



## Filing Receipt

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January 18, 2023

Public Utility Commission of Texas  
1701 N Congress PO Box 13326  
Austin, Texas 78711-3326

**RE: City of Pflugerville's Application to Amend Sewer Certificate of Convenience and Necessity (CCN) No. 20678 and to Cancel Kelly Lane Utility Company's CCN No. 20720**

The City of Pflugerville (City) requests, through the submittal of the attached *Application to Obtain or Amend a Water or Sewer Certificate of Convenience and Necessity (CCN)*, the following two actions:

1. Decertification and Cancellation of Sewer CCN No. 20720 held by Kelly Lane Utility Company (Kelly Lane); and,
2. An amendment of Sewer CCN No. 20678 held by the City.

The City currently provides continuous and adequate sewer utility service to a single commercial connection located within Kelly Lane's existing CCN. Sewer service is provided to the Skyview North Apartment units via City owned facilities.

**Background:**

The City and Kelly Lane entered into the North Pflugerville Wastewater Project Participation Agreement on November 11, 2002. The agreement prescribed efforts toward regionalization and directed that the City become the owner and operator of the Kelly Lane wastewater treatment plant (WWTP).

In December 2002, the City became the operator of the Kelly Lane WWTP through Professional Services and Wholesale Wastewater Agreements. At this time, the Texas Commission on Environmental Quality (TCEQ) transferred the Kelly Lane Water Quality permit (WQ-0011845003) to the City. Amendments to the regionalization agreement were ongoing throughout 2003-2005, during which time the City constructed and installed a lift station and collection lines for the continued provision of sewer service to the Kelly Lane service area. Installation of City sewer facilities was necessary to transport waste, originating from the Kelly Lane's service area, to be treated and discharged at the City's WWTP. Subsequently, the Kelly Lane WWTP was decommissioned and taken offline, and the water quality permit was cancelled.

In 2005, the City and Kelly Lane submitted a Sale, Transfer, Merger Application to TCEQ. This filing should have transferred the entirety of Kelly Lane's CCN to the City. It appears that the portion of Kelly Lane's CCN located in Williamson County was not transferred to the City, but the area located within Travis County was successfully transferred. The City is unable to ascertain the reasoning of this outcome as no further TCEQ correspondence has been recovered.

*Cont...*

**CITY OF PFLUGERVILLE**  
P.O. Box 589  
Pflugerville, TX 78691-0589

**STREET ADDRESS:**  
100 East Main Street  
Pflugerville, TX 78660

**TEL: 512-990-6100**  
**FAX: 512-990-4364**  
[www.pflugervilletx.gov](http://www.pflugervilletx.gov)



January 18, 2023

However, the City requests that their sewer CCN be amended to accurately depict the existing service area, including all City owned and operated sewer facilities. The requested CCN amendment does not require the contemplation of any transaction; there are no assets to transfer, and the single sewer connection is an existing customer of the City. Furthermore, the sewer CCN No. 20720 is currently associated with a non-existent corporation. Therefore, it is in the public interest to grant the City its requested amendment for CCN No. 20678 and to cancel CCN No. 20720.

**Decertification:**

The entirety of Kelly Lane's CCN service area (approximately 115 acres) may be decertified in accordance with 16 Texas Administrative Code (TAC) §24.245(d)(1)(A) which states:

"The current CCN holder has never provided, is no longer providing, is incapable of providing, or has failed to provide continuous and adequate service in all or part of the certificated service area ".

Kelly Lane is no longer providing, and is incapable of providing, sewer utility service in their certificated service area. Furthermore, the City's provision of existing sewer service does not necessitate the purchase of Kelly Lane's utility assets or the transfer of customers.

**Amendment**

The City's requested service area (approximately 92 acres) incorporates the location of existing sewer service, where City facilities are operated and maintained. The provision of continuous and adequate sewer utility service does not require any additional infrastructure or construction. The requested area does not incorporate the residential properties located on Little Lake Road that are currently within Kelly Lane's CCN service area. Those residential properties are existing customers of the City of Hutto.

Please feel free to contact me if there are any questions.

Kind regards,



Brandon Pritchett  
Public Utility Director

Attachment: City of Pflugerville's Application to Obtain or Amend a Water or Sewer Certificate of Convenience and Necessity

# **City of Pflugerville's Application to Obtain or Amend a Water or Sewer Certificate of Convenience and Necessity (CCN)**

Pursuant to 16 Texas Administrative Code (TAC) Chapter 24, Substantive Rules Applicable to Water and Sewer Service Providers, Subchapter G: Certificates of Convenience and Necessity



# **Application to Obtain or Amend a Water or Sewer Certificate of Convenience and Necessity (CCN)**

*Pursuant to 16 Texas Administrative Code (TAC) Chapter 24, Substantive Rules Applicable to Water and Sewer  
Service Providers, Subchapter G: Certificates of Convenience and Necessity*

## **CCN Application Instructions**

- I. **COMPLETE:** In order for the Commission to find the application sufficient for filing, you should adhere to the following:
- Answer every question and submit all required attachments.
  - Use attachments or additional pages if needed to answer any question. If you use attachments or additional pages, reference their inclusion in the form.
  - Provide all mapping information as detailed in Part F: Mapping & Affidavits.
  - Provide any other necessary approvals from the Texas Commission on Environmental Quality (TCEQ), or evidence that a request for approval is being sought at the time of filing with the Commission.
- II. **FILE:** Seven (7) copies of the completed application with numbered attachments. One copy should be filed with no permanent binding, staples, tabs, or separators; and 7 copies of the portable electronic storage medium containing the digital mapping data.
- SEND TO:** Public Utility Commission of Texas, Attention: Filing Clerk, 1701 N. Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 (NOTE: Electronic documents may be sent in advance of the paper copy; however, they will not be processed and added to the Commission's on-line Interchange until the paper copy is received and file-stamped in Central Records.)
- III. The application will be assigned a docket number, and an administrative law judge (ALJ) will issue an order requiring Commission Staff to file a recommendation on whether the application is sufficient. The ALJ will issue an order after Staff's recommendation has been filed:
- DEFICIENT (Administratively Incomplete):** Applicant will be ordered to provide information to cure the deficiencies by a certain date (usually 30 days from ALJ's order). ***Application is not accepted for filing.***
  - SUFFICIENT (Administratively Complete):** Applicant will be ordered by the ALJ to give appropriate notice of the application using the notice prepared by Commission Staff. ***Application is accepted for filing.***
- IV. Once the Applicant issues notice, a copy of the actual notice sent (including any map) and an affidavit attesting to notice should be filed in the docket assigned to the application. Recipients of notice may choose to take one of the following actions:
- HEARING ON THE MERITS:** an affected party may request a hearing on the application. The request must be made within 30 days of notice. If this occurs, the application may be referred to the State Office of Administrative Hearings (SOAH) to complete this request.
  - LANDOWNER OPT-OUT:** A landowner owning a qualifying tract of land (25+ acres) may request to have their land removed from the requested area. The Applicant will be requested to amend its application and file new mapping information to remove the landowner's tract of land, in conformity with this request.
- V. **PROCEDURAL SCHEDULE:** Following the issuance of notice and the filing of proof of notice in step 4, the application will be granted a procedural schedule for final processing. During this time the Applicant must respond to hearing requests, landowner opt-out requests, and requests for information (RFI). The Applicant will be requested to provide written consent to the proposed maps, certificates, and tariff (if applicable) once all other requests have been resolved.
- VI. **FINAL RECOMMENDATION:** After receiving all required documents from the Applicant, Staff will file a recommendation on the CCN request. The ALJ will issue a final order after Staff's recommendation is filed.

### **FAQ:**

#### ***Who can use this form?***

Any retail public utility that provides or intends to provide retail water or wastewater utility service in Texas.

#### ***Who is required to use this form?***

A retail public utility that is an investor owned utility (IOU) or a water supply corporation (WSC) must use this form to obtain or amend a CCN prior to providing retail water or sewer utility service in the requested area.

#### ***What is the purpose of the application?***

A CCN Applicant is required to demonstrate financial, managerial, and technical (FMT) capability to provide continuous and adequate service to any requested area. The questions in the application are structured to support an Applicant's FMT capabilities, consistent with the regulatory requirements.

## Application Summary

**Applicant:** City of Pflugerville

**CCN No. to be amended:** 20678

or ☐ Obtain NEW CCN ☐ Water ☒ Sewer

**County(ies) affected by this application:** Travis & Williamson

**Dual CCN requested with:** \_\_\_\_\_

CCN No.: \_\_\_\_\_

(name of retail public utility)

☐ Portion or ☐ All of requested area

**Decertification of CCN for:** Kelly Lane Utility

CCN No.: 20720

(name of retail public utility)

☐ Portion or ☒ All of requested area

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Please mark the items included in this filing

<input type="checkbox"/> Partnership Agreement	Part A: Question 4
<input type="checkbox"/> Articles of Incorporation and By-Laws (WSC)	Part A: Question 4
<input type="checkbox"/> Certificate of Account Status	Part A: Question 4
<input type="checkbox"/> Franchise, Permit, or Consent letter	Part B: Question 7
<input checked="" type="checkbox"/> Existing Infrastructure Map	Part B: Question 8
<input type="checkbox"/> Customer Requests For Service in requested area	Part B: Question 9
<input type="checkbox"/> Population Growth Report or Market Study	Part B: Question 10
<input checked="" type="checkbox"/> TCEQ Engineering Approvals	Part B: Question 11
<input type="checkbox"/> Requests & Responses For Service to ½ mile utility providers	Part B: Question 12.B
<input type="checkbox"/> Economic Feasibility (alternative provider) Statement	Part B: Question 12.C
<input type="checkbox"/> Alternative Provider Analysis	Part B: Question 12.D
<input type="checkbox"/> Enforcement Action Correspondence	Part C: Question 16
<input checked="" type="checkbox"/> TCEQ Compliance Correspondence	Part D: Question 20
<input type="checkbox"/> Purchased Water Supply or Treatment Agreement	Part D: Question 23
<input type="checkbox"/> Rate Study (new market entrant)	Part E: Question 28
<input type="checkbox"/> Tariff/Rate Schedule	Part E: Question 29
<input type="checkbox"/> Financial Audit	Part E: Question 30
<input type="checkbox"/> Application Attachment A & B	Part E: Question 30
<input type="checkbox"/> Capital Improvement Plan	Part E: Question 30
<input type="checkbox"/> Disclosure of Affiliated Interests	Part E: Question 31
<input checked="" type="checkbox"/> Detailed (large scale) Map	Part F: Question 32
<input checked="" type="checkbox"/> General Location (small scale) Map	Part F: Question 32
<input checked="" type="checkbox"/> Digital Mapping Data	Part F: Question 32
<input checked="" type="checkbox"/> Signed & Notarized Affidavit	Page 12

**Part A: Applicant Information**

1. A. Name: City of Pflugerville  
(individual, corporation, or other legal entity)  
☐ Individual ☐ Corporation ☐ WSC ☒ Other: Municipality
- B. Mailing Address: PO Box 589  
Pflugerville, TX 78691-0589  
Phone No.: (512) 990-6400 Email: \_\_\_\_\_
- C. **Contact Person.** Please provide information about the person to be contacted regarding this application. Indicate if this person is the owner, operator, engineer, attorney, accountant, or other title.  
Name: Matt Johns Title: regulatory manager  
Mailing Address: PO Box 589, Pflugerville TX 78691  
Phone No.: (512) 990-6428 Email: MattJ@Pflugervilletx.gov
2. If the Applicant is someone other than a municipality, is the Applicant currently paid in full on the Regulatory Assessment Fees (RAF) remitted to the TCEQ?  
☐ Yes ☐ No ☒ N/A
3. If the Applicant is an Investor Owned Utility (IOU), is the Applicant current on Annual Report filings with the Commission?  
☐ Yes ☐ No If no, please state the last date an Annual Report was filed: \_\_\_\_\_
4. The legal status of the Applicant is:  
☐ Individual or sole proprietorship  
☐ Partnership or limited partnership (*attach* Partnership agreement)  
☐ Corporation: Charter number (recorded with the Texas Secretary of State): \_\_\_\_\_  
☐ Non-profit, member-owned, member controlled Cooperative Corporation [Article 1434(a) Water Supply or Sewer Service Corporation, incorporated under TWC Chapter 67]  
Charter number (as recorded with the Texas Secretary of State): \_\_\_\_\_  
☐ Articles of Incorporation and By-Laws established (*attach*)  
☒ Municipally-owned utility  
☐ District (MUD, SUD, WCID, FWSD, PUD, etc.)  
☐ County  
☐ Affected County (a county to which Subchapter B, Chapter 232, Local Government Code, applies)  
☐ Other (please explain): \_\_\_\_\_
5. If the Applicant operates under an assumed name (i.e., any d/b/a), provide the name below:  
Name: N/A

**Part B: Requested Area Information**

6. Provide details on the existing or expected land use in the requested area, including details on requested actions such as dual certification or decertification of service area.

The City's requested service area incorporates the location of existing sewer service, where City facilities are operated and maintained. The provision of continuous and adequate sewer utility service does not require any additional infrastructure or construction. Kelly Lane is no longer providing, and is incapable of providing, sewer utility service in their certificated service area.

7. The requested area (check all applicable):

- ☒ Currently receives service from the Applicant ☐ Is being developed with no current customers  
☐ Overlaps or is within municipal boundaries ☐ Overlaps or is within district boundaries

Municipality: \_\_\_\_\_ District: \_\_\_\_\_

Provide a copy of any franchise, permit, or consent granted by the city or district. If not available please explain:

8. Describe the circumstances (economic, environmental, etc.) driving the need for service in the requested area:

The City currently provides continuous and adequate sewer utility service to a single commercial connection located within Kelly Lane ' s existing CCN. Sewer service is provided to the Skyview North Apartment units via City owned facilities.

9. Has the Applicant received any requests for service within the requested area?

- ☐ Yes\* ☒ No \*Attach copies of all applicable requests for service and show locations on a map

10. Is there existing or anticipated growth in the requested area?

- ☐ Yes\* ☒ No \*Attach copies of any reports and market studies supporting growth

11. A. Will construction of any facilities be necessary to provide service to the requested area?

- ☐ Yes\* ☒ No \*Attach copies of TCEQ approval letters

B. Date Plans & Specifications or Discharge Permit App. submitted to TCEQ: \_\_\_\_\_

C. Summarize an estimated timeline for construction for any required facilities to serve the requested area:

N/A

D. Describe the source and availability of funds for any required facilities to serve the requested area:

N/A

**Note: Failure to provide applicable TCEQ construction or permit approvals, or evidence showing that the construction or permit approval has been filed with the TCEQ may result in the delay or possible dismissal of the application.**

12. A. If construction of a physically separate water or sewer system is necessary, provide a list of all retail public water and/or sewer utilities within one half mile from the outer boundary of the requested area below:

N/A

B. Did the Applicant request service from each of the above water or sewer utilities?

☐ Yes\*

☐ No

\*Attach copies of written requests and copies of the written response

C. Attach a statement or provide documentation explaining why it is not economically feasible to obtain retail service from the water or sewer retail public utilities listed above.

D. If a neighboring retail public utility agreed to provide service to the requested area, attach documentation addressing the following information:

(A) A description of the type of service that the neighboring retail public utility is willing to provide and comparison with service the applicant is proposing;

(B) An analysis of all necessary costs for constructing, operating, and maintaining the new facilities for at least the first five years of operations, including such items as taxes and insurance; and

(C) An analysis of all necessary costs for acquiring and continuing to receive service from the neighboring retail public utility for at least the first five years of operations.

13. Explain the effect of granting the CCN request on the Applicant, any retail public utility of the same kind serving in the proximate area, and any landowners in the requested area. The statement should address, but is not limited to, regionalization, compliance, and economic effects.

The City and Kelly Lane entered into the North Pflugerville Wastewater Project Participation Agreement on November 11, 2002. The agreement prescribed efforts toward regionalization and directed that the City become the owner and operator of the Kelly Lane wastewater treatment plant (WWTP). Although the WWTP has since been decommissioned, the efforts towards regionalization of sewer services has been accomplished via connection to the City's WWTP.

**Part C: CCN Obtain or Amend Criteria Considerations**

14. Describe the anticipated impact and changes in the quality of retail utility service for the requested area:

The service area requested will be incorporated into the existing sewer CCN area and will accurately reflect where service is being provided.

15. Describe the experience and qualifications of the Applicant in providing continuous and adequate retail service:

The City has been providing continuous and adequate sewer services to the requested area.

16. Has the Applicant been under an enforcement action by the Commission, TCEQ, Texas Department of Health (TDH), the Office of the Attorney General (OAG), or the Environmental Protection Agency (EPA) in the past five (5) years for non-compliance with rules, orders, or state statutes?

☒ Yes\* ☐ No

\*Attach copies of any correspondence with the applicable regulatory agency concerning any enforcement actions, and attach a description of any actions or efforts the Applicant has taken to comply with these requirements.

17. Explain how the environmental integrity of the land will or will not be impacted or disrupted as a result of granting the CCN as requested:

The integrity of the land will not be impacted. The requested area includes only existing sewer service area.

18. Has the Applicant made efforts to extend retail water or sewer utility service to any economically distressed area located within the requested area?

N/A



19. List all neighboring water or sewer retail public utilities, cities, districts (including ground water conservation districts), counties, or other political subdivisions (including river authorities) providing the same service located within two (2) miles from the outer boundary of the requested area:

City Of Hutto  
City of Round Rock  
Windermere Utility Co. Inc

**Part D: TCEQ Public Water System or Sewer (Wastewater) Information**

20. A. Complete the following for all Public Water Systems (PWS) associated with the Applicant's CCN:

TCEQ PWS ID:	Name of PWS:	Date of TCEQ inspection*:	Subdivisions served:
x	x		x

\*Attach evidence of compliance with TCEQ for each PWS

- B. Complete the following for all TCEQ Water Quality (WQ) discharge permits associated with the Applicant's CCN:

TCEQ Discharge Permit No:	Date Permit expires:	Date of TCEQ inspection*:	Subdivisions served:
WQ-0011845002	11/13/2025	1/19/2018	City of Pflugerville
WQ-			
WQ-			
WQ-			

\*Attach evidence of compliance with TCEQ for each Discharge Permit

- C. The requested CCN service area will be served via: PWS ID:  
WQ - 0011845002

21. List the number of existing connections for the PWS & Discharge Permit indicated above (Question 20. C.):

Water				Sewer	
	Non-metered		2"	0	Residential
	5/8" or 3/4"		3"	1	Commercial
	1"		4"	0	Industrial
	1 1/2"		Other	0	Other
Total Water Connections:				Total Sewer Connections:	1

22. List the number of additional connections projected for the requested CCN area:

Water				Sewer	
	Non-metered		2"	0	Residential
	5/8" or 3/4"		3"	0	Commercial
	1"		4"	0	Industrial
	1 1/2"		Other	0	Other
Total Water Connections:				Total Sewer Connections:	£ 0

23. A. Will the system serving the requested area purchase water or sewer treatment capacity from another source?

☐ Yes\*

☒ No

\*Attach a copy of purchase agreement or contract.

Capacity is purchased from:

Water: \_\_\_\_\_

Sewer: \_\_\_\_\_

B. Are any of the Applicants PWS's required to purchase water to meet the TCEQ's minimum capacity requirements or TCEQ's drinking water standards?

☐ Yes

☐ No

C. What is the amount of supply or treatment purchased, per the agreement or contract? What is the percent of overall demand supplied by purchased water or sewer treatment (if any)?

	Amount in Gallons	Percent of demand
Water:		0%
Sewer:		0%

24. Does the PWS or sewer treatment plant have adequate capacity to meet the current and projected demands in the requested area?

☒ Yes

☐ No

25. List the name, class, and TCEQ license number of the operators that will be responsible for the operations of the water or sewer utility service provided to the requested area:

Name (as it appears on license) See Attachment	Class	License No.	Water/Sewer

26. A. Are any improvements required for the existing PWS or sewer treatment plant to meet TCEQ or Commission standards?

☐ Yes

☒ No

B. Provide details on each required major capital improvement necessary to correct deficiencies to meet the TCEQ or Commission standards (attach any engineering reports or TCEQ approval letters):

Description of the Capital Improvement:	Estimated Completion Date:	Estimated Cost:

27. Provide a map (or maps) showing all facilities for production, transmission, and distribution, and the location of existing or proposed customer connections, in the requested area. Facilities should be identified on subdivision plats, engineering planning maps, or other large scale maps. Color coding can be used, and is encouraged, to distinguish types of facilities.

## Part E: Financial Information

28. If the Applicant seeking to obtain a CCN for the first time is an Investor Owned Utility (IOU) and under the original rate jurisdiction of the Commission, a proposed tariff must be attached to the application. The proposed rates must be supported by a rate study, which provides all calculations and assumptions made. Once a CCN is granted, the Applicant must submit a rate filing package with the Commission within 18 months from the date service begins. The purpose of this rate filing package is to revise a utility's tariff to adjust the rates to a historic test year and to true up the new tariff rates to the historic test year. It is the Applicant's responsibility in any future rate proceeding to provide written evidence and support for the original cost and installation date of all facilities used and useful for providing utility service. Any dollar amount collected under the rates charged during the test year in excess of the revenue requirement established by the Commission during the rate change proceeding shall be reflected as customer contributed capital going forward as an offset to rate base for ratemaking purposes.

29. If the Applicant is an existing IOU, please attach a copy of the current tariff and indicate:

A. Effective date for most recent rates: \_\_\_\_\_

B. Was notice of this increase provided to the Commission or a predecessor regulatory authority?

☐

No

☐

Yes

Application or Docket Number: \_\_\_\_\_

C. If notice was not provided to the Commission, please explain why ( ex: rates are under the jurisdiction of a municipality)

**If the Applicant is a Water Supply or Sewer Service Corporation (WSC/SSC) and seeking to obtain a CCN, attach a copy of the current tariff.**

### 30. **Financial Information**

Applicants must provide accounting information typically included within a balance sheet, income statement, and statement of cash flows. If the Applicant is an existing retail public utility, this must include historical financial information and projected financial information. However, projected financial information is only required if the Applicant proposes new service connections and new investment in plant, or if requested by Commission Staff. If the Applicant is a new market entrant and does not have its own historical balance sheet, income statement, and statement of cash flows information, then the Applicant should establish a five-year projection.

