



Filing Receipt

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DOCKET NO. 53728

IN THE MATTER OF THE	§	BEFORE THE
REQUEST BY THE CITY OF	§	
AMES UNDER TEXAS WATER CODE	§	
§ 13.041 FOR AN EMERGENCY	§	PUBLIC UTILITY COMMISSION
ORDER TO COMPEL THE CITY	§	
OF LIBERTY TO PROVIDE	§	
SEWER SERVICE	§	OF TEXAS

CITY OF LIBERTY’S RESPONSE
TO CITY OF AMES’ REQUEST FOR EMERGENCY ORDER

TO THE PUBLIC UTILITY COMMISSION OF TEXAS:

COMES NOW, the City of Liberty, Texas, (Liberty), and files this Response to the City of Ames’ (Ames’) request under Texas Water Code § 13.041 and 16 Texas Administrative Code § 24.14 for an emergency order to compel Liberty’s continued wholesale wastewater service (Response), and in support thereof, shows as follows:

1. Ames’ request for the emergency order fails for both substantive and procedural reasons, as described below. Ames—a wholesale sewer customer that sends its wastewater flows to Liberty—has failed to maintain its infrastructure, placing the consequences of such neglect on its own residents and on Liberty. It now claims an emergency, and seeks administrative relief rather than addressing the underlying issues that would allow for continuous and adequate sewer service. After years of litigation and ample notice from Liberty, Ames can claim no surprise. Ames also fails to include the express Commission requirements of an emergency petition.

2. In 2018, Liberty filed suit against Ames to recover the fees that Ames owes Liberty for Ames’ excess wastewater flows pursuant to section 5.2(c) of the *Liberty-Ames Waste Water Disposal Contract* (Contract).¹ See Exhibit A for a copy of the Contract. Ames’ excessive

¹ “Additional Service Charge. AMES agrees to pay an additional charge for those volumes delivered in excess of the “Total acceptable Volume” (“TAV”). The TAV shall be defined as 200,000 gallons per day and an aggregate of 6,000,000 gallons per month. Volumes in excess of the TAV shall be charged at three (3) times the highest rate,

wastewater flows result from infiltration and inflow of other water sources into Ames' collection system, putting Ames' residents at risk of sewer overflows, all while conveying excess flows to Liberty and its wastewater treatment plant. These problems are the result of Ames' continued refusal to rehabilitate and remediate its collection system.

3. On January 5, 2022, Liberty notified Ames that it would suspend wastewater collection and treatment service by July 1, 2022. Liberty's notice of suspension of service cites to Section 6.1 of the Contract, which states in relevant part,

PROVIDED, HOWEVER, that should AMES be remiss in its duty to operate and/or maintain the system in accordance with this contract or in a manner consistent with sound engineering principles, and such failure to properly operate the system becomes a danger to the continued proper operation of any portion of the LIBERTY system, then immediately following such written notice of the foregoing circumstances LIBERTY may take whatever steps are necessary to preserve the integrity of its own system, including, but not limited to disconnecting service. PROVIDED, HOWEVER, LIBERTY may assert a right to terminate or abridge service under this section of the contract following the above notice only after AMES has been afforded a reasonable opportunity to remedy such operational or maintenance related neglect or errors and re-establish the operation and maintenance of the system in a manner consistent with sound engineering principles and AMES has failed to do so.

Pursuant to the terms of the Contract, Liberty afforded Ames a reasonable opportunity to remedy Ames' neglect of its wastewater system for over six months (following years of communication dating back to 2017 between Liberty and Ames regarding Ames' infiltration and inflow issues). Ames has had ample time to plan for alternate sewer service. It hasn't done so. Instead, it now asks the Commission to step in to require continued service, even where the Contract provides the exact remedy Liberty seeks.

4. Ames' contention that "Ames has no means of obtaining wholesale wastewater service other than from Liberty" is false: Ames can arrange for a pump and haul service to collect

calculated on a per gallon basis, then existing for sewer service within LIBERTY, or FIVE HUNDRED AND NO/100 (\$500.00) DOLLARS per month, whichever amount is greater."

and transport Ames' wastewater.² This solution allows Ames to continue to provide service to its customers without threatening human health, public safety, and the environment. Moreover, Ames had at least six months of formal notice to arrange for such service.

