



Filing Receipt

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DOCKET NO. 53728

REQUEST OF CITY OF AMES	§	PUBLIC UTILITY COMMISSION
FOR EMERGENCY ORDER	§	
TO MAINTAIN SEWER SERVICE	§	OF TEXAS
FROM CITY OF LIBERTY	§	

CITY OF AMES' AMENDMENT TO REQUEST FOR EMERGENCY ORDER

TO THE PUBLIC UTILITY COMMISSION OF TEXAS:

COMES NOW, the City of Ames, Texas, ("Ames"), and files this amendment to request with the Public Utility Commission of Texas ("Commission" or "PUC") under Texas Water Code § 13.041 and 16 Tex. Admin. Code § 24.14 for an emergency order to compel the City of Liberty ("Liberty") to maintain sewer service in response to Liberty's notice of suspension of services and, in support thereof, would show the following:

I.
PARTIES

1. The City of Ames, Texas is a Type A General Law Municipality located within Liberty County, Texas.
2. The City of Liberty, Texas is a home-rule municipality located within Liberty County, Texas, and incorporated as the City of Liberty.

II.
FACTUAL ALLEGATIONS

On March 14, 2001, representatives for Ames and Liberty signed the Liberty-Ames Wastewater Disposal Contract (As Amended) (the "Contract"). See Attachment A, Exhibit 2. "The purpose of this contract is to provide for the treatment and disposal of waste from [Ames

sanitary sewer collection] system by LIBERTY's wastewater plant." *Id.* The Contract states that it "shall be in force and effect from the date of execution hereof until March 13, 2041." *Id.*

Section 5.2 of the Contract detailed the "Charges" that Ames would pay Liberty each month for the wholesale wastewater service. Pursuant to Section 5.2(a), Ames was required to pay a "Service Charge" of \$0.75 per 1,000 gallons of water metered at the lift station. Ames also was required to pay a "Connection Charge" pursuant to Section 5.2(b) for each connection made to the Ames sanitary collection system after the day Liberty commences taking waste from Ames. Additionally, Section 5.2(c) of the Contract states as follows:

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) DOLLARS per month, whichever amount is greater.

Liberty's interpretation of this Section 5.2(c) in the Contract is disputed by Ames. Ames contends that Section 5.2(c) defines an exceedance of the "Total Acceptable Volume" as occurring when two conditions are met: (1) greater than 200,000 gallons per day, **AND** (2) an aggregate of 6,000,000 gallons per month. Only when a volume of wastewater is delivered by Ames that causes both of those conditions to be exceeded should Ames be required to pay an Additional Service Charge (three times the highest rate existing for sewer service, or five hundred dollars, whichever amount is greater) under the Contract.

By contrast, Liberty invoices Ames for Additional Service Charges whenever either of the two conditions are exceeded, regardless of whether the other condition is met/exceeded. Liberty assesses an Additional Service Charge when: (1) Ames exceeds the daily condition, (2) Ames exceeds the monthly condition, or (3) Ames exceeds the daily and monthly conditions. This has

resulted in Liberty invoicing Ames for much higher Additional Service Charges than what Ames contends is allowed under the Contract.

III. **PENDING DISTRICT COURT CASE AND MEDIATION**

A. District Court Case in Liberty County

On June 26, 2018, Liberty filed a cause of action in the 75th District Court in Liberty County, Texas, for breach of contract against Ames and the City of Hardin,¹ alleging both cities had failed to pay the Additional Service Charges under each city's contract with Liberty for wastewater volumes in excess of identified Total Acceptable Volumes (Section 5.2(c)). Liberty filed a "Plaintiff's Amended Petition" on October 6, 2021, and it filed a "Plaintiff's Second Amended Petition" on February 18, 2022. Attachment A. Liberty's Second Amended Petition alleged that, "[a]s of February 3, 2022, Ames' unpaid obligation to Liberty for outstanding invoices totals \$1,356,611.20, inclusive of a ten percent (10%) interest rate." *Id.* at ¶ 12.

Ames filed its "Defendant's Original Answer and Request for Disclosure" on August 8, 2018, its "First Amended Answer" on October 22, 2021, and its "Second Amended Answer" on December 7, 2021. As part of both its First Amended Answer and Second Amended Answer, Ames filed a Plea to the Jurisdiction arguing that the District Court did not have jurisdiction and that the damages alleged by Liberty were not recoverable under Chapter 271 of the Texas Local Government Code. A hearing was held in the 75th District Court on Ames' Pleas to the Jurisdiction on February 28, 2022. Ames' Plea to the Jurisdiction was denied by the District Court. Ames has appealed the denial of its plea to the jurisdiction to the 9th Court of Appeals. That appeal is still pending.

¹ Liberty also executed the "Liberty-Hardin Wastewater Disposal Contract (Amended)" on December 9, 2003, that is almost identical to the Contract between Liberty and Ames.

B. TCEQ Mediation

Ames was contacted on April 29, 2022, by Todd Burkey, a mediator with the Alternative Dispute Resolution (“ADR”) Program of the Texas Commission on Environmental Quality (“TCEQ”). Mr. Burkey stated that he had been contacted by counsel for the City of Liberty regarding that City’s potential interest in ADR efforts concerning the legal dispute between the City of Liberty and the Cities of Hardin and Ames surrounding wastewater conveyance and treatment services. Ames supports ADR efforts to settle this matter and expressed that position to Mr. Burkey.

IV.

LIBERTY’S THREATENED SUSPENSION OF SERVICES

On January 5, 2022, Liberty’s counsel sent a letter to Ames counsel regarding “Suspension of Services re: March 14, 2001 Contract between City of Ames and City of Liberty for Sewer Disposal” (the “Suspension Letter”). *See* Attachment B. In the Suspension Letter, Liberty states that, “Ames is in arrears on payments owed to Liberty under the Contract for excess flows dating back to 2015 and owes City of Liberty in excess of \$1,035,605.60.” *Id.* The Suspension Letter also “provides notice to Ames that Liberty shall cease accepting wastewater flows as of July 1, 2022.” *Id.*

V.

REQUEST FOR EMERGENCY ORDER

Ames is requesting that the Commission issue an Emergency Order to avoid the threatened suspension of wholesale wastewater service in Liberty’s Suspension Letter to protect public health and safety during the pendency of District Court case and/or TCEQ ADR process that are still ongoing. Specifically, Ames seeks an Emergency Order requiring Liberty to provide continuous and adequate sewer service pursuant to Tex. Water Code § 13.041(d), which provides as follows:

- (d) In accordance with Subchapter K-1, the utility commission may issue emergency orders, with or without a hearing:

- (1) to compel a retail public utility that has obtained or is required to obtain a certificate of public convenience and necessity to provide continuous and adequate water service, sewer service, or both, if the discontinuance of the service is imminent or has occurred because of the retail public utility's actions or failure to act; and
- (2) to compel a retail public utility to provide an emergency interconnection with a neighboring retail public utility for the provision of temporary water or sewer service, or both, for not more than 90 days if service discontinuance or serious impairment in service is imminent or has occurred.

In order to protect the health and well-being of the residents of the City of Ames, Ames requests that the Commission immediately issue an emergency order to compel Liberty to continue to provide wastewater service to Ames. Ames requests that the Commission issue this emergency order without a hearing as the provisions of 16 Tex. Admin. Code § 24.14 allow.

Ames has no means of obtaining wholesale wastewater service other than from Liberty. There are no other neighboring utilities in the vicinity with whom Ames could contract to provide wastewater disposal to allow wastewater services to the residents of Ames. If Liberty is allowed to follow through on its stated intention to suspend providing sewer service to Ames, this would create a threat to the health, safety, and welfare of Ames and its residents. If Liberty takes the actions necessary to stop the flow of waste from Ames into Liberty, it is reasonably certain that an unauthorized discharge of untreated waste will occur. The Commission must not allow Liberty to take steps that are likely to cause this environmental hazard.

VI.
REQUEST TO TCEO FOR EMERGENCY ORDER
AND PUC RULE 22.295 REQUIREMENTS

Since the filing of its original request with the PUC, Ames has also filed a request for emergency order pursuant to Texas Water Code § 13.041(h) and 16 Tex. Admin. Code § 35.202 with the TCEQ. *See* Attachment C. The TCEQ has set the matter for consideration at a public

meeting to be held on Wednesday, June 29, 2022. *See* Attachment D. Based on this development, Ames amends its original request adding the following responses to the items in 16 Tex. Admin. Code § 22.295, which requires that the request must:

(1) *be sworn;*

The request is sworn to/signed below as required.

