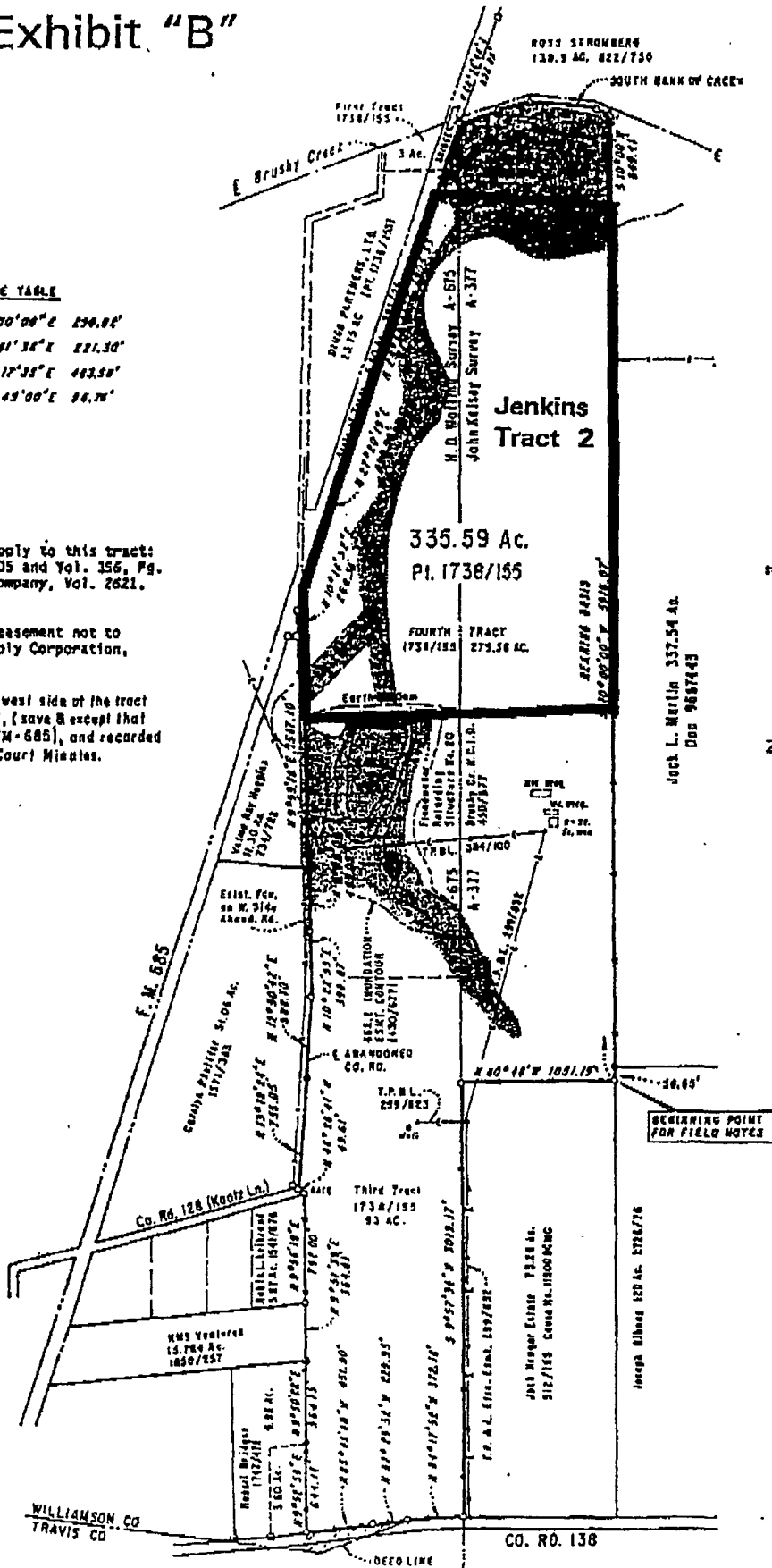
L-1	871°00'00"E	270.84'
L-2	85°41'36"E	221.30'
L-3	570°17'32"E	463.50'
L-4	334°43'00"E	96.76'

## NOTES

g. easements do not apply to this tract:  
any, Vol. 801, Pg. 305 and Vol. 156, Pg.  
HC; to TU Electric Company, Vol. 2621.  
C.

subject to a blanket easement not to  
a Manville Water Supply Corporation,  
. 558. DRWC.

1 county road along the west side of the tract  
was vacated 9-18-97, (save & except that  
d road within 300' of FM-685), and recorded  
in 193, Commissioners Court Minutes.



**WASTEWATER SERVICE AGREEMENT****BETWEEN THE CITY OF HUTTO  
AND  
HM456, LTD.**

This Wastewater Service Agreement (the "Agreement") is entered into between the City of HUTTO ("Hutto") and HM456, LTD., a Texas limited partnership ("HM456") for the purposes and consideration set forth herein.

**RECITALS**

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

WHEREAS, HM456 is a Texas limited partnership which owns certain real property in Williamson County, Texas, which real property is referred to herein as the "Jenkins Tract No. 1" and the "Jenkins Tract No. 2", which tracts are more particularly described in Exhibits "A" and "B" attached hereto (Jenkins Tract No. 1 and Jenkins Tract No. 2 are collectively referred to as the "Jenkins Tract"); and

WHEREAS, Kelly Lane Utility Company ("Kelly Lane") is a Texas corporation; and

WHEREAS, Hutto and Kelly Lane have entered into a Wastewater Service Agreement dated June 9, 1999 (the "Hutto/Kelly Lane Agreement"), regarding the provision of wastewater service to portions of Williamson County, Texas, including the Jenkins Tract; and

WHEREAS, Kelly Lane and HM456 have previously entered into an agreement (the "Kelly Lane/HM456 Agreement") for Kelly Lane to provide wastewater to Jenkins Tract No. 1 and Jenkins Tract No. 2;

WHEREAS, the Hutto/Kelly Lane Agreement is intended to resolve a dispute between Hutto and Kelly Lane over land within Hutto's ETJ for which both Hutto and Kelly Lane have applied to the TNRCC for a wastewater CCN; and

WHEREAS, Hutto and Kelly Lane have simultaneously herewith executed the Hutto/Kelly Lane Agreement, and upon the approval of the Hutto/Kelly Lane Agreement by TNRCC, Hutto will hold the wastewater CCN for the Jenkins Tract No. 1 and the Jenkins Tract No. 2; and

WHEREAS, since the Hutto/Kelly Lane Agreement affects the Kelly Lane/HM456 Agreement, Kelly Lane asked HM456 sign the Hutto/Kelly Lane Agreement to indicate that HM456 understands and approves the effect of the Hutto/Kelly Lane Agreement on Kelly Lane's obligations under the Kelly Lane/HM456 Agreement; and

WHEREAS, as a precondition to HM456 consenting to the Hutto/Kelly Lane Agreement, Hutto has agreed to provide HM456 certain assurances regarding future wastewater service for the Jenkins Tract No. 2, which HM456 expects to develop at some point in the future, including that Hutto will provide wastewater service to Jenkins Tract No. 2 (potentially as much as 476 L.U.E.s, but not to exceed that number) subject to certain terms and conditions set forth in this Agreement; and

WHEREAS, all of the Recitals set forth in Hutto/Kelly Lane Agreement are incorporated herein by reference and, unless specifically set forth herein to the contrary, all capitalized terms in this Agreement shall have the same meanings ascribed to them in the Hutto/Kelly Lane Agreement; and

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

NOW THEREFORE, for and in consideration of the above referenced recitals, all of which are true and correct, the mutual promises, covenants, obligations and benefits in this Agreement and incorporating all of the foregoing recitals herein by reference, then Hutto and HM456 contract and agree as follows.

I.  
DEFINITIONS AND INTERPRETATIONS

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

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

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

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

1.1.4 "Hutto" means City of Hutto.

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

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

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

1.1.8 "Retail Service" means the provision of retail wastewater collection and transportation service by Hutto to any party for land the party owns or occupies within Hutto's Service Area.

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

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

1.1.11 "Cost" means the actual prevailing cost for any item at the time HM456 requests wastewater service for Jenkins Tract No. 2 from Hutto, but specifically excludes any then prevailing published tap fees or L.U.E. fees required by Hutto prior to providing such wastewater service.

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

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

1.4 Interpretations. This Agreement and all the terms and provisions herein shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of this Agreement. The parties agree that this Agreement shall not be construed in favor of or against either party on the basis that the party did or did not author the Agreement. Nothing in this Agreement shall be construed to violate nor shall either party hereto be required by the terms and provisions of this Agreement to violate any Regulatory Requirements, and all acts done pursuant to this Agreement shall be performed in such a manner as to conform thereto.

## II. SERVICE AND OPERATION OBLIGATIONS

2.1 Wastewater Service. Hutto agrees to provide Retail Service to the Jenkins Tract.

2.1.1 Jenkins Tract No. 1. Subject to compliance with Hutto's normal and existing requirements by any person requesting Retail Service, Hutto will grant Retail Service to and authorize connection to Hutto's Collection System by any party requesting such service for land that party owns or occupies within the boundaries of the Service Area; provided, however, Hutto acknowledges that the normal and existing requirements relating to Tract No. 1 have been or will be accomplished as follows:

(a) Section 2.7.2 of the Hutto/Kelly Lane Agreement - The L.U.E. fees for the first 284 L.U.E.s on Tract No. 1 have been paid, to Kelly Lane, and such payment satisfies the normal requirement that HM456 pay Hutto the prevailing L.U.E. fee.

(b) Section 2.7.2 of the Hutto/Kelly Lane Agreement - The L.U.E. fees for L.U.E.s 285-469 on Tract No. 1 are established at \$1,500, to be paid by HM456 to Hutto (which will share them with Kelly Lane per the Hutto/Kelly Lane Agreement); provided, however, if HM456 exercises its right under Section 26 of the Kelly Lane/HM456 Agreement to accelerate its purchase of not less than 185 Additional LUE's (as defined in the Kelly Lane/HM456 Agreement), then the L.U.E. fees for L.U.E.s 285-469 on Tract No. 1 shall be \$1,200.00 per L.U.E. instead of \$1,500.00 per L.U.E., to be paid by HM456 to Hutto (which will share them with Kelly Lane per the Hutto/Kelly Lane Agreement).

(c) Section 2.7.2 of the Hutto/Kelly Lane Agreement - The last two sentences of Section 2.7.2 do not apply to the 1st 284 L.U.E.s on Tract No. 1, but do apply to L.U.E.s 285-469 on Tract No. 1.

(d) Section 2.8 of the Hutto/Kelly Lane Agreement - The tap fees for Tract No. 1 are established at \$400.

(e) Section 2.8 of the Hutto/Kelly Lane Agreement - The tap fees for the 1st 284 L.U.E.s on Tract No. 1 are to be paid by HM456 to 685, Ltd., to be credited on the promissory note ("Note") dated February 26, 1997, executed by Kelly Lane and payable to the order of 685, Ltd. until the Note, and all interest which has accrued thereon, has

been paid in full, and thereafter, if any, to Kelly Lane; the tap fees for L.U.E.s 285-469 are to be paid by HM456 to Hutto (which will share them with Kelly Lane per the Hutto/Kelly Lane Agreement).

(f) Section 2.5 of the Hutto/Kelly Lane Agreement - HM456 will construct a lift station South of the Floodwater Retarding Structure No. 20 in Upper Brushy Creek subwatershed (the "Structure 20 Lift Station"). Structure 20 forms the basis for the boundary line between Jenkins Tract No. 1 and Jenkins Tract No. 2. HM456 will also construct a force main and gravity line from the Structure 20 Lift Station to the Primary Delivery Point (the "Jenkins No. 1 Lines"). HM456 will comply with Hutto's normal requirements and standards relating to the construction of the aforesaid improvements; provided, however any enlargement or oversizing of the such improvements to enhance, enlarge or oversize the Collection System required by Hutto shall be at Hutto's cost and expense.

2.1.2 Jenkins Tract No. 2. Subject to compliance with Hutto's normal and existing requirements by any person requesting Retail Service, Hutto will provide wastewater service to Jenkins Tract No. 2.

2.1.3 Upon approval of a final subdivision plat for all or any portion ("Phase") of the Jenkins Tract No. 2, and upon HM456 paying the then prevailing published rates for the L.U.E.s in the finally approved plat (the "Required L.U.E.s"), including any tap fees or other fees that residential customers pay for one single L.U.E. of wastewater service, Hutto represents and warrants that wastewater service will be available to the lots in each Phase on or before a certificate of occupancy is issued on any lot in that Phase (the "Capacity Date"). For purposes of this Agreement, adequate capacity means the following:

- (1) Adequate treatment capacity in Hutto's wastewater treatment plant ("Hutto Plant") or a treatment plant to which Hutto is authorized to transport and deliver wastewater to treat the Required L.U.E.'s;
- (2) Adequate discharge capacity, through irrigation, evaporation or such other discharge systems employed by Hutto to discharge the treated effluent arising from the Required L.U.E.'s;
- (3) Adequate capacity in all of Hutto's Inflow Lines to transport the Required L.U.E.s of wastewater to the Hutto Plant.

Within thirty (30) days after HM456 receives approval of a final plat for all or any portion of Jenkins Tract No. 2, Hutto agrees to give HM456 written confirmation that by the Capacity Date, Hutto will have adequate capacity in Hutto's Wastewater System to accept, transport, treat and discharge the Required L.U.E.s of wastewater (the "Adequate Capacity Notice").

2.2 Processing of Final Plat(s). Hutto agrees that any proposed final plat submitted by HM456 will be processed in the ordinary course of business, according to the normal timetables, guidelines and procedures generally established by Hutto, and will not be delayed merely because Hutto does not have adequate capacity in the Collection System to handle the Required L.U.E.s.