5. Ames' excess wastewater treatment flows, and failure to pay the Contract amount for such excess flows, have placed both Ames' citizens and Liberty's own wastewater treatment system at risk. As such, the Commission should not issue an emergency order that would allow Ames to continue ignoring the problem (and as a result, posing a threat to human health, public safety, and the environment). Those impacts extend to Liberty's own wastewater compliance. Liberty's TPDES permit compliance has been directly impacted by Ames' excess flows (see TCEQ Docket Nos. 2015-1459-MWD-E and 2018-1495-MWD-E).³ Liberty has since taken steps to address the issues in TCEQ's enforcement dockets. Ames' continued refusal to fix its system, and pay Liberty for its excess flows, leaves Liberty at risk of future enforcement.

6. The Commission should also hold Ames to the terms of the Commission's own emergency order rules. Ames has not met the five express procedural requirements of Texas Water Code § 13.452.⁴ Ames fails to provide the information required in Texas Water Code § 13.452(3) because Ames did not include a proposed start time and a proposed end time for the requested Emergency Order. Furthermore, Ames fails to establish an emergency, as required in Texas Water

² Such hauling contracts are routinely used for certain collection systems that do not have their own associated wastewater treatment plant.

³ TCEQ Docket No. 2015-1459-MWD-E was for violations of the carbonaceous biochemical oxygen demand, ammonia, and *E. coli* parameters as set forth in Liberty's TPDES Permit No. WQ0010108001. This enforcement action resulted in Liberty completing a Supplemental Environmental Project (SEP) constituting repairs to Liberty's wastewater treatment plant totaling \$58,800. TCEQ Docket No. 2018-1495-MWD-E was for violations of the *E. coli* and ammonia nitrogen parameters as set forth in Liberty's TPDES Permit No. WQ0010108001. This enforcement action resulted in Liberty completing a SEP to purchase and install blowers totaling \$ 12,960.

⁴ Texas Water Code § 13.452 ("A person other than the utility commission or the staff of the utility commission who desires the issuance of an emergency order under this subchapter must submit a sworn written application to the utility commission. The application must: (1) describe the emergency condition or other condition justifying the issuance of the order; (2) allege facts to support the findings required under this subchapter; (3) estimate the dates on which the proposed order should begin and end; (4) describe the action sought and the activity proposed to be allowed, mandated, or prohibited; and (5) include any other statement, including who must sign the application for the order, and any information required by the utility commission.").

Code § 13.452(a). To the contrary, Ames admits it has had nearly six months of notice of the July 1, 2022 termination date.⁵ Ames has had sufficient time to prepare, and waited until the eleventh hour to file its emergency petition.

7. Liberty respectfully requests a hearing pursuant to 16 Texas Administrative Code § 24.14(a). The nature of this case includes subjects and background that oral argument would address beyond written briefings alone. Liberty is committed to providing continuous and adequate sewer service to its residents as well as wholesale customers, and a hearing would present the Commission with an opportunity to engage with the parties on such service matters, in light of past performance and future needs.

8. In the alternative, should the Commission issue an Emergency Order, Liberty respectfully requests that the timeline for the Emergency Order be tailored for a time period of 60-days, as permitted under 16 Texas Administrative Code § 24.14(f),(g).⁶ Further, Liberty respectfully requests the Commission require Ames to secure alternative wastewater services, such as pumping and hauling services, during the 60-day time period.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Liberty respectfully requests that the Commission deny Ames' Request for an Emergency Order under Tex. Water Code § 13.041(d) and 16 Tex. Admin. Code § 24.14. In the alternative, if the Commission issues an Emergency Order, Liberty respectfully requests the Order be limited in duration to no more than 60 days and should

⁵ City of Ames' Request for Emergency Order at 4 (June 16, 2022).

⁶ 16 Tex. Admin. Code § 24.14(f),(g) (“(f) An emergency order issued under this subchapter must be limited to a reasonable time as specified in the order. Except as otherwise provided by this chapter, the term of an emergency order may not exceed 180 days. (g) An emergency order may be renewed once for a period not to exceed 180 days, except an emergency order issued under subsection (a)(4) of this section.”).

require Ames to secure alternate wastewater treatment services during such window. Liberty also requests any such further relief to which it may be entitled.

Respectfully submitted,

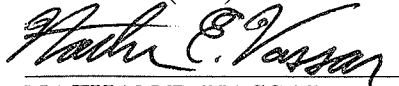
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A handwritten signature in black ink, appearing to read "Nathan E. Vassar", is written over a horizontal line.