(2) *state whether the requesting person is also seeking or has obtained an emergency order from TCEQ;*

As stated above, Ames is also seeking an emergency order from the TCEQ under TCEQ Docket No. 2022-0763-UCR-E. *See* Attachment C & D.

(3) *state the name, address, and telephone number of the requesting person, the person submitting the request on the requesting person's behalf, and the person signing the request on the requesting person's behalf;*

The name, address, and telephone number of the requestor is:

City of Ames
304 Martin Dr.
Ames, Texas 77575-2694
Telephone No.: (936)336-7278

The person submitting the request on the requestor's behalf and the person signing the request on the requestor's behalf is the attorney for the City of Ames, whose contact information is provided below.

(4) *state the name of the retail public utility, its corresponding certificate of public convenience and necessity number(s), and its corresponding TCEQ issued public water system name(s) and identification number(s) and wastewater discharge permit name and identification number(s), if applicable;*

Name of the Utility: City of Liberty

CCN No.: 10144

Liberty owns and operates a wastewater collection system and wastewater treatment plant, pursuant to its authorized Texas Pollutant Discharge Elimination System Permit No. WQ0010108001.

- (5) *contain information sufficient to identify the facility(ies) and location(s) to be affected by the order;*

Liberty owns and operates a wastewater treatment plant located at 400 Farm-to-Market Road 3361, approximately 0.5 mile west of the intersection of Farm-to-Market Road 2684 and Farm-to-Market Road 3361 south of Liberty, in Liberty County, Texas.

- (6) *describe the condition(s) of emergency or other condition(s) justifying the issuance of the order;*

Ames hereby incorporates Sections II-V above.

- (7) *allege facts to support any findings required under this subchapter;*

Ames hereby incorporates Sections II-V above.

- (8) *estimate the dates on which the proposed order should begin and end and the dates on which the activity proposed to be allowed, mandated, or prohibited should begin and end;*

Ames requests that the proposed order should begin on July 1, 2022, and last 180 days until December 28, 2022. Liberty should be required to maintain wastewater service to Ames under the terms of the Contract through the end date of the Contract on March 13, 2041. Otherwise, Liberty should have to provide wastewater service to Ames beginning on July 1, 2022, until December 28, 2022, or until the conclusion of the litigation by the parties, whichever is longer. Ames can provide only estimates at this time because its litigation with Liberty is ongoing and it is difficult to estimate when it will be resolved.

If possible, Ames requests the PUC order Liberty to continue to serve Ames under the Contract that the parties negotiated and have in place. As detailed above, Liberty is misinterpreting

Section 5.2(c) of the Contract. Liberty has provided no evidence, either in District Court or to the PUC, that Ames has materially breached the Contract. If correctly interpreted, Ames can continue to pay for wastewater service under the terms in the Contract until March 13, 2041.

(9) *describe the action sought and the activity proposed to be allowed, mandated, or prohibited;*

Ames requests that the PUC order Liberty to continue to provide wastewater service, or to maintain sewer service to Ames, under the terms in the Contract.

(10) *include any other statement or information required by this subchapter; and*

Ames will provide any other information requested by the Commission. Ames requests that the emergency order be granted by the Commission without a hearing.

(11) *signed by a person authorized to make the representation(s) contained in the request on behalf of the municipality.*

Ames' attorney has been authorized to file this application for emergency order and the required certification pursuant to 16 Tex. Admin. Code § 22.295(b)(11)(D) is provided below.

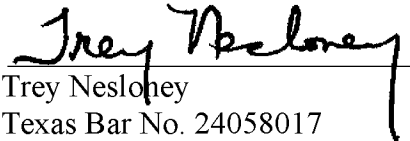
VII. **CONCLUSION**

WHEREFORE, PREMISES CONSIDERED, Ames respectfully requests that the Executive Director of the Commission review this request and, without a hearing, issue an Emergency Order under Tex. Water Code § 13.041(d) compelling Liberty to continue to provide adequate sewer service to Ames and its residents. Ames urges the Commission to act promptly on this request for issuance of an Emergency Order in order to avoid the threat to human health and safety and damage to the environment posed by Liberty's threatened suspension of sewer service to Ames. Ames also requests that the Commission order Liberty to maintain sewer service to Ames

according to the terms and conditions contained in the Contract. Ames also requests any such further relief to which it may be entitled.

Sworn to by,

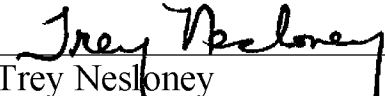
EICHELBAUM WARDELL
HANSEN POWELL & MUÑOZ, P.C.

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ATTORNEY FOR CITY OF AMES

RULE 22.295 CERTIFICATION

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the retail water or sewer system(s) or the retail public utility, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.


Trey Nesloney
ATTORNEY FOR CITY OF AMES

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent via email on June 23, 2022, to the following:

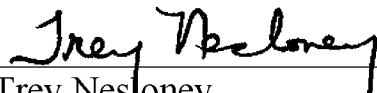
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312 Main St.
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Trey Nesloney

ATTACHMENT A

CAUSE NO. 1813452

CITY OF LIBERTY, TEXAS,	§	IN THE DISTRICT COURT
<i>Plaintiff,</i>	§	
	§	
v.	§	75th JUDICIAL DISTRICT
	§	
CITY OF HARDIN, TEXAS and	§	
CITY OF AMES, TEXAS	§	
	§	
<i>Defendants.</i>	§	LIBERTY COUNTY, TEXAS

PLAINTIFF'S SECOND AMENDED PETITION

COMES NOW Plaintiff, CITY OF LIBERTY, TEXAS, and for its cause of action against Defendants, CITY OF HARDIN, TEXAS and CITY OF AMES, TEXAS, alleges as follows:

**I.
DISCOVERY CONTROL PLAN**

1. Pursuant to Texas Rule of Civil Procedure Rule 190.1, Plaintiff intends to conduct discovery in this case under Level 2.

**II.
PARTIES**

2. Plaintiff City of Liberty, Texas ("Liberty" or "Plaintiff") is a home-rule municipality located within Liberty County, Texas, and incorporated as the City of Liberty, with all just powers, rights, and duties as set forth in its City Charter and other applicable law. Defendant City of Hardin, Texas ("Hardin") is a Type A General Law Municipality located within Liberty County, Texas. Hardin's principal office is in Liberty County, Texas and it may be served by serving its Registered

Agent (or City Secretary) at 142 County Road 2010, Hardin, Texas 77561. Defendant City of Ames, Texas (“Ames”) is a Type A General Law Municipality located within Liberty County, Texas. Ames may be served by serving its Registered Agent (or City Secretary) at 304 Martin Street, Ames, Texas 77575. Ames and Hardin may be collectively referenced as “Defendants.”

III. JURISDICTION AND VENUE

3. This Court has jurisdiction over the parties and the subject matter. The amount in controversy exceeds the minimum jurisdictional limits of this Court.

4. Venue is proper in Liberty County pursuant to Texas Civil Practice and Remedies Code § 15.002 because all or a substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in Liberty County and/or Defendants’ principal offices are in Liberty County.

IV. FACTUAL BACKGROUND

5. Liberty owns and operates a wastewater collection system and wastewater treatment plant (“WWTP”), pursuant to its authorized Texas Pollutant Discharge Elimination System Permit No. WQ0010108001 (the “TPDES Permit”), issued by the Texas Commission on Environmental Quality (“TCEQ”).

6. Liberty’s WWTP receives wastewater flows from three sources: (1) Liberty’s own collection system, along with wastewater flows from (2) Hardin and (3) Ames.

7. Liberty’s acceptance of Defendants’ flows for conveyance to Liberty’s WWTP for wastewater treatment is pursuant to separate contracts with each

Defendant (collectively, the “Contracts”). The December 9, 2003 Liberty-Hardin Wastewater Disposal Contract is attached as **Exhibit 1** hereto. The March 14, 2001 Liberty-Ames Wastewater Disposal Contract is attached as **Exhibit 2** hereto.

8. Among other obligations, the Contracts require Defendants to operate their separate wastewater collection systems in a manner that complies with Liberty’s plumbing code (Section 3.1), and all applicable Liberty Ordinances and standards (Section 3.4). The Contracts also require Defendants to prevent “Seepage and Infiltration” into the collection systems that flow to Liberty’s WWTP (Section 3.5), as there is finite capacity in the Liberty WWTP (Section 4.1).