2.3 General Assurances. HM456 acknowledges and agrees that Hutto's obligations to provide wastewater service to the Jenkins Tract No. 2 is contingent on the expected occurrence of the conditions identified in Sections 2.1.2 and 2.1.3 of this Agreement. In addition, applicable state law (Water Code § 13.250 and TNRCC Rule 30 TAC 281.114) require a CCN holder to provide continuous and adequate service to every customer and every qualified applicant for service whose primary point of use is in the certificated area (with certain limited exceptions). This requirement is echoed in Section 2.1.2 of the Hutto/Kelly Lane Agreement, which calls out that Hutto will provide service to Jenkins Tract No. 2 in accordance with Hutto's normal and existing requirements applicable to any person requesting retail wastewater service.

2.4 Cost Assurances. Hutto shall determine and use the most practical and feasible alternative available for providing wastewater service to Jenkins Tract No. 2 at the time HM456 makes a formal request for service. In no event, however, shall HM456's costs associated with construction of the collection system for providing wastewater service to Jenkins Tract No. 2, including costs of any necessary easements be greater than the combined costs associated with constructing a lift station on the northern end of Jenkins Tract No. 2 and all other costs associated with transporting waste to the manhole located at the intersection of County Road 138 and Derby Day Drive, including the cost of any necessary force mains, pipes, equipment and all other works and appurtenances related thereto. Notwithstanding the foregoing, HM456 remains responsible for paying all applicable tap fees and impact fees required by Hutto at the time wastewater service is provided.

### III MISCELLANEOUS PROVISIONS

3.1 Force Majeure. In the event either party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, then the obligations of such party, to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided, but for no longer period. As soon as reasonably possible after the occurrence of the force majeure relied upon, the party whose contractual obligations are affected shall give notice and full particulars of such force majeure to the other party. Such cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure", as used herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the enemy, orders of any kind of government of the United States or the State of Texas, or any other entity other than a party to this Agreement, or any civil or military

authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of water supply, and any other inability of either party, similar to those enumerated, which are not within the control of the party claiming such inability and which such party could not have avoided by the exercise of due diligence and care. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable to it in the judgment of the party having the difficulty.

**3.2 Remedies upon Default.** It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default, but all remedies existing at law or in equity may be availed of by either party and shall be cumulative; provided, however, in this Agreement, the only manner of proceeding to settle any controversy, claim or dispute arising out of or relating to this agreement, or any breach thereof, shall be by arbitration as provided in Section 3.8 of this Agreement or by administrative action at the TNRCC.

**3.3 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.

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

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



3.6 Parties in Interest. This Agreement shall be for the sole and exclusive benefit of Hutto and HM456 and their successors and assigns.

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

3.8 Arbitration. Except as otherwise expressly provided in this Agreement, any controversy, dispute or claim arising out of or relating to this Agreement, or any breach thereof, shall be settled by arbitration in accordance with the Commercial Rules of Arbitration of the American Arbitration Association; provided, however, the arbitrator to whom any controversy which is subject to arbitration under the terms of this Agreement, is submitted in accordance with the provisions hereof, shall (1) reside in Travis or Williamson Counties, Texas; (2) the arbitrator must be an attorney, engineer or accountant; and (3) who is familiar with wafer end sewer utilities and has at least ten (10) years of experience in this area. The arbitrator has jurisdiction and authority to interpret and apply the applicable provisions of this Agreement in accordance with the laws of the State of Texas. Such application or interpretation of the provisions of this Agreement must be in accordance with the spirit and letter of this Agreement. No arbitrator shall have the jurisdiction or authority to add to, take from, nullify, or modify any of the terms of this Agreement, directly or indirectly under the guise of interpretation. The arbitrator shall be bound by the facts and evidence submitted in the hearing and may not go beyond the terms of this Agreement in rendering the award. It is further understood and agreed that the power of the arbitrator shall be strictly limited to determining the meaning and interpretation of the explicit terms of this Agreement as herein expressly set forth and that no arbitrator shall have the power to base any award on any alleged practices or oral understandings not incorporated herein. Any award rendered in arbitration proceedings under this Agreement shall be subject to judicial review at the instance of either party for the purpose of determining whether the arbitrator exceeded the power as herein limited, and neither party shall be deemed to have waived its right to such review by proceeding to arbitration. Within the power as herein limited, the arbitrator may enter an award based upon any remedy available to the parties as provided in Section 3.3 of this Agreement. The arbitrator shall issue his award within 180 days after the demand for arbitration is made. Judgment upon the award may be entered in any court having jurisdiction thereof. Any such arbitration proceeding shall be held at the municipal offices of Hutto, or such other place in Williamson County as may be designated by the parties, and any expenses incurred by any party in connection with any such arbitration proceeding shall constitute an operation and maintenance expense of that party. Each party represents that this Agreement was concluded upon the advice of counsel. The provisions of this section are subject to and shall not be considered as attempting to exclude the jurisdiction of the Texas Natural Resource Conservation Commission or any other governmental authority

having jurisdiction to arbitrate or settle disputes, hold hearings or enter orders relating to the subject matter of this Agreement.

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

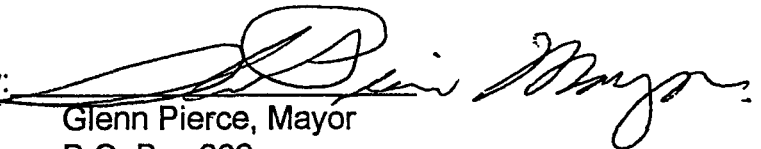
3.10 Binding. This Agreement shall be binding on and inure to the benefit of the respective parties, their successors and assigns.

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

EXECUTED as of the 9<sup>th</sup> day of JUNE, 1999.

HUTTO:

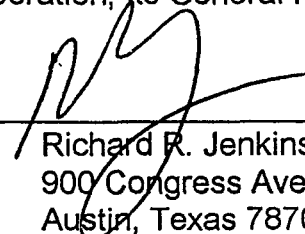
CITY OF HUTTO

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

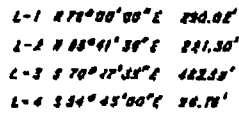
HM456:

HM 456, LTD. a Texas Limited Partnership

By: HM 456 Development, Inc., a Texas corporation, Its General Partner

By:   
Richard R. Jenkins, President  
900 Congress Ave., Suite L-100  
Austin, Texas 78701

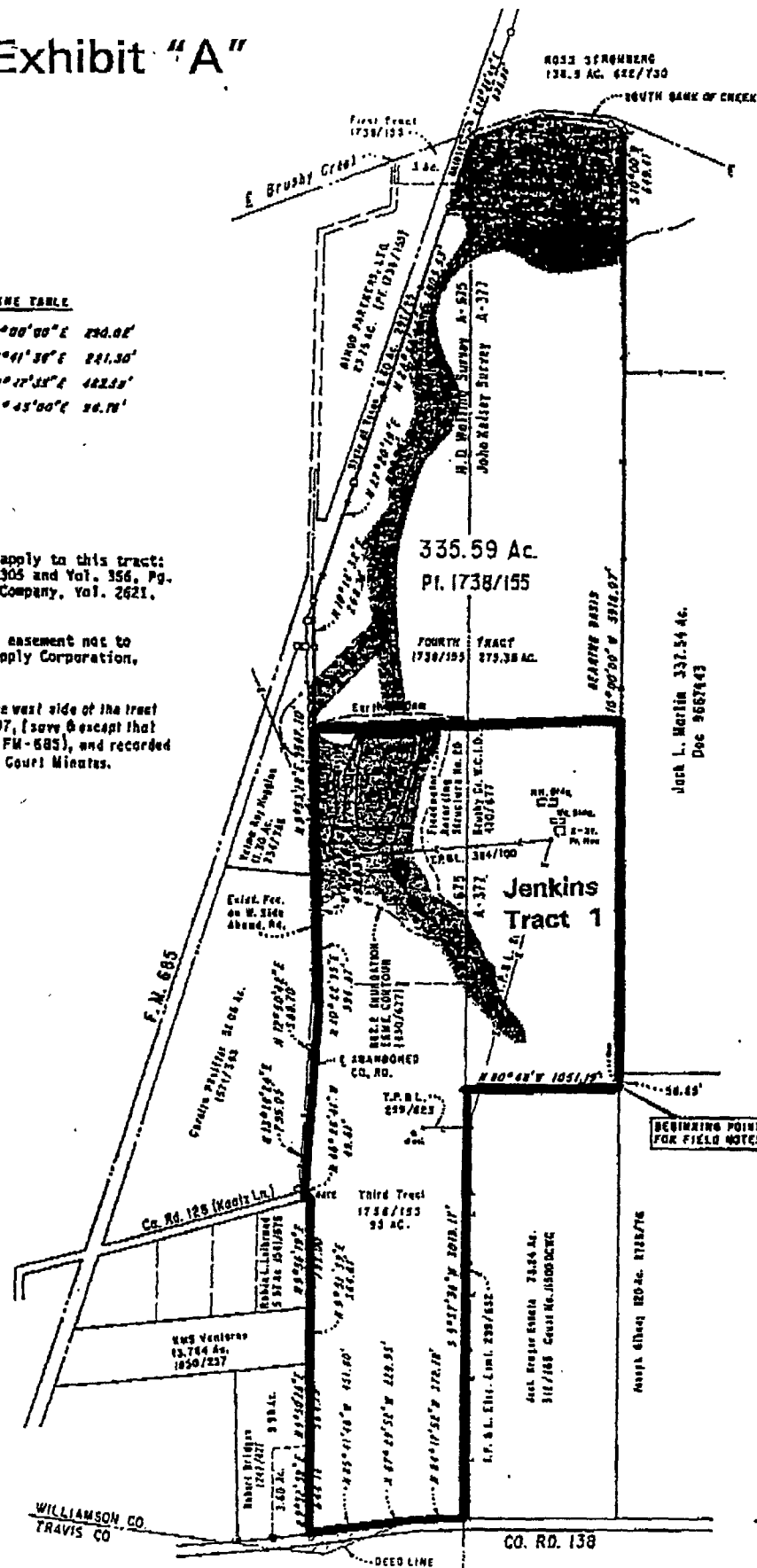
## Exhibit "A"



9 easements do not apply to this tract:  
any, Vol. 801, Pg. 305 and Vol. 356, Pg.  
NC; to TU Electric Company, Vol. 2621.  
C.

subject to a blanket easement not to  
n Manville Water Supply Corporation,  
. 468, DRMC.

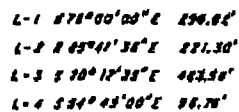
1 county road along the west side of the tract was vacated 9-18-97, (save & except that d road within 300' of FM-585), and recorded in 193, Commissioners Court Minutes.



SEE FIELD NOTES ATTACH

- CONC. W.O.  
 ● IRON ROD I  
 ○ IRON ROD  
 ⊗ IRON PIPE  
 — POWER POL  
|||| WEEN COMP  
 △ MEASUR I  
 SHADED AREA BE

## Exhibit "B"



NOTES

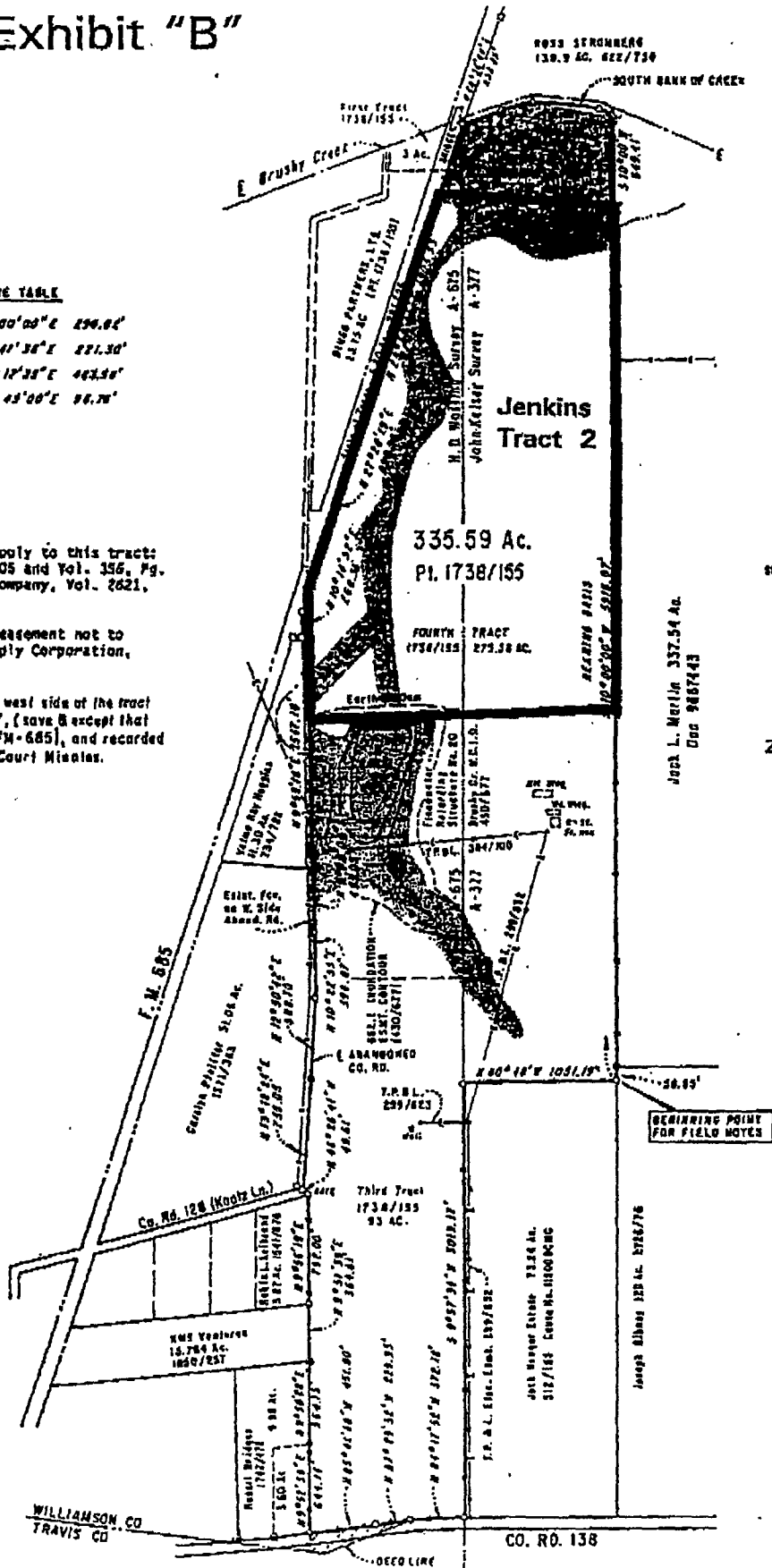
g easements do not apply to this tract:  
any, Vol. 801, Pg. 305 and Vol. 156, Pg.  
MC; to TU Electric Company, Vol. 2621,  
C.

subject to a blanket easement not to  
a Manville Water Supply Corporation,  
. 858. DRWC.