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**ATTORNEYS FOR RESPONDENT
CITY OF LIBERTY, TEXAS**

CERTIFICATE OF SERVICE


I hereby certify that a true and correct copy of the foregoing document has been forwarded to the following attorneys via the Court's electronic filing case management system and electronic mail on this 21st day of June, 2022:

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ATTORNEY FOR CITY OF HARDIN



NATHAN E. VASSAR

Exhibit A

COPY

LIBERTY – AMES
WASTE WATER DISPOSAL CONTRACT
(AS AMENDED)

This contract is executed between the CITY OF LIBERTY, TEXAS, a home rule municipality, 1829 Sam Houston, Liberty, Liberty County, Texas, 77575 (“LIBERTY”), and the CITY OF AMES, TEXAS, a general law municipality, P. O. Box 8094, Liberty, Liberty County, Texas, 77575 (“AMES”).

The purpose for the execution of this amended contract by LIBERTY and AMES is to amend the term of of the original contract executed by both parties. The consideration for the execution of this contract is the sum of TEN and NO/100 (\$10.00) DOLLARS paid by AMES to LIBERTY, together with the provisions of this contract, as amended, and payment as provided herein for the extended term, the receipt and sufficiency of such consideration is hereby acknowledged by each party. This amended contract supersedes and takes the place of the original contract dated and executed by LIBERTY and AMES on September 24, 1997.

AMES intends to construct and operate a sanitary sewer collection system (“the system”) to serve customers within and without its corporate limits. The purpose of this contract is to provide for the treatment and disposal of waste from such system by LIBERTY’s wastewater plant. The consideration for this contract is the payments provided for herein and the promises by and benefits to each party pursuant to the terms of this contract. This contract shall be performed in Liberty County, Texas.

This contract shall be in force and effect from the date of execution hereof until March 13, 2041.

ARTICLE 1.

DEFINITIONS

Section 1.1 – Definitions. The following terms shall have meanings as follows:

Manager: “Manager” shall mean the City Manager of the CITY OF LIBERTY.

Infiltration Water: “Infiltration Water” shall mean water or other waste entering the AMES system by means other than by a permitted connection, and it includes water leaking into the AMES’ system.

Liberty Plumbing Code: “Liberty Plumbing Code” shall include the Plumbing Code of the Southern Building Code Congress International and all waste water and/or plumbing ordinances or other relevant ordinances of the CITY OF LIBERTY, as amended.

Person: “Person” means a natural person, a corporation, partnership, limited liability company or any other entity recognized by law.

Prohibited Waste: “Prohibited Waste” shall be those discharges proscribed by the CITY OF LIBERTY Industrial Waste Ordinance, Ordinance No. 698, a copy of which has been provided to AMES prior to the execution of this contract. The terms of such Ordinance are made a part of this contract. All future amendments to Ordinance No. 698 shall apply to this contract when such amendments are adopted; however, AMES shall be fully advised and notified in advance of any amendment so as to have sufficient time to respond to the proposed amendment and prepare for any reasonable changes brought by an amendment. The term “prohibited waste” shall also include waste water having parameters exceeding those for “sewage” as that word is herein defined.

Sanitary Sewer Collection System: "Sanitary Sewer Collection System" or "the system" shall mean the sanitary sewer collection system(s) and any extensions thereof and additions thereto that AMES shall construct or acquire or cause to be constructed or acquired from time to time. The sanitary sewer collection system shall include all mains, laterals, collections, lift stations and other appurtenances.

Sewage: "Sewage" shall mean waste water (excluding industrial waste water) discharged into the system and in which the average concentration of total suspended solids is not more than 250 mg/l and B.O.D. is not more than 250 mg/l.

ARTICLE 2.

CONSTRUCTION BY AMES: POINTS OF DISCHARGE AND TITLE

Section 2.1 – Construction by AMES of its Sanitary Sewer Collection System.

AMES plans for the system to eventually carry all collected sewage to the point of connection with the LIBERTY system as shown in Exhibit "A" to this contract. AMES will construct or cause to be constructed the system in accordance with plans and specification prepared by AMES' consulting engineers, but in compliance with LIBERTY's standards.

Section 2.2 – Approval of Construction Plans and Specifications Before and After Construction. Prior to initiating construction of the system, AMES' engineers shall submit to the LIBERTY manager and LIBERTY City Engineer for their review two (2) sets of plans and specifications for the system. Construction of the system shall not begin until such plans and specifications are delivered for review to LIBERTY and approved by any applicable State agency. AMES' engineers will provide LIBERTY, upon completion

of the construction, with one set of "as built" drawings and certification that the system was built in accordance with the plans and specifications so delivered to LIBERTY. AMES will likewise obtain any required agency approval for and supply LIBERTY with "as built" drawings and similar certification for any subsequent alterations or modifications made on the system during the term of this contract.