**Historical Financial Information may be shown by providing any combination of the following that includes necessary information found in a balance sheet, income statement, and statement of cash flows:**

1. Completed Appendix A;
2. Documentation that includes all of the information required in Appendix A in a concise format; or
3. Audited financial statements issued within 18 months of the application filing date. This may be provided electronically by providing a uniform resource locator (URL) or a link to a website portal.

Projected Financial Information may be shown by providing any of the following:

1. Completed Appendix B;
2. Documentation that includes all of the information required in Appendix B in a concise format;
3. A detailed budget or capital improvement plan, which indicates sources and uses of funds required, including improvements to the system being transferred; or
4. A recent budget and capital improvements plan that includes information needed for analysis of the operations test for the system being transferred and any operations combined with the system. This may be provided electronically by providing a uniform resource locator (URL) or a link to a website portal.

31. Attach a disclosure of any affiliated interest or affiliate. Include a description of the business relationship between all affiliated interests and the Applicant.

**DO NOT INCLUDE ATTACHMENTS A OR B IF LEFT BLANK**

#### **Part F: Mapping & Affidavits**

32. Provide the following mapping information with each of the seven (7) copies of the application:
1. A general location (small scale) map identifying the requested area in reference to the nearest county boundary, city, or town. The Applicant should adhere to the following guidance:
    - i. If the application includes an amendment for both water and sewer certificated service areas, separate maps must be provided for each.
    - ii. A hand drawn map, graphic, or diagram of the requested area is not considered an acceptable mapping document.
    - iii. To maintain the integrity of the scale and quality of the map, copies must be exact duplicates of the original map. Therefore, copies of maps cannot be reduced or enlarged from the original map, or in black and white if the original map is in color.
  2. A detailed (large scale) map identifying the requested area in reference to verifiable man-made or natural landmarks such as roads, rivers, and railroads. The Applicant should adhere to the following guidance:
    - i. The map should be clearly labeled and the outer boundary of the requested area should be marked in reference to the verifiable man-made or natural landmarks. These verifiable man-made and/or natural landmarks must be labeled and marked on the map as well.
    - ii. If the application includes an amendment for both water and sewer certificated service area, separate maps need to be provided for each.
    - iii. To maintain the integrity of the scale and quality of the map, copies must be exact duplicates of the original map. Therefore, copies of maps cannot be reduced or enlarged from the original map, or in black and white if the original map is in color.
  3. One of the following identifying the requested area:
    - i. A metes and bounds survey sealed or embossed by either a licensed state land surveyor or a registered professional land surveyor. Please refer to the mapping guidance in part 2 (above);

- ii. A recorded plat. If the plat does not provide sufficient detail, Staff may request additional mapping information. Please refer to the mapping guidance in part 2 (above); or
- iii. Digital mapping data in a shapefile (SHP) format georeferenced in either NAD 83 Texas State Plane Coordinate System (US Feet) or in NAD 83 Texas Statewide Mapping System (Meters). The digital mapping data shall include a single, continuous polygon record. The following guidance should be adhered to:
  - a. The digital mapping data must correspond to the same requested area as shown on the general location and detailed maps. The requested area must be clearly labeled as either the water or sewer requested area.
  - b. A shapefile should include six files (.dbf, .shp, .shx, .sbx, .sbn, and the projection (.prj) file).
  - c. The digital mapping data shall be filed on a data disk (CD or USB drives), clearly labeled, and filed with Central Records. Seven (7) copies of the digital mapping data is also required.

#### Part G: Notice Information

The following information will be used to generate the proposed notice for the application.  
DO NOT provide notice until the application is deemed sufficient for filing and the Applicant is ordered to provide notice.

33. Complete the following using verifiable man-made and/or natural landmarks such as roads, rivers, or railroads to describe the requested area (to be stated in the notice documents). Measurements should be approximated from the outermost boundary of the requested area:

The total acreage of the requested area is approximately: 92

Number of customer connections in the requested area: 1

The closest city or town: Hutto

Approximate mileage to closest city or town center: 4

Direction to closest city or town: North-East

The requested area is generally bounded on the North by: Kaatz Lane

on the East by: Little Lake Road

on the South by: County Road 138

on the West by: FM 685

34. A copy of the proposed map will be available at 100 East Main Street, Pflugerville 78660

## Applicant's Oath

STATE OF Texas

COUNTY OF Travis

I, Brandon Pritchett being duly sworn, file this application to  
obtain or amend a water or sewer CCN, as Director, City of Pflugerville Public Utilities

(owner, member of partnership, title as officer of corporation, or authorized representative)

I attest that, in such capacity, I am qualified and authorized to file and verify such application, am personally familiar with the documents filed with this application, and have complied with all the requirements contained in the application; and, that all such statements made and matters set forth therein with respect to Applicant are true and correct. Statements about other parties are made on information and belief. I further state that the application is made in good faith and that this application does not duplicate any filing presently before the Commission.

I further represent that the application form has not been changed, altered, or amended from its original form.  
I further represent that the Applicant will provide continuous and adequate service to all customers and qualified applicants within its certificated service area should its request to obtain or amend its CCN be granted.



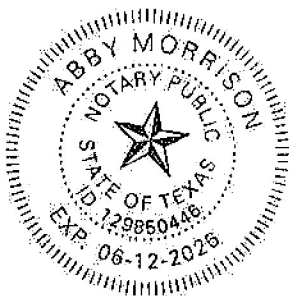
**AFFIANT**

(Utility's Authorized Representative)

If the Affiant to this form is any person other than the sole owner, partner, officer of the Applicant, or its attorney, a properly verified Power of Attorney must be enclosed.

**SUBSCRIBED AND SWORN BEFORE ME**, a Notary Public in and for the State of Texas  
this day the 4th of January, 20 23

SEAL



**NOTARY PUBLIC IN AND FOR THE  
STATE OF TEXAS**



**PRINT OR TYPE NAME OF NOTARY**

**My commission expires:**

6/12/2026

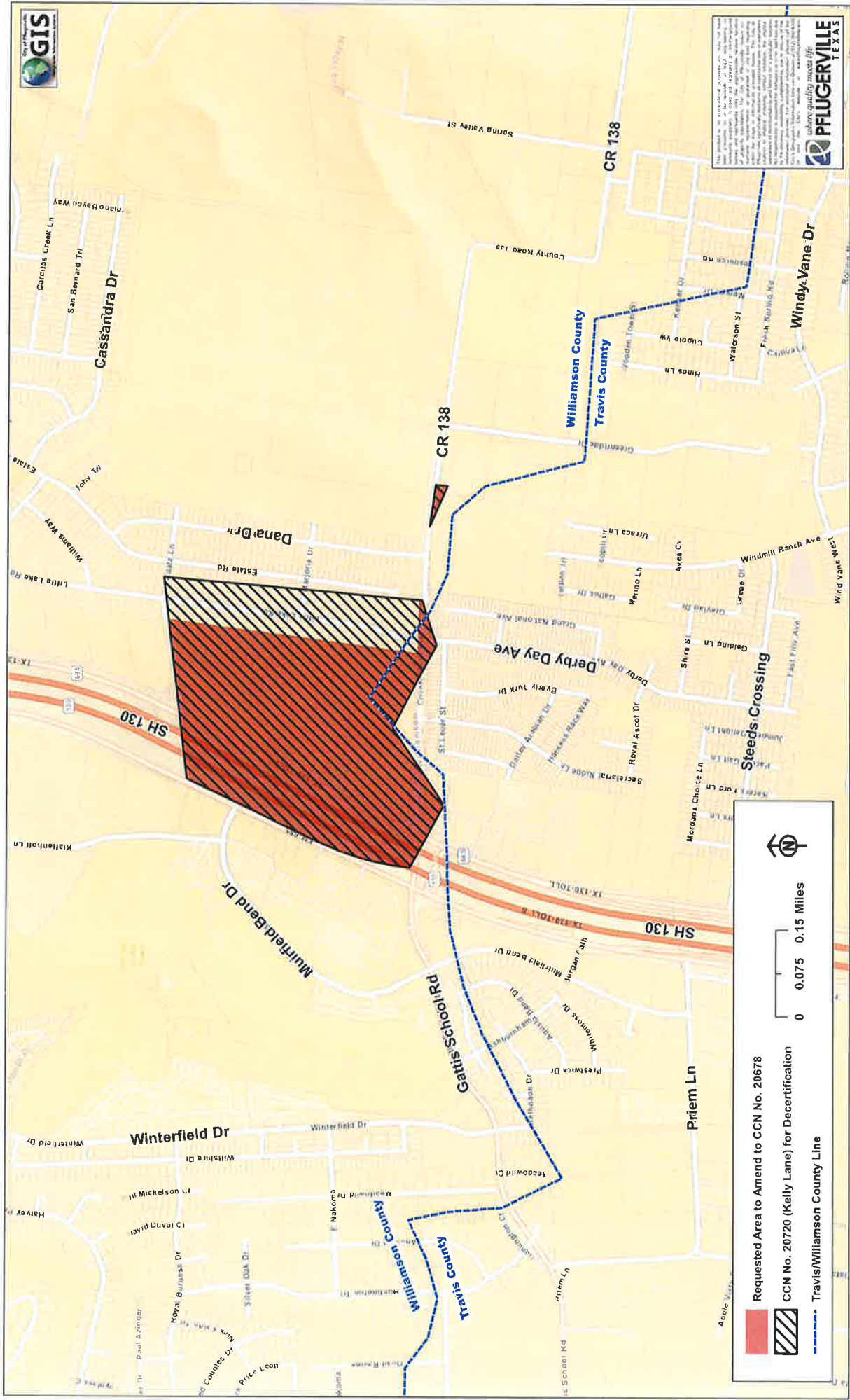
## **List of Attachments:**

- 1. Detailed & General Location Map**
- 2. WW Operators**
- 3. Kelly Lane CCN (TNRCC Docs)**
- 4. North Pflugerville Wastewater Project Participating Agreement**
- 5. 2005 STM Notice & Application**
- 6. TCEQ Compliance Docs**
- 7. WW Permit**
- 8: Financial FY22 Approved Budget**

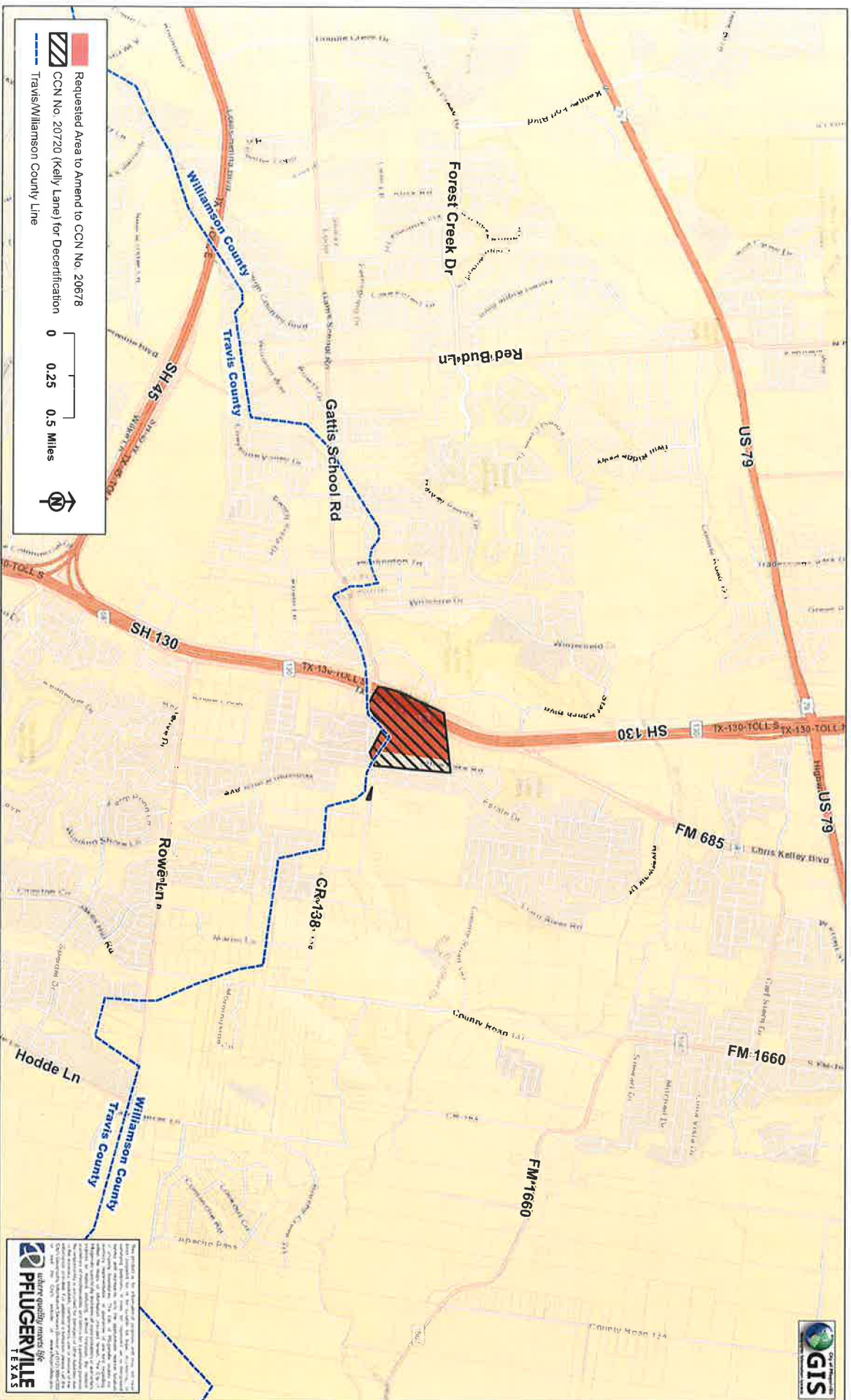
# **1: Detailed & General Location Maps**



**Application to Decertify Kelly Lane Utility (CCN No. 20720) and Amend a Portion to City of Pflugerville (CCN No. 20678)**



# Application to Decertify Kelly Lane Utility (CCN No. 20720) and Amend a Portion to City of Pflugerville (CCN No. 20678)



## 2: Pflugerville Wastewater Operators

**Pflugerville Operators: WW**

Aaron Griffith	B Dist. III Coll., BPAT, CSI	WD0016484, WW0066994, BP0020769, CI0011646
Anderson, Nicholas	C WWT	WW0067567
Brandon Pritchett	A Water, A WWT	WO0038520, WW0069302
Briggs, Gregory (Shayne)	B Dist, III Coll.	WD0011970, WW0052583
Caffey, Guy	C GW, C SW, Coll. I	WG0004348, WS0010919, WW0045104
Clough, Ronald (Trey)	B Dist, III Coll.	WD0012527, WW0054404
Cody Losoya		
Conde, Rudy	C WWT	WW0067067
Dunn, Justin	C Water, Coll. I	WD0017070, WW0064554
Fernando Castillo	B Wastewater	WW0066064
Gonzalez II, Javier	C Dist, III Coll.	WD0011098, WW0067599
Gray Edwards	D WWT, Coll. I	WW0064201, WW0068103
Herchek, Robert	B Dist, III Coll., CSI	WD0016380, WW0067962, CI0011545
Hernandez Jr, Octaviano	II Coll.	WW0065821
Isaac, Archie	B Dist, Coll. III	WD0017452, WW0069902
Johns, Matthew	B Dist, B WWT, BPAT	WD0015138, WW0037565, BP0018520
Kincaid, Angelique	B WWT	WW0064946
Kolbek III, Steven	C Dist., II Coll.	WD0016950, WW0060543
Max Walther	B Dist, A WWT, BPAT, CSI, LI	WD0011042, WW0063707, BP0017156, CI0010894, LI0021566
McGee, David	B Dist., BPAT, CSI, D WWT	WD0015611, BP0017647, CI0010886, WW0067526
Oswaldo Merino (Tito)	B Dist, III Coll.	WD0016528, WW0066589
Paul, Dustin	C Dist, B WWT	WD0009236, WW0045100
Phillip Scruggs	A Wastewater	WW0063959

### 3: Kelly Lane CCN (TNRCC Docs)



# TEXAS NATURAL RESOURCE CONSERVATION COMMISSION



THE STATE OF TEXAS  
COUNTY OF TRAVIS  
I hereby certify that this is a true and correct copy of a Texas Natural  
Resource Conservation Commission document, which is filed in the  
permanent records of the Commission.  
Given under my hand and the seal of office on

*La Donna Cardinale* JUN 06 2000

La Donna Cardinale, Chief Clerk  
Texas Natural Resource  
Conservation Commission

SOAH DOCKET NO. 582-96-0915.S  
TNRCC DOCKET NO. 97-0906-UCR  
APPLICATION NO. 31780-C

IN THE MATTER OF THE APPLICATION OF §  
KELLY LANE UTILITY COMPANY, INC. TO §  
AMEND CERTIFICATE OF CONVENIENCE §  
AND NECESSITY NO. 20720 IN TRAVIS §  
AND WILLIAMSON COUNTIES, TEXAS §

BEFORE THE  
TEXAS NATURAL RESOURCE  
CONSERVATION COMMISSION

## ORDER

An application by Kelly Lane Utility Company, Inc. ("Applicant") to amend its sewer Certificate of Convenience and Necessity ("CCN") No. 20720 in Travis and Williamson Counties, Texas, was presented to the Executive Director of the Texas Natural Resource Conservation Commission ("Commission") for approval pursuant to Section 5.122 of the Texas Water Code ("Code") and Commission rules.

The Applicant provides sewer service in Travis and Williamson Counties, Texas, and is a retail public utility as defined in Section 13.002(23) of the Code.

The application was received by the Commission on May 30, 1997, and accepted for filing on June 27, 1997, under Application No. 31780-C pursuant to Section 13.242 *et. seq.* of the Code. Notice was provided to affected persons by the Applicant on February 2, 1996. Notice of the

application was published on February 1, 1996, and February 8, 1996, in the Pflugerville Pflag, a newspaper generally circulated in Travis and Williamson Counties, Texas. The notice to amend its service area complied with the notice requirements of 30 Texas Administrative Code ("TAC") Section 291.106 and was sufficient to place affected persons on notice regarding the certification of service. The Commission received requests for a public hearing on the application.

Bill Zukauckas, an Administrative Law Judge of the State Office of Administrative Hearings, conducted a preliminary hearing on May 12, 1998, and designated the following parties: Kelly Lane Utility Co., Inc. and Wilke Lane Utility represented by Attorney Richard Kammerman; City of Hutto represented by Attorney Bill Zeis; Windermere Utility Co., Inc. represented by Attorney Bill Flickinger; Williamson County Water, Sewer, Drainage and Irrigation District No. 3 and Commerce Properties, Inc. represented by Attorney Charles Crossfield; City of Pflugerville represented by John Carlton; Tiemann Land & Cattle Development, Inc. represented by Robert Tiemann; B & D Environmental Inc. represented by Darrell Nichols; Tim Timmerman, President of Commerce Properties, Inc; the Public Interest Council; and the Executive Director of the Commission.

On September 16, 1998, a mediation was held and a settlement was reached by all parties. Subsequently, an Agreed Motion for Remand was filed stating that all issues in dispute had been settled. The matter was remanded to the Commission for approval by the Executive Director on September 2, 1999.

The Applicant is capable of rendering adequate and continuous service to every customer in the area proposed to be included in CCN No. 20720 and its certification is necessary for the service, accommodation, convenience, or safety of the public.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS NATURAL RESOURCE  
CONSERVATION COMMISSION that:

The application by Kelly Lane Utility Company, Inc. to amend Certificate of Convenience and Necessity No. 20720, as reflected in the attached copies of official sewer service area maps WRS-227 of Travis County, Texas, and WRS-246 of Williamson County, Texas, is hereby approved.

The Chief Clerk of the Texas Natural Resource Conservation Commission shall forward a copy of this Order to the parties and issue Certificate of Convenience and Necessity No. 20720 to Kelly Lane Utility Company, Inc.

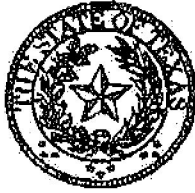
If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

TEXAS NATURAL RESOURCE  
CONSERVATION COMMISSION

Issue Date: **MAY 24 2000**

  
\_\_\_\_\_  
For the Commission





# Texas Natural Resource Conservation Commission

**By These Presents Be It Known To All That**

**Kelly Lane Utility Company, Inc.**

having duly applied for certification to provide sewer utility service for the convenience and necessity of the public, and it having been determined by this commission that the public convenience and necessity would in fact be advanced by the provision of such service by this Applicant, is entitled to and is hereby granted this

## **Certificate of Convenience and Necessity No. 20720**

to provide continuous and adequate sewer utility service to that service area or those service areas in Travis and Williamson Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Application No. 31780-C are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of Kelly Lane Utility Company, Inc. to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this MAY 24 2000

  
For the Commission

# TEXAS NATURAL RESOURCE CONSERVATION COMMISSION



## CERTIFICATE OF CONVENIENCE AND NECESSITY

To Provide Sewer Service Under V.T.C.A., Water Code  
and Texas Natural Resource Conservation Commission Substantive Rules

Certificate No. 20720

### I. Certificate Holder:

Name: Kelly Lane Utility Company, Inc.

Address: 205 East 43rd Street  
Austin, Texas 78751

### II. General Description and Location of Service Area:

The area covered by this certificate consists of two service areas located approximately 18 miles northeast of downtown Austin, Texas, along Farm to Market Road 685 in Travis County and are described as follows:

The north most service area, Steed's Crossing, is generally bounded on the south by Wilbarger Creek and on the west by Farm to Market Road 685;

The east most area, Fairways of Blackhawk, is generally bounded on the south by Kelly Lane and on the west by Farm to Market Road 685.