I casually roved along the west side of the tract  
was vacated 9-18-97, (save & except that  
a road within 300' of FM-685), and recorded  
in 193, Commissioners Court Minutes.

SEE FIELD NOTES ATTACH

- GUNG. R.O.  
 ● IRON ROD 1  
 ○ IRON ROD  
 ⊙ IRON PIPE  
 — POWER POL  
||||| WEED CONF  
 △ MEASURE 1  
 SHADED AREA OF



**AMENDED AND RESTATED CONTRACT FOR WASTEWATER  
SERVICE AND RESERVATION AGREEMENT**

This Amended and Restated Contract for Wastewater Service and Reservation Agreement ("Restated Agreement") is by and between Kelly Lane Utility Company, a Texas corporation ("Kelly Lane"), and HM456, Ltd., a Texas limited partnership ("HM456") and amends and restates that certain Contract for Wastewater Service and Reservation Agreement dated February 26, 1997 ("Agreement"), by and between Kelly Lane and HM456, and is as follows:

**RECITALS**

WHEREAS, Kelly Lane is a public utility which provides wastewater services in Northeast Travis County, Texas and which holds Certificate of Convenience and Necessity ("CCN") No. 20720 issued by the Texas Natural Resource Conservation Commission ("TNRCC"), to which reference is made a part hereof for all purposes; and

WHEREAS, HM456 owns certain real property in Southeast Williamson County, Texas, which is more particularly described by metes and bounds contained in the attached Exhibits "A", which is called Jenkins Tract No. 1, and "B" which is called Jenkins Tract No. 2, and which are made a part hereof for all purposes (both tracts are referred to as "Property"); and

WHEREAS, the Property is located immediately North of and contiguous to the proposed service area served by Kelly Lane as described in the CCN Amendment, and although the point of ultimate use of the wastewater service for the entire Property is not within one-quarter mile of the boundary of the service area described in the CCN, Kelly Lane, with approval of HM456, made application to extend its CCN to include all of the Property, and reference is made to the proposed service area in the CCN Amendment on file with the TNRCC ("Application"); and

WHEREAS, Hutto and Windemere Utility Company objected to the Application, and a hearing was scheduled before the State Office of Administrative Hearings under Application No. 31780-C; TNRCC Docket No. 97-0906-UCR; SOAH Docket No. 582-96-0915, all of which is referred to as the "Administrative Proceedings"; and

WHEREAS, the litigation that was occurring in the Administrative Proceedings among the above named parties and others was settled in a mediation that occurred on September 16, 1998; and

WHEREAS, HM456, by and through its duly authorized representative, appeared and participated in the mediation, and HM456 agreed to the settlement between Hutto and Kelly Lane regarding wastewater service to the Property pursuant to the mediation agreement; and

WHEREAS, as part of the Mediation Agreement, HM456 and the City of Hutto ("Hutto") have entered into a Wastewater Service Agreement as of June 9, 1999 ("Hutto-456 Agreement") to which reference is made for all purposes and under which Hutto has agreed, pursuant to the provisions in the Hutto-456 Agreement, to provide retail sewer service to the Property; and

WHEREAS, as part of the Médiation Agreement, the Wastewater Service Agreement between Hutto and Kelly Lane Utility Company and approved by HM456 ("Wastewater Service Agreement") was signed June 9, 1999, whereby Kelly Lane will provide exclusive wholesale sewer service to Hutto for Jenkins Tract No.1 and Hutto agreed to provide retail sewer service to the Property pursuant to the Hutto-456 Agreement; and

WHEREAS, because of the Mediation Agreement, the parties hereto have agreed to amend, modify and restate the Agreement to be consistent with the terms of the Wastewater Service Agreement and the Hutto-456 Agreement; and

WHEREAS, HM456 has agreed to approve the Wastewater Service Agreement; and

WHEREAS, pursuant to the Wastewater Service Agreement and Hutto-456 Agreement, Hutto has agreed to provide retail sewer service to the Property and Kelly Lane has agreed to provide exclusive wholesale sewer service to Hutto for the Jenkins Tract No. 1 to the extent of 469 living unit equivalents ("LUEs") in accordance with the terms of the Wastewater Service Agreement; and

WHEREAS, the Property does not receive wastewater service from any other retail public utility and the Property is not currently located within the service area of public convenience and necessity of any other retail public utility, but is expected to be within Hutto's CCN in the future; and

WHEREAS, HM456 has developed and Hutto has approved a preliminary plat for all of Jenkins Tract No. 1 into approximately 469 residential lots, a copy of such preliminary plat is attached hereto as Exhibit "D" and made a part hereof for all purposes; and

WHEREAS, HM456 contemplates developing the Lots in Jenkins Tract No. 1 in five phases by obtaining separate Final Plats on each phase, with Phase One containing approximately 101 residential Lots, Phase Two containing approximately 75 residential Lots, Phase Three containing approximately 108 residential Lots, Phase Four containing approximately 108 residential Lots, and Phase Five containing approximately 108 residential Lots, provided, however, the number and size of each Phase, as well as, the number and type of Lots in each Phase may be changed; and

WHEREAS, HM456 contemplates developing approximately 450 additional residential Lots in four phases on Jenkins Tract No. 2, by obtaining separate Final Plats on each phase; and

WHEREAS, 685, Ltd., a Texas limited partnership ("685"), is an entity affiliated with HM456, and 685 owns certain real property immediately across County Road 138 from the Property known as The Ridge at Steeds Crossing; and

WHEREAS, 685 and Kelly Lane have previously entered into that certain Contract for Wastewater Service and Reservation Agreement dated August 6, 1996, as amended ("685 Agreement"), which 685 Agreement is incorporated herein by reference for all pertinent purposes, and Kelly Lane has certain obligations to 685 under the terms of the 685 Agreement; and

WHEREAS, pursuant to the 685 Agreement, 685 purchased and has fully paid for 750 LUEs of wastewater service from Kelly Lane ("Pre-Paid LUEs"), which Pre-Paid LUEs provide both wastewater service to The Ridge at Steeds Crossing and provide approximately 284 surplus LUEs which are in excess of the amount of LUEs 685 needs to fully develop The Ridge at Steeds Crossing; and

WHEREAS, 685 has the right, under the 685 Agreement, to sell or assign such surplus Pre-Paid LUEs to HM456 and 685 has agreed to assign such 284 surplus Pre-Paid LUEs to HM456; and

WHEREAS, HM456 desires retail wastewater service ("Service") for each of the Lots within Jenkins Tract No. 1 and has requested Service from Hutto and Hutto has agreed to provide such service in accordance with terms and provisions of Hutto-456 Agreement and the Wastewater Service Agreement; and

WHEREAS, the parties hereto desire to memorialize the various agreements regarding the Property and also to substitute this Restated Agreement for the Agreement dated February 26, 1997 between Kelly Lane and HM456.

NOW THEREFORE, for and in consideration of the above-referenced recitals and other good and valuable consideration, the receipt of which is acknowledged the parties agree as follows:

1. Recitals. The above-stated Recitals are true and correct and are incorporated herein for all purposes.
2. Service. At the request of HM456 and subject to Paragraph 5 herein, Kelly Lane hereby commits to Hutto to reserve for the benefit of Jenkins Tract No. 1, four hundred sixty-nine (469) LUEs of wastewater capacity, subject to the terms of this Restated Agreement, the Wastewater Service Agreement and the Hutto-456 Agreement. For the purposes of this Restated Agreement, the term LUE is defined in the Wastewater Service Agreement. Notwithstanding anything in the Agreement, HM456 agrees and acknowledges that Kelly Lane will be the exclusive wholesale service provider under the Wastewater Service Agreement and Hutto will provide retail sewer service to the Jenkins Tract No. 1. Further, HM456 agrees and acknowledges that Kelly Lane, as of this date, is not the retail or wholesale provider of sewer service to Jenkins Tract No. 2, and Kelly Lane has no legal obligation to Hutto, HM456 or anyone else to provide wholesale or retail sewer service to Jenkins Tract No. 2.
3. LUE Price. Kelly Lane acknowledges and agrees that 685 is the owner of the Pre-Paid LUEs and that 685 has the right, under the 685 Agreement, to sell and assign any of the Pre-Paid LUEs to HM456 to be used by HM456 in connection with the development of Jenkins Tract No. 1. Kelly Lane acknowledges and agrees that HM456 has the right to acquire additional Pre-Paid LUEs from 685. As to the additional LUEs which may be needed by HM456 for the development of the Jenkins Tract No. 1 that are in excess of the

Pre-Paid LUEs, same being 185 LUEs (the "Additional LUEs"), HM456 represents to Kelly Lane and Hutto that the cost of each such Additional LUE is \$1,500.00, subject to the right of HM456 in Paragraph 26 herein, which sum shall be paid to Hutto and which sum Hutto will share equally with Kelly Lane pursuant to the Wastewater Service Agreement.

4. Payment: Phase One, Two and Three Lots. The LUE fees for the first 284 residential Lots (the "Phase One, Two and Three Lots") in the Jenkins Tract No. 1 shall be paid by HM456 to 685 for Pre-Paid LUEs, but HM456 shall not be obligated to pay Hutto or Kelly Lane any additional money for such 284 Pre-Paid Residential LUEs. The parties agree that Kelly Lane has made no commitment to HM456 regarding future Service for any other land except Jenkins Tract No. 1, as stated herein.
5. Reservation. Notwithstanding anything in paragraph 4 above, Kelly Lane acknowledges and agrees that it has reserved for HM456's benefit 284 LUEs of Wholesale Service capacity to Hutto for the Jenkins Tract No. 1, and upon payment by HM456 to Hutto of the applicable LUE fees described in Paragraph 3 above for the Additional LUEs and receipt by Kelly Lane of its one half of said payment from Hutto, Kelly Lane will reserve up to 185 Additional LUEs for Hutto for Jenkins Tract No. 1 in accordance with the terms of the Wastewater Service Agreement and the Hutto-456 Agreement.
6. Tap Fees. Prior to the time that any improvements on any Lot are connected to the Collection System as defined in Wastewater Service Agreement, a tap fee in the amount of \$400.00 per single family residential Lot (for one tap) and \$800.00 per duplex Lot (for two taps) shall be paid as follows:
  - (a) For the 284 Pre-Paid LUEs, such payment of tap fees shall be made to Kelly Lane; provided, however, notwithstanding the foregoing, beginning on April 1, 1998, HM456 shall pay any such tap fees for each Lot connected to the Kelly Lane wastewater system to 685 instead of Kelly Lane or Hutto, which amounts shall be credited on that certain Promissory Note, dated February 26, 1997, executed by Kelly Lane payable to 685 in the amount of \$161,332.00 ("Note") as stated in the Modification of Promissory Note of even date attached hereto as **Exhibit "A"**. When the Note has been paid in full (see Paragraph 25f., 25g., and 25h. herein), all taps fees up to 284 shall be paid to Kelly Lane and all tap fees for LUEs 285 to 469, i.e. the Additional LUEs, shall be paid to Hutto in accordance with Paragraph 2.1.1(e) of the Hutto-456 Agreement to which reference is made for all purposes.
  - (b) For the Additional LUEs, such payment shall be made to Hutto provided, however, Hutto has agreed to pay one-half of such amounts received from HM456 as tap fees for such Additional LUEs to Kelly Lane within 30 days after Hutto receives a statement from Kelly Lane.