AMES specifically grants LIBERTY the right to inspect at any time any and all construction and the system for substantial conformance with the standards of the LIBERTY Plumbing Code or Ordinance and the approved plans and specifications. Should any such construction or the system at any time, during construction or after completion, be found not to conform in some material respect with the approved plans and specifications and applicable laws and regulations, then AMES shall immediately upon written notice of such non-conformance take those remedial steps necessary to meet the required standards. It shall be AMES' burden to establish that any non-conformance complained of by LIBERTY is not material for the purposes of this section of the contract.

Section 2.3 – Ownership and Maintenance of the Sanitary Sewer Collection System. AMES shall own, maintain and operate the Sanitary Sewer Collection System in accordance with applicable laws, rules and regulations.

Section 2.4 – Completion of Construction. Upon completion of the construction of the system, LIBERTY agrees to receive and take from AMES, for the price and at the point of deliver hereinafter provided, and AMES agrees to discharge, for such price as provided in Article 5 of this contract and at such point of delivery, such volumes of

sewage at such times as hereinafter provide in Article 4 of this contract, consistent with other limitations as stated herein.

Section 2.5 – Points of Discharge. The initial point of discharge will be as shown in Exhibit “A”. The parties may, by mutual consent, designate additional or substitute points of discharge to serve the system.

Section 2.6 – Title to and Responsibility for Waste. Title to, possession and control of sewage shall remain in AMES up to the point or points of discharge as provided in Section 2.5 or other points of discharge. From the point of discharge all non-prohibited sewage shall pass to LIBERTY, and LIBERTY shall take such title, possession and control of the non-prohibited waste at such point or points of discharge and shall be solely responsible for treatment and disposal of such sewage. LIBERTY shall be under no responsibility to accept prohibited waste that does not conform to the quality or quantity standards specified herein or materials that are in violation of the standards required under LIBERTY’s discharge permits.

ARTICLE 3.

OPERATION AND MAINTENANCE OF SANITARY SEWER COLLECTION SYSTEM

Section 3.1 – Plumbing Code. AMES shall comply with LIBERTY’s current plumbing code for sanitary sewer facilities by adopting similar provisions and agrees not to allow connections to its system unless in compliance with the standards established by LIBERTY’s code and this agreement.

AMES shall not permit plumbing work relating to sewer service to be performed on any premises in AMES or served by the system unless a plumbing permit therefor has first been obtained from AMES. No such plumbing work shall be connected to the system unless it has first been inspected and approved by a LIBERTY Plumbing Inspector. AMES will enforce any notices issued by such Inspectors and any notices not complied with will result in discontinuance of sewer service for the inspected user when this may be legally done upon the request of LIBERTY.

Section 3.2 – Outside Service Contracts. Proper maintenance of the system by AMES is of paramount importance and has a contributing effect upon the ability of LIBERTY to maintain and operate its own sewer system. Therefore, recognizing the interest of LIBERTY in the proper maintenance of the AMES system, AMES agrees that should AMES desire to delegate responsibility for maintenance or for supervision or maintenance of its system to any other entity, such as a private service corporation, association, individual or other similar agency, rather than maintain its system through use of its own employees, then any such proposed service arrangement, by written contract or otherwise, must be approved by the LIBERTY Manager prior to its execution by the parties.

Section 3.3 – Prohibited Waste. The effect of certain types of prohibited waste upon sewers and waste treatment and disposal processes are such as to require that careful and special consideration be made of each connection discharging industrial waste. Accordingly, service for the treatment and disposal of prohibited waste shall be negotiated directly between such customer and LIBERTY and shall provide such fees and control deemed necessary by LIBERTY to comply with all governmental regulations of

such treatment and disposal. LIBERTY shall not be obligated to provide prohibited waste treatment and disposal services if LIBERTY determines that such services are beyond the projected capacity of its system. AMES will receive a transportation fee agreed upon by the parties for the collection of such prohibited waste. AMES will permit no prohibited waste connections until same are approved in writing by LIBERTY Manager pursuant to a fully executed contract between LIBERTY, AMES and the prohibited waste customer.

Section 3.4 – Waste to Comply With LIBERTY Ordinances. Discharges into the sanitary sewer collection system of AMES shall comply with all applicable LIBERTY Ordinances and standards, including LIBERTY's industrial waste Ordinance if appropriate. AMES is obligated to assume the responsibility to enforce standards established by the LIBERTY ordinances with respect to impermissible discharges or prohibited wastes originating from within AMES. AMES shall not permit the discharge of any "prohibited waste", as that term is defined herein; failure to comply with this requirement shall constitute a material breach of this contract for which LIBERTY may, and AMES recognizes LIBERTY's right to terminate this agreement or seek any other relief at law or in equity.