### III. Certificate Maps:

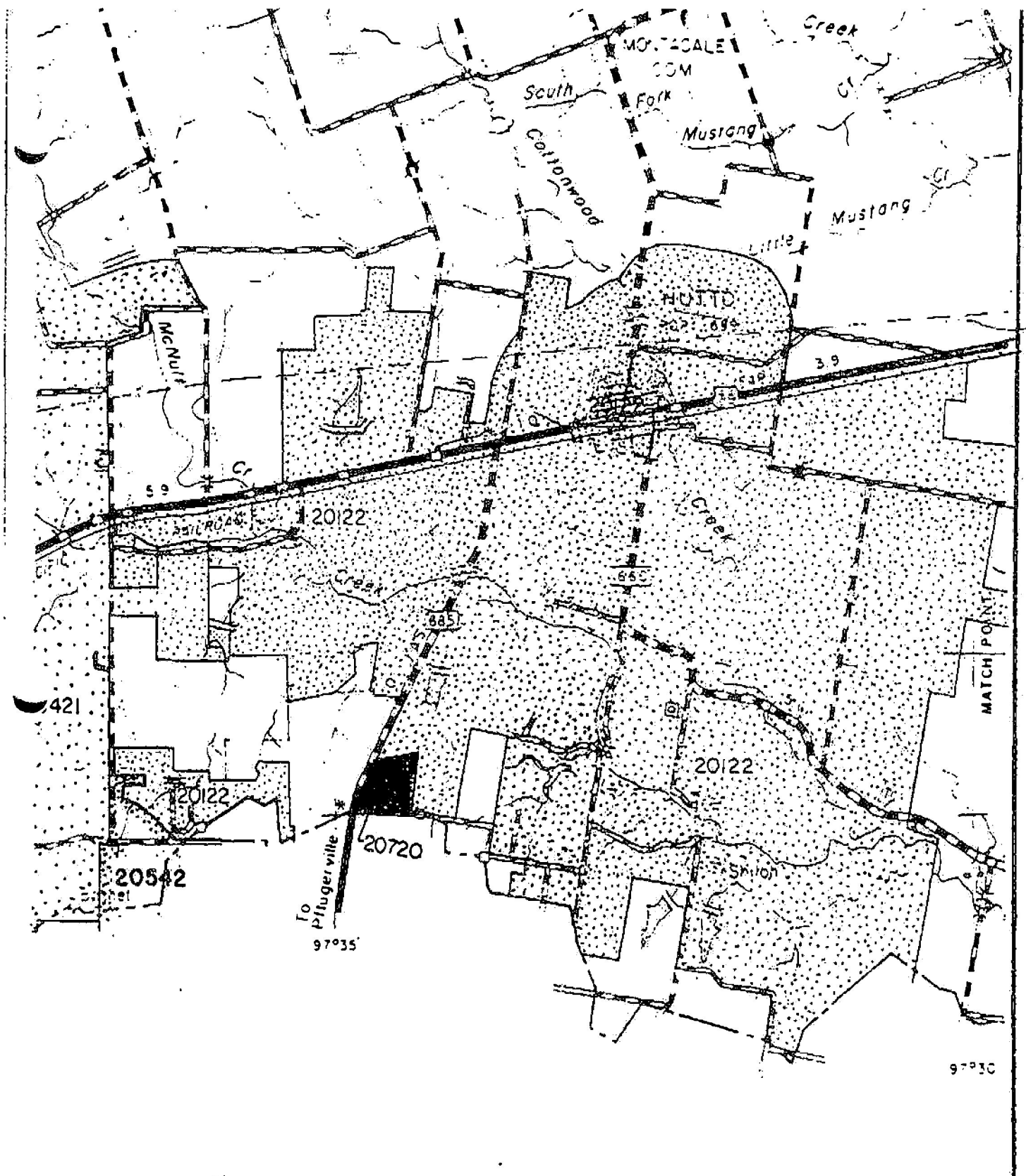
The certificate holder is authorized to provide sewer service in the area identified on the Commission's official service area map, WRS-227, maintained in the offices of the Texas Natural Resource Conservation Commission, 1700 North Congress, Austin, Texas with all attendant privileges and obligations.

This certificate is issued under Application No. 30301-Q and subject to the rules and orders of the Commission, the laws of the State of Texas, conditions contained herein and may be revoked for violations thereof. The certificate is valid until amended or revoked by the Commission.

Issued Date: FEB 28 1994

ATTEST:

Glenn A. Varguez John Hall  
For the Commission

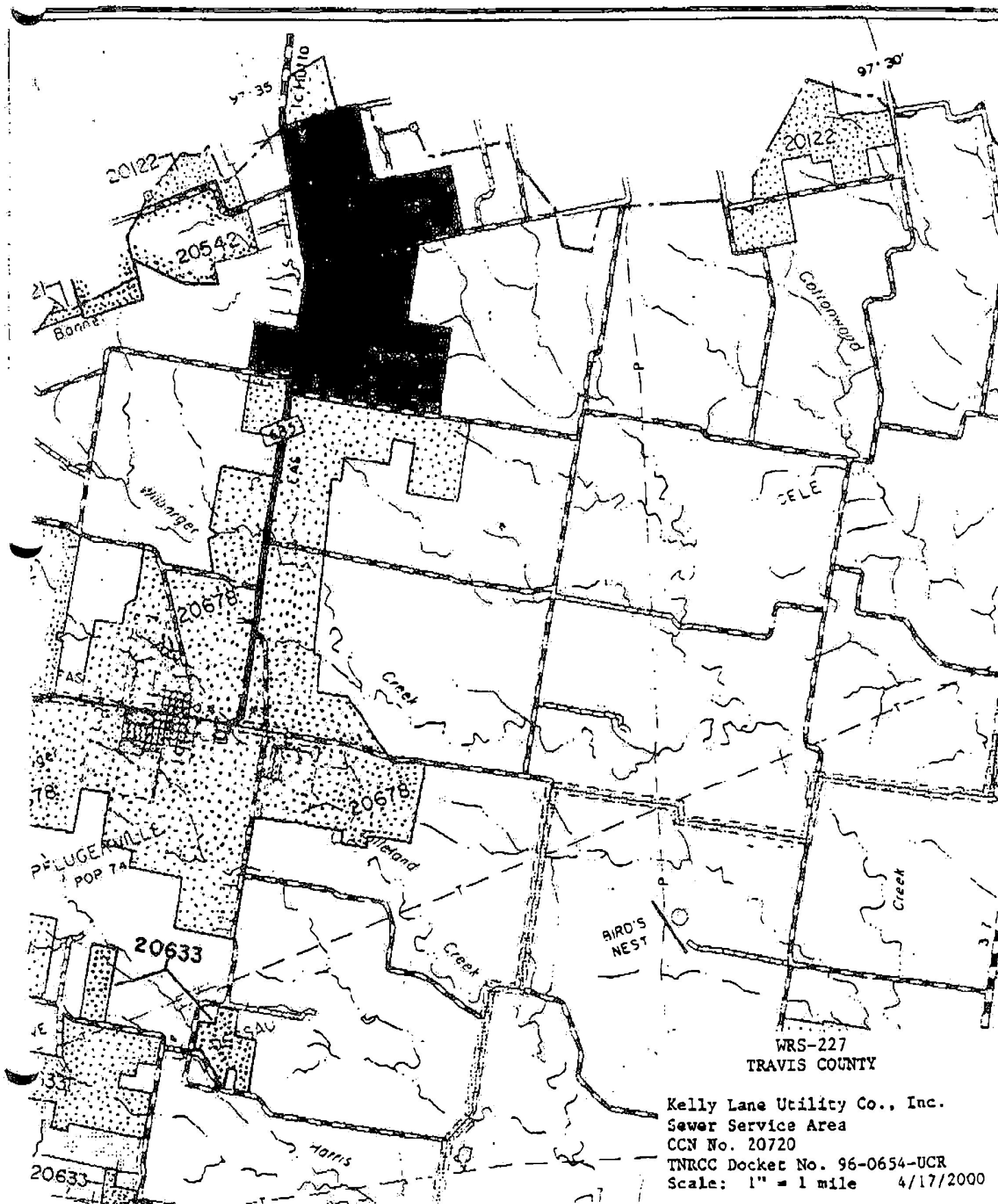


WRS-246  
WILLIAMSON COUNTY

Kelly Lane Utility Co., Inc.  
Sewer Service Area  
CCN No. 20720  
TNRCC Docket No. 96-0654-UCR  
Scale: 1" = 1 mile 4/17/2000

Georgetown

4 5 6



Robert J. Huston, *Chairman*  
R. B. "Ralph" Marquez, *Commissioner*  
John M. Baker, *Commissioner*  
Jeffrey A. Saitas, *Executive Director*



## TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

*Protecting Texas by Reducing and Preventing Pollution*

June 6, 2000

TO: Persons on the attached mailing list.

RE: Kelly Lane Utility Company, Inc.; Application No. 31780-C  
TNRCC Docket No. 1997-0906-UCR; SOAH Docket No. 582-96-0915.S

This letter is your notice that the Texas Natural Resource Conservation Commission (TNRCC) executive director has issued final approval of the above-named application.

You may file a **motion for reconsideration/motion to overturn** with the chief clerk. A motion is a request for the commission to review the TNRCC executive director's approval of the application. Any motion must explain why the commission should review the TNRCC executive director's action.

A motion must be received by the chief clerk within 23 days after the date of this letter. An original and 11 copies of a motion must be filed with the chief clerk in person, or by mail to the chief clerk's address on the attached mailing list. On the same day the motion is transmitted to the chief clerk, a copy must be mailed to the applicant's address listed on the attached mailing list. If a motion is not acted on by the commission within 48 days after the date of this letter, then the motion shall be deemed overruled.

Individual members of the public may seek further information by calling the TNRCC Office of Public Assistance, toll free, at 1-800-687-4040.

Sincerely,

A handwritten signature in black ink, appearing to read "LaDonna Castañuela".

LaDonna Castañuela  
Chief Clerk

LDC/jla

# TEXAS WATER COMMISSION



B. J. Wynne, III, Chairman  
John E. Birdwell, Commissioner  
Cliff Johnson, Commissioner

John J. Vay, General Counsel  
Michael E. Field, Chief Hearings Examiner  
Gloria A. Vasquez, Chief Clerk

Allen Beinke, Executive Director

March 27, 1991

Mr. Kenneth W. Durr, President  
Kelly Lane Utility Company  
2112 Rio Grande Street  
Austin, TX 78705

Re: Kelly Lane Utility Company, Inc.  
Docket No. 8973-C  
Application to amend sewer CCN

Dear Applicant, Permittee, or Representative:

Enclosed is a certified copy of:

- (✓) an order of the Commission issuing, amending, transferring or cancelling a Certificate of Convenience and Necessity (CCN). A certified copy of the CCN is enclosed.
- ( ) a CCN issued by the Commission.
- ( ) an order dismissing without prejudice an application for a CCN or for a change in water rates.
- ( ) an order of the Commission regarding the above-referenced matter.

Should you have any questions, please contact us.

Sincerely,

*Gloria A. Vasquez*  
Gloria A. Vasquez, Chief Clerk

GAV:pm  
Enclosure  
cc/with enclosure:

Mr. Richard E. Kammerman, Attorney, 323 Congress Avenue, Suite 200,  
Austin, TX 78701

THE STATE OF TEXAS  
COUNTY OF TRAVIS  
TEXAS WATER COMMISSION



I hereby certify that this is a true and correct copy of a Texas Water Commission Document, the original of which is filed in the permanent records of the Commission.

Given under my hand and the seal of office on  
MAR 27 1991

*Gloria A. Vasquez*  
Gloria A. Vasquez, Chief Clerk  
Texas Water Commission

APPLICATION NO. 8973-C

IN THE MATTER OF THE APPLICATION §  
OF KELLY LANE UTILITY COMPANY, §  
INC. TO AMEND SEWER CERTIFICATE §  
OF CONVENIENCE AND NECESSITY NO. §  
20720 IN TRAVIS AND WILLIAMSON §  
COUNTIES, TEXAS

BEFORE THE  
TEXAS WATER COMMISSION

ORDER

On March 27, 1991, the Texas Water Commission pursuant to Chapter 13 of the Texas Water Code considered the application of Kelly Lane Utility Company, Inc. to amend sewer Certificate of Convenience and Necessity No. 20720 in Travis and Williamson Counties. After considering the evidence, the Commission finds that:

No person has requested a public hearing on the application;

Notice of the application was given all affected and interested parties;

The criteria set forth in Section 13.246(c) have been considered by the Commission; and

Granting the application is necessary for the service, accommodation, convenience and safety of the public.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS WATER COMMISSION that the amendment is granted and the amended Certificate of Convenience and Necessity No. 20720 is issued to Kelly Lane Utility Company, Inc. in accordance with the terms and conditions set forth herein and in the certificate.

BE IT FURTHER ORDERED that Kelly Lane Utility Company, Inc. shall serve every customer and applicant for service within the area certificated under Certificate of Convenience and Necessity No. 20720 and that such service shall be continuous and adequate.

Issued Date: March 27, 1991

TEXAS WATER COMMISSION

ATTEST:

*Gloria A. Vasquez*  
Gloria A. Vasquez, Chief Clerk

*B. J. Wynne, III*  
B. J. Wynne, III, Chairman

THE STATE OF TEXAS  
COUNTY OF TRAVIS  
TEXAS WATER COMMISSION



I hereby certify that this is a true and correct copy of a Texas Water Commission Document, the original of which is filed in the permanent records of the Commission.

Given under my hand and the seal of office on  
MAR 27 1991

*Gloria A. Vasquez*  
Gloria A. Vasquez, Chief Clerk  
Texas Water Commission

CERTIFICATE OF CONVENIENCE AND NECESSITY

To Provide Sewer Service Under V.T.C.A., Water Code  
and Texas Water Commission Substantive Rules

Certificate No. 20720

I. Certificate Holder:

Name: Kelly Lane Utility Company, Inc.

Address: 2112 Rio Grande St.  
Austin, Texas 78705

II. General Description and Location of Service Area:

The applicant's two proposed certificated service areas are described as follows:

The northern-most service area is located approximately 17.8 miles north-northeast of downtown Austin, Texas on Farm to Market Road 685. The service area is generally bounded on the west by Farm to Market Road 685 and on the south by Wilbarger Creek in Travis County, Texas, and;

The southern-most service area is located approximately 15.3 miles north-northeast of downtown Austin, Texas on Wilke Road. The service area is generally bounded on the west by Schultz Lane, on the north by Meister Lane and on the east by Wilke Lane in Travis and Williamson Counties, Texas.

III. Certificate Maps:

The certificate holder is authorized to provide sewer service in the area identified on the Commission's official sewer service area map, WRS-227 and WRS-246, maintained in the offices of the Texas Water Commission, 1700 North Congress, Austin, Texas with all attendant privileges and obligations.

This certificate is issued under Application No. 8973-C and subject to the rules and orders of the Commission, the laws of the State of Texas, conditions contained herein and may be revoked for violations thereof. The certificate is valid until amended or revoked by the Commission.

Issued Date: March 27, 1991

ATTEST: *Gloria A. Vasquez* *BSW*  
For the Commission



COUNTY OF TRAVIS IS  
I hereby certify that this is a true and correct copy of a Texas Water Commission document, the original of which is filed in the permanent records of the Commission.  
Given under my hand and the seal of office on OCT 26 1989

TEXAS WATER COMMISSION



*Brenda W. Foster*  
Brenda W. Foster, Chief Clerk  
Texas Water Commission

CERTIFICATE OF CONVENIENCE AND NECESSITY

To Provide Sewer Service Under V.T.C.A., Water Code  
and Texas Water Commission Substantive Rules

Certificate No. 20720

I. Certificate Holder:

Name: Kelly Lane Utility Company, Inc.

Address: 2112 Rio Grande  
Austin, Texas, 78705

II. General Description and Location of Service Area:

The area covered by this certificate is located approximately 18 miles northeast of downtown Austin, Texas on Farm to Market Road 685. The service area is generally bounded on the west by Farm to Market Road 685 in Travis County, Texas.

III. Certificate Maps:

The certificate holder is authorized to provide sewer service in the area identified on the Commission's official sewer service area map, WRS-227, maintained in the offices of the Texas Water Commission, 1700 North Congress, Austin, Texas with all attendant privileges and obligations.

This certificate is issued subject to the rules and orders of the Commission, the laws of the State of Texas, conditions contained herein and may be revoked for violations thereof. The certificate is valid until amended or revoked by the Commission.

ISSUED this 26th day of October, 1989.

ATTEST:

*Brenda W. Foster* *BW*  
For the commission

# TEXAS WATER COMMISSION

AND STATE OF TEXAS  
COUNTY OF TRAVIS

I hereby certify that this is a true and correct copy of a Texas Water Commission document, the original of which is filed in the permanent records of the Commission.  
Given under my hand and the seal of office on OCT 26 1989



*Brenda W. Foster*  
Brenda W. Foster, Chief Clerk  
Texas Water Commission

APPLICATION NO. 8084-C

IN THE MATTER OF THE APPLICATION )  
OF KELLY LANE UTILITY COMPANY, )  
INC. FOR A SEWER CERTIFICATE OF )  
CONVENIENCE AND NECESSITY IN )  
TRAVIS COUNTY, TEXAS

BEFORE THE  
TEXAS WATER COMMISSION

## ORDER

On October 26, 1989, the Texas Water Commission pursuant to Chapter 13 of the Texas Water Code considered the application of Kelly Lane Utility Company, Inc. for a sewer Certificate of Convenience and Necessity in Travis County. After considering the evidence, the Commission finds that:

Caprock Savings and Loan protested this application, however, the protestant does not have a justiciable interest in this matter. There were no other protests received;

Notice of the application was given all affected and interested parties;

The criteria set forth in Section 13.246(c) have been considered by the Commission; and

Granting the application is necessary for the service, accommodation, convenience and safety of the public.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS WATER COMMISSION that the application is granted and Certificate of Convenience and Necessity No. 20720 be issued to Kelly Lane Utility Company, Inc. in accordance with the terms and conditions set forth herein and in the certificate.

BE IT FURTHER ORDERED that Kelly Lane Utility Company, Inc. shall serve every customer within the area certified under Certificate of Convenience and Necessity No. 20720 and that such service shall be continuous and adequate.

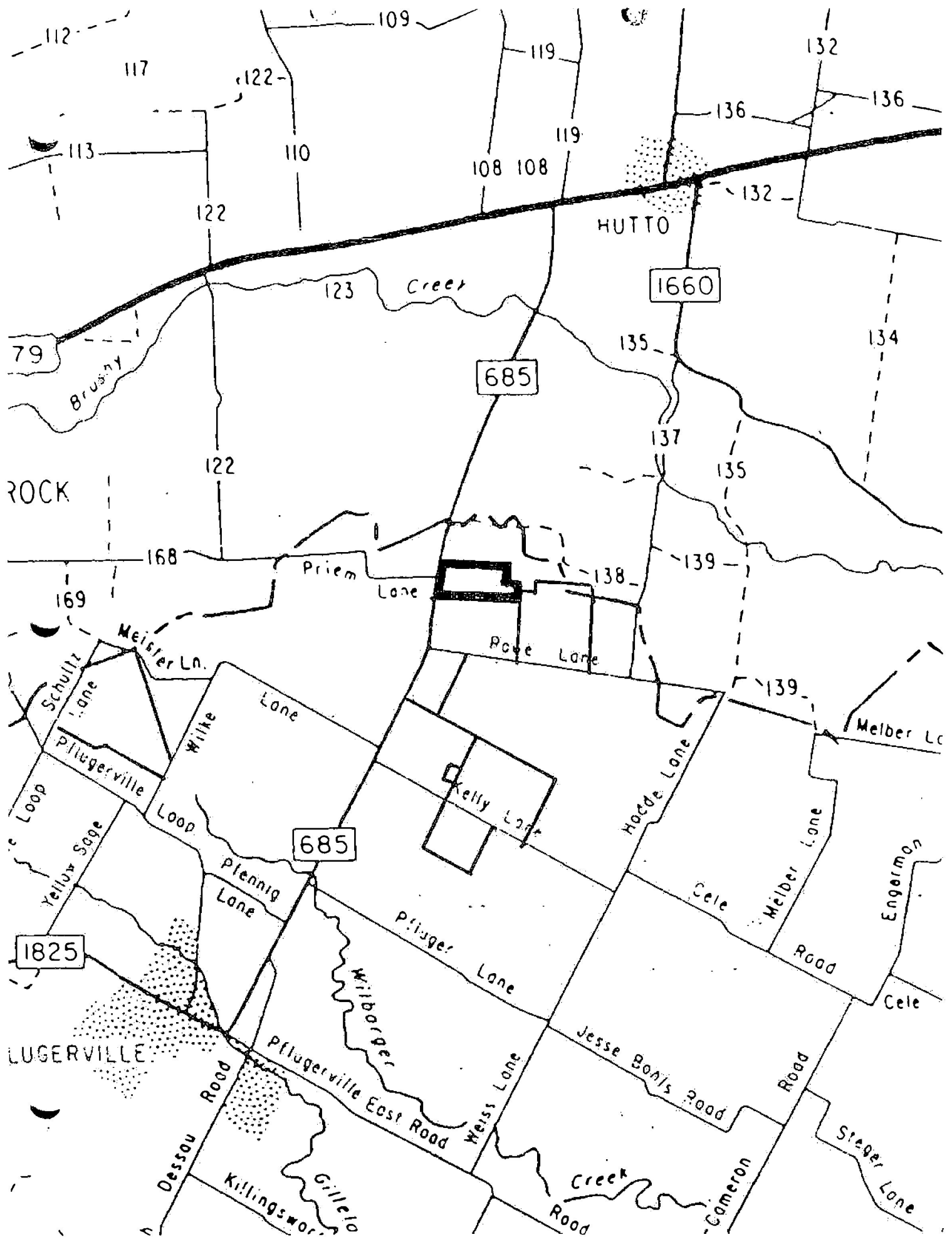
Signed this the 26th day of October, 1989.