9. The Contracts further require Defendants to pay service charges (“Service Charges”) for wastewater volumes in excess of identified Total Acceptable Volumes (Section 5.2(c)). Hardin’s Total Acceptable Volume is established at “200,000 gallons per day and an aggregate of 6,000,000 gallons per month” (Section 5.2(c)). Ames’ Total Acceptable Volume is also established at “200,000 gallons per day and an aggregate of 6,000,000 gallons per month” (Section 5.2(c)). Defendants have not paid Liberty their total owed Service Charges, as required under the Contracts.

10. The total balance due to Liberty is \$3,000,563.86 as of the date of this filing, inclusive of attorney’s fees, outstanding invoices owed to Liberty, and ten percent (10%) interest on the invoices.

11. As of February 3, 2022, Hardin's unpaid obligation to Liberty for outstanding invoices totals \$1,345,274.87, inclusive of a ten percent (10%) interest rate.

12. As of February 3, 2022, Ames' unpaid obligation to Liberty for outstanding invoices totals \$1,356,611.20, inclusive of a ten percent (10%) interest rate.

13. Liberty has provided Defendants with written demands for payment of overdue Service Charges by separate letter demands. Liberty demanded payment from Ames on or about May 11, 2016. Liberty demanded payment from Hardin on or about June 27, 2017. Defendants have failed to pay the amounts outstanding.

14. The Contracts provide that Liberty may terminate the Contracts and seek all remedies at law or equity for Defendants' breaches.

**V.
CAUSE OF ACTION: BREACH OF CONTRACT**

15. Plaintiff incorporates paragraphs 1-14 by reference as is fully set out herein.

16. The Legislature has waived immunity for the claims brought in this action pursuant to Section 271.152 of the Texas Local Government Code.

17. Each of the Contracts is a written contract for the provision of goods and services by Plaintiff to each defendant, properly executed on behalf of each defendant, consistent with the provisions of Section 271.151(2)(A) of the Texas Local Government Code.

18. The acts and/or omissions of Defendants, as set forth above, are in clear breach of the Contracts. Defendants have repeatedly breached the Contracts' requirements as outlined above with respect to excess flows, maintenance of their wastewater collection systems, and payment of Service Charges. Additionally, Defendants failed to comply with key provisions of Liberty's ordinances, which are terms of Sections 3.1 and 3.4 of the Contracts. Exhibit 1 at 5, 7; Exhibit 2 at 5, 7. By connecting with Liberty's sanitary sewer system, Defendants must comply with Liberty's Plumbing Code *Id.*; Liberty, Tex. Code of Ordinances § 3.04.003(b) ("Any plumbing outside the boundaries of the city connecting to either the city water or sewerage system shall meet all the requirements of this article as to methods of installation and materials and shall be inspected by the plumbing inspector."); *see id.* § 3.04.031 (adopting 2018 International Plumbing Code). Defendants' sanitary sewer system allows for unlawful deposits that could overload Liberty's WWTP. *See id.* § 3.04.007. Defendants' allowed connections to their own systems without the required inspection and approval. *See id.* § 3.04.006. Defendants' employed unlicensed plumbers to engage in the business of plumbing. *See id.* §§ 3.04.002, .005. Defendants failed to require that each fixture emptying through a connection to the sanitary sewer system is installed in a good and workmanlike manner conformable to established plumbing standards and the provisions of Article 3.04 of the Code of Ordinances. *See id.* § 13.03.002. Finally, Defendants failed to pay years of invoices, failed to pay collection fees, and failed to pay late fees. *See id.* §§ 13.02.003, .005, .008.

19. Defendants' breaches have caused Liberty damages in an amount that exceeds the minimum jurisdictional limits of this Court. Liberty is entitled to recover damages from Defendants for such breaches. Liberty seeks damages in the amount of the full balance due and owed under the Contracts, both as of the date of this Petition and as such amounts continue to accrue, as permitted by Section 271.153(a)(1) of the Texas Local Government Code.

20. All conditions precedent to Liberty's cause of action against Defendants have been performed or have occurred.

VI. SUIT ON SWORN ACCOUNT

21. Paragraphs 1 through 20 are incorporated herein by reference.

22. A Suit on Account under Rule 185 of the Texas Rules of Civil Procedure requires that (1) the plaintiff sold goods or furnished services to the defendant; (2) the prices charged were just and true because they were either according to the terms of a contract or were usual, customary, and reasonable; (3) plaintiff include with the petition a systematic record of the transaction; (4) all lawful offsets, payments, and credits have been applied to the account; (5) the account remains unpaid; (6) damages be liquidated; and (7) the petition be filed under oath. *See* Tex. R. Civ. P. 185.

23. Liberty has furnished and continues to furnish services to the Defendants in the form of wastewater collection, treatment, and disposal. Defendants accepted the services under the terms of the Contracts and became obligated to pay rates as set forth therein. See **Exhibits 1 and 2**. The account

represents the records of transactions Liberty systematically keeps in the ordinary course of business. Liberty regularly provides Defendants with monthly invoices for such services rendered.

24. Liberty systematically records the transactions between Liberty and Defendants under the Contracts (“Payment History Log”). See **Exhibit 3**. As shown in the Payment History Log, Liberty applies payments from Defendants as credits against the total outstanding balance on Defendants’ accounts. As shown in the Payment History Log, the total balance remains outstanding.

25. This claim is just and true, it is due, and all lawful and just offsets, payments, and credit have been allowed. Defendants account remains unpaid. Despite Liberty’s demands for payment, Defendants have refused and failed to pay on account, to Liberty’s injury. Therefore, Liberty brings this Suit on Account.

26. For invoices owed pursuant to the services provided under the Contracts, Defendant Hardin owes \$1,039,799.46 to Liberty and Defendant Ames owes \$1,092,029.96 to Liberty as of the date of this filing.

27. Liberty has filed this Petition under oath by reference to and incorporation of the attached Affidavit of Thomas Warner. See **Exhibit 4**.

VII. ATTORNEY’S FEES

28. Liberty requests an award of court costs and reasonable and necessary attorney’s fees incurred in this matter as authorized by Chapter 38 of the Texas Civil Practice and Remedies Code and/or the Contracts, and as permitted by Section 271.153(a)(3) of the Texas Local Government Code.

**VIII.
PRAYER**

Liberty respectfully requests a judgment against Defendants awarding Liberty:

29. Actual damages of the balance due and owed under the Contracts in an amount to be proved at trial;
30. Court costs and reasonable and necessary attorney's fees as are equitable and just;
31. Pre-judgment and post-judgment interest as allowed by law; and
32. Any other relief to which Liberty is entitled.

Respectfully submitted,

LLOYD GOSSELINK
ROCHELLE & TOWNSEND, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701
Telephone: (512) 322-5800
Facsimile: (512) 472-0532



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**ATTORNEYS FOR PLAINTIFF
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 18th day of February, 2022:

Trey Nesloney
Eichelbaum Wardell Hansen Powell & Munoz, P.C.
4201 W. Parmer Lane, Suite A100
Austin, Texas 78727
TNesloney@edlaw.com

ATTORNEY FOR DEFENDANT
CITY OF AMES

Matthew Gott
matt@jaimecarterlaw.com
JAIME CARTER & ASSOCIATES
312 Main St.
Liberty, Texas 77575

ATTORNEY FOR DEFENDANT
CITY OF HARDIN

A handwritten signature in black ink, reading "Nathan E. Vassar". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

NATHAN E. VASSAR

EXHIBIT 1

COPY

LIBERTY-HARDIN
WASTEWATER DISPOSAL CONTRACT
(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 HARDIN, TEXAS, a general law municipality, P.O. Box 324, Hardin, Liberty County, Texas 77561 ("HARDIN").

The purpose for the execution of this amended contract by LIBERTY and HARDIN is to amend the term 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 HARDIN 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 supercedes and takes the place of the original contract dated and executed by LIBERTY and HARDIN on September 16, 2003.

HARDIN 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 January 31, 2044.

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 HARDIN system by means other than by a permitted connection, and it includes water leaking into the HARDIN system.

Liberty Plumbing Code: “Liberty Plumbing Code” shall include the *International Plumbing Code, 2000 edition*, as amended, and all wastewater 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 HARDIN 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, HARDIN 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

wastewater 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 HARDIN 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, connections, lift stations and other appurtenances.