Section 3.5 – Seepage and Infiltration. AMES shall adopt and enforce written rules, regulations and/or provisions in all connection contracts with customers designed to insure that connections to the system will prevent, to the extent feasible, the discharge into the system of anything except sewage. In particular, no yard drains or other drains shall be connected or installed to the system, thereby allowing rainwater or other surface waters to enter the system. In addition, but without limitation, adequate safeguards shall

be taken by AMES to prevent any abnormal seepage or infiltration or discharge of any solid matter into the system. Within ninety (90) days following the date of execution of this contract, AMES shall supply the LIBERTY Manager a copy of such rules, regulation and contracts, including a statement of measures designed to enforce such provisions. AMES shall initiate whatever lawful actions are necessary to disconnect any customer who, following notice, refuses to remove non-compliant connections. AMES shall routinely inspect and permit LIBERTY to routinely inspect all connections at the time made and continue to monitor the system as a whole to detect infiltration and unpermitted connections. AMES shall continuously maintain the system so as to prevent any abnormal seepage or infiltration into the system.

LIBERTY has reserved capacity for AMES in its waste water plant only for the volumes of sewage stated in Section 4.1 of this contract. Damages which would result to LIBERTY from violation of this provision as to the prevention of abnormal seepage or infiltration or the discharge of solid matter or surface water into the sanitary sewer system would be difficult to ascertain. Additional costs would accrue to LIBERTY to provide additional treatment capacity above and beyond that called for in Section 4.1. Therefore, AMES agrees to pay the additional charges provided for in Section 5.1(c) for such excess infiltration. LIBERTY Inspectors shall have the right to make such inspections as are necessary to insure that AMES is making adequate and proper repairs for the purpose of safeguarding the LIBERTY sanitary sewer system.

These provisions for additional charges shall not be construed as giving AMES any rights by virtue of the payment of such amounts and any payment by AMES shall not prejudice the right of LIBERTY to exercise any other right or remedy available to it

under this contract, including the right to declare the contract in breach or to seek injunctive relief for compliance with its provisions.

Section 3.6 – Participation in State and Federal Grant Program; Contribution to Costs. LIBERTY may in the future participate in Federally or State funded grant programs for the construction and/or improvement of its sewer or waste water system. As part of such programs, and consistent with LIBERTY's successful participation and sharing in grant funds, certain responsibilities may be imposed upon LIBERTY with respect to compliance with State and/or Federal rules and regulations regarding contributors to LIBERTY's waste water system. AMES recognizes that it will be deemed a contributor to the LIBERTY system, and shall take all necessary steps to enable LIBERTY to comply with such programs and bear its pro rata share of the expense of such compliance, but only to the extent that any such expense is attributable to the AMES system. More specifically, AMES authorizes LIBERTY and its representatives, after prior notice, to enter AMES property (with AMES' representative(s) present) and to conduct those tests, including infiltration/inflow analysis, smoke tests or other similar analysis as required to characterize the condition of the AMES system should that be reasonably required. AMES agrees to pay the cost of such analysis of the system not refunded by the State or Federal government to LIBERTY. In addition, AMES agrees to pay the unrefunded cost of any remedial measures necessary to improve the AMES system so as to be in compliance with State or Federal requirements and agrees that such remedial measures will be timely taken. AMES recognizes that such measures are necessary to LIBERTY's continued compliance

with State and Federal requirements, and that failure on the part of AMES to comply with this section shall constitute a material breach of this contract.

ARTICLE 4.

SCHEDULE FOR ACCEPTANCE OF WASTE; VOLUMES OF WASTE TO BE ACCEPTED

Section 4.1 – Generally. There is a finite capacity for sewage treatment for the LIBERTY sewage Treatment Plant and the efficient operation of the LIBERTY Main Treatment Plant consistent with State and Federal laws was a factor in LIBERTY's decision to provide service under the provisions of this contract. Prior to the execution of this contract, AMES submitted estimates to LIBERTY on the incremental volumes of sewage flows to be delivered to the LIBERTY Main Plant. Therefore, LIBERTY shall, for the recited compensation, accept the maximum wet weather sewage volumes ("Total Acceptable Volume" or "TAV") of 200,000 gallons per day which is twice the normal dry weather flow per day and an aggregate of 6,000,000 gallons per month.