TEXAS WATER COMMISSION

ATTEST:

*Brenda W. Foster*  
Brenda W. Foster, Chief Clerk

*B. J. Wynne, III*  
B. J. Wynne, III, Chairman



## **4: North Pflugerville Wastewater Project Participating Agreement**

## NORTH PFLUGERVILLE WASTEWATER PROJECT PARTICIPATING AGREEMENT

This is the North Pflugerville Wastewater Project Participating Agreement ("Participating Agreement") entered into by and among Kelly Lane Utility Company ("Kelly Lane") and Wilke Lane Utility Company ("Wilke Lane"), which are collectively sometimes referred to as "Utilities", and the City of Pflugerville ("City" or "Manager") entered into on the date set forth herein.

### RECITALS

WHEREAS, Kelly Lane is the owner of a tract of land containing approximately 3.1 acres as shown in Exhibit "A" attached hereto and located within the City of Pflugerville ("Kelly Lane Land"); and

WHEREAS, Kelly Lane owns/leases a sewage treatment plant ("Kelly Lane Plant") and lift station which are located on the Kelly Lane Land ( the Kelly Lane Plant and lift station located on the Kelly Lane Land are collectively referred to herein as the "Kelly Lane Facilities"); and

WHEREAS, Kelly Lane also is the owner of those certain easements from the Kelly Lane Land appurtenant to the Kelly Lane Land, which are more particularly described as Exhibits "C", "D" and "E" to that certain "Deed" recorded in Volume 11209, Page 1283 or the Real Property Records of Travis County, Texas (such easements being more particularly described in Exhibit "B" attached hereto and referred to herein as the "Kelly Lane Easement") and the Kelly Lane Easement is part of the Kelly Lane Facilities; and

WHEREAS, Wilke Lane owns that certain 5.0 acre tract of land shown in Exhibit "C" ("Wilke Lane Land") on which a sewage treatment plant ("Wilke Lane Plant") and lift station are located (collectively referred to as the "Wilke Lane Facilities"); and

WHEREAS, Kelly Lane has entered into a Wholesale Wastewater Service Agreement with the City, a copy of which is attached hereto as Exhibit "D"; and

WHEREAS, Kelly Lane is also the holder of that certain Certificate of Convenience and Necessity ("CCN") number 20720 issued by the Texas Natural Resource Conservation Commission, predecessor to the Texas Commission on Environmental Quality ("TCEQ"), (a copy of which is attached as Exhibit "E") which allows Kelly Lane to provide exclusive retail wastewater service in the service area as described in the CCN ("Kelly Lane Retail Service Area"); and

WHEREAS, Kelly Lane also provides wholesale service to other entities listed in Exhibit "F", which is attached hereto ("Kelly Lane Wholesale Service Area"), and the Kelly Lane Retail Service Area and Kelly Lane Wholesale Service Area are collectively referred to herein as "Kelly Lane Service Area" ; and

WHEREAS, Wilke Lane entered into a Wholesale Wastewater Service Agreement with the North Travis County MUD No. 5, which was assumed by the City ("Wilke Wholesale Service Agreement") under which Wilke Lane provides wholesale wastewater service to an area that formerly comprised North Travis MUD No. 5 and which area is now part of the City as a result of an annexation ("Wilke Lane Service Area") and is shown in Exhibit "G"; and

WHEREAS, the City and the Utilities desire to promote regionalization of the wastewater services in and around the City and recognize that the TCEQ (formerly known as the Texas Natural Resource Conservation Commission, "Commission") and its predecessor agencies, the Legislature of the State of Texas, and the Courts of the State of Texas, have established, consistently stated, and enforced, as a matter of public policy and State law under the Texas Water Code, the policy of regionalization of wastewater treatment plants, while encouraging the availability of sewer services to those who require the same as part of the economic development of the State of Texas; and

WHEREAS, the Parties, by executing this Participating Agreement have determined that they are acting in a manner that is consistent with the policy of regionalization, while making sewer services available to those who require the same in order to promote economic development of the State of Texas; and

WHEREAS, this Participating Agreement contains the agreements and documents to implement the Project and its goals, including implementation of the State policy of reducing the number of wastewater treatment plants by decommissioning the Kelly Lane Facilities and diversion of the flow that had been treated at the Kelly Lane Facilities to a City Plant; and

WHEREAS, one of the other goals of the Project is to allow the City to have control over wastewater services within its corporate limits and in large portions of its extraterritorial jurisdiction; and

WHEREAS, provided however, that the failure to occur of any of the Recitals or Goals shall not be the basis for or justify the termination, rescission, abrogation or breach of this Agreement.

WHEREAS, in light of the foregoing Recitals, the Parties enter into this Participating Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged by the respective Parties, including the mutual promises contained herein, and the above Recitals, the Parties hereto agree as follows:

1. Recitals and Definitions. The Parties represent to each other that the Recitals stated above are true and correct and form a significant basis for the execution of this Participating Agreement. As used in this Participating Agreement, the following terms shall have the following meanings:

a. Active Connection. The term "Active Connection" means a single family modular or manufactured housing residence or any tract of land, residential or non-residential, with or without improvements on it, notwithstanding whether the improvements have been

partially or substantially completed, where a water meter has been installed on and/or for the benefit of such residence or tract of Land.

b. City Service Area. The term "City Service Area" means all of the area within or outside of the city limits of the City where the City has a right to provide Service.

c. Current Actual Knowledge and Belief. When reference is made in this Participating Agreement or any document identified, referenced or related to this Participating Agreement to Kelly Lane's or the Utilities' "Current Actual Knowledge And Belief", such terms shall include only the express information of a fact by the officers of Kelly Lane known or believed as of the date of the document in which the representation or warranty is made, but shall exclude: (i) constructive knowledge or notice; (ii) imputed knowledge of third parties that may be imputed to Kelly Lane and/or its officers, agents and directors ("agents"); and (iii) any duty of inquiry by Kelly Lane and its agents and the exercise of that duty.

d. Customers. The term "Customers" as used in this Participating Agreement means all persons, firms and entities that currently receive Sewer Service from the Kelly Lane Plant or the Wilke Lane Plant and all those persons both in the area covered by the CCN, and other areas within and without the limits of the City which by contract have a right to receive Service from Kelly Lane as of December 10, 2002, or are receiving Service at the Kelly Lane Plant or the Wilke Lane Plant.

e. Infiltration Water. The term "Infiltration Water" means water that leaks into the Collection System.

f. LUE. The term "LUE" means living unit equivalent and is a measure of the estimated average daily volume of Wastewater generated by a single family residence. For the purposes of this Agreement, an LUE represents 350 gallons average per day of Wastewater flow on a monthly average basis, except for those Wholesale Service Customers of the Utilities whose contracts specify a different amount, in which case the amount set forth in the Wholesale Service Customer's contract shall be used to determine the appropriate flow per LUE.

g. LUEs Billed. The term "LUEs Billed" means the number of LUEs attributable to a Customer and billed to that Customer. For Retail Service Customers, the number of LUEs Billed equals one, unless a different amount is set forth under a specific contract with that Customer. For Wholesale Service Customers, the number of LUEs Billed equals the amount as calculated under the terms of the applicable Wholesale Service contract with that Customer. LUEs Billed may vary from the number of Active Connections.

h. Retail Service. The term "Retail Service" means the provision of retail wastewater service by the Kelly Lane or the City to any person for land that person owns or occupies within the City Service Area or the Kelly Lane Service Area.

i. Service. The term "Service" means Retail Service and/or Wholesale Service as the context requires.

j. Wholesale Service. The term "Wholesale Service" means the treatment and disposal, on a wholesale basis, of all Waste generated in or arising out of activities and

processes within the Kelly Lane Service Area, the Wilke Lane Service Area, or the City Service Area.

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

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

2. Definitive Participating Agreement. The Parties previously had entered into a Memorandum of Agreement executed to be effective September 10, 2002 ("Memorandum"). The Parties acknowledge that this Participating Agreement is the Definitive Participating Agreement referred to in the Memorandum.

3. No Partnership. The Parties hereto specifically represent that they are not and will not be partners. Nothing in this Participating Agreement or any document or group of documents related to this Participating Agreement, will ever be interpreted as creating a partnership, joint venture or any other type of partnership by and among any of the Parties hereto. In particular, the Parties agree that there will not be sharing of profits and/or losses under this Participating Agreement.

4. Independent. The Utilities and the City warrant and represent to each other that each are independent of the other, but are acting together under this Participating Agreement to accomplish the goals of the Project.

5. Project. The term "Project" as used in this Participating Agreement involves the regionalization of wastewater services and the availability of Wastewater services to those who require the same in the City and areas within its extraterritorial jurisdiction.

a. Kelly Lane. The Project also involves the financing and construction of a large lift station on the Kelly Lane Land, which is referred to in the Memorandum as the "Kennemer Site" and other locations to be determined by the City as the Manager of the Project. Included within the Project is the construction of a large trunk sewer line from the Kennemer Site through the Kelly Lane Easement to be sold by Kelly Lane to the City and other easements to be obtained or already obtained by the City to divert the wastewater flow currently being treated at and to be treated by the Kelly Lane Facilities to the City Plant as shown in Exhibit "I" attached hereto. Upon the diversion of such flow, the City will decommission the Kelly Lane Facilities located on the Kennemer Site. However, between the date of this Participating Agreement and the date the trunk line has been completed, the City will acquire the Kelly Lane Facilities from Kelly Lane and operate the Kelly Lane Facilities to serve all of the existing and future Customers that are within the area covered by the CCN, and the areas within the Kelly Lane Service Area and the City Service Area.



b. Wilke Lane. Another part of the Project involves the operation of the Wilke Lane Facilities by the City and right of the City under certain conditions and terms to acquire the Utilities.

c. Benefits. One of the benefits of the Project is to allow the City the opportunity to properly plan for the continued growth of the City and implement land use planning that will be beneficial to all residents of the City.

6. Steps Towards Implementation of the Project. The following steps will be taken by the Parties in order to implement the Project.

a. Acquisition of Kelly Lane Utilities. The City agrees to enter into an Earnest Money Contract to purchase the Kelly Lane Facilities from Kelly Lane. A copy of that Earnest Money Contract will be attached hereto as Exhibit "I". The Purchase Price of the Kelly Lane Facilities is \$2,000,000.00. Kelly Lane and the City will execute appropriate documents to implement such purchase and sale, which will be closed at a time and date acceptable to the Parties, but no later than December 10, 2002.

b. Planning and Construction. Upon execution of this Participating Agreement, in addition to acquiring the Kelly Lane Utilities, as part of the regionalization plan, the City will immediately begin work on planning and implementing the construction of the lift station at the Kennemer Site, any other lift stations and easements that may be needed, and the trunk line to divert the wastewater now being treated at the Kennemer Site to the City Plant as shown on Exhibit "H".

7. Wholesale Wastewater Service Agreement. The City and Kelly Lane shall enter into a Wholesale Wastewater Service Agreement ("Wholesale Wastewater Service Agreement") effective December 10, 2002, whereby the City will provide retail and wholesale services to current and future Customers of Kelly Lane. Under the Wholesale Wastewater Service Agreement for Kelly Lane (attached hereto as Exhibit "J"), the City will provide wastewater treatment services to all Customers and for this service, will charge Kelly Lane at a rate of \$8.10 per LUEs Billed per month (i.e., retail and wholesale connections based upon a general rate and charge for this type of wholesale customer of \$1.35 per 1,000 gallons as set for the City's rate ordinance for an estimated 6,000 gallons per month based upon historical data). The Wholesale Wastewater Service Agreement is described in Exhibit "J".

8. Wilke Lane Operating Agreement. The City will operate the Wilke Lane Facilities under the terms of the Professional Services Agreement for Wastewater Plant Operations ("Wilke Operating Agreement"), a copy of which is attached hereto as Exhibit "K", for \$10 per LUEs Billed per month. The Wilke Operating Agreement will allow the City to operate the Wilke Lane Plant and will reflect all charges and payments by the City to Wilke Lane as shown in Exhibit "K". If Wilke Lane desires to sell the Wilke Lane Facilities to any third party, it will be sold subject to the terms of this Participating Agreement, as required in Section 22.

9. Kelly Lane Operating Agreement. The Professional Services Agreement for Wastewater Collection System Operation and Billing Services ("Kelly Operating Agreement") for Kelly Lane as shown in Exhibit "L", will require the City, as the Manager, to

maintain and operate the Kelly Lane Collection System in order to serve the Customers of Kelly Lane for \$8.21 per Customer per month. All costs of operation and maintenance will be paid by the City and the City will be compensated for such services as set forth in the Kelly Operating Agreement attached hereto as Exhibit "L".

10. Operating Agreements - Generally. The City will bill all Customers of Kelly Lane and Wilke Lane the monthly sewer charges that are being billed by the respective Utilities to their respective Customers ("Utility Charges") at a rate no less than the rates charged as of December 1, 2002 by the each of the Utilities. The Kelly and Wilke Operating Agreements provide that the City will pay to the respective Utilities, on a monthly basis, an amount equal to the amounts billed by the City to the Customers of the respective Utilities, less payments due the City by the respective Utilities. The Kelly and Wilke Operating Agreements shall be effective as of December 1, 2002, and are shown in Exhibits K and L attached hereto.

11. Taxes. The Parties specifically agree that the Project is not and will not be liable for any taxes but recognize that Kelly Lane and Wilke Lane are private entities subject to taxation while the City and any assets it owns, whether under this Participating Agreement or otherwise, are tax exempt pursuant to Article XI, Section 9, of the Texas Constitution and Tex. Rev. Civ. Stat. Ann. Art. 7150, Section 4 (1960).

12. Tap Fees and LUE Fees. The Manager will, under the First Amendment to Wholesale Wastewater Service Agreement and the Second Amendment to Agreement for Providing Wholesale Wastewater Service, collect for Kelly Lane and Wilke Lane, and as well as the Manager, all Tap Fees and LUE Fees and distribute those fees to Kelly Lane as stated in the First Amendment to Wholesale Wastewater Service Agreement as shown in Exhibit "M" and as stated in the Second Amendment to Agreement for Providing Wholesale Wastewater Service for Wilke Lane as shown on Exhibit "N". The City shall be entitled to keep all Tap Fees, provided that such fees do not exceed \$400 per tap in the areas subject to Kelly Lane's retail tariff approved by TCEQ. The LUE Fees collected pursuant to such agreements will be distributed in accordance with the terms and provisions of the Escrow Agreement attached as Exhibit "O".

13. Termination of Participating Agreement. The City and the Utilities agree that significant steps towards the regionalization will have happened and that the assets of the Utilities will have substantially increased in value upon the occurrence of all of the following events ("Events"): (1) completion of construction of the lift station at the Kennemer Site; (2) completion of construction of the second lift station, or any other lift stations to divert the flows from the Kennemer Site to the City's wastewater treatment plant as shown in Exhibit "H"; (3) completion of the trunk line to divert the wastewater flow from the Kelly Lane Facilities at the Kennemer Site to the City Plant as shown on Exhibit "H"; and (4) diversion of all or part of the flows being treated by or which would be treated by the Kelly Lane Facilities at the Kennemer Site to the City Plant as shown on Exhibit "H", but no sooner than January 1, 2005. Thus, if all of the Events occur, but no sooner than January 1, 2005, the Parties will have the following rights.

a. City's Rights. The City will have the right to exercise an option to purchase one hundred percent (100%) of the Utilities (the term "Utilities" also means assignees of the Utilities) by giving notice in writing to the Utilities between January 1, 2005 and the close

of business on January 31, 2005. If the City gives such Notice, the City then has the obligation to and must consummate the purchase of the Utilities pursuant to the terms of the purchase as stated below in paragraph 13.b. The purchase shall close in the month of January, 2006. After the consummation of the purchase of the Utilities and the City has issued the bonds and delivered the bonds to the Utilities described below in paragraph 13.b, this Participating Agreement shall end as long as the City has paid all sums due to the Utilities.

b. Terms of Purchase - Issuance of Bonds. The terms of the purchase by the City pursuant to paragraph 13.a above are as follows. The purchase price is \$12,000,000.00, to be paid by the City through the issuance of tax exempt bonds, notes or other obligations ("Bonds") to the Utilities. The Bonds will bear an initial interest rate of five percent (5%) per annum for the first ten (10) years and will be payable as follows:

- (i) All of the Bonds will be payable interest only for ten (10) years from the date of issuance, but shall be callable at any time after five (5) years at a price of par plus accrued interest to the date of redemption.
- (ii) If the Bonds are not called and paid by the end of the tenth (10th) year after date of issuance, the Bonds will then be payable at the interest rate of six percent (6%) per annum and will be due in an additional ten (10) years, that is, twenty (20) years from the date of issuance.
- (iii) During the first ten (10) year period, the interest will be payable quarter-annually, on the first day of January, April, July and October commencing on April 1, 2006, and continuing on the same dates during each calendar year thereafter.
- (iv) If the City has not redeemed the Bonds in full by the end of the tenth (10th) year from date of issuance, the second (2nd) ten (10) year term of the Bonds will be payable quarter-annually, principal and interest, in an amount to amortize the Bonds so that the Bonds are paid in full at the end of twenty (20) years from the date of issuance. All principal and interest payments on the Bonds will be made on the first (1st) day of each quarter of each year, during the second (2nd) ten (10) year period stated above.
- (v) At the sole option of the City, the Bonds may be secured by and payable from either of the following: (1) a first lien on and pledge of the net revenues of the City's combined waterworks and sewer system, which lien is on parity with the City's revenue bonds or other obligations (now or hereafter outstanding) payable from all or any part of the revenues of the City's combined waterworks and sewer system; (2) a pledge of ad valorem taxes of the City; or (3) any combination of (1) and (2). To the extent allowed by law at the time of the issuance of the Bonds and only as additional security to the alternatives set forth above, the City, in its sole

discretion, also has the right to pledge any additional lawfully available source of funds to the payment of the Bonds.

- (vi) The Bonds will be in form and in substance reasonably acceptable to Bond Counsel for the Utilities and the City.

c. Utilities' Rights. If the City does not exercise its option to purchase the Utilities under paragraph 13.a. herein, within the time period set forth in that paragraph, that is, between January 1, 2005 and the close of business on January 31, 2005, and/or does not consummate the purchase of the Utilities no earlier than January 1, 2006 and no later than January 31, 2006, pursuant to provisions of paragraphs 13.a and 13.b herein, then the Utilities shall have the following rights.

- (i) This Participating Agreement shall continue in full force and effect in the sole discretion of the Utilities for a period not to exceed forty (40) years at which time this Participating Agreement will end. The City will continue to provide the services described herein to the Utilities at the rates and charges set forth in Exhibits J, K, L, M and N, and will pay all sums due to the Utilities under these Exhibits during such forty (40) year period of time except the City shall not retain any LUE fees that it collects, but instead shall pay all LUE fees it collects regarding the Wilke Lane Service Area and Kelly Lane Service Area to the respective Utilities.
- (ii) In addition to the rights granted in paragraph 13.c.(i.)above, the Utilities shall have the right to take all of the funds held in escrow and, in the sole discretion of the Utilities, use those funds that were held in escrow for such purposes as determined by the Utilities, in its sole discretion. One of the purposes may be the construction and development of a regional wastewater treatment plant and sewer lines and easements, if necessary related thereto ("Regional Site") by the Utilities to be located on approximately seventeen (17) acres of land owned or to be acquired by the City generally south and east of the intersection of Weiss Lane and Pfluger Lane in Travis County, Texas or such acreage of land which in the opinion of the Utilities is adequate to construct and operate a 10 million gallon per day ("mgd") wastewater treatment plant. The City currently anticipates that the Regional Site will be located as shown on Exhibit "P". If this option is implemented by the Utilities, the City agrees to execute a lease with the Utilities or its designee ("Designee") for the Regional Site for a period of ninety nine (99) years, plus obtain for the benefit of the Utilities all easements needed by the Designee to construct and operate a regional Wastewater treatment plant. The City will also provide assistance to the Designee in obtaining all permits, approvals and consents for the construction of the Regional Site and operation of a regional sewage treatment plant with an average daily flow of not

less than 10 mgd, although such assistance may cost the City significant sums in attorney's fees, engineering costs, and other costs. If the Designee exercises this option, all sums due under this Participating Agreement shall end only upon Notice from the Utilities or the Designee that the regional sewage treatment plant has been completed, the flows from the Kelly Lane Service Area have been diverted to the regional sewage treatment plant on the Regional Site, and all Customers described herein by and among Kelly Lane and others have been connected to the Regional Site and the City has transferred to the Utilities all of the operating information, including information about Customers and all deposits, and the City has paid the Utilities all sums due the Utilities whether under this Participating Agreement or otherwise. The City shall bear all costs of transferring the customers to the Utilities and Designee. Thereafter, at the sole discretion of the Designee, when all of the foregoing has occurred and the regional sewage treatment plant on the Regional Site is operational as stated above, then the Utilities or Designee shall provide written notice to the City and the Utilities shall not pay the City any sums and the City shall not pay the Utilities any sums for services provided by the City to the Utilities, and at that time, the Professional Services Agreements shown in Exhibits K and L shall terminate, unless terminated earlier by Kelly Lane.

- (iii) In addition to the rights contained in paragraph 13.c.ii above, if the Utilities elect to implement the Regional Wastewater Plant and provide wholesale and retail service only to the Kelly Lane Service Area, the Utilities shall also have the right to continue to receive from the City, and the City will pay to the Utilities, the monthly payments for each LUE served in the Wilke Lane Service Area for a period of forty (40) years from the date hereof under the amended Wilke Lane Wholesale Service Agreement with the City.

d. Liquidated Damages. If the City has breached or defaulted on any of the provisions of this Participating Agreement or any other agreement related to this Participating Agreement, in addition to all rights and remedies otherwise contained herein, or at law or in equity, the Utilities shall have the right to recover from the City and the City shall be liable to Kelly Lane and Wilke Lane for the sum of \$5,000.00 per day for each day that the City fails or has failed to comply with the provisions of this Participating Agreement from the date of demand by Kelly Lane or Wilke Lane (or their assignee) to the City for compliance. The said sum of \$5,000.00 per day is a liquidated amount because of the complexities of this arrangement, the uncertainties of the Project, the difficulties in determining the actual amounts of damages that may be incurred by Kelly Lane and Wilke Lane, which amount may be more or less than \$5,000.00 per day, and other factors, including the size of the Project relating to this arrangement, the waiver by the Utilities of rights to receive all of the LUE fees as allowed in the Escrow Agreement, and/or any document related to this Participating Agreement and the Project, the Parties agree that liquidated damages in the amount of \$5,000.00 per day, are reasonable and

necessary in order to fully reimburse Kelly Lane and Wilke Lane for the losses that it will incur as a result of any breach or default by the City.

