

## **APPENDIX B Wastewater Treatment Plant**

### **Introduction**

The District and the Interconnected District own the Wastewater Treatment Plant, which is in the process of being expanded and reconstructed. As expanded and reconstructed, the WWTP can be used to serve not only the District and the Interconnected, but also the City, on a regional basis. As more fully described in Article IV of the Agreement, the City is initially reserving wastewater capacity in the WWTP, and the City plans to deliver sewage to the WWTP for treatment in the future.

In addition to the laws authorizing this Agreement, this Appendix is authorized by Chapter 30 and Sections 49.213, 49.215, 49.227 of the Texas Water Code and other provisions of the Texas Local Government Code.

For and in consideration of the premises and the mutual covenants and agreements herein contained, the parties hereto do mutually agree as follows:

### **DIVISION I Definitions**

Unless the context requires otherwise, the following terms as used in this Appendix shall have meanings as follows:

"City System" means all facilities necessary to enable City to collect and transport Sewage to the WWTP, including Interconnects.

"City Capacity" means 300,000 GPD (composed of 150,000 GPD from the District and 150,000 from the Interconnected District), subject to change in accordance with Division II.

"Delivery Point" means the point on the WWTP site designated by the WWTP Engineer for delivery of Sewage by the City. By separate agreement, the City and District may establish another Delivery Point.

"Design Capacity" of the WWTP means 1,200,000 GPD. See Section B2.05 regarding changes to the Design Capacity. See Section B2.04(i) regarding work necessary to increase the current capacity to the Design Capacity.

"ESFC" is a measure of sewage treatment demand equivalent to that required by a typical detached single-family house, which is the lower of 300 GPD of Sewage flow or such

lesser average daily flow as may be approved by TCEQ for use with respect to the City System. For other types of buildings or premises, the number of ESFC's is calculated by dividing the domestic water usage, in GPD, by 360.

“Expansion Costs” shall mean the total costs of an expansion of the WWTP, including:

- (1) construction and acquisition contract amounts, including amendments and change orders;
- (2) advertisement costs;
- (3) costs of engineering, surveying, legal and other professional services, to the extent necessary for design or construction of the expansion or acquiring land or rights of way for the expansion;
- (4) costs of inspection and construction observation;
- (5) costs of acquiring land and right of way;
- (6) costs of licenses, permits and other approvals; and
- (7) other direct costs incurred because of the expansion.

“Flow-Related WWTP Expenses” means WWTP Expenses that vary from month to month in proportion to the flow of Sewage treated by the WWTP. See Section B4.02 for categories of expenses, allocation factors, etc.

“GPD” means gallons per day (average day, determined in accordance with TCEQ waste discharge permits).

"Governmental Regulations" means all laws, rules, regulations, orders and of the District, the State of Texas, the federal government of the United States and any other regulatory authority having jurisdiction. *Examples:* District regulations, TCEQ disposal permits and regulations, etc.

“Interconnect” means a force main, lift station and other associated appurtenances connecting a part of the City System to the WWTP (at a Delivery Point).

“Non-Flow-Related WWTP Expenses” means WWTP Expenses that are not Flow-Related WWTP Expenses. See Section B4.02 for categories of expenses, allocation factors, etc.

“Operating District” means, until changed by the District and the Interconnected District, Montgomery County Utility District No. 3.

“Operations Committee” means the committee described in Division IV.

“Participants” means the District, the Interconnected District, the City and any other utility entity that may have a contract right to participate in the WWTP under arrangements similar to those in this Appendix (including cost sharing, right to expand the WWTP, etc.)

"Sewage" includes only:

- (1) waterborne human waste and waste from typical domestic activities (and similar activities at commercial establishments), such as washing, bathing and food preparation, and
- (2) water, including inflow and infiltration, and,
- (3) other substances, if approved by written agreement of the Operating District pursuant to Section B3.11.

"Sewage Disposal Services" means transporting Sewage from the Delivery Point, treatment and ultimate disposal.

"Start Date" means, for each expansion, the date set as provided in Division II.

"TCEQ" means the Texas Commission on Environmental Quality, or its successor.

"WWTP" is defined in Article II of this Agreement.

"WWTP Account" means the account established by the Operating District as provided in Division III.

"WWTP Engineer" means the engineer hired by the Operating District to provide engineering services for the WWTP.