7. Wastewater Lines. HM456, at its sole cost and expense, shall have the obligation to construct all internal wastewater lines and all lift station(s), and other items which constitute a wastewater collection system (the "Collection System") necessary for each Phase of the development of Jenkins Tract No. 1, together with the cost to connect the said Collection System to the fifteen inch (15") wastewater line owned by Kelly Lane and located at the intersection of County Road 138 and Derby Day Drive. The Collection System shall be constructed in accordance with all applicable governmental requirements and shall meet the standards of the City of Hutto. Upon completion of the Collection System for each phase which has a final plat, HM456 agrees to (i) execute a document dedicating and transferring the Collection System within that Phase of the Property to Hutto (the "Dedication Agreement") and (ii) provide Hutto and Kelly Lane with a written statement from HM456's engineer, bearing the seal of such engineer (the "Engineer's Statement"), that states the Collection System and all other sewer lines, including lines to connect the Collection System to the Kelly Lane system, have been constructed in accordance with the plans and specifications that have been approved by all appropriate governmental agencies and that the Collection System is in good working order at the time of the execution of the Dedication Agreement. Upon dedication of the Collection System by HM456 and delivery of the Engineer's Statement, HM456 will request Hutto to accept the dedication by HM456 and execute the Dedication Agreement thereby assuming all obligations to maintain the Collection System from and after the date of the dedication in accordance with the Wastewater Service Agreement.
8. Construction. During the construction of the Collection System within any section within Jenkins Tract No.1 and lines to connect the said system to the Kelly Lane system, Kelly Lane and Hutto shall have the right of access, at all reasonable times during daylight hours, to all construction and staking areas to inspect all pipes, machinery, equipment, goods, and any other personal property or items to be used with or incident to said construction.
9. Cooperation and Approval. HM456 agrees to cooperate with Kelly Lane and Hutto in a reasonable manner, under the circumstances, in providing Service to all, or a portion of, the Lots within Jenkins Tract No. 1 including, but not limited to, the submission of information and documentation requested by Kelly Lane and Hutto. Additionally, Kelly Lane shall not be obligated to provide Service to any of the Lots within Jenkins Tract No. 1 unless and until:
- a. All of the terms of this Restated Agreement have been met; and
  - b. A copy of the plans for any proposed Collection System and any connecting lines shall be submitted to and approved by Kelly Lane; and
  - c. Hutto and its engineers have reviewed and approved the plans for any proposed Collection System and any connecting lines; and

- d. HM456 complies with the provisions of the Hutto-456 Agreement.

Any approvals required from Kelly Lane shall not be unreasonably withheld or delayed.

10. Notices of Default. If any party claims an event of default or breach of this Restated Agreement, unless an emergency exists or circumstances exist that would constitute an emergency prior to the end of the cure period hereinafter described, before any party exercises any right or remedy available to it, whether under this Restated Agreement, at law, in equity, or otherwise, such party shall give written notice thereof ("Notice of Default") to the other party setting forth the event or events of default or breach. The party to whom Notice of Default is addressed shall have the opportunity to cure such claimed event of default within the following periods ("Notice and Cure Period"):
- a. With respect to default as to a monetary payment ("Monetary Default"), the expiration of ten (10) days after Notice of Default has been sent; or
  - b. With respect to any default other than a Monetary Default ("Non-Monetary Default"), the expiration of third (30) days after Notice of Default, provided, however, that if such Non-Monetary Default cannot be reasonably cured with such thirty (30) day period, the cure period shall be a reasonable period under the circumstances as long as the defaulting party commences to cure the Non-Monetary Default within such thirty (30) day period and thereafter diligently continues to cure such default, but in no event shall such cure period exceed one hundred twenty (120) days.
11. TNRCC Rules and Regulations. This Restated Agreement and both parties to this Restated Agreement shall be subject to the terms and provisions of all applicable law including the rules and regulations of the TRNCC. Further, this Restated Agreement is subject to the CCN of Hutto being issued by the TNRCC, and as hereafter amended.
12. Remedies on Default. If any party hereto is in default and such default has not been cured within the time period stated above, then the party claiming the default shall have the right to institute arbitration as set forth below.
13. Arbitration of Disputes. Any and all disputes, controversies or claims (e.g. whether in contract, tort, statutory, common law or otherwise) now existing or hereafter arising between the parties in any way arising out of this Restated Agreement, any promises, representations, incidents, omissions, acts, practices, or occurrences arising out of or in connection with this Restated Agreement (hereinafter referred to as "Dispute") shall be arbitrated by the parties under the provisions of this Section 13. Any party hereto may, by summary proceedings (e.g. plea in abatement or motion to stay), bring an action in the District Court of Travis County, Texas, to compel arbitration of any Dispute(s).

- a. Governing Rules. Unless the parties agree to use a private mediation service or alternative dispute resolution method, and unless otherwise expressly provided in this Restated Agreement, all Disputes shall be resolved by binding arbitration administered by the American Arbitration Association ("AAA") in accordance with this Section 13 and the Commercial Arbitration Rules of the AAA. In the event of any inconsistency between this Section 13 and the AAA procedures, this Section 13 shall prevail. Judgment upon the award rendered by the arbitrators shall be binding and not subject to appeal, but may be reduced to judgment in any court having jurisdiction. The arbitrators shall interpret and apply the provisions of this Restated Agreement in accordance with the spirit and letter of this Restated Agreement and in accordance with the laws of the State of Texas. No arbitrator shall have the jurisdiction or authority to add to, take from, nullify, or modify any of the terms of this Restated Agreement, directly or indirectly, under the guise of interpretation. The arbitrator(s) shall be bound by the facts and evidence submitted in the hearing and may not go beyond the terms of this Restated Agreement in rendering the award. It is further understood and agreed that the power of the arbitrator(s) shall be strictly limited to determining the meaning and interpretation of the explicit terms of this Restated Agreement as herein expressly set forth and that no arbitrator shall have the power to base any award on any alleged practices or oral understandings not incorporated herein.
- b. Exception to Arbitration. No provision herein and in this Restated Agreement shall prevent anyone from instituting a lawsuit in the District Court of Travis County, Texas, seeking ancillary or preliminary remedies for the purpose or realizing upon and or preserving the status quo or protecting the rights of any party during the time that any request for arbitration or arbitration is pending. Including in those remedies available to the parties are the right of injunction, sequestration, etc. The institution and maintenance of any action for judicial relief or pursuit of provisional or ancillary remedies or the exercise of self help remedies shall not constitute a waiver of any party to submit the Dispute to arbitration or alternative dispute resolution nor render inapplicable the compulsory arbitration provisions herein. Provided, further, nothing herein shall be interpreted as depriving the TNRCC of jurisdiction nor any party from pursuing any rights available to that party by virtue of applicable law.
- c. Statute of Limitations. All statutes of limitations that would otherwise be applicable shall apply to any arbitration or alternative dispute resolution procedures that the parties hereto may commence.

- d. Scope of Award: Qualification. The Arbitrators shall resolve all Disputes in accordance with the applicable substantive law. The arbitrators shall be disinterested persons who by profession are either registered professional engineers or attorneys licensed in the State of Texas and having practiced their respective profession during the last ten years in Travis County. The arbitrators shall be knowledgeable about water or wastewater utilities. For Dispute(s) involving sums below \$100,000.00 one arbitrator shall be chosen by the parties and shall decide the Dispute. For Dispute(s) involving sums in excess of \$100,000.00, three arbitrators shall be selected by the parties, with each party selecting one arbitrator and the two arbitrators selected by the parties to select a third arbitrator, and the Dispute(s) shall be decided by majority vote. The arbitrators may grant any remedy or relief that the arbitrators deem just and reasonable, and may grant such ancillary relief as is necessary to make effective the award. Provided, however, in all arbitration proceedings where the amount in controversy is in excess of \$500,000.00, the arbitrators shall make specific, written findings of fact and conclusions of law as part of the award. The arbitrators' findings of fact shall only be subject to judicial review under a "no evidence" standard used by appellate courts in the State of Texas. Any award rendered in arbitration proceedings under this Restated Agreement shall be subject to judicial review at the instance of either party for the purpose of determining whether the arbitrator(s) exceeded the power as herein limited, and neither party shall be deemed to have waived its right to such review by proceeding to arbitration. The provisions of this Section 13 are subject to and shall not be considered as attempting to exclude the jurisdiction of the TNRCC or any other governmental regulatory authority to arbitrate or settle disputes, hold hearings or enter orders relating to the subject matter of this Restated Agreement. The parties specifically waive any right to a jury determination as to any such fact.
- e. Other Matters. All arbitration proceedings shall be completed within one hundred eighty (180) days from the date that any party requests arbitration by filing a Dispute with the AAA. All arbitration proceedings shall be conducted in Austin, Travis County, Texas, and the arbitrators shall be empowered to impose sanctions and take such other actions as the arbitrators deem necessary to the same extent a judge could pursuant to the Texas Rules of Civil Procedure and applicable state law. To the extent allowed by applicable law, the arbitrators may award attorneys fees and costs as they deem just and proper.
- f. Nondisclosure. Each party agrees to keep all Disputes and arbitration proceedings strictly confidential in accordance with Section 154.073 of the Texas Civil Practices and Remedies Code, except for disclosures of information required in the ordinary course of business of the parties or by applicable law.

- g. Costs. The initial cost of arbitration shall be borne equally by the parties, but the arbitrators, in their award, shall have the right to assess costs of arbitration against any party. All costs of arbitration and payments of any sums in or due to arbitration shall be an operating cost for Kelly Lane.
14. Assignment. HM456 shall have the right to sell, transfer or assign all or any portion of the LUEs that it has reserved under this Restated Agreement to any third party who owns any Lot within the Property for which the LUE fee has been paid upon compliance with the other provisions of this Restated Agreement, the Hutto-456 Agreement, but not for service to any other land except as described herein.
15. Binding. This Restated Agreement is binding upon and inures to the benefit of the respective parties, their successors, assigns and transferees, except to the extent limited and upon the conditions stated herein. The term HM456 means HM456 and all those to whom HM456 has transferred LUEs under this Restated Agreement.
16. Performance. This Restated Agreement is performable in the City of Austin, Travis County, Texas, except as herein stated.
17. Entire Agreement. This Restated Agreement embodies the entire agreement between the parties with respect to the subject matter hereto and there are no oral agreements existing between the parties with respect to the subject matter hereof that are not expressly set forth herein.
18. Notice. Any notice required or permitted to be delivered hereunder shall be deemed to be delivered two days after deposit in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to Kelly Lane or HM456 as the case may be, at the address set forth below the signature of such party to this Restated Agreement.
19. Severability. In case any one or more of the provisions contained in this Restated Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Restated Agreement shall be construed as if such invalid, illegal or unenforceable provision has never been contained herein.
20. Force Majeure. In the event any party to this Restated Agreement is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Restated Agreement, the obligations of such party, to the extent affected by the force majeure, shall suspend during the period of the force majeure. 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 mean and include without limitations of the generality thereof acts of God, strikes, other industrial disturbances, acts of public enemy,

riot, insurrection, others of any section of the government of the United States of America, the State of Texas or any other political subdivision or any civil or military authority, epidemics, lightning, earthquakes, fires, storms, floods, washouts, civil disturbances, breakage or accidents to machinery, equipment, or any other event or circumstance whether or not similar to those enumerated which is not within the control of the party claiming such inability. To the extent that a Force Majeure impairs performance hereunder, the time for performance shall be extended by the amount of time involved in such Force Majeure or is necessary, a longer period of such longer time period is reasonable in light of the facts and circumstances pertaining thereto.

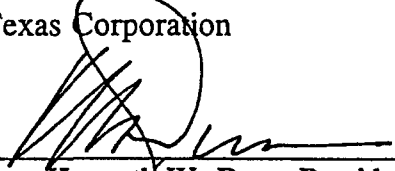
21. Attorneys Fees. The prevailing party in any proceeding to compel arbitration or similar court proceeding shall be entitled to recover from the unsuccessful party or parties reasonable attorneys fees, expenses and costs of court.
22. Invalid Provision. Any clause, sentence, provision or paragraph in this Restated Agreement that is held invalid, illegal, unenforceable or ineffective shall not impair, invalidate or nullify the remainder of this Restated Agreement, the effect thereof shall not impair, invalidate or nullify the remainder of this Restated Agreement, the effect thereof shall be confined to the clauses, sentences, provision or paragraph so held to be invalid, illegal, unenforceable or ineffective.
23. Saturday, Sunday or Legal Holiday. If any date set forth in this Restated Agreement for performance of any obligation, notice, or delivery of any document should be on a Saturday, Sunday or legal holiday, the compliance with such obligation shall be acceptable if performed on the next business day following such Saturday, Sunday or holiday. The term "holiday" shall only mean a holiday when national banks are closed.
24. Hutto. The City of Hutto is aware of this Restated Agreement.
25. Parties Representations. The Parties warrant and represent to each other the following:
  - a. Neither Party has breached any obligation in the Agreement;
  - b. Except as stated herein, neither Party has any claims, demands or causes of action of any type against the other Party whether arising out of the Agreement or otherwise;
  - c. Each Party has participated in the Mediation dated September 16, 1998, and this Restated Agreement replaces the Agreement in light of the Mediation Agreement;
  - d. All sums heretofore paid to and/or received by Kelly Lane pursuant to the Agreement are not refundable;

- e. Each Party agrees that Kelly Lane's obligation to provide wholesale service to the Jenkins Tract No. 1 is conditioned upon and subject to compliance by HM456 with the provisions of the Hutto-456 Agreement and with the provisions of the Wastewater Service Agreement;
  - f. HM456 releases Kelly Lane from all obligations under the Agreement to provide retail sewer service to the Property;
  - g. 685, HM456, and Kelly Lane will execute a Modification of Note Agreement of even date which Modification Agreement will modify the Note as follows:
    - (1) the Note will be a non-personal liability note; and
    - (2) the Balance of the Note will be paid from tap fees from the remaining lots in property owned by 685 and not to exceed the first 284 tap fees from the Jenkins Tract No. 1.
  - h. Upon payment of the balance due on the Note shall be declared paid in full and shall be returned by 685 to Kelly Lane; and
  - i. Kelly Lane, as the wholesale provider to Jenkins Tract No. 1 has no liability whatsoever to HM456 for anything other than providing wholesale service to Hutto for Jenkins Tract No. 1 pursuant to the provisions of the Wastewater Service Agreement.
26. Additional LUE Purchase(s): If HM456 purchases not less than 185 Additional LUEs at one time, then the price of each LUE shall be \$1,200.00 and not \$1,500.00 (see Section 2.1.1(b) of the 456-Hutto Agreement).