AMES shall purchase and install at the point of discharge an electromagnetic flow meter capable of recording total throughput on a daily basis for at least a week's time to record flows, including peak daily flows. A proper sewer meter of suitable accuracy and design acceptable to the LIBERTY Manager shall be used. The flow meter will be installed in compliance with applicable laws and regulation and at a point where the line will be full of liquid at all times to insure that the measurements would be accurate. An accurate constant flow measurement will be accomplished by providing the flow through the meter only when the lift station is pumping. In addition to a flow meter, there shall be

a permanent recorder (elapsed time meter) to record the time the pump in the lift station is pumping will be installed at the lift station. The recorder will be used to verify the accuracy of the meter. AMES shall maintain the meter and recorder in good operating condition at all times and calibrate the meter for accuracy at least once every six (6) months. LIBERTY shall have the right to inspect and to take readings from these devices at all times. If LIBERTY's inspection discloses the metering device is failing to register within 10% or more of the actual wastes being discharged, then AMES shall bear the cost of the inspection and recalibration, and the billing to AMES shall be adjusted at the option of LIBERTY to include charges for the estimated unmetered flow or, equal the previous month's billing. AMES shall, within ten (10) days of the request of LIBERTY, perform all necessary repairs or replace said device if necessary. AMES shall tender monthly readings reports to LIBERTY from the meter and recorder. The readings shall be made on the first regular business day following the first day of each month.

LIBERTY has reserved capacity for AMES in its sewer plant only for the volumes of sewage stated herein. Should the needs of AMES, for whatever reason (including infiltration), exceed the maximum, based on daily readings for total throughput, then LIBERTY shall be exposed to an inordinate cost of treatment by virtue of such excess, and AMES agrees to pay the additional compensation as provided in Section 5.2 (c) of this contract. However, such payment by AMES will not authorize or permit any excess volume. This provision for additional compensation shall not limit any right of LIBERTY to respond or remedy such violation of the maximum level of capacity.

Section 4.2 – Service Contracts With Others. The primary purpose of this contract is to provide sewer service to the CITY OF AMES and to allow AMES to provide sewer service within AMES' extraterritorial jurisdiction and the territory encompassed in the AMES-MINGLEWOOD WATER SUPPLY CORPORATION certificate of convenience and necessity. Except as specifically provided above, AMES shall not provide sewer service to any area within LIBERTY's extraterritorial jurisdiction or within territory comprising the area of LIBERTY's certificate of convenience and necessity for water and/or sewer service. AMES may provide sewer service outside of its corporate limits, but only if the providing of such service does not encroach upon LIBERTY's extraterritorial jurisdiction or upon the territory comprising LIBERTY's certificate of convenience and necessity for water and/or sewer service. Should AMES extend sewer service beyond the jurisdiction of its police power, AMES shall enforce the necessary provisions of this contract through individual contracts with the customers it serves. AMES shall not permit other governmental or quasi-governmental entities to connect temporarily or otherwise to the sewer system without the consent and approval of the City Council of the CITY OF LIBERTY.

ARTICLE 5.

PAYMENT, TERMS AND CONNECTION CHARGE

Section 5.1. AMES shall pay TWENTY-FIVE THOUSAND AND NO/100 (\$25,000.00) DOLLARS upon connection of its system to LIBERTY's system.

Section 5.2 – Charges. In addition to the TWENTY-FIVE THOUSAND AND NO/100 (\$25,000.00) DOLLARS connection charge, AMES will pay LIBERTY each month as follows:

- a. Service Charge. A charge of 75/100 (\$0.75) DOLLARS per 1,000 gallons of water metered at the lift station. This rate of 75/100 (\$0.75) DOLLARS per 1,000 gallons shall be adjusted upward to include any fee or charge mandated by the Federal and/or State government. Any other adjustment to the charge is controlled by paragraph 5.5 below.
- b. Connection Charge. For each connection made to the AMES sanitary collection system after the day LIBERTY commences taking waste from AMES there will be a one-time connection charge of TWENTY – FIVE AND NO/100 (\$25.00) DOLLARS. However, there shall be no inspection fee imposed by LIBERTY for such subsequent connections.
- c. Additional Service Charge. AMES agrees to pay an additional charge for those volumes delivered in excess of the “Total acceptable Volume” (“TAV”). The TAV shall be defined as 200,000 gallons per day and an aggregate of 6,000,000 gallons per month. Volumes in excess of the TAV shall be charged at three (3) times the highest rate, calculated on a per gallon basis, then existing for sewer service within LIBERTY, or FIVE HUNDRED AND NO/100 (\$500.00) DOLLARS per month, whichever amount is greater.
- d. All payments to LIBERTY shall be from AMES current revenue.