Sewage: "Sewage" shall mean wastewater (excluding industrial wastewater) 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 HARDIN: POINTS OF DISCHARGE AND TITLE

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

HARDIN 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. HARDIN will construct or cause to be constructed the system in accordance with plans and specifications prepared by HARDIN'S 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, HARDIN'S 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. HARDIN'S engineers will provide LIBERTY, upon completion of the construction, with one set of "as built" drawings and a certification that the system was built in accordance with the plans and specifications so delivered to LIBERTY. HARDIN 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.

HARDIN 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 HARDIN shall immediately upon written notice of such non-conformance take those remedial steps necessary to meet the required standards. It shall be HARDIN'S 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. HARDIN 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 HARDIN, for the price and at the point of deliver hereinafter provided, and HARDIN 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 time as hereinafter provided 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 HARDIN 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. HARDIN 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.

HARDIN shall not permit plumbing work relating to sewer service to be performed on any premises in HARDIN or served by the system unless a plumbing permit therefore has first been obtained from HARDIN. No such plumbing work shall be connected to the system unless it has first been inspected and approved by a LIBERTY Plumbing Inspector. HARDIN 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 HARDIN 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 HARDIN system, HARDIN agrees that should HARDIN desire to delegate responsibility for maintenance or for supervision of 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 controls 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. HARDIN will receive a transportation fee agreed upon by the parties for the collection of such prohibited waste. HARDIN will permit no prohibited waste connections until same are approved in writing by the LIBERTY Manager pursuant to a fully executed contract between LIBERTY, HARDIN and the prohibited waste customer.

Section 3.4 – Waste to Comply With LIBERTY Ordinances. Discharges into the sanitary sewer collection system of HARDIN shall comply with all applicable LIBERTY Ordinances and standards, including LIBERTY'S industrial waste ordinance if appropriate. HARDIN 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 HARDIN. HARDIN 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 HARDIN recognizes LIBERTY'S right to terminate this agreement or seek any other relief at law or in equity.

Section 3.5 – Seepage and Infiltration. HARDIN 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 HARDIN 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, HARDIN shall supply the LIBERTY Manager a copy of such rules, regulations and contracts, including a statement of measures designed to enforce such provisions. HARDIN shall initiate whatever lawful actions are necessary to disconnect any customer who, following notice, refuses to remove non-compliant connections. HARDIN 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. HARDIN shall continuously maintain the system so as to prevent any abnormal seepage or infiltration into the system.

LIBERTY has reserved capacity for HARDIN in its wastewater 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, HARDIN 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 HARDIN 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 HARDIN any rights by virtue of the payment of such amounts and any payment by HARDIN 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 wastewater 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 wastewater system. HARDIN 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 HARDIN system. More specifically, HARDIN authorizes LIBERTY and its representatives, after prior notice, to enter HARDIN property (with HARDIN'S 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 HARDIN system should that be reasonably required. HARDIN agrees to pay the cost of such analysis of the system not refunded by the State or Federal government to LIBERTY. In addition, HARDIN agrees to pay the unrefunded cost of any remedial measures necessary to improve the HARDIN system so as to be in compliance with State or Federal requirements and agrees that such remedial measures will be timely taken. HARDIN recognizes that such measures are necessary to LIBERTY'S continued

compliance with State and Federal requirements, and that failure on the part of HARDIN 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 which were a factor in LIBERTY'S decision to provide service under the provisions of this contract. Prior to the execution of this contract, HARDIN 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.

HARDIN 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 regulations 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. HARDIN 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 HARDIN shall bear the cost of the inspection and recalibration, and the billing to HARDIN shall be adjusted at the option of LIBERTY to include charges for the estimated unmetered flow or, equal the previous month's billing. HARDIN shall, within ten (10) days of the request of LIBERTY, perform all necessary repairs or replace said device if necessary. HARDIN 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 HARDIN in its sewer plant only for the volumes of sewage stated herein. Should the needs of HARDIN, 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 HARDIN agrees to pay the additional compensation as provided in Section 5.2(c) of this contract. However, such payment by HARDIN 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 HARDIN and to allow HARDIN to provide sewer service within HARDIN'S extraterritorial jurisdiction. Except as specifically provided above, HARDIN 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. HARDIN 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 HARDIN extend sewer service beyond the jurisdiction of its police power, HARDIN shall enforce the necessary provisions of this contract through individual contracts with the customers it serves. HARDIN 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. HARDIN 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, HARDIN 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 HARDIN sanitary collection system after the day LIBERTY commences taking waste from HARDIN 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. HARDIN 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 HARDIN 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 HARDIN necessary to determine the number of sewage connections served by HARDIN. It shall be the duty of HARDIN to cooperate fully with LIBERTY in checking or determining the number of connections. The books, records and accounts of HARDIN shall be open for inspection during normal business hours by any authorized representative of LIBERTY, but only for the purposed of insuring compliance with this contract. Any confidential or

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

Section 5.4 – Billing and Payments. Beginning on the date when LIBERTY first commences taking sewage from HARDIN through the LIBERTY Main Plant, HARDIN shall count and certify to LIBERTY the number of connections in use on the first day and thereafter HARDIN 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 HARDIN for the sewage charges accrued during the preceding month. Payment by HARDIN to LIBERTY shall be made in the form and at such location as may be designated in writing by HARDIN. Payments will be made by HARDIN 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 investigation of each connection.

Any sums payable by HARDIN 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 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 HARDIN 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 HARDIN shall be by the same percentage.

Section 5.6 – Operating Expense and Covenants as to Rates. The payments to LIBERTY by HARDIN are an essential cost of operating and maintaining HARDIN'S system as a part of the combined water works and sanitary sewer system of HARDIN, and such costs shall be a first charge upon the gross revenues received from the operation of HARDIN of said combined system. HARDIN 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 HARDIN 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. Contracting 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 HARDIN 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 HARDIN 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 HARDIN 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 incapacities 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 HARDIN, to:

Mayor
CITY OF HARDIN
P.O. Box 324
Hardin, Texas 77561

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 except that HARDIN may, at its option and without further consent from LIBERTY, assign its right, title and interest in and to this contract to the United States of America/U.S. Department of Agriculture, as collateral.

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 HARDIN 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 to 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 9th day of December, 2003.

CITY OF LIBERTY, TEXAS



BRUCE E. HALSTEAD, MAYOR

ATTEST:



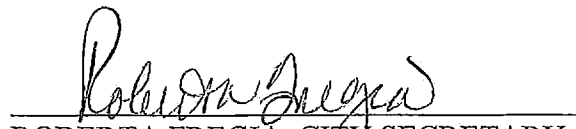
DIANNE TIDWELL, CITY SECRETARY

CITY OF HARDIN, TEXAS



WM. E. HAYNIE, MAYOR

ATTEST:



ROBERTA FREGIA, CITY SECRETARY

EXHIBIT 2

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.

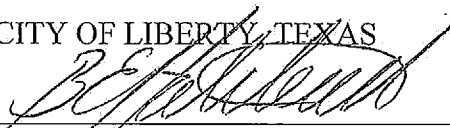
Section 6.10 – Captions. The captions appearing at the first of each numbered section in this contract are inserted and included solely for convenience and shall never be considered or be given any effect in construing this contract, or any provision hereof, or in connection with the duties, obligations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

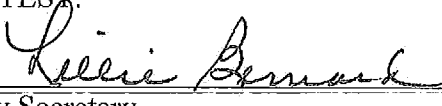
ATTEST:

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"