14. Accounting - Inspection. The Utilities shall have the right, from time to time, upon reasonable notice to the City, to inspect the City's records regarding payments and the number of Customers served by the City in the Kelly Lane Service Area and Wilke Lane Service Area. The City will cooperate in all respects regarding such audit. In the event the audit indicates that the City has underpaid either or both of the Utilities by an amount in excess of three percent (3%) of the sums due to the Utilities, then the City shall pay for all of the costs incurred by the Utilities for professionals to review the books and records of the City and shall pay to the Utilities the sum of \$5,000.00 to reimburse the Utilities for costs incurred by non-professional employees or agents of the Utilities for such work.

15. Confidentiality. To the largest extent allowed by applicable law, the Parties agree that each will keep all of the information received and disclosed pursuant to this Participating Agreement strictly confidential.

16. Non-Assumption of Liabilities. The Utilities agree that the City will not assume any liability of the Utilities, except as expressly assumed herein or any document executed pursuant to this Participating Agreement, or as expressly assumed in writing by the City.

17. Regulatory Approval. The Parties agree that each will cooperate with the other to file appropriate documentation to receive, as necessary, all regulatory approvals required from the TCEQ. The Parties further agree to promptly respond to each others' request and to promptly pursue all such consents and approvals that may be required by the TCEQ.

18. City Covenant. The City will take any actions that may be necessary to assure (i.e., refinancing its existing utility system bonds) or refrain from any action that would adversely affect the treatment of the City's existing utility systems bonds, or any such bonds that may be issued by the City in the future as obligations described in Section 103 of the Internal Revenue Code of 1986, as amended, the interest on which is not includable in the gross income of the holder for the purposes of federal income taxation.

19. Default-Notice-Cure-Remedies. In the event that either Party hereto claims the other Party has failed to pay money when due under any of the provisions of this Participating Agreement, or any other agreement related to this Participating Agreement, the Party claiming the default shall notify the other Party in writing of the claimed default and allow the other Party ten (10) days to cure such monetary default (provided, however, that no notice of default will be required if notice of a monetary default has been given under this provision and/or any other agreement related to this Participating Agreement on two or more earlier occasions in the preceding twelve-month period). In the event that either Party hereto claims the other Party has defaulted under any of the non-monetary provisions of this Participating Agreement, or any other agreement related to this Participating Agreement, the Party claiming the default shall notify the other Party in writing of the claimed default and allow the other Party thirty (30) days to cure such default. In the event that the Party to whom such notice has been sent is unable to cure such default within the 30 day period because of circumstances beyond its control, then the said 30 day period shall be extended for a reasonable amount of time to allow that Party seeking to cure the default the opportunity to cure the default, as long as that Party seeking to cure that default is



acting diligently and in good faith. In the event that the Party claiming the breach determines, in good faith, that the other Party has not cured the default, then in addition to the Party claiming default, shall have the right to enforce in arbitration all rights and remedies contained at law, in equity, herein, and in any document related to this Participating Agreement. With reference to the Utilities, the Utilities shall have the right, in addition to all other rights and remedies contained herein or at law or in equity, to recover from the City liquidated damages as contained in paragraph 13.d. The notice and cure provisions herein do not apply to payments due under the Bonds and under Article VI of the Professional Service Agreement attached hereto as Exhibits K and L.

20. Arbitration Provision. Any controversy, dispute, or claim arising out of or relating to this Participating Agreement, or any other agreement related to this Participating Agreement, or any part thereof, or any breach thereof, shall be settled in accordance with the terms and provisions of that certain "Arbitration Agreement" attached as Exhibit "Q" dated effective November 12, 2002. However, no claim and demand for arbitration under this paragraph or the Arbitration Agreement shall be made by the City against either or both of the Utilities after two years and one day from date hereof, and in such arbitration, the Utilities will never be liable to the City for damages, including attorney's fees and costs, in excess of \$200,000.00 notwithstanding how many or the nature of the claims of the City against both of the Utilities.

21. Entire Agreement. This Participating Agreement contains the entire agreement of the Parties. There are no other agreements, oral or written, between the Parties regarding the Property and this Participating Agreement can be amended only by written agreement signed by the Parties hereto.

22. Assignment - Binding Effect. This Participating Agreement shall only be assignable by the Utilities to one or more entities with the prior written notice to the City, which notice will be timely provided to the City, and such notice shall contain the name, address and telephone number of the transferee and its principals and the transferee is in good standing with the State of Texas as a Texas entity and that the transferee has agreed to assume, in writing, all of the obligations of the Utilities. Further, the Utilities agree that they may not transfer or sell any of their assets to any other entity without this Participating Agreement being assigned to and assumed by such entity. Subject to the foregoing, this Participating Agreement shall inure to the benefit of and be binding upon the successors and assigns of the respective Parties.

23. Effective Date. The Effective Date of this Participating Agreement is shown at the end of this Participating Agreement.

24. Notice. Any notice, communication, request, reply or advice (severally and collectively referred to as "Notice") in this Participating Agreement provided or permitted to be given, made or accepted by either Party to the other must be in writing. Notice may, unless otherwise provided herein, be given or served: (i) by depositing the same in the United States Mail, certified, with return receipt requested, addressed to the Party to be notified and with all charges prepaid; (ii) by depositing the same with Federal Express or another service guaranteeing "next day delivery", addressed to the Party to be notified and with all charges prepaid; (iii) by delivering the same to such Party, or an agent of such Party; or (iv) by

transmitting the same to the Party to be notified by facsimile, provided that receipt for such facsimile is verified by the sender and followed by a notice sent in accordance with one of the other provisions set forth above. Notices will be effective on the date of delivery, deposit or transmittal in the manner described in this Section. For the purposes of notice, the addresses of the Parties shall, until changed as provided below, be as follows:

Utilities:

Kelly Lane Utility Company, Inc. and  
Wilke Lane Utility Company, Inc.  
Attention: Kenneth W. Durr, President  
205 East 43rd Street  
Austin, Texas 78751  
Telephone No.: (512) 458-2830  
Facsimile No: (512) 467-6776

With copy to:

Richard E. Kammerman  
Richard Kammerman, P.C.  
7200 North Mopac, Suite 150  
Austin, Texas 78731  
Telephone No.: (512) 343-2424  
Facsimile No.: (512) 343-6767

Purchaser:

City of Pflugerville, Texas  
Attn: Steve Jones, City Manager  
102 South 3rd Street  
Pflugerville, Texas 78660  
Facsimile No.: (512) 990-4374  
Telephone No.: (512) 990-4363

With copy to:

John J. Carlton  
Armbrust & Brown, L.L.P.  
100 Congress Avenue, Suite 1300  
Austin, Texas 78701  
Facsimile No. (512) 435-2360  
Telephone No. (512) 435-2300

The Parties have the right from time to time to change their respective addresses, and each has the right to specify as its address any other address within the United States of America by at least five (5) days written notice to the other Party. For purposes of this Participating Agreement, the term "business day" or "business days" shall mean and refer to all calendar days other than Saturdays, Sundays and days which are generally recognized as holidays by financial institutions in the State of Texas. If any date or any period provided in this Participating Agreement ends on a day which is not a business day, then the applicable period shall be extended to the first succeeding day which is a business day.



25. Commissions. The Utilities and the City each represent and warrant to the other that no brokerage commission is payable to any person or entity in connection with this transaction, and each agrees to and does hereby indemnify and hold the other harmless against the payment of any claims of commissions.

26. Time. Time is of the essence in all things pertaining to the performance of this Participating Agreement.

27. Severability. If any provision of this Participating Agreement is illegal, invalid, or unenforceable under present or future laws, then, and in that event, it is the intention of the Parties hereto that the remainder of this Participating Agreement shall not be affected thereby, and it is also the intention of the Parties to this Participating Agreement that in lieu of each provision of this Participating Agreement that is illegal, invalid, or unenforceable, there be added as a part of this Participating Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible, and be legal, valid, and enforceable.

28. Waiver. Any failure by a Party hereto to insist, or any election by a Party hereto not to insist, upon strict performance by the other Party of any of the terms, provisions, or conditions of this Participating Agreement shall not be deemed to be a waiver thereof or of any other term, provision, or condition hereof, and such Party shall have the right at any time or times thereafter to insist upon strict performance of any and all of the terms, provisions, and conditions hereof.

29. Applicable Law and Venue. The construction and validity of this Participating Agreement shall be governed by the laws of the State of Texas. Venue shall be in Travis County, Texas.

30. Paragraph Headings. The paragraph headings contained in this Participating Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof.

31. Grammatical Construction. Wherever appropriate, the masculine gender may include the feminine or neuter, and the singular may include the plural, and vice versa.

32. No Offset; Waiver by City. All payments that will be due by the City to the Utilities under this Participating Agreement and any documents related to this Participating Agreement and the Bonds including, but not limited to, those payments due to the Utilities under Article VI of the Professional Service Agreements for Wilke Lane and Kelly Lane as shown in Exhibits "K" and "L", attached hereto, shall be made by the City without demand, setoff, counter-claim and abatement, and no payments shall be withheld by the City, notwithstanding whether the City claims that Utilities or either of such have breached any provision of this Participating Agreement or another document related to or executed pursuant to this Participating Agreement. Accordingly, in the event the City believes that the Utilities have breached or defaulted on any provision of this Participating Agreement and/or any document or agreement related or pursuant to this Participating Agreement, the City shall continue making payments as required under this Participating Agreement and the other documents related to this Agreement including the Professional Service Agreements in Exhibits "K" and "L" and under the Bonds, if the Bonds have issued, and the City shall have the right to submit the dispute to arbitration

pursuant to but limited by the provisions contained in paragraph 20 herein. All past due sums bear interest at the rate of one percent (1.0%) per month until paid if not paid within ninety (90) days after date.

**Further, and notwithstanding anything contained herein, at law or in equity, except for claims of the City arising under Section VI of the Earnest Money Contract shown in Exhibit "I", the City hereby waives and releases Kelly Lane of and from all claims of any kind and character that it may have and in the future, which have arisen in any way, directly or indirectly, out of the Participating Agreement and/or any document related or executed pursuant to this Participating Agreement, and the City further states, warrants and represents that it will not raise and waives any and all defenses of any kind or character to the payment of the sums due by the City to the Utilities. The City warrants and represents to the Utilities that the City executes the Release and Waiver after consulting with its counsel and being advised of the significance of this provision.**

33. Force Majeure. Except for any obligations under this Participating Agreement which can be satisfied solely with the payment of money, the duties of each Party to observe or perform any of the obligations or provisions of this Participating Agreement on its part to be performed or observed, shall be excused for a period of time equal to the period of any prevention, delay or stoppage due to causes beyond the control of the Party charged with performance or observation, whether by reason of strikes, civil riots, work stoppages, weather delays, fire or other casualty, acts of God, or other similar events or occurrences; provided, however, that in each event, the Party charged with performance or observation must take such steps as are reasonable under the circumstances to mitigate the effects of the applicable force majeure situation. However, force majeure shall never be a defense to payment of sums due by the City to the Utilities whether under the Bonds or otherwise.

34. Authority. The parties hereto represent, warrant and guarantee that they are authorized to enter into this Participating Agreement, and that they are executing this Agreement and all documents referenced or described herein or related hereto and executed of even date herewith of their own free will and volition; that they are doing so having read and understood the same, upon their, and each of their, own decisions as to the merits thereof; that they have had the opportunity to review same with counsel of their own choosing; and that, as executed and delivered, this Participation Agreement is valid and binding upon the parties hereto, according to its terms.

35. Exhibits.

Exhibit "A" - Kelly Lane Wastewater Treatment Plant Site Description

Exhibit "B" - Kelly Lane Easements Description

Exhibit "C" - Wilke Lane Wastewater Treatment Plant Site Description

Exhibit "D" - Wholesale Wastewater Service Agreement

Exhibit "E" - Kelly Lane CCN

Exhibit "F" - List of Wholesale Service Customers:

Exhibit "G" - Wilke Lane Service Area Map

Exhibit "H" - Project Schematic

Exhibit "I" - Earnest Money Contract

Exhibit "J" - Wholesale Wastewater Service Agreement between the City of  
Pflugerville, Texas and Kelly Lane Utility Company, Inc.

Exhibit "K" - Professional Service Agreement for Wastewater Plant Operations  
(Wilke Lane)

Exhibit "L" - Professional Service Agreement for Wastewater Collection System  
Operations and Billing Services (Kelly Lane )

Exhibit "M" - First Amendment to Wholesale Wastewater Service Agreement (Kelly)

Exhibit "N" - Second Amendment to Agreement for Providing Wholesale Wastewater  
Service (Wilke)

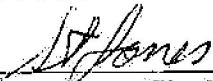
Exhibit "O" - Escrow Agreement

Exhibit "P" - Southeast Regional Plant Proposed Site

Exhibit "Q" - Arbitration Agreement

Executed to be effective **November 12, 2002.**


CITY OF PFLUGERVILLE

By:   
Name: Steve Jones, City Manager

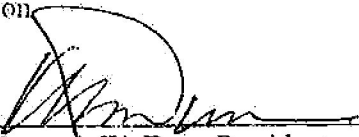
Attest:

By:   
Name: Karen Thompson, City Secretary

KELLY LANE UTILITY COMPANY, a Texas  
corporation

By:   
Name: Kenneth W. Durr, President

WILKE LANE UTILITY COMPANY, a Texas  
corporation

By:   
Name: Kenneth W. Durr, President

## **5: 2005 Sale, Transfer, Merger Notice to Customers & Application filed**



August 30, 2005

Customers of Kelly Lane Utility Company

RE: Notice to Customers of Kelly Lane Utility Company Regarding Sale to the City of Pflugerville

Dear Customer:

As you may be aware, the City of Pflugerville (the "City") entered into a contract with Kelly Lane Utility Company ("KLUC") in late 2002 that allowed the City to purchase the Kelly Lane Wastewater Treatment Plant and gave the City an option to purchase the retail wastewater collection system operated by KLUC in 2006. Under that agreement, the City began operating KLUC's wastewater collection system and assumed responsibility for billing for all wastewater services delivered to you by KLUC. In January 2005, the City decided to exercise its option to purchase KLUC's collection system and has since filed an application with the Texas Commission on Environmental Quality (the "Commission") to approve that purchase. The attached notice is a Commission form that advises you of the City's application and how you can obtain information. The application is also available for your review at the Pflugerville Library, 102 10<sup>th</sup> Street, Pflugerville, Texas 78660.

The City has been working diligently to improve the quality of the wastewater service you are receiving, and the filing of this application is the last step necessary to allow the City to obtain full control over KLUC's wastewater system. After the City has acquired KLUC's collection system, your wastewater rates will be analyzed. You should see no other change in the service you have been receiving over the past 2 years. In fact, the City is continually working to improve your service and has removed the Kelly Lane Wastewater Treatment Plant and redirected all wastewater flow from that plant to the City's central wastewater treatment plant south of Pecan Street East.

If you have any questions regarding your service or this application, please feel free to contact me at City Hall at 990-4363.

Sincerely,

A handwritten signature in cursive script, appearing to read "David Buesing".

David Buesing  
City Manager, City of Pflugerville

**City Manager's Office**

[www.cityofpflugerville.com](http://www.cityofpflugerville.com)

Mailing Address:  
P.O. Box 589  
Pflugerville, Texas 78667-0589  
200962-2 08/29/2005

Street Address:  
100 East Main Street  
Suite 300  
Pflugerville, Texas 78660

Tel: 512.990.4363  
Fax: 512.990.4364

**ARMBRUST & BROWN, L.L.P.**

ATTORNEYS AND COUNSELORS

100 CONGRESS AVENUE, SUITE 1300  
AUSTIN, TEXAS 78701-2744  
512-435-2300

FACSIMILE 512-435-2360

JOHN J. CARLTON  
(512) 435-2308  
jcarlton@abaustin.com

July 22, 2005

***VIA HAND DELIVERY***

Texas Commission on Environmental Quality  
Registration, Review and Reporting Division  
Permits Administrative Review Section  
Water Quality Applications Team  
MC-151  
12100 Park 35 Circle, Building F  
Austin, Texas 78753

Re: Application for Sale, Transfer or Merger of a Retail Public Utility  
Transferor: Kelly Lane Utility Co., Inc.  
Transferee: City of Pflugerville (the "City"); RN: 101419299; CN: 600412985

To Whom It May Concern:

Enclosed for filing are the following:

1. An original and three (3) copies of the completed application, with attachments, maps and exhibits;
2. Four (4) copies of the North Pflugerville Wastewater Project Participating Agreement (the "Agreement") (agreement between parties which supports the proposed transaction) (*NOTE*: exhibits to the Agreement are voluminous and are not included);
3. Four (4) copies of the proposed tariff for the purchased system (the City's current rate ordinance);
4. An original and three (3) copies of the proposed Notice to Current Customers, Neighboring Systems, Landowners and Cities. The City respectfully requests a waiver for sending this Notice to current customers because the City is currently operating and maintaining the system per the Agreement noted in Item 2 above and providing service to the 1,490 affected customers;

**ARMBRUST & BROWN, L.L.P.**

Page 2

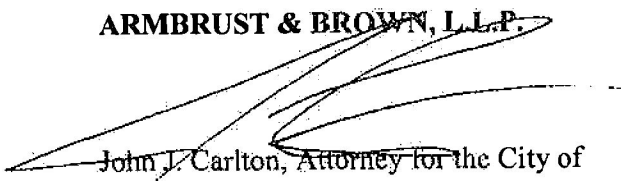
5. Our firm check number 41206 in the amount of \$500, which represents the required filing fee for more than 500 connections;

6. An original and three (3) copies of each sworn affidavit of the transferor and transferee utilities' representatives.

Please file this application for consideration and send any correspondence relating to the application to John J. Carlton, attorney for the City, at the letterhead address. Also, please acknowledge receipt of this application by file-stamping the extra copy of this letter provided herewith and returning it via the courier delivering same.

Sincerely,

**ARMBRUST & BROWN, L.L.P.**

  
John J. Carlton, Attorney for the City of  
Pflugerville

Enclosures

cc: David Buesing  
Charles Simon  
Richard Kammerman

*w/enc: copy of application w/o exhibits*





APPLICATION FOR SALE, TRANSFER,  
OR MERGER OF A RETAIL PUBLIC UTILITY

\*RN #101419299

\*CN #600412985

\*If known (See instructions)

I. Proposed action of application (check all the boxes that apply):

<input type="checkbox"/> Sale	of	<input type="checkbox"/> All	of the	<input type="checkbox"/> Water system(s) under CCN No.:	_____
<input type="checkbox"/> Acquisition		<input type="checkbox"/> Portion		<input type="checkbox"/> Sewer system(s) under CCN No.:	_____
<input type="checkbox"/> Lease/Rental					
<input checked="" type="checkbox"/> Transfer	of	<input checked="" type="checkbox"/> All	of the	<input type="checkbox"/> Certificated water service area - CCN No.:	_____
		<input type="checkbox"/> Portion		<input checked="" type="checkbox"/> Certificated sewer service area - CCN No.:	20720

☒ If only a portion of a system or certificated service area is affected by this transaction, please specify the areas or subdivisions involved:

and to:

<input type="checkbox"/>	Obtain a CCN for the transferee (purchaser)
<input checked="" type="checkbox"/>	Amend the transferee's CCN No.: 20678
<input type="checkbox"/>	Merge or consolidate public utilities
<input type="checkbox"/>	Cancel CCN of the transferor (seller)

2. Proposed effective date of this transaction: January 2, 2006

(Must be at least 120 days after completion of notice)

☒ **QUESTIONS 3 THROUGH 5 APPLY TO AND SHOULD BE COMPLETED ONLY BY THE TRANSFEROR, CURRENT SERVICE PROVIDER OR SELLER**

3. For the current CCN holder or service provider please indicate:

A. Name: Kelly Lane Utility Co., Inc.

(Individual, Corporation or Other Legal Entity)

who is a(n): ☐ Individual ☒ Corporation ☐ WSC ☐ HOA or POA ☐ Other: \_\_\_\_\_

B. Utility Name (if different than above): \_\_\_\_\_

Address: 205 E. 43<sup>rd</sup> Street Telephone: (512) 451-2944

Austin, Texas 78751

- C. Contact person. Please provide information about the person to be contacted regarding this application. Indicate if this person is the owner, operator, engineer, attorney or accountant.

Name: John J. Carlton Title: Attorney  
Address: 100 Congress Ave., Suite 1300, Austin, Texas 78701 Telephone: (512) 435-2300

4. About the last rate increase for the system or facilities being transferred:

A. What was the effective date of the last rate increase? March 27, 1991

- B. Was notice of this increase provided to the Texas Commission on Environmental Quality or its predecessors?

☐

No.

☒

Yes. Application/Docket Number: 08973 Date: January 24, 1991

5. Please provide a list of all customers affected by this transaction who have deposits held by the transferor or seller utility, if any, and include the following information (attach additional sheets if necessary):

Name and Address of utility customer	Date of Deposit	Amount of Deposit	Amount of unpaid interest on Deposit
See attached Exhibit A			

☛ Within 30 days of the actual transaction date, and prior to the transfer of the certificate by the TCEQ, the seller must provide proof to the Commission that these customer deposits were returned to the customers or transferred to the purchasing utility. Proof should include a sworn affidavit.