Section 5.3 – Right of Inspection. LIBERTY shall have the right at any time by actual count or by an inspection of the books, records and accounts of AMES necessary to determine the number of sewage connections served by AMES. It shall be the duty of AMES to cooperate fully with LIBERTY in checking or determining the number of connections. The books, records and accounts of AMES shall be open for inspection during normal business hours by any authorized representative of LIBERTY, but only for the purpose of insuring compliance with this contract. Any confidential or privileged

information in such records shall be marked and kept confidential and privileged by AMES and not disclosed by LIBERTY.

Section 5.4 – Billing and Payments. Beginning on the date when LIBERTY first commences taking sewage from AMES through the LIBERTY Main Plant, AMES shall count and certify to LIBERTY the number of connections in use on the first day and thereafter AMES shall render to LIBERTY on the first day of each month an accounting of the service charges as provided in Section 5.2 (a) and 5.2 (c) and of connections in use during the preceding quarter as described in Section 5.2 (b). On receipt of the above-described accounting, the LIBERTY Manager will bill AMES for the sewage charges accrued during the preceding month. Payment by AMES to LIBERTY shall be made in the form and at such location as may be designated in writing by AMES. Payments will be made by AMES within thirty (30) days following the receipt of such bill. LIBERTY shall have the right to verify submitted quantities of any and all connections by on-site investigations of each connection.

Any sums payable by AMES to LIBERTY under this contract which are not paid within thirty (30) days following the receipt of the bill shall bear interest at the rate of ten (10%) percent per annum from the date of such indebtedness matured until payment. If, in the event of any default, the amount so past due and unpaid, including interest thereon, is collected by LIBERTY, LIBERTY also shall be entitled to reasonable attorney's fees for the collection of such indebtedness by suit.

Section 5.5 – Service Charge Modifications. Although LIBERTY believes that the present charges for such services as set forth in Section 5.2 (a) and 5.2 (c) herein are fair and reasonable, nonetheless, the parties realize that LIBERTY may increase the

charges for such services, either by amendment of the rate schedule for like services within the City Limits upon which the service charges levied hereunder are based, or by other means. It is agreed, however, that such charges shall not be increased as to AMES during the first five (5) years of this contract and will be increased thereafter only when the rates or charges of other customers purchasing such services from LIBERTY are also increased. After five (5) years if rates are increased or decreased by LIBERTY to its citizens, then the rate increase (or decrease) to AMES shall be by the same percentage.

Section 5.6 – Operating Expense and Covenants as to Rates. The payments to LIBERTY by AMES are an essential cost of operating and maintaining AMES' system as a part of the combined water works and sanitary sewer system of AMES, and such costs shall be a first charge upon the gross revenues received from the operation of AMES of said combined system. AMES agrees to establish and maintain rates sufficient to pay all costs and expenses of operation and maintenance of its combined system.

ARTICLE 6

MISCELLANEOUS PROVISIONS

Section 6.1 – Default. Failure to act expeditiously, as determined by the circumstances of each instance, to cure the material non-conformance following notice of such non-conformance shall constitute a material breach of this contract, for which LIBERTY may terminate this contract and seek all remedies at law or in equity to enforce this contract. A material breach of this contract by AMES includes, but is not limited to, the following acts:

- a. The acceptance of prohibited waste in the system;

- b. Failure to enforce the provisions of the LIBERTY Plumbing Code and this agreement;
- c. Failure to obtain the prior consent and approval of a third party maintenance or operation agreement for the system;
- d. Contract directly with customers of prohibited waste of the system; and,
- e. Failure to correct infiltration of the system in a reasonable time period.

PROVIDED, HOWEVER, that should AMES be remiss in its duty to operate and/or maintain the system in accordance with this contract or in a manner consistent with sound engineering principles, and such failure to properly operate the system becomes a danger to the continued proper operation of any portion of the LIBERTY system, then immediately following such written notice of the foregoing circumstances LIBERTY may take whatever steps are necessary to preserve the integrity of its own system, including, but not limited to disconnecting service. PROVIDED, HOWEVER, LIBERTY may assert a right to terminate or abridge service under this section of the contract following the above notice only after AMES has been afforded a reasonable opportunity to remedy such operational or maintenance related neglect or errors and re-establish the operation and maintenance of the system in a manner consistent with sound engineering principles and AMES has failed to do so.

Section 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 (except the obligation to pay money past due) under this contract, upon such party's giving notice and full particulars of such force majeure in writing as soon as possible after the occurrence of the cause relied upon, then the obligations of the party giving such notice, to the extent it is affected by 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 as to the extent provided, but for no longer period. Such cause shall be remedied with all reasonable dispatch.