Executed to be effective as of the 9<sup>th</sup> day of ~~November~~, 1998.  
JUNE, 1999

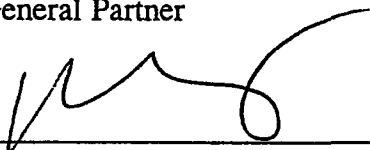


KELLY LANE UTILITY COMPANY, INC.  
A Texas Corporation

By:   
Kenneth W. Durr, President

HM456, LTD.,  
A Texas Limited Partnership

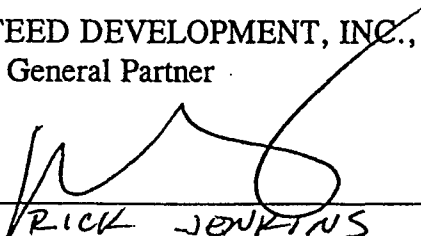
By: HM456 DEVELOPMENT, INC.  
its General Partner

By:   
Richard R. Jenkins, President  
900 Congress Ave., Suite L-100  
Austin, Texas 78701

**APPROVED AND AGREED TO BY:**

685 LTD.,  
A Texas Limited Partnership

By: STEED DEVELOPMENT, INC.,  
its General Partner

By:   
Name: RICK JENKINS  
President



# Exhibit "A"

## LINE TABLE

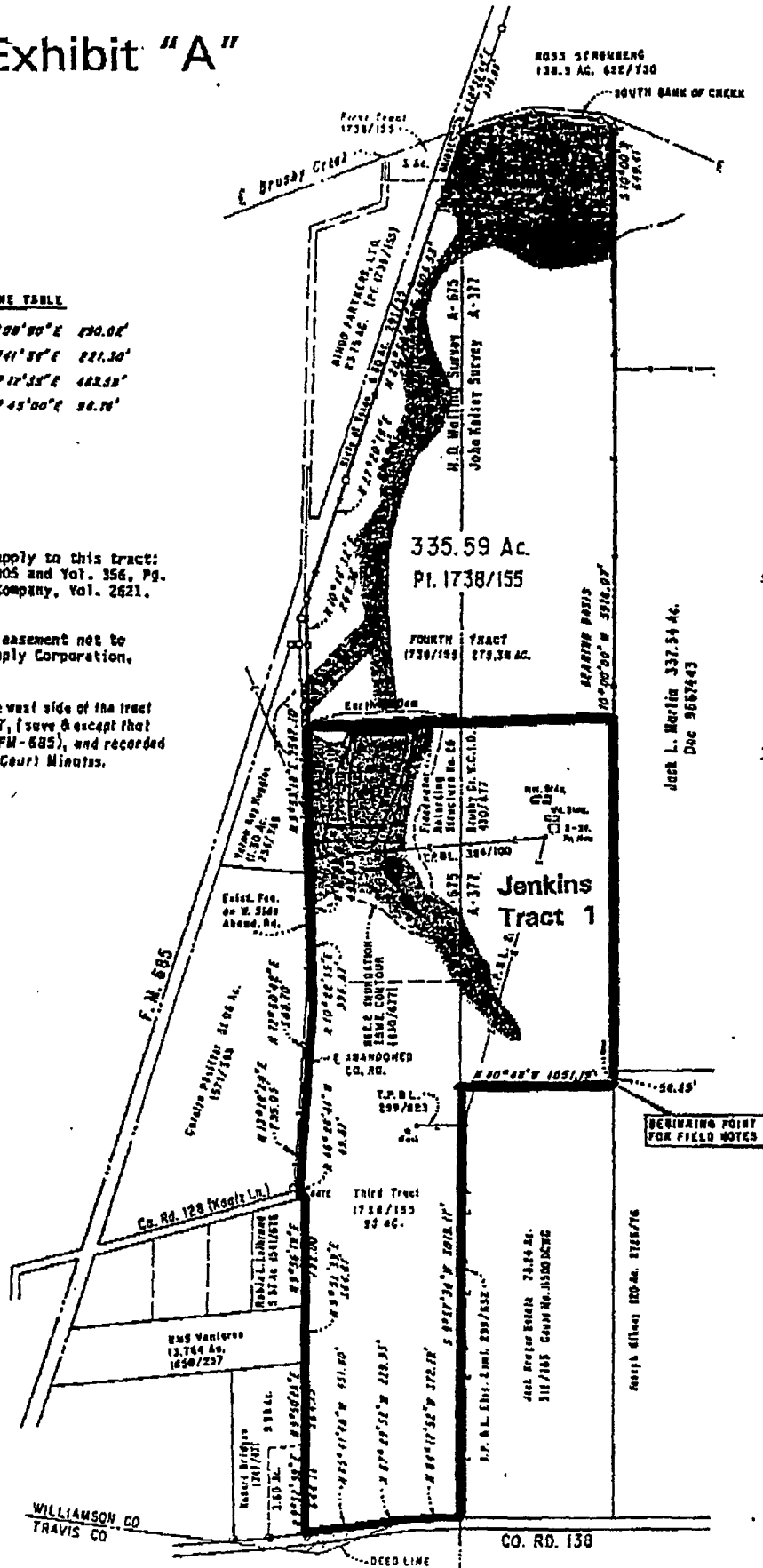
L-1  $N 74^{\circ} 00' 00" E$  250.00'  
 L-2  $N 65^{\circ} 41' 36" E$  221.30'  
 L-3  $S 70^{\circ} 12' 35" E$  462.80'  
 L-4  $S 34^{\circ} 45' 00" E$  86.70'

## NOTES

§ easements do not apply to this tract:  
 Any, Vol. 801, Pg. 305 and Vol. 356, Pg.  
 MC; to TU Electric Company, Vol. 2621,  
 C.

subject to a blanket easement not to  
 a Manville Water Supply Corporation,  
 . 668, DRWC.

§ county road along the west side of the tract  
 was vacated 9-18-97, (save & except that  
 a road within 300' of FM-685), and recorded  
 . 193, Commissioners Court Minutes.



# Exhibit "B"

## LINE TABLE

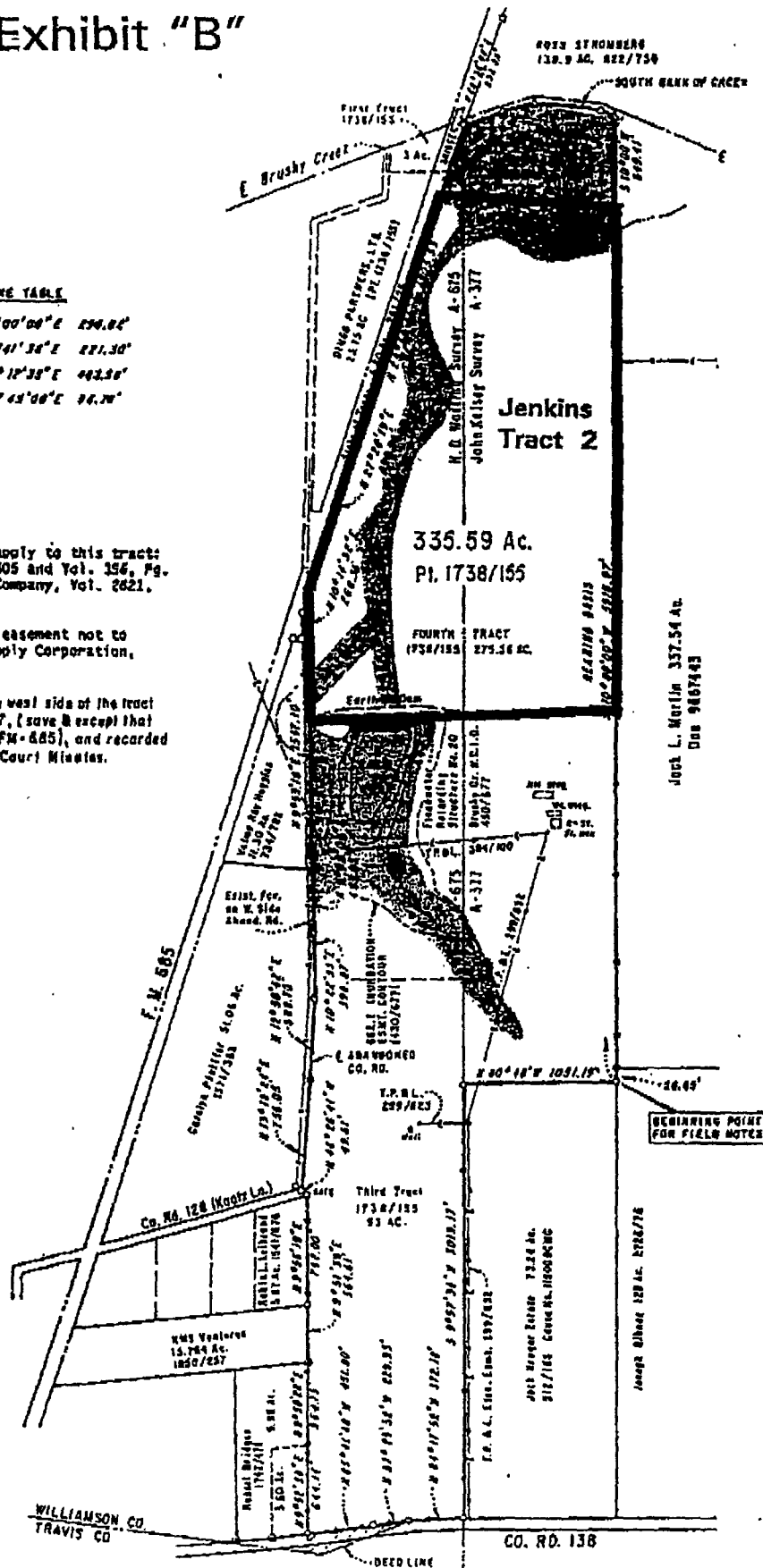
L-1	87°00'00"E	230.00'
L-2	85°41'34"E	271.30'
L-3	78°12'38"E	442.50'
L-4	33°44'43"E	96.70'

## NOTES

§ easements do not apply to this tract:  
any, Vol. 801, Pg. 305 and Vol. 156, Pg.  
NC; to TU Electric Company, Vol. 2621,  
C.

subject to a blanket easement not to  
a Manville Water Supply Corporation,  
• 868. DRMC.

1 county road along the west side of the tract  
was vacated 9-18-97, (save & except that  
d road within 300' of FM-885), and recorded  
• 193, Commissioners Court Minutes.