☛ **QUESTIONS 6 THROUGH 13 REFER TO AND SHOULD BE COMPLETED BY THE TRANSFEREE OR PURCHASER**

6. For the person or entity acquiring the facilities and/or CCN:

Applicant: City of Pflugerville  
(Individual, Corporation, or Other Legal Entity)

Utility Name: City of Pflugerville  
(If different than above)

Utility Address: P. O. Box 589, Pflugerville, Texas 78660 Telephone: (512) 990-4363

CCN Numbers held prior to the filing of this application: 11303; 20678

7. Check the appropriate box and provide information regarding the legal status of the transferee applicant:

<input type="checkbox"/>	Individual
<input type="checkbox"/>	Home or Property Owners Association
<input type="checkbox"/>	Partnership; attach copy of partnership agreement
<input type="checkbox"/>	Corporation; provide charter number as recorded with the Office of the Secretary of State for Texas: _____
<input type="checkbox"/>	Non-profit, member-owned, member-controlled Cooperative Corporation (Article 1434(a) Water Supply or Sewer Service Corporation); provide charter number: _____
<input checked="" type="checkbox"/>	Municipally-owned utility
<input type="checkbox"/>	District (MUD, SUD, WCID, etc.)
<input type="checkbox"/>	County
<input type="checkbox"/>	Other (please explain): _____

8. If the applicant is an *Individual* provide the following information. If not, skip to the next question.

Name: \_\_\_\_\_ n/a \_\_\_\_\_ Telephone: \_\_\_\_\_  
Address: \_\_\_\_\_

9. If the applicant is other than an *Individual* provide the following information regarding the officers or partners of the legal entity applying for the transfer. You must complete either question 8. or question 9., whichever applies to the transferee applicant.

•Name:	SEE attached Exhibit B	Telephone:	_____
Address: _____			
Position:	_____	Ownership % (if applicable):	_____
•Name:	_____	Telephone:	_____
Address: _____			
Position:	_____	Ownership % (if applicable):	_____
•Name:	_____	Telephone:	_____
Address: _____			
Position:	_____	Ownership % (if applicable):	_____
•Name:	_____	Telephone:	_____
Address: _____			
Position:	_____	Ownership % (if applicable):	_____

- Attach additional sheet(s) if necessary -

**Important:**

- If the applicant is a for-profit corporation, please provide a copy of the corporation's "Certification of Account Status" from the State Comptroller Office. This "Certification of Account Status" can be obtained from:

Comptroller of Public Accounts, Office Management  
P. O. Box 13528, Capitol Station  
Austin, Texas 78711  
1-800-252-5555

- If the applicant is an Article 1434a water supply or sewer service corporation or other non-profit corporation, please provide a copy of the Articles of Incorporation and By-Laws.

10. Contact person. Please provide information about the person to be contacted regarding this application. Indicate if this person is the owner, operator, engineer, attorney or accountant.

Name: John J. Carlton Title: Attorney

Address: 100 Congress Avenue, Suite 1300, Austin, Texas 78701 Telephone: (512) 435-2300

**IF THERE ARE MORE THAN TWO PARTIES INVOLVED IN THIS TRANSACTION, PLEASE ATTACH SHEETS PROVIDING THE INFORMATION REQUIRED IN QUESTION 6 THROUGH QUESTION 10 FOR EACH PARTY**

11. Please respond to each of the following questions. Attach additional sheets if necessary.

- A. Describe the experience and qualifications of the applicant to provide adequate utility service:

The City of Pflugerville provides water and wastewater service to 17,717 customers and  
currently operates the Kelly Lane collection system under a contract.

- B. Has the applicant acquiring the CCN or facilities or an affiliated interest of the applicant been under enforcement action by the Texas Department of Health, the Commission, the Attorney General or EPA in the past for noncompliance with rules, orders or State Statutes?
- |  |      |
|--|------|
| <input checked="checked" type="checkbox"/> | Yes. |
| <input type="checkbox"/>                   | No.  |

If yes, please attach copies of any correspondence with these regulatory agencies concerning these enforcement actions and describe any actions and efforts to comply with those requirements.

SEE attached Exhibit C

- C. Describe the source and availability of funds required to make the planned or required improvements to meet minimum requirements of the Texas Natural Resource Conservation Commission and ensure continuous and adequate service.

Developers in the area have contributed a portion of the funds and the City of Pflugerville has funded  
the balance through utility revenue bonds.

- D. Describe the anticipated impact of this transaction on the quality of utility service and explain any anticipated changes in the quality of service.

There should be no change in quality of service because the City of Pflugerville currently operates the  
collection system.

12. Please describe the nature of the proposed transaction:

This is a transfer of Certificate of Convenience and Necessity per the terms of the North Pflugerville  
Wastewater Project Participating Agreement dated November 12, 2002.

13. If the transferee applicant is an IOU and will be under the rate jurisdiction of the TCEQ, please provide the following information. Water supply or sewer service corporations and political subdivisions of the state should mark this section N/A.: N/A

A. • Total Purchase Price: \_\_\_\_\_

• Total Original Cost (as recorded on books of seller or merging entity): \_\_\_\_\_

• Accumulated Depreciation as of the proposed effective date of the transaction: \_\_\_\_\_

• Contributions in Aid of Construction:

-Specific surcharges approved by TCEQ: \_\_\_\_\_

-Revenues from explicit customer agreements: \_\_\_\_\_

-Developer Contributions (please explain): \_\_\_\_\_

-Other Contributions (please explain): \_\_\_\_\_

Total Contributions in Aid of Construction: \_\_\_\_\_

• Net Book Value: \_\_\_\_\_

☒ If the Original Cost or any of the above items has been established in a rate case proceeding by the PUC, the TWC or the TCEQ, please provide the Application/Docket Number and date:

Application/Docket Number: \_\_\_\_\_

Date: \_\_\_\_\_

☒ If the applicant is not under the rate jurisdiction of the TCEQ, only the purchase price and information related to Contributions in Aid of Construction is required.

B. Please provide any other information concerning the nature of the transaction and consideration given if not explained elsewhere in the application (attach additional sheet(s) if necessary):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- C. Complete the following proposed entries in books of purchasing (or surviving) company to record purchase or merger). Additional entries may be made, the following are suggested only, and not intended to pose descriptive limitations.

Utility Plant in Service: \_\_\_\_\_  
Plant Acquisition Adjustment: \_\_\_\_\_  
Extraordinary Loss on Purchase: \_\_\_\_\_  
Accumulated Depreciation of Plant: \_\_\_\_\_  
Cash: \_\_\_\_\_  
Notes Payable: \_\_\_\_\_  
Mortgage Payable: \_\_\_\_\_  
Others (please list): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

As the purchaser, I understand that it is **my responsibility** in any future rate proceeding to provide written evidence and support for the original cost and installation date of all facilities used and useful for providing utility service.

Purchaser's Initials: \_\_\_\_\_ Date: \_\_\_\_\_

14. Please indicate the proposed effect of this transaction on the rates to be charged to the affected customers:

- ☐ All the customers will be charged the same rates as they were charged before the transaction.  
☐ Some ☒ All customers will be charged different rates than they were charged before the transaction.

If so, please explain: \_\_\_\_\_ Customers will become retail customers of the City of Pflugerville and pay City retail rates.

- ☐ Applicant is an IOU and intends to file with the Commission or municipal regulatory authority an application to change rates of some/all of its customers as a result of this transaction. If so, please explain:

\_\_\_\_\_  
N/A

- ☐ Other. Please explain: \_\_\_\_\_ N/A

15. List all neighboring water and/or sewer utilities, cities, and political subdivisions providing the same service within two (2) miles of area affected by this proposed transaction. This information should be available from Applicant's licensed water operator or regional Texas Department of Health Office.

\_\_\_\_\_  
SEE attached Exhibit D  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PLEASE ANSWER QUESTIONS 16 THROUGH 22 ON A DIFFERENT SHEET FOR EACH PHYSICALLY DISTINCT SYSTEM BEING TRANSFERRED OR ACQUIRED**

16. A. For Water Systems. TCEQ Public Water System Identification Number: 

		N	A				
--	--	---	---	--	--	--	--

B. For Wastewater Systems:

-TCEQ Discharge Permit Number: 

W	Q	1	3	2	1	9	-	0	0	1
---	---	---	---	---	---	---	---	---	---	---

-Name of Permittee: Kelly Lane Utility Co., Inc.

-Date of application to transfer Discharge Permit submitted: December 2, 2002

-Date of application to transfer Discharge Permit approved by TCEQ: December 19, 2002

17. A. Are any improvements required to meet TCEQ standards? ☐ Yes ☒ No

B. Is there a moratorium on new connections? ☐ Yes ☒ No

C. Provide details of each required major capital improvement to correct the deficiencies and meet the TNRCC standards (attach additional sheets if necessary):

Description of the required improvement	Schedule to Complete	Estimated Cost

18. Does the system being transferred operate within the city limits of a municipality? ☒ Yes ☐ No

If yes, indicate the number of customers within the city limits: 0 Water 1,494 Sewer

☐ Attach copy of franchise agreement or consent letter from the city.

N/A - City is transferee.

19. Do you currently purchase water or sewer treatment capacity from another source? ☐ Yes ☐ No

☒ Water ☐ Sewer Purchased on a ( ) regular - ( x ) seasonal - ( x ) emergency basis

• Source: City of Austin % of total supply: 3.6

20. List the number of existing connections to be affected by this transaction:

Water:	Non Metered		2" meter		Sewer:	Residential connection	1,468
	5/8" or 3/4" meter		3" meter			Commercial connection	22
	1" meter		4" meter			Industrial connection	0
	1½" meter		Other _____"			Other <u>wholesale</u>	4
	Total Water connections:			N/A		Total Sewer connections	1,494

21. Has the system reached 85% of its capacity based on TNRCC's minimum requirements? ☐ Yes ☒ No

22. List the name, class, and license number of the operator that will be responsible for the system:

SEE attached Exhibit E

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23. Attach the following maps with each copy of the application: (All maps should include Applicant's name, address, and telephone number, and date of drawing or revision. All maps should be folded to 8½ X 11")

- a. One small scale map clearly showing affected service area. This map will assist TCEQ staff in locating the service area in relation to neighboring utility service areas. If the application is for the transfer of all or a portion of a CCN, the service area boundary should be delineated on a copy of the TCEQ official CCN map. If there is no current CCN, the service area should be delineated on a county map (Texas Highway Department 1" = 2 miles). The service area boundaries should conform to verifiable landmarks such as roads, creeks, railroads, etc. County maps may be obtained locally or from the Texas Department of Transportation, Map Scales, P. O. Box 5020, Austin, Texas 78763-5020, (512) 486-5014 and 486-5015. *A copy of the TCEQ official CCN map may be obtained by contacting the Utilities & Districts Section at 512/239-4691 or by mailing a written request to the following address:*

Texas Commission on Environmental Quality  
Water Supply Division  
Utilities & Districts Section  
MC-153  
P.O. Box 13087  
Austin, TX 78711-3087

- b. One large scale map showing the proposed service area boundaries being sold, transferred, or merged and, if available, the existing and proposed facilities. Color coding should be used to differentiate existing from proposed facilities. Facilities and service area boundaries should be shown with such exactness that they can be located on the ground. Applicant should use U.S.G.S. 7½-minute series, subdivision plat, engineer planning map, or other large scale map.

SEE attached Exhibit F



**OATH FOR SELLER OR FORMER SERVICE PROVIDER**

STATE OF TEXAS

COUNTY OF TRAVIS

I, Kenneth W. Durr, being duly sworn, file this application for sale, lease, rental or merger or consolidation as President (indicate relationship to applicant) that is, owner, member of partnership, title as officer of corporation, or other authorized representative of applicant); that, in such capacity, I am qualified and authorized to file and verify such application, am personally familiar with the documents filed with this application, and have complied with all the requirements contained in the application; and, that all such statements made and matters set forth therein with respect to applicant are true and correct. Statements about other parties are made on information and belief. I further state that the application is made in good faith and that this application does not duplicate any filing presently before the Commission.

I further state that I have provided to the purchaser or transferee a written disclosure statement about any contributed property as required under Section 13.301(j) and copies of any outstanding Orders of the Commission or Attorney General and have also complied with the notice requirements in Section 13.301(k) of the Water Code.

Kelly Lane Utility Co., Inc.

By: Kenneth W. Durr, President

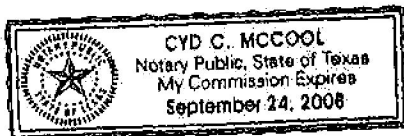
  
AFFIANT


(Applicant's Authorized Representative)

If the Affiant to this form is any person other than the sole owner, partner, officer of the applicant or its attorney, a properly verified Power of Attorney must be enclosed.

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public in and for the State and County above-named, this 14 day of July, 2005.

SEAL



  
Notary Public

One copy of this page must be submitted for each utility involved in this transaction.

## OATH FOR PURCHASER OR ACQUIRING ENTITY

STATE OF TEXAS

COUNTY OF TRAVIS

I, David Buesing, being duly sworn, file this notice of intent to purchase, acquire, lease or rent, or merge or consolidate as City Manager (indicate relationship to applicant) that is, owner, member of partnership, title as officer of corporation, or other authorized representative of applicant); that, in such capacity, I am qualified and authorized to file and verify such application, am personally familiar with the documents filed with this application, and have complied with all the requirements contained in the application; and, that all such statements made and matters set forth therein with respect to applicant are true and correct. Statements about other parties are made on information and belief. I further state that the application is made in good faith and that this application does not duplicate any filing presently before the Commission.

I am also authorized and do agree to be bound by and comply with any outstanding orders of the Commission or the Attorney General which have been issued to the system or facilities being acquired and recognize that I will be subject to administrative penalties or other enforcement actions if I do not comply.

David Buesing

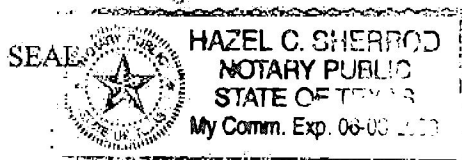
AFFIANT

(Applicant's Authorized Representative)

If the Affiant to this form is any person other than the sole owner, partner, officer of the applicant or its attorney, a properly verified Power of Attorney must be enclosed.

Applicant represents that all other parties to this transaction have been furnished copies of this completed application.

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public in and for the State and County above-named, this 20<sup>th</sup> day of July, 20 05.



Hazel C. Sherrod  
Notary Public

One copy of this page must be submitted for each utility involved in this transaction.

NOTICE OF INTENT TO SELL FACILITIES AND TRANSFER THE CERTIFICATE OF  
CONVENIENCE AND NECESSITY (CCN) OF \_\_\_\_\_  
TO \_\_\_\_\_ IN \_\_\_\_\_ COUNTY, TEXAS

Gentlemen:

Date Notice Mailed: \_\_\_\_\_, 20\_\_

Seller's or Transferor's Name

Address

City

State

Zip Code

has submitted an application with the Texas Commission on Environmental Quality to sell facilities and transfer a CCN to provide \_\_\_\_\_ [water/sewer] utility service in \_\_\_\_\_ [County Name] County to:

Purchaser's or Transferee's Name

Address

City

State

Zip Code

The sale is scheduled to take place as approved by the Executive Director (V.T.C.A., Water Code §13.301). The transaction and the transfer of the CCN includes the following subdivisions:

The area subject to this transaction is located approximately \_\_\_\_\_ miles \_\_\_\_\_ [direction] of downtown \_\_\_\_\_ [City or Town], Texas and is generally bounded on the north by \_\_\_\_\_; on the east by \_\_\_\_\_; on the south by \_\_\_\_\_; and on the west by \_\_\_\_\_.

The total area being requested includes approximately \_\_\_\_\_ acres and \_\_\_\_\_ current customers.

This transaction will have the following effect on the current customer's rates and services:

Affected persons may file written protests and/or request a public hearing within 30 days of this notice.

To request a hearing, you must state (1) your name, mailing address and daytime telephone number; (2) the applicant's name, application number or another recognizable reference to this application; (3) the statement "I/we request a public hearing"; (4) a brief description of how you, the persons you represent, or the public interest would be adversely affected by the proposed transaction and transfer of the CCN; and (5) your proposed adjustment to the application or CCN which would satisfy your concerns and cause you to withdraw your request for a hearing. Only those persons who submit a written request to be notified of a hearing will receive notice if a hearing is scheduled. The Executive Director will issue the CCN requested in the referenced application unless a hearing is scheduled to consider the transaction. If no protests or requests for hearing are filed during the comment period, the Executive Director may issue the CCN 30 days after publication of this notice.

Persons who wish to protest or request a hearing on this application should write the:

Texas Commission on Environmental Quality  
Water Supply Division  
Utilities and Districts Section, MC-153  
P. O. Box 13087, Austin, TX 78711-3087

\_\_\_\_\_  
Utility Representative

\_\_\_\_\_  
Utility Name

NOTICE OF INTENT TO SELL FACILITIES OF KELLY LANE UTILITY CO., INC.  
TO THE CITY OF PFLUGERVILLE AND TO OBTAIN OR AMEND A CERTIFICATE OF  
CONVENIENCE AND NECESSITY (CCN) IN TRAVIS COUNTY, TEXAS

Gentlemen: Date Notice Mailed: \_\_\_\_\_, 20\_\_

<u>Kelly Lane Utility Co, Inc.</u>	<u>205 E. 43<sup>rd</sup> Street</u>	<u>Austin</u>	<u>Texas</u>	<u>78751</u>
Seller's or Transferor's Name	Address	City	State	Zip Code

has submitted an application with the Texas Commission on Environmental Quality to sell facilities to provide sewer [water/sewer] utility service in Travis [County Name] County to:

<u>City of Pflugerville</u>	<u>P. O. Box 589</u>	<u>Pflugerville</u>	<u>Texas</u>	<u>78660</u>
Purchaser's or Transferee's Name	Address	City	State	Zip Code

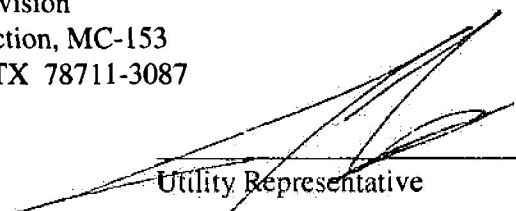
The transferee has also requested to obtain/amend a CCN in this application. The sale is scheduled to take place as approved by the Executive Director (V.T.C.A., Water Code §13.301). The transaction and proposed service area includes the following subdivisions: Fairways of Blackhawk; Steed's Crossing; 685 Commercial; Falcon Pointe; and Meadows of Blackhawk. The area subject to this transaction is located approximately 3.2 miles northeast [direction] of downtown Pflugerville [City or Town], Texas and is generally bounded on the north by CR 130; on the east by Weiss Lane; on the south by Kelly Lane; and on the west by FM 685. The total area being requested includes approximately 985 acres and 1,494 current customers. This transaction will have the following effect on the current customer's rates and services: retail rates will change to the retail rates charged by the City of Pflugerville.

Affected persons may file written protests and/or request a public hearing within 30 days of this notice.

To request a hearing you must state (1) your name, mailing address and daytime telephone number; (2) the applicant's name, application number or another recognizable reference to this application; (3) the statement "I/we request a public hearing"; (4) a brief description of how you, the persons you represent, or the public interest would be adversely affected by the proposed transaction and issuance of the CCN; and (5) your proposed adjustment to the application or CCN which would satisfy your concerns and cause you to withdraw your request for a hearing. Only those persons who submit a written request to be notified of a hearing will receive notice if a hearing is scheduled. The Executive Director will issue the CCN requested in the referenced application unless a hearing is scheduled to consider the transaction. If no protests or requests for hearing are filed during the comment period, the Executive Director may issue the CCN 30 days after publication of this notice.

Persons who wish to protest or request a hearing on this application should write the:

Texas Commission on Environmental Quality  
Water Supply Division  
Utilities and Districts Section, MC-153  
P. O. Box 13087, Austin, TX 78711-3087

  
\_\_\_\_\_  
Utility Representative  
Kelly Lane Utility Co, Inc.  
Utility Name

**ADDENDUM TO WATER OR SEWER CERTIFICATE OF CONVENIENCE AND  
NECESSITY RELATED APPLICATIONS (CCN/STM/STOCK TRANSFER)**

**FINANCIAL, MANAGERIAL, AND TECHNICAL INFORMATION  
FOR NEW SYSTEMS and EXISTING SYSTEMS**

The Commission is required to determine if the applicant has the necessary financial, managerial, and technical capability to provide continuous and adequate service. The Commission is also committed to promoting the regionalization or consolidation of systems where practical and feasible. The following questions are designed to aid in making these decisions. If the applicant has this information available in the form of a Business Plan, Facility Plan, Engineering Study, or other document, it may be submitted instead - however, the Commission reserves the right to request additional information if necessary.

**I. Technical Capacity - The Facilities Plan**

**A. The Reason for Service: exactly what is this application for ?**

1. Describe the service area and circumstances driving the need for service in this area. Is this a distinct, platted subdivision(s) or a rural area? List all areas to be served by the system. Who owns this property? Are there people already living there? If developers are involved, describe relationship to utility.

This is an existing service area with 1,494 existing customers. The City of Pflugerville is acquiring the service area from the Applicant.

**2. Population Projections:**

USAGE DEMAND:	POPULATION	CONNECTIONS
UPON COMPLETION OF PROJECT (DATE: January 2, 2006 )	4,723	1,490
ONE YEAR AFTER (DATE: January 2, 2007 )	4,874	1,540
FIVE YEARS AFTER (DATE: January 2, 2011)	5,478	1,740

3. What other utility systems are within 2 miles? For each one, describe all attempts or feasibility to obtain service. Indicate location, system capabilities, contact person, and telephone number. Attach copies of written correspondence.

The City of Pflugerville's system is located within two (2) miles and the City of Pflugerville intends to consolidate this area with its existing system.

B. The Plan for Service: How service will be provided.

1. For New Systems or Additions to Existing Systems - Summarize what will be constructed. If project will be built in phases, describe each separately, including when the phases will be started and the connections to be served. Indicate who will be responsible for construction and inspection.