The term "force majeure" shall include, but not be limited to acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, war, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of governments and people, explosions, breakage or damage to machinery or pipelines and any other inability of either party, whether similar to those enumerated or otherwise, and not within the control of the party claiming such inability, which by the exercise of due diligence and care such party could not have avoided.

Section 6.3 – Approval. Approval of an act or event may be given before the time of such act or event. Approval or consent may be evidenced by Ordinance, resolution, motion duly adopted by the governing body, or by an appropriate certificate executed by a person, firm or entity previously authorized to determine and give such approval or consent.

Section 6.4 – Address and Notice. Unless otherwise provided in this contract, any notice, communication, request, reply or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made or accepted by any 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 and registered or certified and addressed to the party to be notified, with return receipt requested, or by personally delivering the same to the officer designated below to receive such notice. Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated in this contract, from and after the expiration of three (3) days after it is so deposited.

Notice given in any other manner shall be effective only if and when received by the party to be notified. However, in the event of service interruption or hazardous conditions, neither party will delay remedial action pending the receipt of formal notice. For the purpose of notice, the designated recipients and the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to LIBERTY, to:

City Manager
CITY OF LIBERTY
1829 Sam Houston
Liberty, Texas 77575

If to AMES, to:

Mayor
CITY OF AMES
P. O. Box 8094
Liberty, Texas 77575

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, provided at least fifteen (15) days' written notice is given of such new address to the other parties.

Section 6.5 – Assignability. This contract shall bind and benefit the respective parties and their legal successors and shall not be assignable, in whole or in part, by any party without first obtaining written consent of the other parties.

Section 6.6 – Regulatory Agencies. This contract shall be subject to all present and future valid laws, order, rules and regulations of the United States of America, the State of Texas, and of any regulatory body having jurisdiction.

Section 6.7 – No Additional Waiver Implied. The failure of any party hereto to insist, in any one or more instances upon performance of any of the terms, covenants or conditions of this contract, shall not be construed as a Waiver or relinquishment of the future performance of any such term, covenant or condition by any other party hereto, but the obligation of such other party with respect to such future performance shall continue in full force and effect.

Section 6.8 – Modification. Except as otherwise provided in this contract, this contract shall be subject to change or modification only with the mutual consent of the parties hereto.

Section 6.9 – Parties In Interest. This contract shall be for the sole and exclusive benefit of the parties hereto and shall not be construed to confer any rights upon any third party. LIBERTY shall never be subject to any liability in damages to any customer of AMES for any failure to perform its obligations under this contract.

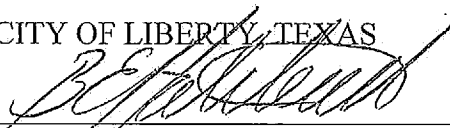
Section 6.10 – Captions. The captions appearing at the first of each numbered section in this contract are inserted and included solely for convenience and shall never be considered or be given any effect in construing this contract, or any provision hereof, or in connection with the duties, obligations or liabilities of the respective parties hereto or in ascertaining intent, if any question of intent should arise.


Section 6.11 – Severability. The provisions of this contract are severable, and if any provision or part of this contract or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this contract and the application of such provision or part of this contract or other persons or circumstances shall not be affected thereby.


Section 6.12 – Merger. This contract embodies the entire sanitary sewer service understanding between the parties and there are no prior effective representations, warranties or agreements between the parties.

Section 6.13 – Construction of Contract. The parties agree that this contract shall not be construed in favor of or against any part on the basis that the party did or did not author this contract.

SIGNED IN DUPLICATE ORIGINALS this the 14 day of MARCH, 2001.

CITY OF LIBERTY, TEXAS
By: 
BRUCE HALSTEAD, Mayor

ATTEST:

E. BRUCE MINTZ, City Secretary

CITY OF AMES
By: 
Mayor 3/14/01

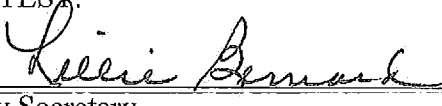
ATTEST:

City Secretary

EXHIBIT "A" TO
LIBERTY – AMES WASTE WATER DISPOSAL CONTRACT

The point of discharge into the LIBERTY sewer system shall be on the South side of U.S. Hwy. 90 and East of Layl Drive, said point of discharge being essentially at the Southeast corner of the intersection of Layl Drive and the U.S. Hwy. 90 right of way.

END OF EXHIBIT "A"