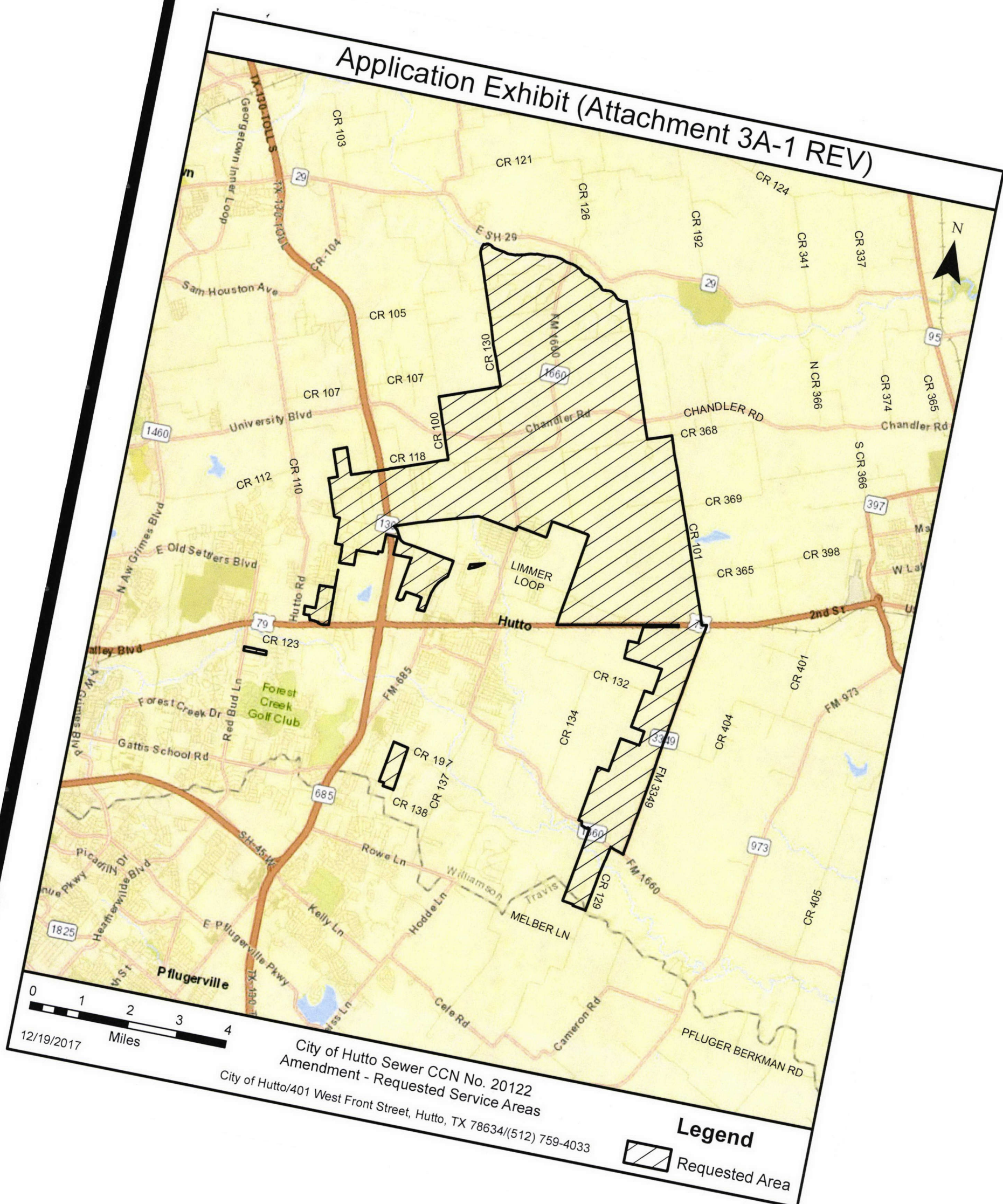


## SEE FIELD NOTES ATTACH

- CONC. R.O.
- IRON ROD
- IRON ROD
- ⊙ IRON PIPE
- POWER POL
- ===== DEED CONF
- △ MEASURE I
- SHADES AREA OF



# Application Exhibit (Attachment 3A-1 REV)



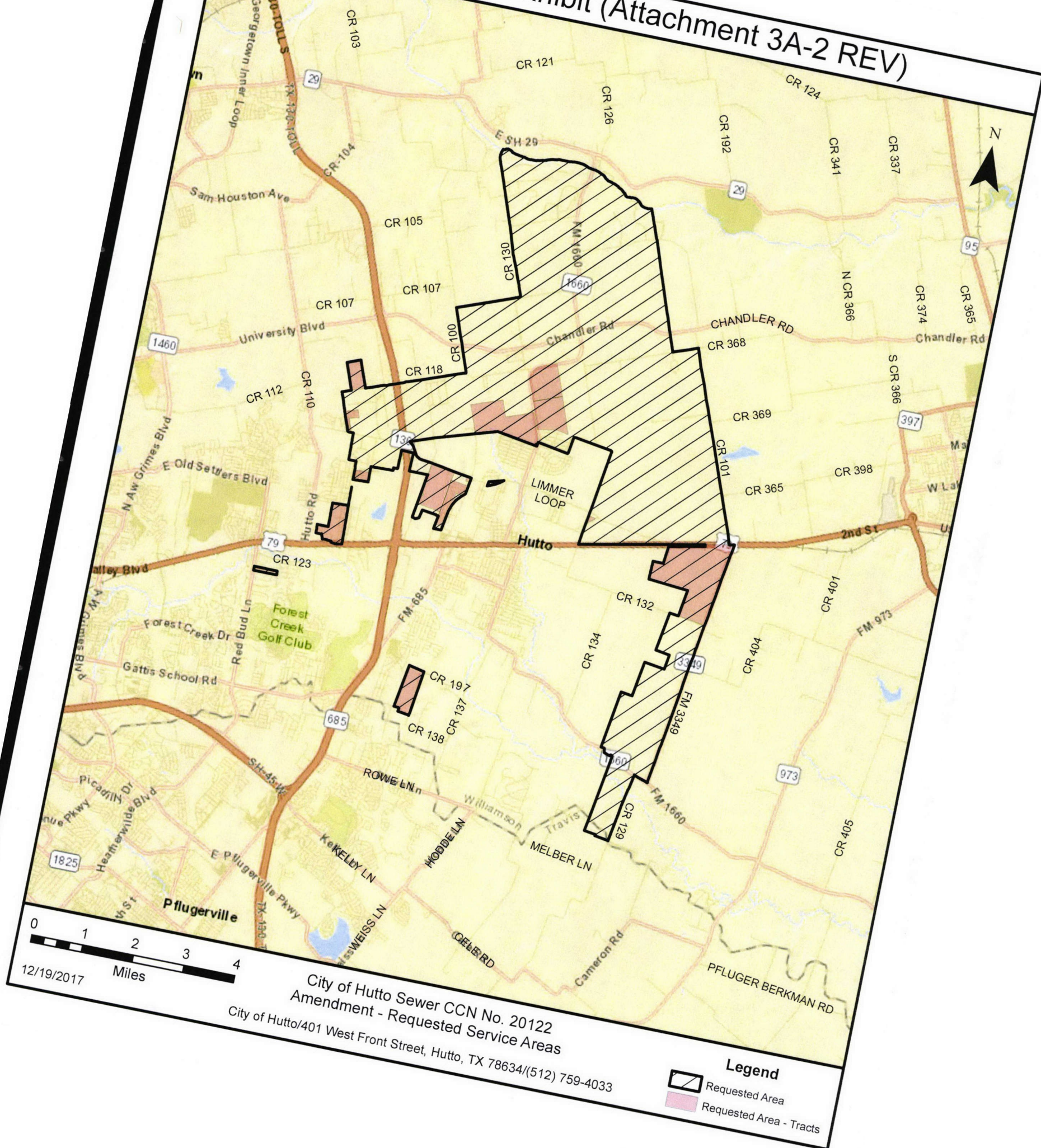
12/19/2017

City of Hutto Sewer CCN No. 20122  
Amendment - Requested Service Areas  
City of Hutto/401 West Front Street, Hutto, TX 78634/(512) 759-4033

**Legend**  
 Requested Area

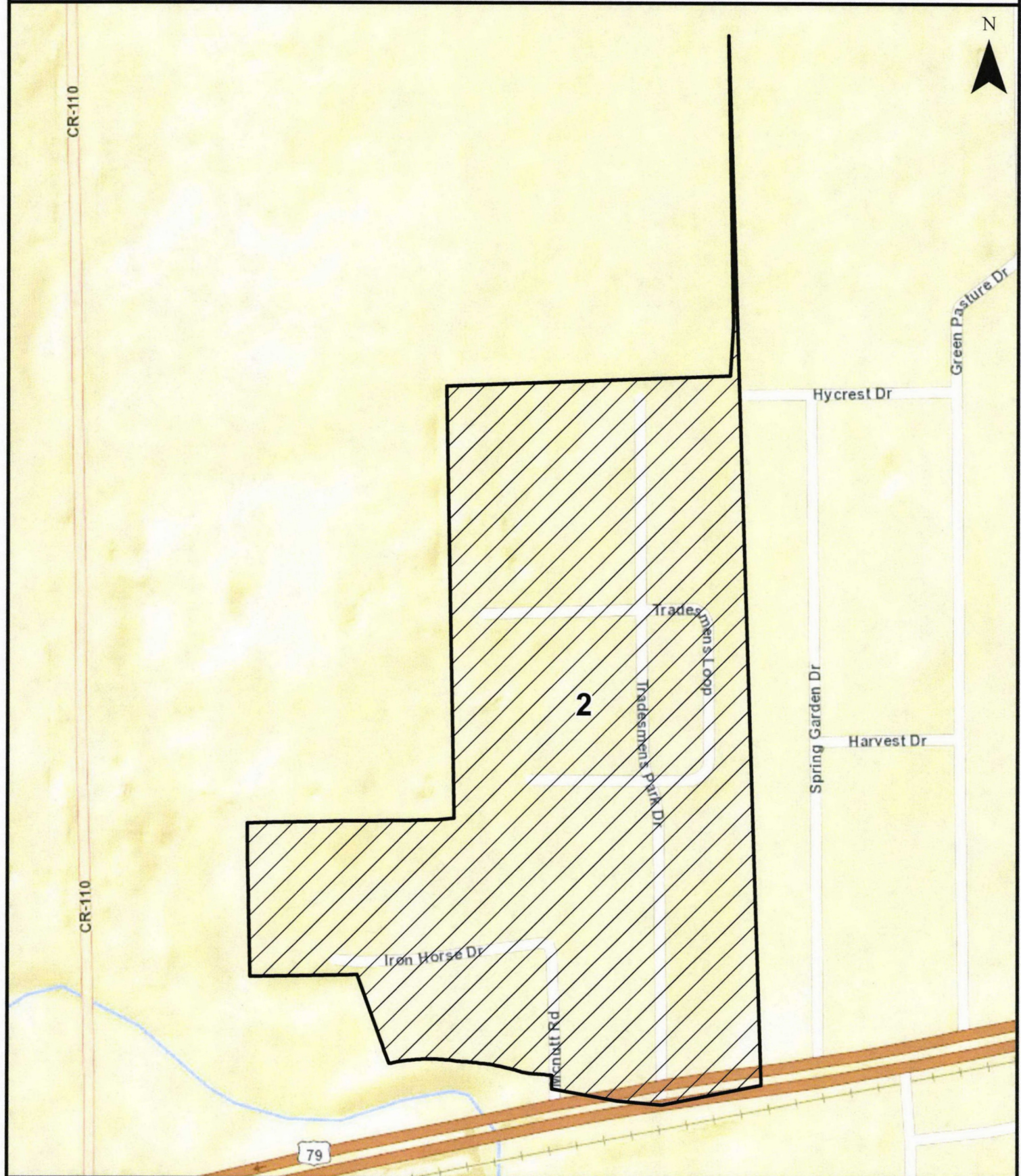


# Application Exhibit (Attachment 3A-2 REV)





# Application Exhibit (Attachment 3B-2 REV)




0 350 700 1,050 1,400

Feet

12/19/2017

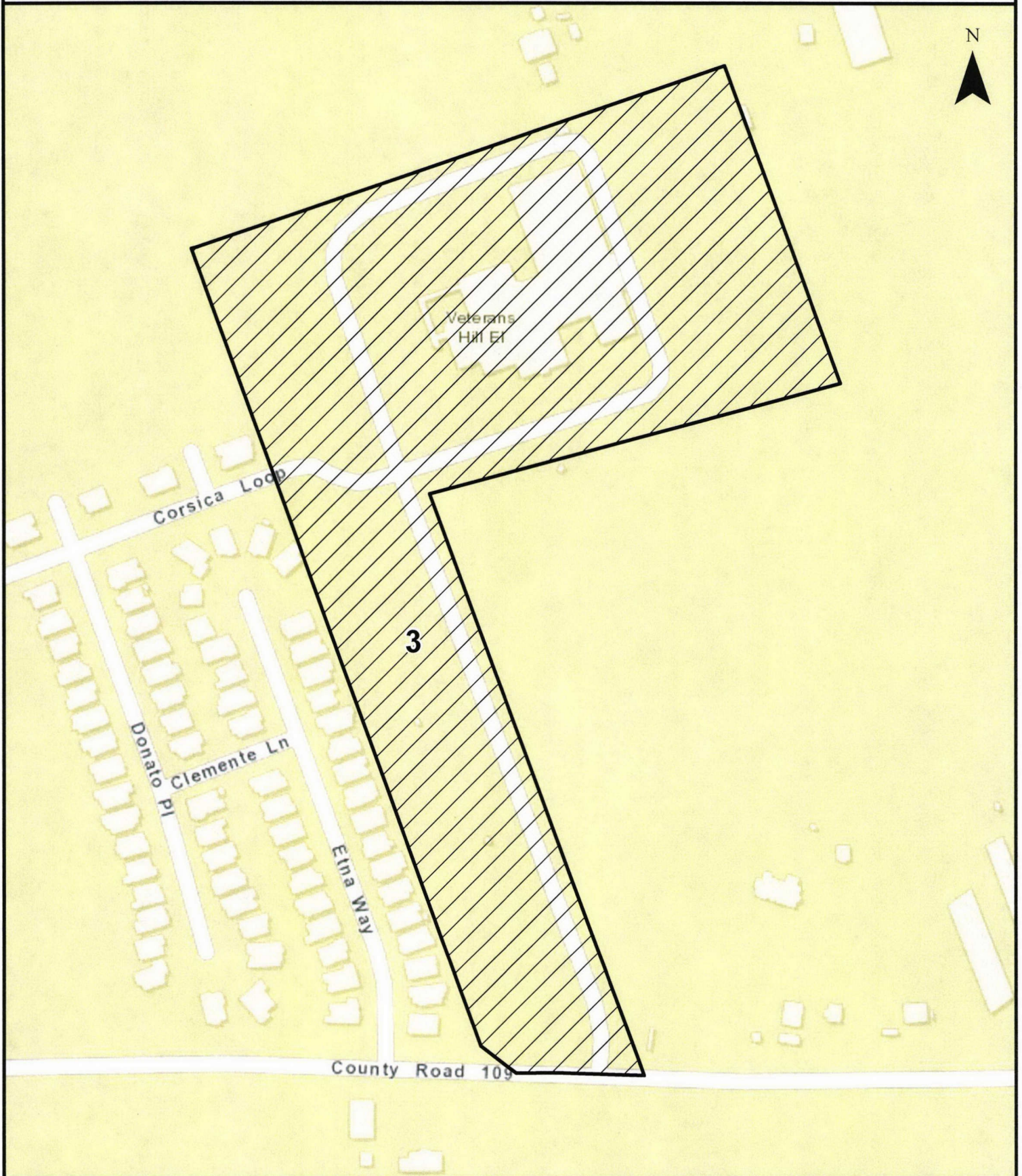
City of Hutto Sewer CCN No. 20122  
Amendment - Requested Service Area Map (2 of 12)  
City of Hutto/401 West Front Street, Hutto, TX 78634/(512) 759-4033

## Legend

 Requested Area - Tract 2



# Application Exhibit (Attachment 3B-3 REV)



0 150 300 450 600


Feet

12/19/2017

City of Hutto Sewer CCN No. 20122  
Amendment - Requested Service Area Map (3 of 12)