A. Distribution system (collection system)

N/A

B. Source of supply and production (wells, surface water treatment facilities, tanks, etc.). Summarize facilities to be constructed or existing facilities to be used. Include overall design capacity.

N/A

C. Attach construction cost breakdown.

N/A

2. For Purchase of Existing System - Describe existing facilities and additions or upgrades that will address deficiencies or will meet growth projections.

A. Distribution system (collection system)

New lift station and collection mains have been constructed by the City of Pflugerville to serve the area.

B. Source of supply and production (wells, surface water treatment facilities, tanks, etc.). Summarize facilities to be constructed or existing facilities to be used. Include overall design capacity.

The City of Pflugerville's central wastewater treatment plant services this area.

C. Attach construction cost breakdown.

Construction has been completed.

II. Managerial Capacity - Ownership and Management Structure

- A. Clear Ownership Identity: Indicate whether owner of the system is municipal, member-owned water supply corporation, investor-owned, mobile home park, or other. List all partners, major stockholders, and affiliated companies.

The City of Pflugerville owns and operates the system.

- B. Directorship and Accountability: Attach an organizational chart or describe governing or management structure.

The City of Pflugerville is governed by the City Council, which consists of the Mayor and five (5) councilmembers elected at large.

- C. Describe complete staffing pattern with number of employees. Summarize qualifications and job duties of key personnel such as office manager, chief operator, other licensed operators, president, etc.

The City of Pflugerville utility department is responsible for operating the City's wastewater system. SEE attached Exhibit E, the list of the City's licensed operators.

- D. Describe business office and customer service set-up. Indicate office location, business hours, and after hours emergency practices.

The City of Pflugerville's offices are located at 100 East Main, Suite 100, in Pflugerville, Texas. The offices are open during regular business hours.

- E. Summarize employee benefit and training programs.

All City of Pflugerville employees receive benefits and training through City programs and the Texas Municipal League.

III. Financial Capacity - Ability to meet current and future capital and operating needs.

SEE attached Exhibit G.

- A. Attach a pro-forma income, expense, and cash flow worksheet for each of the first five years of operation. Income from rates should correlate to the growth projections in Part I.
- B. Attach a pro forma balance sheet for each the first five years of operation. Include a line item for emergency or equipment replacement reserve.
- C. Describe sources of capital. Indicate interest rate and payment schedules for loans, bonds, or notes.
- D. Describe the procedure for determining the rates and fees and indicate date of last change. Attach copies of any cost of service studies or rate analysis worksheets.
- E. Identify any appropriate capital assurances, including those offered to capital providers.
- F. Describe the accounting standards and practices. Indicate frequency and distribution of periodic financial reports.

# EXHIBIT J-1

## Kelly Lane Utility - City of Pflugerville, Texas Agreement January 2001



This map has been prepared by the City of Pflugerville, Texas, for the purpose of showing the location of the Kelly Lane Utility. It is not intended to be a legal document. The City of Pflugerville is not responsible for any errors or omissions in this map. The City of Pflugerville is not responsible for any damages or losses resulting from the use of this map.

Approved:

City of Pflugerville, Texas

By: Bruce Jensen, City Manager

Kelly Lane Utility Company

By: Kenneth R. Dyer, President

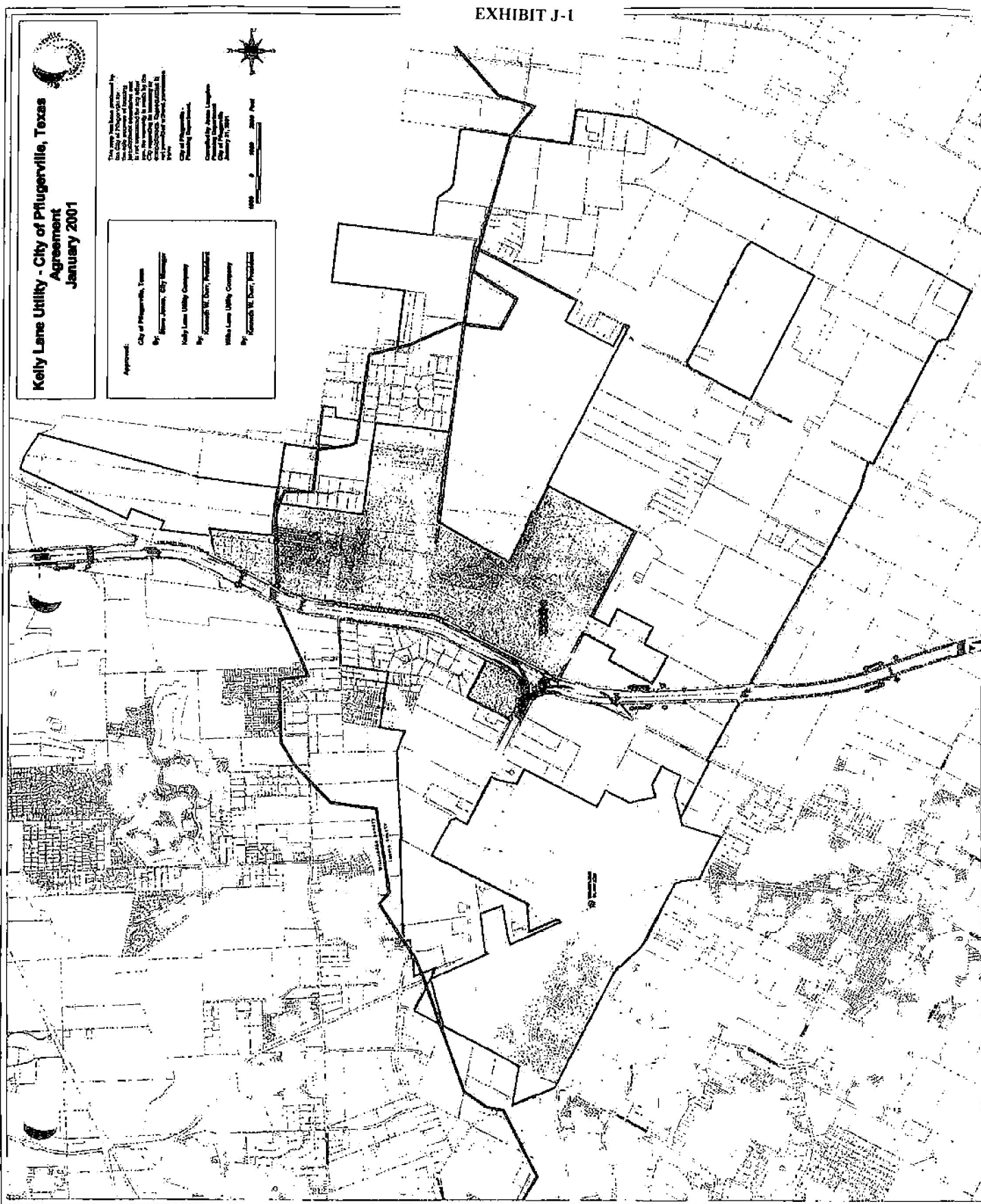
Wills Lane Utility Company

By: Kenneth R. Dyer, President

By: Kenneth R. Dyer, President

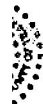


Scale: 1" = 100' Feet









Projected according to the Texas State Plans Center NAD 83.

Compiled by Jesse Langdon  
Planning Department  
City of Pflugerville  
January 31, 2001



Approved:

City of Pflugerville, Texas  
By: *Steve Jones*  
Steve Jones, City Manager

Kelly Langdon Company  
By: *Kenneth W. Durr*  
Kenneth W. Durr, President

Wilke Land Utility Company  
By: *Kenneth W. Durr*  
Kenneth W. Durr, President



## **6: TCEQ Compliance Documents for WQ0011845002**

## TCEQ EXIT INTERVIEW FORM: Potential Violations and/or Records Request

<b>Regulated Entity/Site Name</b>			Upper Gilileland W/WTP		<b>TCEQ Add. ID No.</b> RN No (optional)		WQ0011845002	
<b>Investigation Type</b>	CCI	<b>Contact Made In-House (Y/N)</b>	Y	<b>Purpose of Investigation</b>	Compliance			
<b>Regulated Entity Contact</b>	Mr. Wiley Webb			<b>Telephone No.</b>	512-251-9935		<b>Date Contacted</b>	
				<b>FAX#/Email Address</b>			<b>FAX/Email Date</b>	

**NOTICE:** The information provided in this form is intended to provide clarity to issues that have arisen during the investigation process between the TCEQ and the regulated entity named above and *does not represent final TCEQ findings related to violations*. Any potential or alleged violations discovered after the date on this form will be communicated to the regulated entity representative prior to the issuance of a notice of violation or enforcement. Conclusions drawn from this investigation, including additional violations or potential violations discovered (if any) during the course of this investigation, will be documented in a final investigation report.

Issue		For Records Request, identify the necessary records, the company contact and date due to the agency. For Alleged and Potential Violation issues, include the rule in question with the clearly described potential problem. Other type of issues: fully describe.	
No.	Type <sup>1</sup>	Rule Citation (if Known)	Description of Issue
1	AV	30 TAC 305.126(a); Operational Requirements, Page 14, Item 8.a	Failed to obtain authorization to commence construction of the necessary additional treatment and/or collection facilities when the annual average flow reaches 90% of the permitted average daily flow for three consecutive months. Specifically, the annual average flow was at least 90% (>3.96MGD) of the permitted flow limit (4.4MGD) every month of the previous monitoring year. <b>Recommended Corrective Action (RCA):</b> Authorization to commence construction must be obtained. <b>Submit a summary transmittal letter for the expansion of the wastewater treatment plant.</b>
2	AV	305.125(t); Monitoring and Reporting Requirements, No. 7.c, Page 7	Failed to provide notification of any effluent violation which deviates from the permitted effluent limitation by more than 40%. Specifically, during the record review period of February 2016 to February 2017, 6 daily max and 5 daily average violations of E.Coli and 1 daily average violation of TSS exceeded the permitted limit by more than 40%. The exceedances were not reported to the Region and Enforcement Division within 5 days. The 40% exceedances were noted on the DMRS. <b>(RCA):</b> Non-compliances shall be reported by the permittee in writing to the Region and the Enforcement Division within five working days of becoming aware of the noncompliance. Submit documentation outlining the steps taken to ensure the proper notification of effluent violations in the future.
3	PV	30TAC 317; 305.125(t) Permit Condition	Failed to provide blowers in the aeration basin that are capable of providing the required air flow with the largest unit out of service. <b>(RCA):</b> Submit documentation indicating that back-up blowers are available that are capable of providing the required air flow with the largest unit out of service.
4	PV	30TAC 317; 305.125(t) Permit Condition	Failed to provide sufficient pumping units for return activated sludge to maintain design pumping rates with the largest single unit out of service. <b>(RCA):</b> Submit documentation indicating that back-up pumping units are available that are capable of providing the required air flow with the largest unit out of service.

**Note 1:** Issue Type Can Be One or More of: AV (Alleged Violation), PV (Potential Violation), O (Other), or RR (Records Request)

Issue		For Records Request, identify the necessary records, the company contact and date due to the agency. For Alleged and Potential Violation issues, include the rule in question with the clearly described potential problem. Other type of issues: fully describe.	
No.	Type <sup>1</sup>	Rule Citation (if Known)	Description of Issue
5	AV	26.121(a)(1); 305.125(4); 305.125(1); Permit Conditions, Page 9, Item 2.g	Failed to prevent the unauthorized discharge of wastewater. Specifically, during the 18 months preceding the investigation, 4 unauthorized discharges were reported (November 13, March 11, and December 12, 2016 and February 8, 2017). <b>RCA:</b> There shall be no unauthorized discharge of wastewater. Submit the steps taken to prevent the recurrence of unauthorized discharges from the collection system/wwtp. <b>Resolution:</b> Actions taken as a result of the discharges were submitted to the TCEQ Austin Region within the timeframe required. No further action is necessary.
6	O	30 TAC 305.125(5); Operational Requirements, Page 13, Item 1	Pinfloc was observed in the clarifier and some sludge was observed floating in the chlorine contact basin. No sludge was observed after filtration.
7	O	305.125(1); Other Requirements, Page 32, Item 11	The annual sludge report was being submitted to the TCEQ Water Quality Compliance Monitoring Team as required; however, a copy was not being sent to the Austin Region Office.
8	O	317.4(g)(2)	All aeration tanks shall have a freeboard of not less than 18 inches at peak flow. During the investigation, the aeration basin was noted to be at or close to the freeboard limit with wave action.
9	O	Page 4, Item E.	The daily average bacteria concentration was calculated using an arithmetic average rather than the geometric mean. In the future, the bacteria concentration should be calculated and reported using the geometric mean.

**Note 1: Issue Type Can Be One or More of: AV (Alleged Violation), PV (Potential Violation), O (Other), or RR (Records Request)**

Did the TCEQ document the regulated entity named above operating without proper authorization?

Yes X No

Did the investigator advise the regulated entity representative that continued operation is not authorized?

Yes X No

**Document Acknowledgment.** Signature on this document establishes only that the regulated entity (RE) representative received a copy of this document and associated continuation pages on the date noted. If contact was made by telephone, the document will be sent via FAX or Email to RE; therefore, the RE signature is not required.

Julie White	04/04/17	
Investigator Name (Signed & Printed)	Date	Regulated Entity Representative Name (Signed & Printed)

**If you have questions about any information on this form, please contact your local TCEQ Regional Office.**

Individuals are entitled to request and review their personal information that the agency gathers on its forms. They may also have any errors in their information corrected. To review such information, call 512/239-3282.

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



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

April 19, 2022

### FIRST CLASS MAIL

Brandon Pritchett, Public Utility Director  
The Honorable Victor Gonzales, Mayor  
City of Pflugerville  
P.O. Box 589  
Pflugerville, Texas 78691

RE: City of Pflugerville  
TCEQ Docket No. 2021-0376-MWD-E; Permit No. WQ0011845002  
Agreed Order Assessing Administrative Penalties and Requiring Certain Actions

Enclosed is a copy of an order issued by the Commission.

Questions regarding the order should be directed to the Texas Commission on Environmental Quality's Enforcement Division at (512) 239-2545 or the Litigation Division at (512) 239-3400. If there are questions pertaining to the mailing of the order, then please contact Michael O'Malley of the Office of the Chief Clerk at (512) 239-3300.

Sincerely,

A handwritten signature in cursive script that reads "Laurie Gharis".

Laurie Gharis  
Chief Clerk

LG/mo

Enclosure

cc: Ellen Ojeda, Enforcement Coordinator, TCEQ Enforcement Division

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CITY OF PFLUGERVILLE  
RN101611440**

§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2021-0376-MWD-E**

On **APR 13 2022**, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Pflugerville (the "Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this Order to the Commission.

The Respondent understands that they have certain procedural rights at certain points in the enforcement process, including the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated agreement of the parties. The provisions of this Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

### **I. FINDINGS OF FACT**

1. The Respondent owns and operates a wastewater treatment facility located at 15500 Sun Light Near Way, #B in Pflugerville, Travis County, Texas (the "Facility"). The Facility is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
2. During a record review conducted on January 4, 2021, an investigator documented that the Respondent did not comply with permitted effluent limitations, as shown in the effluent violation table below:

Monitoring Period	Flow	Ammonia Nitrogen			<i>E. coli</i>	Total Suspended Solids		
	Annual Average Flow	Daily Average Conc.	Daily Max. Conc.	Daily Average Loading	Daily Max. Conc.	Daily Average Conc.	Daily Average Loading	Daily Max. Conc.
	Limit= 5.3 MGD	Limit = 2 mg/L	Limit = 10 mg/L	Limit = 88 lbs/d	Limit = 379 CFU/100 mL	Limit= 5 mg/L	Limit = 221 lbs/d	Limit = 20 mg/L
January 2020	c	c	c	c	461	5.1	c	c
February 2020	c	c	c	c	c	5.5	261.5	c
March 2020	c	c	c	c	c	5.3	270.7	22
April 2020	5.326	c	c	c	c	c	c	c
May 2020	5.348	c	c	c	c	c	c	c
June 2020	5.441	c	c	c	c	c	c	c
July 2020	5.565	c	c	c	c	c	c	c
August 2020	5.664	3.23	c	166.9	c	c	c	c
September 2020	5.742	6.45	15.1	329.1	c	c	c	c

*E. coli* = *Escherichia coli*  
Conc.= Concentration  
Max.= Maximum  
c= compliant

mg/L= milligrams per liter  
lbs/d = pounds per day  
CFU/100 mL= colony forming units per 100 milliliters  
MGD= million gallons per day

## II. CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, the Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2, the Respondent failed to comply with permitted effluent limitations, in violation of 30 TEX. ADMIN. CODE § 305.125(1), TEX. WATER CODE § 26.121(a)(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011845002, Interim II Effluent Limitations and Monitoring Requirements No. 1.
3. Pursuant to TEX. WATER CODE § 7.051, the TCEQ has the authority to assess an administrative penalty against the Respondent for violations of state statutes within the TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of \$72,500 is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Respondent paid the \$72,500 penalty.



### III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed a penalty as set forth in Conclusion of Law No. 4 for violations of state statutes and rules of the TCEQ. The payment of this penalty and the Respondent's compliance with all the requirements set forth in this Order resolve only the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations that are not raised here. Penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Pflugerville, Docket No. 2021-0376-MWD-E" to:

Financial Administration Division, Revenue Operations Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. The Respondent shall, within 130 days after the effective date of this Order, submit written certification of compliance with the effluent limitations of TPDES Permit No. WQ0011845002, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations. The certification shall include detail supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with the permitted effluent limitations. The certification shall be signed by the Respondent and shall include the following certification language: "

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Water Section Manager  
Austin Regional Office  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

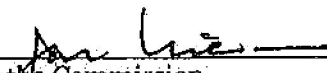
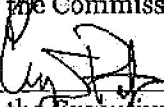
3. All relief not expressly granted in this Order is denied.
4. The duties and provisions imposed by this Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. If the Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. Extension requests shall be sent to the Order Compliance Team at the address listed above.
7. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. This Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
10. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and

may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms: electronic transmission, owner, person, writing, and written, shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

11. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

 _____ For the Commission	<u>4/18/22</u> _____ Date
 _____ For the Executive Director	<u>3/2/2022</u> _____ Date

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this Order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

 _____ Signature	<u>7/26/2021</u> _____ Date
---	-----------------------------------

<u>Braden Pritchett</u> _____ Name (Printed or typed) Authorized Representative of City of Pflugerville	<u>Public Utility Director</u> _____ Title
---	--

☐ If mailing address has changed, please check this box and provide the new address below:

**Instructions:** Send the original, signed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Ordering Provision 1 of this Order.

## 7: City of Pflugerville WWTP

Kathleen Hartnett White, *Chairman*  
R. B. "Ralph" Marquez, *Commissioner*  
Larry R. Soward, *Commissioner*  
Glenn Shankle, *Executive Director*

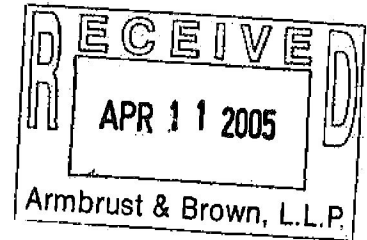


*Karen Thompson*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

April 8, 2005



Mr. David Buesing  
City of Pflugerville  
P.O. Box 589  
Pflugerville, Texas 78691

Re: City of Pflugerville, Permit No. WQ0011845003  
(RN 100878404; CN 600412985)

Dear Mr. Buesing:

Enclosed is a copy of the above referenced permit for a wastewater treatment facility issued on behalf of the Executive Director pursuant to Chapter 26 of the Texas Water Code.

Self-reporting or Discharge Monitoring Forms and instructions will be forwarded to you from the Water Quality Management Information Systems Team so that you may comply with monitoring requirements. For existing facilities, revised forms will be forwarded if monitoring requirements have changed.

Enclosed is a "Notification of Completion of Wastewater Treatment Facilities" form. Use this form when the facility begins to operate or goes into a new phase. The form notifies the agency when the proposed facility is completed or when it is placed in operation. This notification complies with the special provision incorporated into the permit.

Should you have any questions, please contact Mr. Ronald W. Riggins of the Texas Commission on Environmental Quality's Wastewater Permitting Section at (512) 239-4671 or if by correspondence, include MC 148 in the letterhead address below.

Sincerely,

A handwritten signature in dark ink, appearing to read "L'Oreal W. Stepney".

L'Oreal W. Stepney, Director  
Water Quality Division

LWS/RWR/lh

Enclosures

ccs: TCEQ, Region 11

Mr. John J. Carlton, Armbrust & Brown, L.L.P., 100 Congress Avenue, Suite 1300, Austin, Texas 78701



TPDES PERMIT NO.  
WQ0011845002  
*[For TCEQ office use only - EPA I.D.  
No. TX0094927]*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
P.O. Box 13087  
Austin, Texas 78711-3087

This minor amendment supersedes and replaces TPDES Permit No. WQ0011845002 issued on November 13, 2020 and is reissued pursuant to 30 TAC § 305.62 (c)(2).

PERMIT TO DISCHARGE WASTES  
under provisions of  
Section 402 of the Clean Water Act  
and Chapter 26 of the Texas Water Code

City of Pflugerville

whose mailing address is

P.O. Box 589  
Pflugerville, Texas 78691

is authorized to treat and discharge wastes from the Upper Gilleland Creek Wastewater Treatment Facility, SIC Code 4952

located at 15500 Sun Light Near Way, #B, in the City of Pflugerville, Travis County, Texas 78660

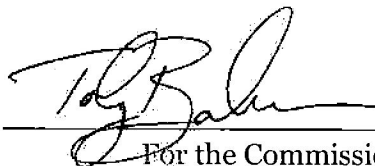
to Gilleland Creek, thence to Colorado River Below Lady Bird Lake (formerly Town Lake) in Segment No. 1428 of the Colorado River Basin

only according to effluent limitations, monitoring requirements, and other conditions set forth in this permit, as well as the rules of the Texas Commission on Environmental Quality (TCEQ), the laws of the State of Texas, and other orders of the TCEQ. The issuance of this permit does not grant to the permittee the right to use private or public property for conveyance of wastewater along the discharge route described in this permit. This includes, but is not limited to, property belonging to any individual, partnership, corporation, or other entity. Neither does this permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary to use the discharge route.