"WWTP Expenses" means all expenses directly attributable to the WWTP, including expenses for operating, maintaining, repairing, replacing, modifying, improving, extending and enlarging the WWTP, except for: (i) expenses incurred for the current expansion and reconstruction of the WWTP and (ii) expenses covered by payments of Expansion Costs (see Division II). If it is necessary for the Operating District to borrow money to pay WWTP Expenses, the Operating District may, upon notice to the City, elect to treat the costs of borrowing as WWTP Expenses. See Section B4.02 for categories of expenses, allocation factors, etc.

## **DIVISION II. Construction of Facilities, Etc.**

B2.01: Current Construction Contract. The Operating District shall proceed under the current construction contract for expansion and reconstruction of the WWTP. The cost sharing and payment provisions agreed-upon by the District and the Interconnected District shall apply to that contract. The City shall make payments to District as required by Article IV of the Agreement.

B2.02: Interconnect. (a) City shall be responsible for the construction of the Interconnect. The Interconnect shall be owned, maintained and controlled by City (except

for measuring equipment, as provided below). City must make sure that the plans and specifications for the Interconnect are approved in writing by the Operating District and any other regulatory authority having jurisdiction before the start of construction. City must give the Operating District advance notices and opportunities to inspect the Interconnect during construction.

(b) The City System may only be connected to the WWTP at a Delivery Point and through an Interconnect, by means of lift stations and force mains. The lift station pumps shall be sized and controlled to deliver Sewage not in excess of the limits allowed by this Agreement, and there must be measuring equipment installed for each Interconnect. The measuring equipment may be proposed by the City, but must receive approval from the Operating District. The measuring equipment may be a meter, flume or other device that meets the accuracy tolerances required by Division VI. The measuring equipment may include recording or telemetry devices (which would likely reduce the City's portion of the Monthly Charges for reading the measuring equipment). The measuring equipment for each Interconnect must be provided and paid for by the City but transferred to the Operating District, with appropriate access agreements, before the Interconnect is placed in service.

(c) City shall notify the WWTP Engineer and operator prior to the activation of each part of the City System discharging into an Interconnect. Notice shall be given at least 90 days in advance, but the Operating District shall consent to a shorter notice period if the additional flow can be handled without undue expense or dislocation. City shall notify the Operating District as long as practicable in advance whenever a substantial increase in Sewage flow through the City System is expected.

(d) Before an Interconnect is placed in service: (i) City shall provide the WWTP Engineer with one set of "as built" record drawings of those facilities and the related measuring equipment, with certification in the customary form that they were constructed in accordance with the plans and specifications approved by District and the other regulatory authorities, and (ii) City shall ensure that the Interconnect is in compliance with regulations adopted by the TCEQ, the Operating District and all other regulations governing sewage systems (including regulations regarding testing and certification).

(e) City may not change the design or construction of the Interconnect, its lift stations, force mains, associated facilities, measuring equipment or other parts of the Interconnect without complying with all the provisions stated above (e.g., submission of plans, approval, certification, etc.).

(f) The provisions stated above apply to the initial Interconnect as well as any additional Interconnects subsequently authorized by the Operating District pursuant to the agreement of the parties.

**B2.03: Customer Connections.** No customers shall be permitted to connect directly to an Interconnect. City shall ensure that all taps and entry points to the City System are made in compliance with regulations adopted by the TCEQ and all other applicable Governmental Regulations.

**B2.04: Future WWTP Expansions.** (a) City may notify the District and the other Participants of its desire to trigger a future expansion of the WWTP after the current

expansion and reconstruction. The notice must specify the City's capacity requirements in the future expansion. Following receipt of such a notice, the District and the other Participants shall have 45 days to send a reply notice to the triggering party and the District to indicate whether it will participate in the future expansion. Any such reply notice must specify the replying party's capacity requirements in the future expansion. Capacities of the parties in the future expansion shall be as specified in the triggering notice and (if applicable) the reply notices, unless adjusted as provided below.

(b) After expiration of the 45-day reply period, the Operating District may collect the initial installments of Expansion Costs (to cover preliminary engineering work) and shall proceed with preliminary engineering work, to the extent necessary to determine the appropriate capacity and scope of the future expansion. The WWTP Engineer, by notice to the parties, may adjust the requested capacities of the parties proportionally to make the capacity of a future expansion comply with sound engineering principles, including feasibility and economy of construction and operation. If the requested capacities are adjusted as provided above, a participating party shall have the option to withdraw from the future expansion by so notifying the other participating parties and the District within 45 days following receipt of notice of the adjustment. If no participating party withdraws, the Participants's capacities in the future expansion shall be as provided in the engineer's notice.