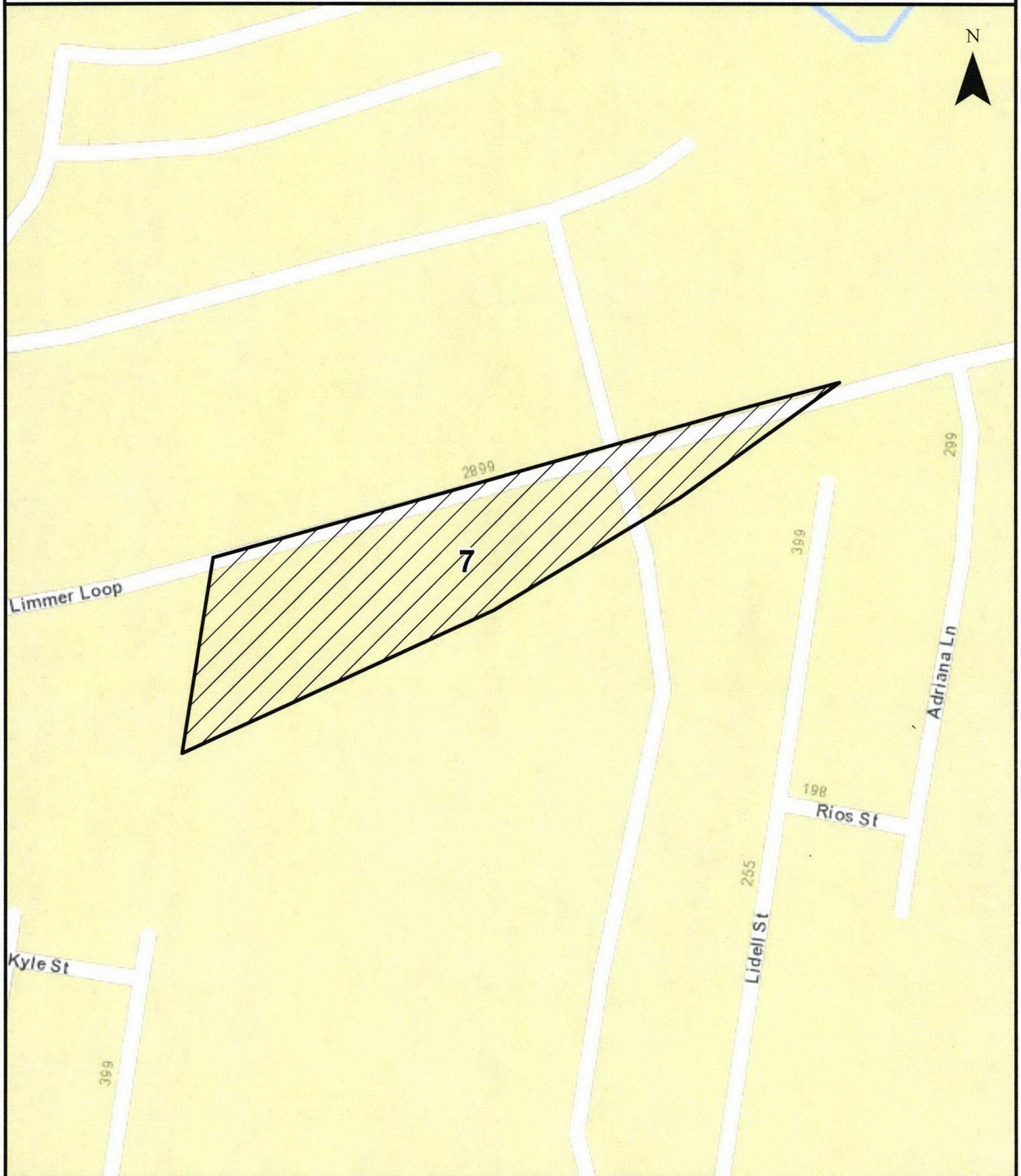
City of Hutto/401 West Front Street, Hutto, TX 78634/(512) 759-4033

## Legend

 Requested Area -  
Tract 3



# Application Exhibit (Attachment 3B-7 REV)



0 150 300 450 600


Feet

12/19/2017

City of Hutto Sewer CCN No. 20122  
Amendment - Requested Service Area Map (7 of 12)

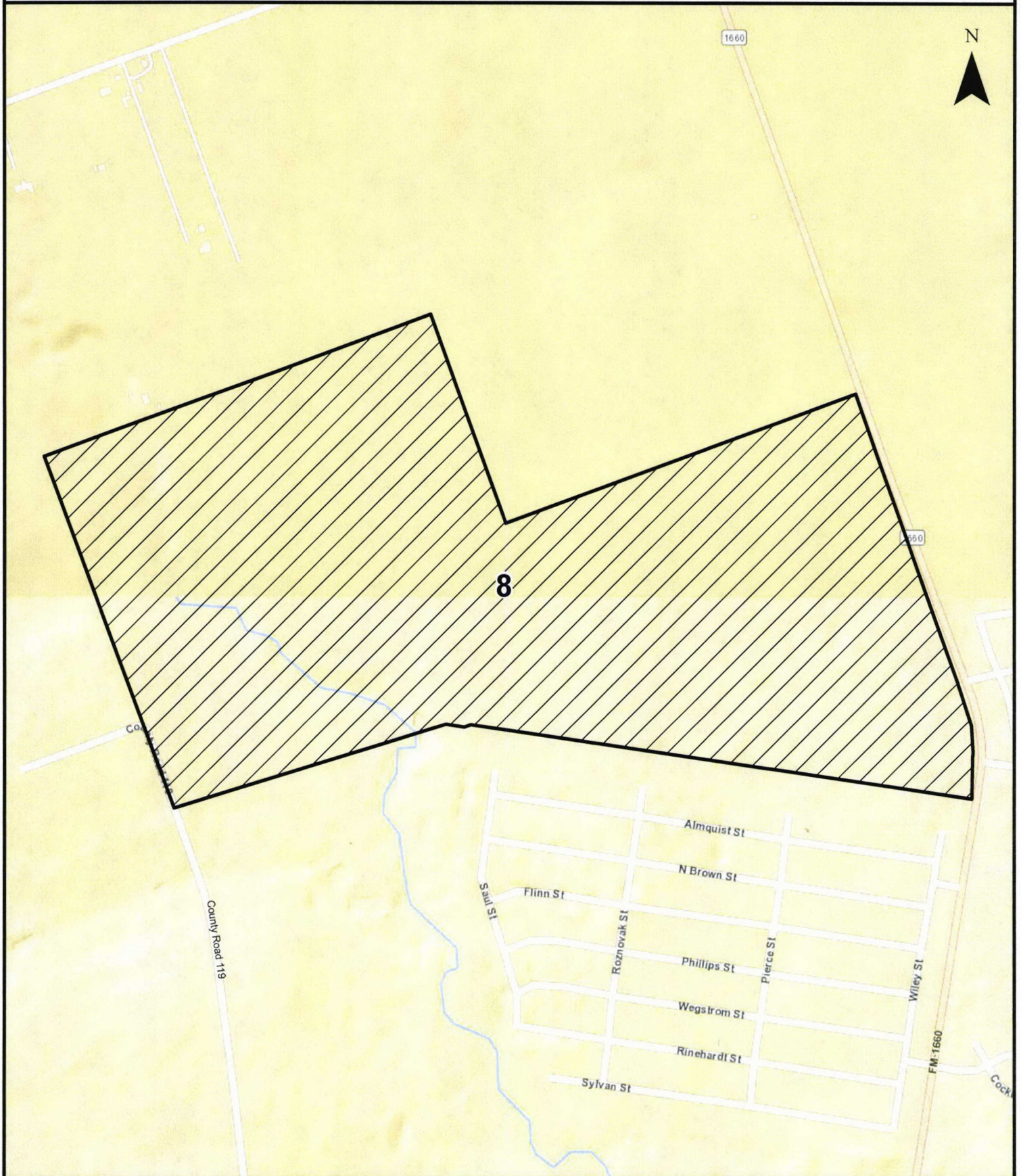
City of Hutto/401 West Front Street, Hutto, TX 78634/(512) 759-4033

## Legend

 Requested Area -  
Tract 7



# Application Exhibit (Attachment 3B-8 REV)



0 500 1,000 1,500 2,000


Feet

12/19/2017

City of Hutto Sewer CCN No. 20122  
Amendment - Requested Service Area Map (8 of 12)

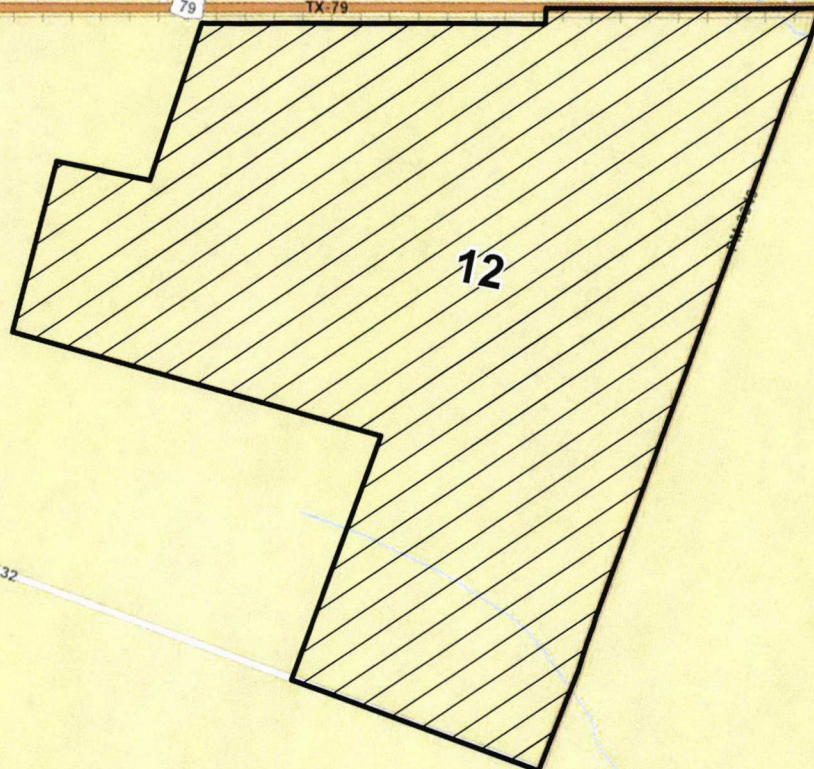
City of Hutto/401 West Front Street, Hutto, TX 78634/(512) 759-4033

## Legend

 Requested Area -  
Tract 8



# Application Exhibit (Attachment 3B-12 REV)




0 1,000 2,000 3,000 4,000  
Feet

12/19/2017

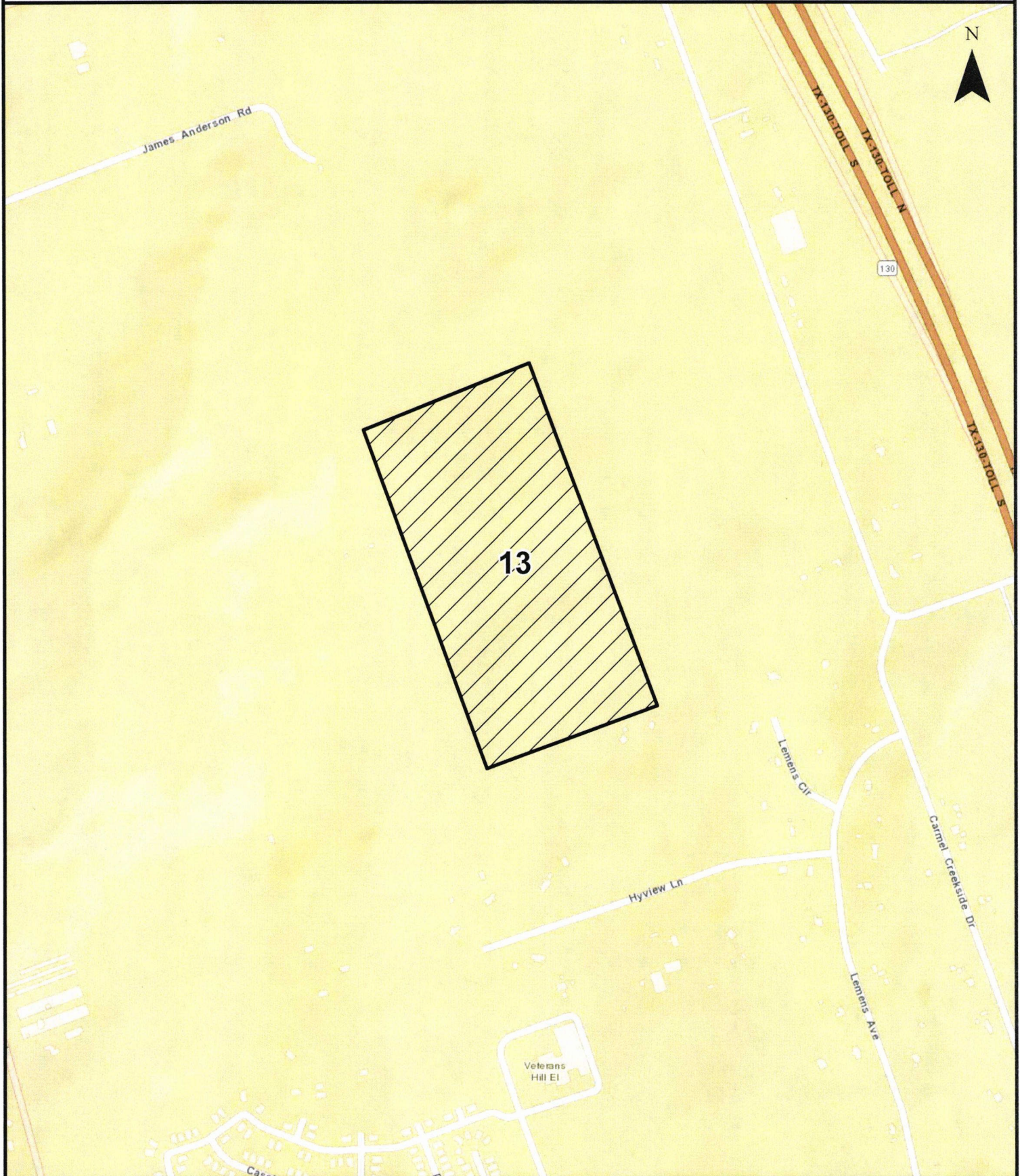
City of Hutto Sewer CCN No. 20122  
Amendment - Requested Service Area Map (12 of 12)  
City of Hutto/401 West Front Street, Hutto, TX 78634/(512) 759-4033