EXHIBIT 3

City of Hardin

Date	Billed	Payment	Balance	10.00%
6/29/2015	\$52,155.60		\$52,155.60	
9/24/2015		-\$5,215.56	\$46,940.04	
10/16/2015		-\$5,215.56	\$41,724.48	
11/13/2015		-\$5,215.56	\$36,508.92	
11/20/2015	\$13,020.00		\$49,528.92	
12/16/2015		-\$5,215.56	\$44,313.36	\$4,431.34
1/13/2016		-\$5,215.56	\$39,097.80	
2/17/2016		-\$5,215.56	\$33,882.24	
3/17/2016		-\$5,215.56	\$28,666.68	
4/14/2016		-\$5,215.56	\$23,451.12	
5/26/2016		-\$5,215.56	\$18,235.56	
6/1/2016	\$22,520.40		\$40,755.96	
6/14/2016		-\$5,215.56	\$35,540.40	
7/8/2016	\$14,532.00		\$50,072.40	
7/14/2016		-\$6,510.00	\$43,562.40	
8/3/2016	\$193.20		\$43,755.60	
8/9/2016		-\$6,510.00	\$37,245.60	
9/2/2016	\$17,892.00		\$55,137.60	
10/10/2016	\$806.40		\$55,944.00	
11/18/2016		-\$1,500.00	\$54,444.00	
12/19/2016		-\$1,500.00	\$52,944.00	\$5,294.40
1/10/2017	\$5,594.40		\$58,538.40	
1/12/2017		-\$1,500.00	\$57,038.40	
2/13/2017	\$17,287.20		\$74,325.60	
2/21/2017		-\$1,500.00	\$72,825.60	
3/15/2017	\$5,728.80		\$78,554.40	
3/23/2017		-\$1,500.00	\$77,054.40	
4/18/2017		-\$1,500.00	\$75,554.40	
5/4/2017	\$7,728.00		\$83,282.40	
5/4/2017	\$4,401.60		\$87,684.00	
5/24/2017		-\$1,500.00	\$86,184.00	
6/6/2017	\$5,426.40		\$91,610.40	
6/15/2017		-\$1,500.00	\$90,110.40	
7/11/2017	\$16,472.40		\$106,582.80	
7/14/2017		-\$1,500.00	\$105,082.80	
8/1/2017	\$3,234.00		\$108,316.80	
8/21/2017		-\$1,500.00	\$106,816.80	
9/15/2017		-\$1,500.00	\$105,316.80	
9/19/2017	\$35,540.20		\$140,857.00	

10/23/2017		-\$1,500.00	\$139,357.00	
11/6/2017	\$6,006.00		\$145,363.00	
11/6/2017	\$742.50		\$146,105.50	
12/4/2017		-\$1,500.00	\$144,605.50	
12/11/2017	\$618.75		\$145,224.25	
12/18/2017		-\$1,500.00	\$143,724.25	\$14,372.43
1/2/2018	\$1,833.75		\$145,558.00	
1/12/2018		-\$1,500.00	\$144,058.00	
2/13/2018	\$35,482.50		\$179,540.50	
3/15/2018		-\$1,500.00	\$178,040.50	
4/2/2018	\$96,986.25		\$275,026.75	
4/2/2018	\$10,586.25		\$285,613.00	
4/16/2018		-\$1,500.00	\$284,113.00	
5/2/2018	\$7,571.25		\$291,684.25	
5/18/2018		-\$1,500.00	\$290,184.25	
6/8/2018	\$1,327.50		\$291,511.75	
7/9/2018	\$3,071.25		\$294,583.00	
7/20/2018		-\$1,500.00	\$293,083.00	
8/15/2018	\$3,453.75		\$296,536.75	
8/20/2018		-\$1,500.00	\$295,036.75	
9/11/2018	\$1,158.75		\$296,195.50	
9/20/2018		-\$1,500.00	\$294,695.50	
10/5/2018	\$41,062.50		\$335,758.00	
10/15/2018		-\$1,500.00	\$334,258.00	
11/2/2018	\$11,115.00		\$345,373.00	
11/13/2018		-\$1,500.00	\$343,873.00	
12/4/2018	\$39,150.00		\$383,023.00	
12/13/2018		-\$1,500.00	\$381,523.00	\$38,152.30
1/7/2019	\$59,365.25		\$440,888.25	
1/21/2019		-\$1,500.00	\$439,388.25	
2/5/2019	\$113,298.75		\$552,687.00	
2/19/2019		-\$1,500.00	\$551,187.00	
3/2/2019	\$39,116.25		\$590,303.25	
3/21/2019		-\$1,500.00	\$588,803.25	
4/4/2019	\$6,412.50		\$595,215.75	
4/25/2019		-\$1,500.00	\$593,715.75	
5/2/2019	\$6,817.50		\$600,533.25	
5/29/2019		-\$6,817.50	\$593,715.75	
5/24/2019		-\$1,500.00	\$592,215.75	
6/3/2019	\$38,148.75		\$630,364.50	
6/28/2019		-\$1,500.00	\$628,864.50	
7/3/2019	\$13,950.00		\$642,814.50	
8/1/2019		-\$1,500.00	\$641,314.50	

8/7/2019	\$933.75		\$642,248.25	
9/1/2019		-\$1,500.00	\$640,748.25	
9/9/2019	\$0.00		\$640,748.25	
9/16/2019		-\$1,500.00	\$639,248.25	
10/4/2019	\$19,226.25		\$658,474.50	
10/16/2019		-\$1,500.00	\$656,974.50	
11/6/2019	\$9,798.75		\$666,773.25	
11/15/2019		-\$1,500.00	\$665,273.25	
12/16/2019		-\$1,500.00	\$663,773.25	\$66,377.33
1/6/2020	\$14,940.00		\$678,713.25	
1/17/2020		-\$1,500.00	\$677,213.25	
1/28/2020	-\$14,940.00		\$662,273.25	
1/28/2020	\$3,690.00		\$665,963.25	
2/4/2020	\$56,542.50		\$722,505.75	
2/18/2020		-\$1,500.00	\$721,005.75	
3/6/2020	\$4,252.50		\$725,258.25	
3/13/2020		-\$1,500.00	\$723,758.25	
4/3/2020	\$13,353.75		\$737,112.00	
4/17/2020		-\$1,500.00	\$735,612.00	
5/1/2020	\$3,217.50		\$738,829.50	
5/19/2020		-\$1,500.00	\$737,329.50	
6/5/2020	\$9,776.25		\$747,105.75	
6/16/2020		-\$1,500.00	\$745,605.75	
7/13/2020	\$15,086.25		\$760,692.00	
7/16/2020		-\$1,500.00	\$759,192.00	
8/17/2020		-\$1,500.00	\$757,692.00	
9/8/2020	\$0.00		\$757,692.00	
9/8/2020	\$0.00		\$757,692.00	
9/15/2020		-\$1,500.00	\$756,192.00	
10/1/2020	\$3,982.50		\$760,174.50	
10/13/2020		-\$1,500.00	\$758,674.50	
11/2/2020	\$1,080.00		\$759,754.50	
11/16/2020		-\$1,500.00	\$758,254.50	
12/3/2020	\$8,370.00		\$766,624.50	
12/16/2020		-\$1,500.00	\$765,124.50	\$76,512.45
1/5/2021	\$26,853.75		\$791,978.25	
1/14/2021		-\$1,500.00	\$790,478.25	
2/2/2021	\$43,762.50		\$834,240.75	
3/12/2021		-\$1,500.00	\$832,740.75	
3/4/2021	\$17,786.25		\$850,527.00	
3/11/2021		-\$1,500.00	\$849,027.00	
4/5/2021	\$6,378.75		\$855,405.75	
4/14/2021		-\$1,500.00	\$853,905.75	

5/4/2021	\$0.00		\$853,905.75	
5/12/2021		-\$1,500.00	\$852,405.75	
6/3/2021	\$82,428.75		\$934,834.50	
6/8/2021		-\$1,500.00	\$933,334.50	
7/6/2021		-\$1,500.00	\$931,834.50	
7/13/2021	\$17,550.00		\$949,384.50	
8/2/2021	\$34,886.25		\$984,270.75	
8/16/2021		-\$1,500.00	\$982,770.75	
9/15/2021		-\$1,500.00	\$981,270.75	
10/4/2021	\$5,028.75		\$986,299.50	
10/8/2021		-\$1,500.00	\$984,799.50	
11/12/2021		-\$1,500.00	\$983,299.50	
11/9/2021	\$18,349.68		\$1,001,649.18	
11/15/2021		-\$1,500.00	\$1,000,149.18	
12/9/2021	\$4,702.56		\$1,004,851.74	
12/14/2021		-\$1,500.00	\$1,003,351.74	\$100,335.17
1/7/2022	\$9,417.24		\$1,012,768.98	
1/13/2022		-\$1,500.00	\$1,011,268.98	
2/3/2022	\$28,530.48		\$1,039,799.46	<u><u>\$305,475.41</u></u>
		-		
	\$1,204,792.56	\$164,993.10		