This permit shall expire at midnight, **November 13, 2025**.

ISSUED DATE:

August 9, 2021

  
For the Commission

INTERIM 1 EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTSOutfall Number 001

1. During the period beginning upon the date of issuance and lasting through the completion of the expansion of the facility to 7.25 million gallons per day (MGD), the permittee is authorized to discharge subject to the following effluent limitations:

The annual average flow of effluent shall not exceed 5.3 MGD, nor shall the average discharge during any two-hour period (2-hour peak) exceed 12,083 gallons per minute.

Effluent Characteristic	Discharge Limitations			Min. Self-Monitoring Requirements		
	Daily Avg mg/l (lbs/day)	7-day Avg mg/l	Daily Max mg/l	Single Grab mg/l	Report Daily Avg. & Daily Max. Measurement Frequency Continuous	Sample Type Totalizing Meter
Flow, MGD	Report	N/A	Report	N/A		
Carbonaceous Biochemical Oxygen Demand (5-day)	5 (221)	10	20	30	Five/week	Composite
Total Suspended Solids	5 (221)	10	20	30	Five/week	Composite
Ammonia Nitrogen	2 (88)	5	10	15	Five/week	Composite
Total Phosphorus	1 (44)	2	4	6	Five/week	Composite
Total Dissolved Solids	Report (Report)	N/A	Report	N/A	Two/month	Composite
Sulfates	Report (Report)	N/A	Report	N/A	Two/month	Composite
Chlorides	Report (Report)	N/A	Report	N/A	Two/month	Composite
<i>E. coli</i> , CFU or MPN per 100 ml	120	N/A	379	N/A	Three/week	Grab

\*CFU or MPN - colony-forming units or most probable number

2. The effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes (based on peak flow), and shall be monitored daily by grab sample. An equivalent method of disinfection may be substituted only with prior approval of the Executive Director.
3. The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored once per week by grab sample.
4. There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.
5. Effluent monitoring samples shall be taken at the following location(s): Following the final treatment unit.
6. The effluent shall contain a minimum dissolved oxygen of 6.0 mg/l and shall be monitored five times per week by grab sample.
7. The annual average flow and maximum 2-hour peak flow shall be reported monthly.



INTERIM II EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS Outfall Number 001

1. During the period beginning upon the completion of the expansion of the facility to 7.25 million gallons per day (MGD) and lasting through the completion of expansion of facility to 8.5 MGD, the permittee is authorized to discharge subject to the following effluent limitations:

The annual average flow of effluent shall not exceed 7.25 MGD, nor shall the average discharge during any two-hour period (2-hour peak) exceed 17,306 gallons per minute.

Effluent Characteristic	Discharge Limitations			Min. Self-Monitoring Requirements	
	Daily Avg mg/l (lbs/day)	7-day Avg mg/l	Daily Max mg/l	Single Grab mg/l	Report Daily Avg. & Daily Max.
Flow, MGD	Report	N/A	Report	N/A	Continuous
Carbonaceous Biochemical Oxygen Demand (5-day)	5 (302)	10	20	30	One/day
Total Suspended Solids	5 (302)	10	20	30	One/day
Ammonia Nitrogen	2 (121)	5	10	15	One/day
Total Phosphorus	0.8 (48)	2	4	6	One/day
Total Dissolved Solids	Report (Report)	N/A	Report	N/A	Two/month
Sulfate	Report (Report)	N/A	Report	N/A	Two/month
Chlorides	Report (Report)	N/A	Report	N/A	Two/month
<i>E. coli</i> , CFU or MPN* per 100 ml	120	N/A	379	N/A	Daily
*CFU or MPN - colony-forming units or most probable number					Grab

2. The permittee shall utilize an Ultraviolet Light (UV) system for disinfection purposes. An equivalent method of disinfection may be substituted only with prior approval of the Executive Director.

3. The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored once per day by grab sample.

4. There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.

5. Effluent monitoring samples shall be taken at the following location(s): Following the final treatment unit.

6. The effluent shall contain a minimum dissolved oxygen of 6.0 mg/l and shall be monitored once per day by grab sample.

7. The annual average flow and maximum 2-hour peak flow shall be reported monthly.

INTERIM III EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

Outfall Number 001

1. During the period beginning upon the completion of the expansion of the facility to 8.5 million gallons per day (MGD) and lasting through the completion of expansion of facility to 10.0 MGD, the permittee is authorized to discharge subject to the following effluent limitations:
- The annual average flow of effluent shall not exceed 8.5 MGD, nor shall the average discharge during any two-hour period (2-hour peak) exceed 20,833 gallons per minute.

Effluent Characteristic	Discharge Limitations			Min. Self-Monitoring Requirements	
	Daily Avg mg/l (lbs/day)	7-day Avg mg/l	Daily Max mg/l	Report Daily Avg. & Daily Max.	Sample Type
Flow, MGD	Report	N/A	Report	Continuous	Totalizing Meter
Carbonaceous Biochemical Oxygen Demand (5-day)	5 (354)	10	20	30	One/day Composite
Total Suspended Solids	5 (354)	10	20	30	One/day Composite
Ammonia Nitrogen	2 (142)	5	10	15	One/day Composite
Total Phosphorus	0.6 (43)	1	2	3	One/day Composite
Total Dissolved Solids	Report (Report)	N/A	Report	N/A	Two/month Composite
Sulfate	Report (Report)	N/A	Report	N/A	Two/month Composite
Chlorides	Report (Report)	N/A	Report	N/A	Two/month Composite
<i>E. coli</i> , CFU or MPN* per 100 ml	120	N/A	379	N/A	Daily Grab

\*CFU or MPN - colony-forming units or most probable number

2. The permittee shall utilize an Ultraviolet Light (UV) system for disinfection purposes. An equivalent method of disinfection may be substituted only with prior approval of the Executive Director.
3. The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored once per day by grab sample.
4. There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.
5. Effluent monitoring samples shall be taken at the following location(s): Following the final treatment unit.
6. The effluent shall contain a minimum dissolved oxygen of 6.0 mg/l and shall be monitored once per day by grab sample.
7. The annual average flow and maximum 2-hour peak flow shall be reported monthly.

FINAL EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTSOutfall Number 001

1. During the period beginning upon the completion of the expansion of the facility to 10.0 million gallons per day (MGD) and lasting through the date of expiration, the permittee is authorized to discharge subject to the following effluent limitations:

The annual average flow of effluent shall not exceed 10.0 MGD, nor shall the average discharge during any two-hour period (2-hour peak) exceed 24,306 gallons per minute.

Effluent Characteristic	Discharge Limitations			Min. Self-Monitoring Requirements		
	Daily Avg mg/l (lbs/day)	7-day Avg mg/l	Daily Max mg/l	Single Grab mg/l	Report Daily Avg. & Daily Max. Measurement Frequency	Sample Type Totalizing Meter
Flow, MGD	Report	N/A	Report	N/A	Continuous	
Carbonaceous Biochemical Oxygen Demand (5-day)	5 (417)	10	20	30	One/day	Composite
Total Suspended Solids	5 (417)	10	20	30	One/day	Composite
Ammonia Nitrogen	2 (167)	5	10	15	One/day	Composite
Total Phosphorus	0.5 (42)	1	2	3	One/day	Composite
Total Dissolved Solids	Report (Report)	N/A	Report	N/A	Two/month	Composite
Sulfate	Report (Report)	N/A	Report	N/A	Two/month	Composite
Chlorides	Report (Report)	N/A	Report	N/A	Two/month	Composite
<i>E. coli</i> , CFU or MPN* per 100 ml	120	N/A	379	N/A	Daily	Grab

\*CFU or MPN - colony-forming units or most probable number

2. The permittee shall utilize an Ultraviolet Light (UV) system for disinfection purposes. An equivalent method of disinfection may be substituted only with prior approval of the Executive Director.
3. The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored once per day by grab sample.
4. There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.
5. Effluent monitoring samples shall be taken at the following location(s): Following the final treatment unit.
6. The effluent shall contain a minimum dissolved oxygen of 6.0 mg/l and shall be monitored once per day by grab sample.
7. The annual average flow and maximum 2-hour peak flow shall be reported monthly.

## DEFINITIONS AND STANDARD PERMIT CONDITIONS

As required by Title 30 Texas Administrative Code (TAC) Chapter 305, certain regulations appear as standard conditions in waste discharge permits. 30 TAC § 305.121 - 305.129 (relating to Permit Characteristics and Conditions) as promulgated under the Texas Water Code (TWC) §§ 5.103 and 5.105, and the Texas Health and Safety Code (THSC) §§ 361.017 and 361.024(a), establish the characteristics and standards for waste discharge permits, including sewage sludge, and those sections of 40 Code of Federal Regulations (CFR) Part 122 adopted by reference by the Commission. The following text includes these conditions and incorporates them into this permit. All definitions in TWC § 26.001 and 30 TAC Chapter 305 shall apply to this permit and are incorporated by reference. Some specific definitions of words or phrases used in this permit are as follows:

### 1. Flow Measurements

- a. Annual average flow - the arithmetic average of all daily flow determinations taken within the preceding 12 consecutive calendar months. The annual average flow determination shall consist of daily flow volume determinations made by a totalizing meter, charted on a chart recorder and limited to major domestic wastewater discharge facilities with one million gallons per day or greater permitted flow.
- b. Daily average flow - the arithmetic average of all determinations of the daily flow within a period of one calendar month. The daily average flow determination shall consist of determinations made on at least four separate days. If instantaneous measurements are used to determine the daily flow, the determination shall be the arithmetic average of all instantaneous measurements taken during that month. Daily average flow determination for intermittent discharges shall consist of a minimum of three flow determinations on days of discharge.
- c. Daily maximum flow - the highest total flow for any 24-hour period in a calendar month.
- d. Instantaneous flow - the measured flow during the minimum time required to interpret the flow measuring device.
- e. 2-hour peak flow (domestic wastewater treatment plants) - the maximum flow sustained for a two-hour period during the period of daily discharge. The average of multiple measurements of instantaneous maximum flow within a two-hour period may be used to calculate the 2-hour peak flow.
- f. Maximum 2-hour peak flow (domestic wastewater treatment plants) - the highest 2-hour peak flow for any 24-hour period in a calendar month.

### 2. Concentration Measurements

- a. Daily average concentration - the arithmetic average of all effluent samples, composite or grab as required by this permit, within a period of one calendar month, consisting of at least four separate representative measurements.
  - i. For domestic wastewater treatment plants - When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values in the previous four consecutive month period consisting of at least four measurements shall be utilized as the daily average concentration.

- ii. For all other wastewater treatment plants - When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values taken during the month shall be utilized as the daily average concentration.
- b. 7-day average concentration - the arithmetic average of all effluent samples, composite or grab as required by this permit, within a period of one calendar week, Sunday through Saturday.
- c. Daily maximum concentration - the maximum concentration measured on a single day, by the sample type specified in the permit, within a period of one calendar month.
- d. Daily discharge - the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in terms of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the sampling day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the sampling day.

The daily discharge determination of concentration made using a composite sample shall be the concentration of the composite sample. When grab samples are used, the daily discharge determination of concentration shall be the arithmetic average (weighted by flow value) of all samples collected during that day.

- e. Bacteria concentration (*E. coli* or Enterococci) - Colony Forming Units (CFU) or Most Probable Number (MPN) of bacteria per 100 milliliters effluent. The daily average bacteria concentration is a geometric mean of the values for the effluent samples collected in a calendar month. The geometric mean shall be determined by calculating the  $n$ th root of the product of all measurements made in a calendar month, where  $n$  equals the number of measurements made; or, computed as the antilogarithm of the arithmetic mean of the logarithms of all measurements made in a calendar month. For any measurement of bacteria equaling zero, a substituted value of one shall be made for input into either computation method. If specified, the 7-day average for bacteria is the geometric mean of the values for all effluent samples collected during a calendar week.
  - f. Daily average loading (lbs/day) - the arithmetic average of all daily discharge loading calculations during a period of one calendar month. These calculations must be made for each day of the month that a parameter is analyzed. The daily discharge, in terms of mass (lbs/day), is calculated as (Flow, MGD x Concentration, mg/l x 8.34).
  - g. Daily maximum loading (lbs/day) - the highest daily discharge, in terms of mass (lbs/day), within a period of one calendar month.
3. Sample Type
- a. Composite sample - For domestic wastewater, a composite sample is a sample made up of a minimum of three effluent portions collected in a continuous 24-hour period or during the period of daily discharge if less than 24 hours, and combined in volumes proportional to flow, and collected at the intervals required by 30 TAC § 319.9 (a). For industrial wastewater, a composite sample is a sample made up of a minimum of three effluent portions collected in a continuous 24-hour period or during the period of daily discharge if less than 24 hours, and combined in volumes proportional to flow, and collected at the intervals required by 30 TAC § 319.9 (b).

- b. Grab sample - an individual sample collected in less than 15 minutes.
- 4. Treatment Facility (facility) - wastewater facilities used in the conveyance, storage, treatment, recycling, reclamation and/or disposal of domestic sewage, industrial wastes, agricultural wastes, recreational wastes, or other wastes including sludge handling or disposal facilities under the jurisdiction of the Commission.
- 5. The term "sewage sludge" is defined as solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in 30 TAC Chapter 312. This includes the solids that have not been classified as hazardous waste separated from wastewater by unit processes.
- 6. Bypass - the intentional diversion of a waste stream from any portion of a treatment facility.

## **MONITORING AND REPORTING REQUIREMENTS**

### **1. Self-Reporting**

Monitoring results shall be provided at the intervals specified in the permit. Unless otherwise specified in this permit or otherwise ordered by the Commission, the permittee shall conduct effluent sampling and reporting in accordance with 30 TAC §§ 319.4 - 319.12. Unless otherwise specified, effluent monitoring data shall be submitted each month, to the Compliance Monitoring Team of the Enforcement Division (MC 224), by the 20th day of the following month for each discharge which is described by this permit whether or not a discharge is made for that month. Monitoring results must be submitted online using the NetDMR reporting system available through the TCEQ website unless the permittee requests and obtains an electronic reporting waiver. Monitoring results must be signed and certified as required by Monitoring and Reporting Requirements No. 10.

As provided by state law, the permittee is subject to administrative, civil and criminal penalties, as applicable, for negligently or knowingly violating the Clean Water Act (CWA); TWC §§ 26, 27, and 28; and THSC § 361, including but not limited to knowingly making any false statement, representation, or certification on any report, record, or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance, or falsifying, tampering with or knowingly rendering inaccurate any monitoring device or method required by this permit or violating any other requirement imposed by state or federal regulations.

### **2. Test Procedures**

- a. Unless otherwise specified in this permit, test procedures for the analysis of pollutants shall comply with procedures specified in 30 TAC §§ 319.11 - 319.12. Measurements, tests, and calculations shall be accurately accomplished in a representative manner.
- b. All laboratory tests submitted to demonstrate compliance with this permit must meet the requirements of 30 TAC § 25, Environmental Testing Laboratory Accreditation and Certification.

### **3. Records of Results**

- a. Monitoring samples and measurements shall be taken at times and in a manner so as to be representative of the monitored activity.
- b. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period

of at least five years (or longer as required by 40 CFR Part 503), monitoring and reporting records, including strip charts and records of calibration and maintenance, copies of all records required by this permit, records of all data used to complete the application for this permit, and the certification required by 40 CFR § 264.73(b)(9) shall be retained at the facility site, or shall be readily available for review by a TCEQ representative for a period of three years from the date of the record or sample, measurement, report, application or certification. This period shall be extended at the request of the Executive Director.

c. Records of monitoring activities shall include the following:

- i. date, time and place of sample or measurement;
- ii. identity of individual who collected the sample or made the measurement.
- iii. date and time of analysis;
- iv. identity of the individual and laboratory who performed the analysis;
- v. the technique or method of analysis; and
- vi. the results of the analysis or measurement and quality assurance/quality control records.

The period during which records are required to be kept shall be automatically extended to the date of the final disposition of any administrative or judicial enforcement action that may be instituted against the permittee.

4. Additional Monitoring by Permittee

If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit using approved analytical methods as specified above, all results of such monitoring shall be included in the calculation and reporting of the values submitted on the approved self-report form. Increased frequency of sampling shall be indicated on the self-report form.

5. Calibration of Instruments

All automatic flow measuring or recording devices and all totalizing meters for measuring flows shall be accurately calibrated by a trained person at plant start-up and as often thereafter as necessary to ensure accuracy, but not less often than annually unless authorized by the Executive Director for a longer period. Such person shall verify in writing that the device is operating properly and giving accurate results. Copies of the verification shall be retained at the facility site and/or shall be readily available for review by a TCEQ representative for a period of three years.

6. Compliance Schedule Reports

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each schedule date to the Regional Office and the Compliance Monitoring Team of the Enforcement Division (MC 224).



## 7. Noncompliance Notification

- a. In accordance with 30 TAC § 305.125(9) any noncompliance which may endanger human health or safety, or the environment shall be reported by the permittee to the TCEQ. Except as allowed by 30 TAC § 305.132, report of such information shall be provided orally or by facsimile transmission (FAX) to the Regional Office within 24 hours of becoming aware of the noncompliance. A written submission of such information shall also be provided by the permittee to the Regional Office and the Compliance Monitoring Team of the Enforcement Division (MC 224) within five working days of becoming aware of the noncompliance. For Publicly Owned Treatment Works (POTWs), effective December 21, 2023, the permittee must submit the written report for unauthorized discharges and unanticipated bypasses that exceed any effluent limit in the permit using the online electronic reporting system available through the TCEQ website unless the permittee requests and obtains an electronic reporting waiver. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.
  - b. The following violations shall be reported under Monitoring and Reporting Requirement 7.a.:
    - i. Unauthorized discharges as defined in Permit Condition 2(g).
    - ii. Any unanticipated bypass that exceeds any effluent limitation in the permit.
    - iii. Violation of a permitted maximum daily discharge limitation for pollutants listed specifically in the Other Requirements section of an Industrial TPDES permit.
  - c. In addition to the above, any effluent violation which deviates from the permitted effluent limitation by more than 40% shall be reported by the permittee in writing to the Regional Office and the Compliance Monitoring Team of the Enforcement Division (MC 224) within 5 working days of becoming aware of the noncompliance.
  - d. Any noncompliance other than that specified in this section, or any required information not submitted or submitted incorrectly, shall be reported to the Compliance Monitoring Team of the Enforcement Division (MC 224) as promptly as possible. For effluent limitation violations, noncompliances shall be reported on the approved self-report form.
8. In accordance with the procedures described in 30 TAC §§ 35.301 - 35.303 (relating to Water Quality Emergency and Temporary Orders) if the permittee knows in advance of the need for a bypass, it shall submit prior notice by applying for such authorization.
9. Changes in Discharges of Toxic Substances

All existing manufacturing, commercial, mining, and silvicultural permittees shall notify the Regional Office, orally or by facsimile transmission within 24 hours, and both the Regional Office and the Compliance Monitoring Team of the Enforcement Division (MC 224) in writing within five (5) working days, after becoming aware of or having reason to believe:



- a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant listed at 40 CFR Part 122, Appendix D, Tables II and III (excluding Total Phenols) which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
  - i. One hundred micrograms per liter (100 µg/L);
  - ii. Two hundred micrograms per liter (200 µg/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/L) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;
  - iii. Five (5) times the maximum concentration value reported for that pollutant in the permit application; or
  - iv. The level established by the TCEQ.
- b. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
  - i. Five hundred micrograms per liter (500 µg/L);
  - ii. One milligram per liter (1 mg/L) for antimony;
  - iii. Ten (10) times the maximum concentration value reported for that pollutant in the permit application; or
  - iv. The level established by the TCEQ.

#### 10. Signatories to Reports

All reports and other information requested by the Executive Director shall be signed by the person and in the manner required by 30 TAC § 305.128 (relating to Signatories to Reports).

#### 11. All POTWs must provide adequate notice to the Executive Director of the following:

- a. Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to CWA § 301 or § 306 if it were directly discharging those pollutants;
- b. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit; and
- c. For the purpose of this paragraph, adequate notice shall include information on:
  - i. The quality and quantity of effluent introduced into the POTW; and
  - ii. Any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

### PERMIT CONDITIONS

#### 1. General

- a. When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in an application or in any report to the Executive Director, it shall promptly submit such facts or information.
- b. This permit is granted on the basis of the information supplied and representations made by the permittee during action on an application, and relying upon the accuracy and completeness of that information and those representations. After notice and opportunity for a hearing, this permit may be modified, suspended, or revoked, in whole or in part, in accordance with 30 TAC Chapter 305, Subchapter D, during its term for good cause including, but not limited to, the following:
  - i. Violation of any terms or conditions of this permit;
  - ii. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts; or
  - iii. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.
- c. The permittee shall furnish to the Executive Director, upon request and within a reasonable time, any information to determine whether cause exists for amending, revoking, suspending or terminating the permit. The permittee shall also furnish to the Executive Director, upon request, copies of records required to be kept by the permit.

## 2. Compliance

- a. Acceptance of the permit by the person to whom it is issued constitutes acknowledgment and agreement that such person will comply with all the terms and conditions embodied in the permit, and the rules and other orders of the Commission.
- b. The permittee has a duty to comply with all conditions of the permit. Failure to comply with any permit condition constitutes a violation of the permit and the Texas Water Code or the Texas Health and Safety Code, and is grounds for enforcement action, for permit amendment, revocation, or suspension, or for denial of a permit renewal application or an application for a permit for another facility.
- c. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.
- d. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation that has a reasonable likelihood of adversely affecting human health or the environment.
- e. Authorization from the Commission is required before beginning any change in the permitted facility or activity that may result in noncompliance with any permit requirements.
- f. A permit may be amended, suspended and reissued, or revoked for cause in accordance with 30 TAC §§ 305.62 and 305.66 and TWC§ 7.302. The filing of a request by the permittee for a permit amendment, suspension and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.