## Legend

 Requested Area - Tract 12



# Application Exhibit (Attachment 3B-13 REV)




0 500 1,000 1,500 2,000  
Feet

12/19/2017

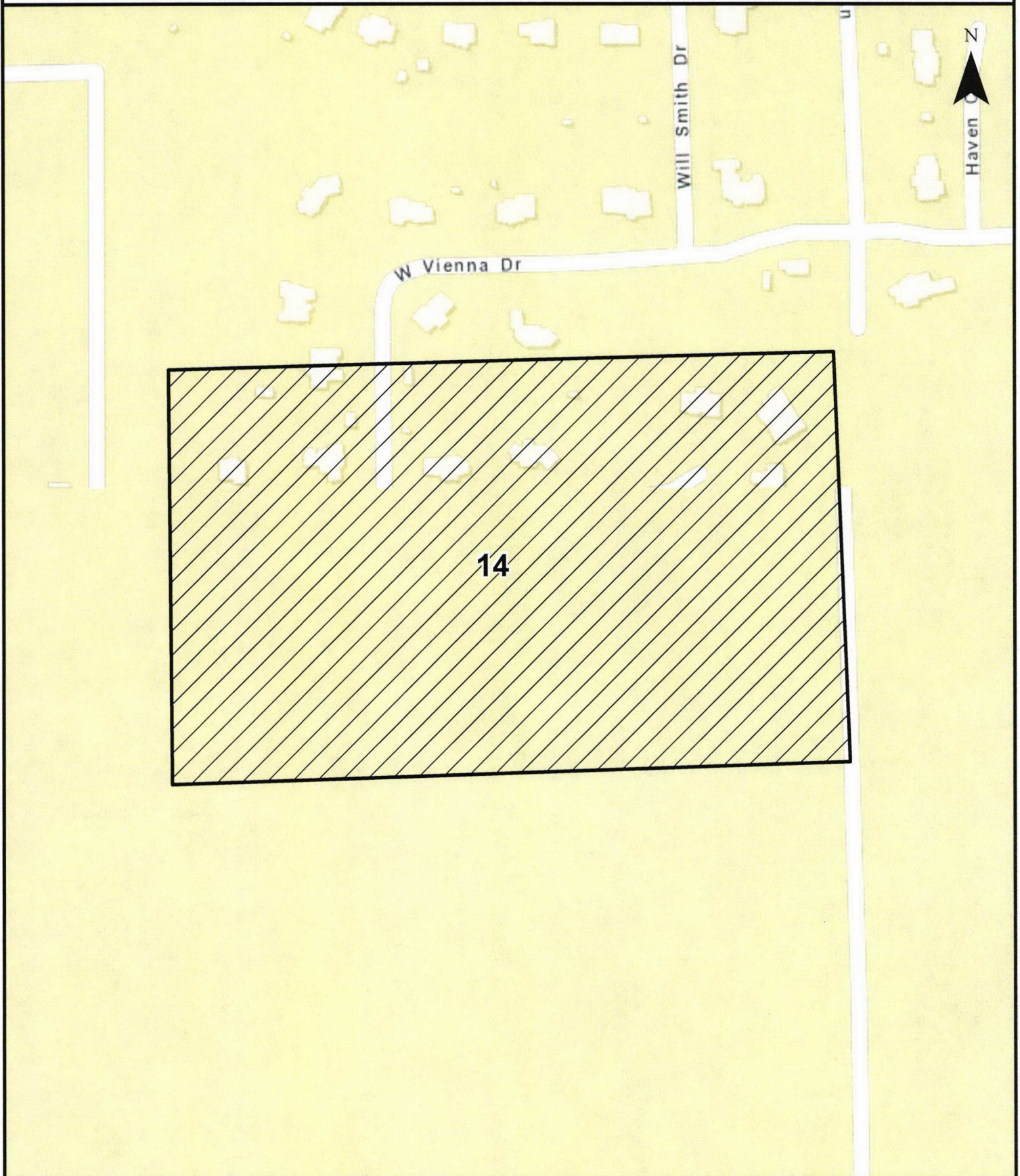
City of Hutto Sewer CCN No. 20122  
Amendment - Requested Service Area Map (12 of 12)  
City of Hutto/401 West Front Street, Hutto, TX 78634/(512) 759-4033

## Legend

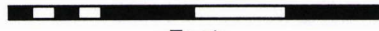
 Requested Area -  
Tract 13



# Application Exhibit (Attachment 3B-14 REV)



0 150 300 450 600



Feet

12/19/2017

City of Hutto Sewer CCN No. 20122  
Amendment - Requested Service Area Map (12 of 12)

City of Hutto/401 West Front Street, Hutto, TX 78634/(512) 759-4033

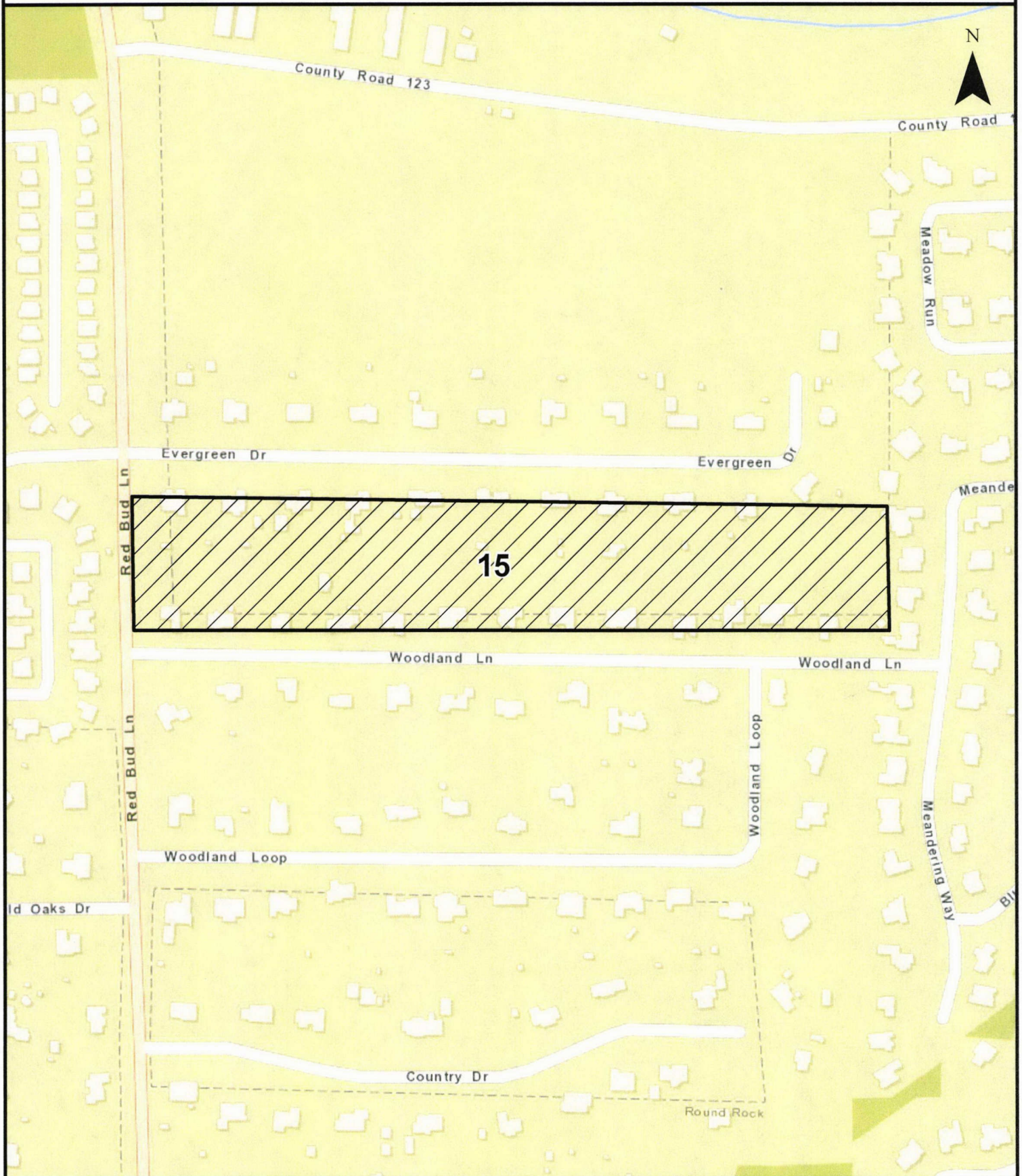
## Legend



Requested Area -  
Tract 14



# Application Exhibit (Attachment 3B-15 REV)



0 200 400 600 800


Feet

12/19/2017

City of Hutto Sewer CCN No. 20122  
Amendment - Requested Service Area Map (12 of 12)

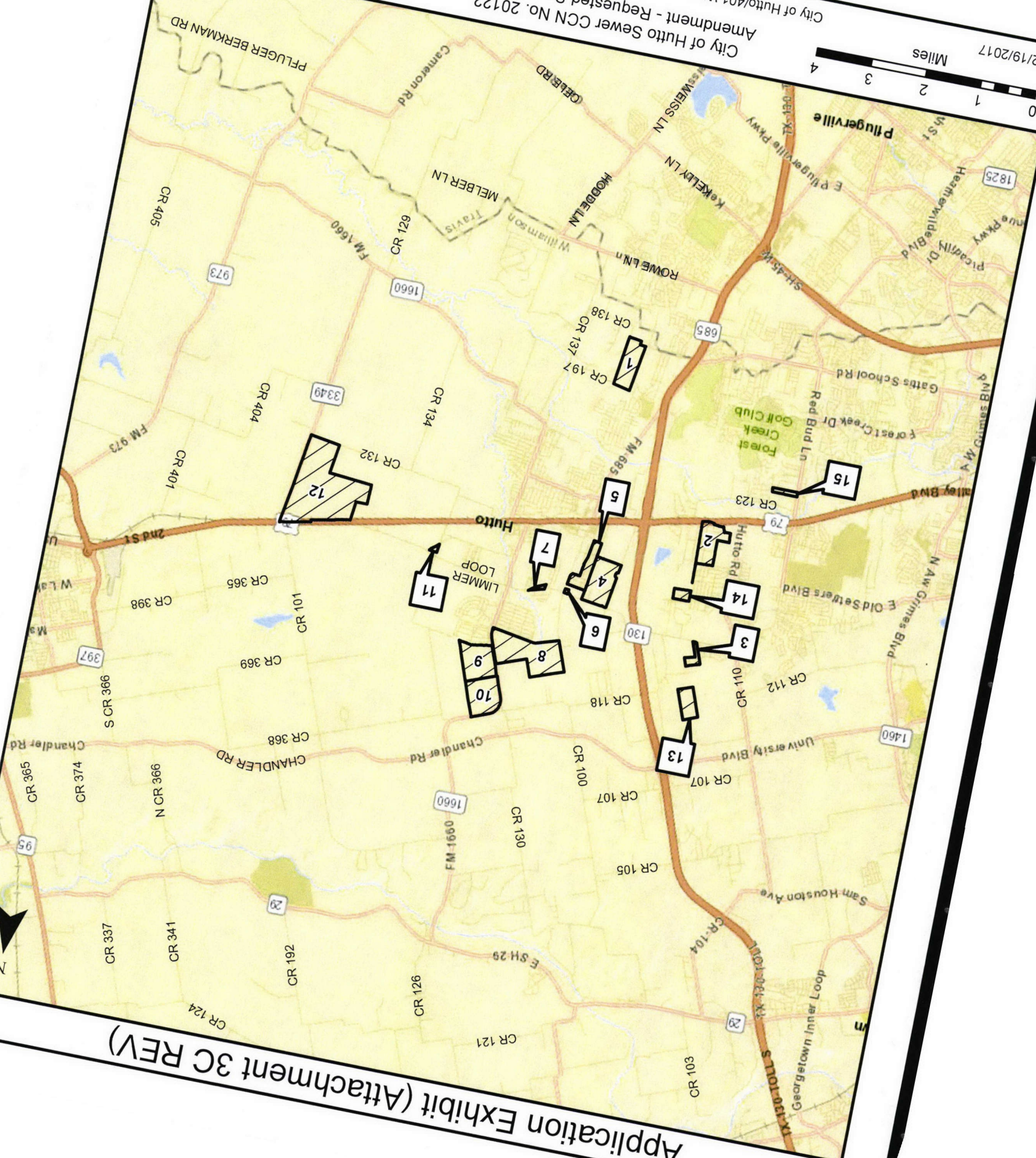
City of Hutto/401 West Front Street, Hutto, TX 78634/(512) 759-4033

## Legend

 Requested Area -  
Tract 15



Application Exhibit (Attachment 3C REV)



Legend



Requested Area

City of Hutto Sewer CCN No. 20122  
Amendment - Requested Service Areas  
City of Hutto/401 West Front Street, Hutto, TX 78634/(512) 759-4033



12/19/2017