City of Ames

Date	Billed	Payment	Balance	10.00%
6/29/2015	\$47,173.68		\$47,173.68	
8/10/2015		-\$20,000.00	\$27,173.68	
10/2/2015		-\$1,000.00	\$26,173.68	
11/6/2015		-\$5,541.27	\$20,632.41	
11/19/2015	\$6,610.80		\$27,243.21	\$2,724.32
2/17/2016		-\$2,000.00	\$25,243.21	
3/2/2016		-\$2,000.00	\$23,243.21	
4/5/2016		-\$1,000.00	\$22,243.21	
5/3/2016		-\$1,000.00	\$21,243.21	
6/1/2016		-\$1,000.00	\$20,243.21	
6/1/2016	\$25,821.60		\$46,064.81	
7/1/2016		-\$1,000.00	\$45,064.81	
7/8/2016	\$16,564.80		\$61,629.61	
7/29/2016		-\$1,000.00	\$60,629.61	
8/3/2016	\$126.00		\$60,755.61	
8/16/2016		-\$126.00	\$60,629.61	
9/2/2016	\$13,398.00		\$74,027.61	
9/9/2016		-\$1,000.00	\$73,027.61	
9/9/2016		-\$2,000.00	\$71,027.61	
10/1/2016		-\$3,000.00	\$68,027.61	
10/10/2016	\$848.40		\$68,876.01	
10/13/2016		-\$848.40	\$68,027.61	
10/14/2016		-\$1,151.60	\$66,876.01	
11/4/2016		-\$1,500.00	\$65,376.01	
12/2/2016		-\$1,500.00	\$63,876.01	\$6,387.60
1/10/2017	\$6,031.20		\$69,907.21	
1/10/2017		-\$1,500.00	\$68,407.21	
2/6/2017		-\$1,500.00	\$66,907.21	
2/13/2017	\$18,186.00		\$85,093.21	
3/1/2017		-\$1,500.00	\$83,593.21	
3/16/2017	\$2,503.20		\$86,096.41	
3/30/2017		-\$10,000.00	\$76,096.41	
5/1/2017		-\$1,500.00	\$74,596.41	
5/4/2017	\$7,064.40		\$81,660.81	
5/4/2017	\$4,132.80		\$85,793.61	
6/4/2017		-\$1,500.00	\$84,293.61	
6/6/2017	\$3,024.00		\$87,317.61	
7/11/2017		-\$1,500.00	\$85,817.61	
7/11/2017	\$4,527.60		\$90,345.21	

8/1/2017	\$3,024.00		\$93,369.21	
8/1/2017		-\$1,500.00	\$91,869.21	
9/7/2017		-\$1,500.00	\$90,369.21	
9/19/2017	\$71,509.20		\$161,878.41	
10/9/2017		-\$1,500.00	\$160,378.41	
11/6/2017	\$7,551.60		\$167,930.01	
11/6/2017	\$1,687.50		\$169,617.51	
11/14/2017		-\$5,000.00	\$164,617.51	
12/5/2017		-\$1,500.00	\$163,117.51	
12/11/2017	\$1,631.25		\$164,748.76	
12/15/2017		-\$11,000.00	\$153,748.76	\$15,374.88
1/2/2018	\$540.00		\$154,288.76	
1/3/2018		-\$1,500.00	\$152,788.76	
2/5/2018		-\$1,500.00	\$151,288.76	
2/13/2018	\$13,106.25		\$164,395.01	
3/12/2018		-\$1,500.00	\$162,895.01	
4/2/2018	\$54,618.75		\$217,513.76	
4/2/2018	\$12,307.50		\$229,821.26	
5/2/2018	\$1,530.00		\$231,351.26	
5/2/2018		-\$1,500.00	\$229,851.26	
6/1/2018		-\$1,500.00	\$228,351.26	
7/9/2018	\$821.25		\$229,172.51	
7/10/2018		-\$1,500.00	\$227,672.51	
8/14/2018	\$7,987.50		\$235,660.01	
8/7/2018		-\$1,500.00	\$234,160.01	
9/10/2018		-\$1,500.00	\$232,660.01	
9/11/2018	\$2,036.25		\$234,696.26	
10/5/2018	\$15,423.75		\$250,120.01	
10/5/2018		-\$1,500.00	\$248,620.01	
11/2/2018	\$10,293.00		\$258,913.01	
11/7/2018		-\$1,500.00	\$257,413.01	
12/4/2018	\$22,758.75		\$280,171.76	
12/7/2018		-\$1,500.00	\$278,671.76	\$27,867.18
1/7/2019	\$60,187.50		\$338,859.26	
1/7/2019		-\$1,500.00	\$337,359.26	
2/5/2019	\$57,948.75		\$395,308.01	
2/7/2019		-\$1,500.00	\$393,808.01	
3/2/2019	\$5,760.00		\$399,568.01	
3/5/2019		-\$1,500.00	\$398,068.01	
4/4/2019		-\$1,500.00	\$396,568.01	
4/4/2019	\$708.75		\$397,276.76	
5/2/2019	\$2,418.75		\$399,695.51	
5/3/2019		-\$1,500.00	\$398,195.51	

6/3/2019	\$42,513.75		\$440,709.26	
6/3/2019		-\$1,500.00	\$439,209.26	
7/3/2019	\$15,075.00		\$454,284.26	
7/5/2019		-\$1,500.00	\$452,784.26	
8/6/2019		-\$1,500.00	\$451,284.26	
8/7/2019	\$1,811.25		\$453,095.51	
9/6/2019		-\$1,500.00	\$451,595.51	
9/9/2019	\$0.00		\$451,595.51	
10/4/2019	\$28,451.25		\$480,046.76	
10/8/2019		-\$1,500.00	\$478,546.76	
11/5/2019		-\$1,500.00	\$477,046.76	
11/6/2019	\$15,918.75		\$492,965.51	
12/6/2019		-\$1,500.00	\$491,465.51	\$49,146.55
1/3/2020		-\$1,500.00	\$489,965.51	
1/6/2020	\$562.50		\$490,528.01	
2/4/2020		-\$1,500.00	\$489,028.01	
2/4/2020	\$51,187.50		\$540,215.51	
3/4/2020		-\$1,500.00	\$538,715.51	
3/6/2020	\$15,300.00		\$554,015.51	
4/3/2020	\$956.25		\$554,971.76	
4/8/2020		-\$1,500.00	\$553,471.76	
5/1/2020	\$1,845.00		\$555,316.76	
5/11/2020		-\$1,500.00	\$553,816.76	
6/5/2020	\$14,805.00		\$568,621.76	
6/8/2020		-\$1,500.00	\$567,121.76	
7/1/2020		-\$1,500.00	\$565,621.76	
7/13/2020	\$13,072.50		\$578,694.26	
8/3/2020		-\$1,500.00	\$577,194.26	
9/8/2020		-\$1,500.00	\$575,694.26	
9/8/2020	\$6,457.50		\$582,151.76	
9/8/2020	\$618.75		\$582,770.51	
9/15/2020		-\$1,500.00	\$581,270.51	
10/1/2020	\$6,671.25		\$587,941.76	
10/1/2020		-\$1,500.00	\$586,441.76	
11/2/2020	\$101.25		\$586,543.01	
11/2/2020		-\$1,500.00	\$585,043.01	
12/3/2020	\$12,273.75		\$597,316.76	
12/7/2020		-\$1,500.00	\$595,816.76	\$59,581.68
1/5/2021	\$54,123.75		\$649,940.51	
1/6/2021		-\$1,500.00	\$648,440.51	
2/8/2021		-\$1,500.00	\$646,940.51	
2/2/2021	\$113,962.50		\$760,903.01	
2/8/2021		-\$1,500.00	\$759,403.01	

3/5/2021	\$16,841.25		\$776,244.26	
3/11/2021		-\$1,500.00	\$774,744.26	
4/1/2021		-\$1,500.00	\$773,244.26	
4/6/2021	\$7,470.00		\$780,714.26	
5/4/2021	\$573.75		\$781,288.01	
5/5/2021		-\$1,500.00	\$779,788.01	
6/2/2021		-\$1,500.00	\$778,288.01	
6/3/2021	\$102,431.25		\$880,719.26	
7/2/2021		-\$1,500.00	\$879,219.26	
7/13/2021	\$3,285.00		\$882,504.26	
8/5/2021		-\$1,500.00	\$881,004.26	
8/3/2021	\$111,982.50		\$992,986.76	
9/1/2021		-\$1,500.00	\$991,486.76	
10/5/2021		-\$1,500.00	\$989,986.76	
10/4/2021	\$9,765.00		\$999,751.76	
11/2/2021		-\$1,500.00	\$998,251.76	
11/9/2021	\$37,353.84		\$1,035,605.60	
12/1/2021		-\$1,500.00	\$1,034,105.60	
12/9/2021	\$884.76		\$1,034,990.36	\$103,499.04
1/7/2022	\$6,920.52		\$1,041,910.88	
1/12/2022		-\$1,500.00	\$1,040,410.88	
2/3/2022	\$51,619.08		\$1,092,029.96	<u><u>\$264,581.24</u></u>
		-		
	\$1,254,697.23	\$162,667.27		

EXHIBIT 4

AFFIDAVIT OF THOMAS WARNER

STATE OF TEXAS §
 §
COUNTY OF LIBERTY §

Before me, the undersigned notary, on this day personally appeared Thomas Warner, the affiant, whose identity is known to me. After I administered an oath, affiant testified as follows:

1. “My name is Thomas Warner. I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

2. I am the City Manager of the City of Liberty (the “City”). In my capacity as City Manager, I am responsible for the day-to-day operations of the City, and I am present at the City’s meetings of its City Council.

3. This action is for services provided by the City to the City of Ames (“Ames”) and the City of Hardin (“Hardin”), of which a systematic record was kept and is regularly kept in the normal course of business for the City.

4. As of February 3, 2022, a principal balance of \$1,039,799.46 is due on the account for Hardin and \$1,092,029.96 is due on account for Ames. That amount is just and true, it is due, and all just and lawful offsets, payments, and credits have been allowed. The amounts due are comprised of the sum of invoices issued by Liberty to Ames and Hardin, which are attached to the Second Amended Petition as Exhibit 3.

5. I have read the above and foregoing Second Amended Petition and, based upon my personal knowledge, verify that the allegations contained in paragraphs 23 through 27 are true and correct.

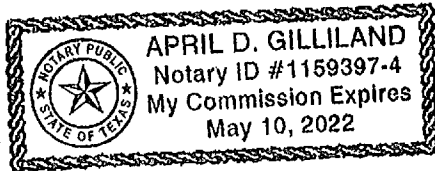
6. As City Manager it is my duty to oversee, maintain, and manage the City’s contracts, including contracts relating to the implementation of the City’s wastewater services under the City’s Water/Wastewater Department. Based upon my personal knowledge and experience in my capacity as City Manager, I verify that Exhibit 1 is a true and correct copy of the Liberty-Hardin Wastewater Disposal Contract entered into on December 9, 2003.

7. As City Manager it is my duty to oversee, maintain, and manage the City’s contracts, including contracts relating to the implementation of the City’s wastewater services under the City’s Water/Wastewater Department. Based upon my personal knowledge and experience in my capacity as City Manager, I verify that Exhibit 2 is a true and correct copy of the Liberty-Ames Wastewater Disposal Contract entered into on March 14, 2001.

8. As City Manager, my duties include tracking amounts due and owed to the City, including amounts due and owed for the City’s wastewater services. Based upon my personal knowledge and experience in my capacity as City Manager, I verify that Exhibit 3 is a true and correct copy of the Payment History Log indicating payments due and owed to the City by Hardin and Ames in exchange for the City’s wastewater services.”

Thomas Warner
Thomas Warner

SUBSCRIBED AND SWORN TO before me this 17th day of February, 2022.



April D. Gilliland
Notary Public, State of Texas

My Commission Expires: May 10, 2022

ATTACHMENT B



816 Congress Avenue, Suite 1900
Austin, Texas 78701
512.322.5800 p
512.472.0532 f
lglawfirm.com

Mr. Vassar's Direct Line: (512) 322-5867
Email: nvassar@lglawfirm.com

SUBJECT TO TEXAS RULE OF EVIDENCE 408

January 5, 2022

Trey H. Nesloney
Eichelbaum Wardell
Hansen Powell & Munoz, P.C.
4201 W. Parmer Lane, Suite A-100
Austin, Texas 78727

VIA ELECTRONIC-MAIL

RE: Suspension of Services re: March 14, 2001 Contract between City of Ames and City of Liberty for Sewer Disposal

Dear Mr. Nesloney:

The City of Ames ("Ames") originally contracted with the City of Liberty ("Liberty") on September 24, 1997, and amended the contract on March 14, 2001, for the disposal and treatment of Ames' wastewater (the "Contract"). According to the Contract, Ames may send Liberty up to 200,000 gallons of sewage per day for disposal and 6,000,000 gallons per month for disposal without accruing additional service charges. Ames has consistently discharged amounts greater than such thresholds, and the time has come to pursue longer-term solutions to avoid continued inundation and costs related to such high flows.

Ames' excess discharges have caused continued challenges for Liberty's wastewater conveyance and treatment system, including at the lift stations, sewer mains, and the wastewater treatment plant ("WWTP"). Ames' additional usage has also resulted in flows exceeding Liberty's TCEQ permit limits at the WWTP, and Liberty has faced TCEQ enforcement. Finally, Ames is in arrears on payments owed to Liberty under the Contract for excess flows dating back to 2015 and owes City of Liberty in excess of \$1,035,605.60.

For more than five years, Liberty has communicated to Ames that Ames must repair its system to reduce the infiltration and inflow problems affecting Liberty. Ames has not corrected such issues and continues to send Liberty excess flows. To that end, and as Ames is aware, Section 6.1 of the Contract states as follows:

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 in 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.

January 5, 2022
Page 2

Accordingly, pursuant to Section 6.1 of the Contract, Liberty hereby provides notice to Ames that Liberty shall cease accepting wastewater flows as of July 1, 2022.

Furthermore, in Ames' recently-filed Plea to the Jurisdiction in the ongoing litigation between Liberty and Ames, Ames contended that Liberty has not proven that the Contract is valid and properly executed. We have asked Ames to retract such statement and re-file, but we have not received a response. Liberty disputes Ames' position on this issue, and Ames' disregard for a two-decade old Contract further underscores the need for Liberty to take this action.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan Vassar", written in a cursive style.

Nathan Vassar

NEV/dxg
8349458

cc: Mr. Tom Warner, *City of Liberty, City Manager*
Mr. Brandon Davis, *City of Liberty, City Attorney*
Ms. Lauren C. Thomas, *Lloyd Gosselink Rochelle and Townsend, P.C.*

ATTACHMENT C

NO. _____

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

CITY OF AMES' REQUEST FOR EMERGENCY ORDER

TO THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

COMES NOW, the City of Ames, Texas, ("Ames"), and files this request with the Texas Commission on Environmental Quality ("Commission") under Texas Water Code § 13.041 and 16 Tex. Admin. Code § 35.202 for an emergency order to compel the City of Liberty ("Liberty") to provide sewer service in response to Liberty's notice of suspension of services and, in support thereof, would show the following:

I.

PARTIES

1. The City of Ames, Texas is a Type A General Law Municipality located within Liberty County, Texas.
2. The City of Liberty, Texas is a home-rule municipality located within Liberty County, Texas, and incorporated as the City of Liberty.

II.

FACTUAL ALLEGATIONS

On March 14, 2001, representatives for Ames and Liberty signed the Liberty-Ames Wastewater Disposal Contract (As Amended) (the "Contract"). *See* Attachment A, Exhibit 2. "The purpose of this contract is to provide for the treatment and disposal of waste from [Ames

sanitary sewer collection] system by LIBERTY's wastewater plant." *Id.* The Contract states that it "shall be in force and effect from the date of execution hereof until March 13, 2041." *Id.*

Section 5.2 of the Contract detailed the "Charges" that Ames would pay Liberty each month for the wholesale wastewater service. Pursuant to Section 5.2(a), Ames was required to pay a "Service Charge" of \$0.75 per 1,000 gallons of water metered at the lift station. Ames also was required to pay a "Connection Charge" pursuant to Section 5.2(b) for each connection made to the Ames sanitary collection system after the day Liberty commences taking waste from Ames. Additionally, Section 5.2(c) of the Contract states as follows:

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) DOLLARS per month, whichever amount is greater.

Liberty's interpretation of this Section 5.2(c) in the Contract is disputed by Ames. Ames contends that Section 5.2(c) defines an exceedance of the "Total Acceptable Volume" as occurring when two conditions are met: (1) greater than 200,000 gallons per day, **AND** (2) an aggregate of 6,000,000 gallons per month. Only when a volume of wastewater is delivered by Ames that causes both of those conditions to be exceeded should Ames be required to pay an Additional Service Charge (three times the highest rate existing for sewer service, or five hundred dollars, whichever amount is greater) under the Contract.

By contrast, Liberty invoices Ames for Additional Service Charges whenever either of the two conditions are exceeded, regardless of whether the other condition is met/exceeded. Liberty assesses an Additional Service Charge when: (1) Ames exceeds the daily condition, (2) Ames exceeds the monthly condition, or (3) Ames exceeds the daily and monthly conditions. This has

resulted in Liberty invoicing Ames for much higher Additional Service Charges than what Ames contends is allowed under the Contract.

III. **PENDING DISTRICT COURT CASE AND MEDIATION**

A. District Court Case in Liberty County

On June 26, 2018, Liberty filed a cause of action in the 75th District Court in Liberty County, Texas, for breach of contract against Ames and the City of Hardin,¹ alleging both cities had failed to pay the Additional Service Charges under each city's contract with Liberty for wastewater volumes in excess of identified Total Acceptable Volumes (Section 5.2(c)). Liberty filed a "Plaintiff's Amended Petition" on October 6, 2021, and it filed a "Plaintiff's Second Amended Petition" on February 18, 2022. Attachment A. Liberty's Second Amended Petition alleged that, "[a]s of February 3, 2022, Ames' unpaid obligation to Liberty for outstanding invoices totals \$1,356,611.20, inclusive of a ten percent (10%) interest rate." *Id.* at ¶ 12.

Ames filed its "Defendant's Original Answer and Request for Disclosure" on August 8, 2018, its "First Amended Answer" on October 22, 2021, and its "Second Amended Answer" on December 7, 2021. As part of both its First Amended Answer and Second Amended Answer, Ames filed a Plea to the Jurisdiction arguing that the District Court did not have jurisdiction and that the damages alleged by Liberty were not recoverable under Chapter 271 of the Texas Local Government Code. A hearing was held in the 75th District Court on Ames' Pleas to the Jurisdiction on February 28, 2022. Ames' Plea to the Jurisdiction was denied by the District Court. Ames has appealed the denial of its plea to the jurisdiction to the 9th Court of Appeals. That appeal is still pending.

¹ Liberty also executed the "Liberty-Hardin Wastewater Disposal Contract (Amended)" on December 9, 2003 that is almost identical to the Contract between Liberty and Ames.

B. TCEQ Mediation

Ames was contacted on April 29, 2022 by Todd Burkey, a mediator with the Alternative Dispute Resolution (“ADR”) Program of the Commission. Mr. Burkey stated that he had been contacted by counsel for the City of Liberty regarding that city’s potential interest in ADR efforts concerning the legal dispute between the City of Liberty and the Cities of Hardin and Ames surrounding wastewater conveyance and treatment services. Ames supports ADR efforts to settle this matter and expressed that position to the Commission through Mr. Burkey.

IV.

LIBERTY’S THREATENED SUSPENSION OF SERVICES

On January 5, 2022, Liberty’s counsel sent a letter to Ames counsel regarding “Suspension of Services re: March 14, 2001 Contract between City of Ames and City of Liberty for Sewer Disposal” (the “Suspension Letter”). *See* Attachment B. In the Suspension Letter, Liberty states that, “Ames is in arrears on payments owed to Liberty under the Contract for excess flows dating back to 2015 and owes City of Liberty in excess of \$1,035,605.60.” *Id.* The Suspension Letter also “provides notice to Ames that Liberty shall cease accepting wastewater flows as of July 1, 2022.” *Id.*

V.

REQUEST FOR EMERGENCY ORDER

Ames is requesting that the Commission issue an Emergency Order to avoid the threatened suspension of wholesale wastewater service in Liberty’s Suspension Letter to protect public health and safety during the pendency of District Court case and/or Commission ADR process that are still ongoing. Specifically, Ames seeks an Emergency Order requiring Liberty to provide continuous and adequate sewer service pursuant to Tex. Water Code § 13.041(h), which provides as follows:

- (h) In accordance with Subchapter L, Chapter 5, the commission may issue emergency orders, with or without a hearing:

- (1) to compel a retail public utility that has obtained a certificate of public convenience and necessity to provide water or sewer service, or both, that complies with all statutory and regulatory requirements of the commission if necessary to ensure safe drinking water or environmental protection; and
- (2) to compel a retail public utility to provide an emergency interconnection with a neighboring retail public utility for the provision of temporary water or sewer service, or both, for not more than 90 days if necessary to ensure safe drinking water or environmental protection.

In order to protect the health and well-being of the residents of the City of Ames, Ames requests that the Commission immediately issue an emergency order to compel Liberty to continue to provide sewer service to Ames. Ames requests that the Commission issue this emergency order without a hearing as the provisions of Tex. Water Code § 13.041(h) allow. The Commission may also use any means in its power “to prevent a discharge of waste that is injurious to public health.” Tex. Water Code § 26.041.

Ames has no means of obtaining sewer service other than from Liberty. There are no other neighboring utilities in the vicinity with whom Ames could contract to provide wastewater disposal to allow wastewater services to the residents of Ames. If Liberty is allowed to follow through on its stated intention to suspend providing sewer service to Ames, this would create a threat to the health, safety, and welfare of Ames and its residents and the environment. If Liberty takes the actions necessary to stop the flow of waste from Ames into Liberty, it is reasonably certain that an unauthorized discharge of untreated waste will occur. The Commission must not allow Liberty to take steps that are likely to cause this environmental hazard.

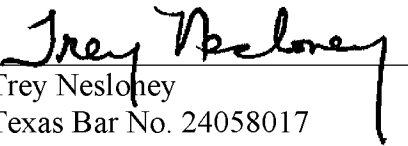
VI. **CONCLUSION**

WHEREFORE, PREMISES CONSIDERED, Ames respectfully requests that the Executive Director of the Commission review this request and, without a hearing, issue an Emergency Order under Tex. Water Code § 13.041(h) and 16 Tex. Admin. Code § 35.202

compelling Liberty to continue to provide adequate sewer service to Ames and its residents. Ames urges the Commission to act promptly on this request for issuance of an Emergency Order to avoid the threat to human health and safety and damage to the environment posed by Liberty's threatened suspension of sewer service to Ames. Ames also requests any such further relief to which it may be entitled.

Respectfully submitted,

EICHELBAUM WARDELL
HANSEN POWELL & MUÑOZ, P.C.

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ATTORNEYS FOR CITY OF AMES

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent via email and/or first class mail on June 16, 2022, to the following:

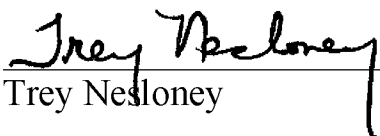
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ATTACHMENT D

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*



ATTACHMENT D

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 21, 2022

TO: All Persons on the Mailing List (Via email and/or fax only)

RE: **TCEQ Docket No. 2022-0763-UCR-E.** Consideration of a request filed on June 16, 2022, by the City of Ames for the issuance of an emergency order to compel the City of Liberty to provide continuous and adequate sewer service to the City of Ames in Liberty County, Texas

On June 16, 2022, the City of Ames filed a request for the issuance of an emergency order to compel the City of Liberty to provide continuous and adequate sewer service to the City of Ames in Liberty County, Texas, pursuant to Texas Water Code Section 13.041(h) and Title 30, Section 35.202 of the Texas Administrative Code. Copies of the request may be obtained from the Office of Chief Clerk, TCEQ, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087.

The Commission's Office of General Counsel is hereby setting the matter for consideration by the Commission at a public meeting to be held on **Wednesday, June 29, 2022**. The meeting will begin at 9:30 a.m., and the parties will be given an opportunity to address the Commission. The agenda meeting will be held in person in Room 201S of Building E at the Commission's offices located at 12100 Park 35 Circle in Austin, Texas, and virtually.

Should you need any additional information, please contact Dinniah Tadema, Assistant General Counsel, at Dinniah.Tadema@tceq.texas.gov, or Mehgan Taack in the Office of the Chief Clerk at (512) 239-3300.

Sincerely,

A handwritten signature in black ink that reads "Mary Smith".

Mary Smith
General Counsel

Mailing List

Mailing List
City of Ames
TCEQ Docket No. 2022-0763-UCR-E

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