(c) After determining the appropriate capacity and scope of a future expansion, the District shall pursue the remaining work for design and construction with commercially reasonable diligence, following the steps listed below. Expansion Costs, and the resulting capacity, shall be apportioned among the participating parties in accordance with the quantities allocated to each party participating in such expansion. After completion of construction, the Start Date for the expansion is set as provided in Section 2.06. On the Start Date: (i) the City Capacity may increase (if City participated in that expansion), and (ii) billing will be adjusted accordingly.

(d) For each expansion, City shall pay its apportioned share of the Expansion Costs in installments, as requested by the Operating District. The Operating District may request installments for each contract or phase of work, beginning with preliminary engineering. The following shall apply to installments and Expansion Costs:

- (1) Each installment shall be made within 30 days following a written request for same from Operating District. Installments may be requested both before and after Operating District enters contracts or incurs other costs, including contracts for design, acquisition and construction. An installment may include reasonable estimates and contingency amounts. In lieu of paying pre-contract costs, estimates or contingency amounts, City may provide an escrow, a letter of credit, a guarantee or other assurance of immediate payment. If such assurance is not acceptable to the Operating District, the Operating District may work with City to develop an alternate payment method that will allow the Operating District to proceed with the work with assurance that the costs will be paid when due.
- (2) When the Operating District has received the full installment requested for each contract or phase of the expansion (or acceptable

assurance of payment), Operating District will proceed with the work. In the case of an installment for a construction contract, the Operating District agrees to reduce the installment after the contract is signed, so that it will not exceed 105% of the contract amount; and the Operating District shall refund any excess promptly upon request by City.

- (3) If the City's apportioned share of the actual Expansion Costs exceeds the installments paid, Operating District may request City (and any other Participant) to pay its share of the excess, and City agrees to pay its share within 30 days of the request. Likewise, if the actual Expansion Costs are less than the installments paid, Operating District will refund the excess to the Participants who paid it, within 30 days following the time when the actual Expansion Costs are known.

(e) Operating District shall assure that the plans and specifications for the expansion will be approved by each regulatory authority having approval jurisdiction over the work. Operating District will permit City to inspect the construction and will provide written notice to City of the commencement of each phase of construction.

(f) Operating District shall provide City's engineer with one set of "as built" record drawings of the expansion with certification, in the customary form, that it was constructed in accordance with the plans and specifications approved by regulatory authorities.

***(g) Notwithstanding anything in this Agreement to the contrary, it is understood and agreed that: (i) the Operating District is not obligated to do work toward any expansion beyond the work paid for by City and the other Participants, if any, and (ii) if the full amount to be paid by City toward an expansion (or any other Participant in that expansion) is not timely paid, the Operating District may suspend work and may exclude the non-paying Participant from further participation in that expansion (with no refund of amounts previously paid by that Participant).***

(h) If one or more Participants pay for a future expansion that triggers Governmental Regulations that would not otherwise apply, any resulting increase in WWTP Expenses directly attributable to such expansion shall be borne by those Participants. Such increase shall be borne in proportion to their respective increases in capacity resulting from the expansion.

(i) Work necessary to increase the current capacity of the WWTP to the Design Capacity (e.g., upsizing pumps and adding dechlorination facilities) shall not be considered an expansion and shall be paid for as a Non-Flow-Related WWTP Expense.

(j) Work toward an expansion required by TCEQ rules and triggered by increasing discharges from the WWTP shall be paid for as a Non-Flow-Related WWTP Expense if no Participant desires capacity in excess of the Design Capacity, and the Operating District shall endeavor to avoid or reduce such expense in those circumstances. *Exception:* If any Participant(s) are delivering flows in excess of contractual limits, and if that excess triggered the expansion, the costs of the work shall be paid by such Participant(s), in proportion to their respective shares of the excess.

(k) Except as provided by (j) above, City shall have no obligation to participate in the

cost of any expansion unless City has requested and agreed to accept additional capacity resulting from the expansion.

**B2.05: Capacities; Changes; Ownership, Etc.** (a) If the Design Capacity of the WWTP is reduced by regulatory action, casualty or other cause, the City Capacity and the other capacity in the WWTP are reduced proportionally, “share and share alike.”

(b) The Design Capacity or the City Capacity, or both, may change as a result of a future expansion as provided in Section B2.04, effective on the Start Date of that expansion. The City Capacity may be reduced by transfer, as provided in Article IV of this Agreement.

(c) The WWTP Engineer shall make determinations of the Design Capacity and City Capacity from time to time, in accordance with this Appendix.

(d) The WWTP, including each expansion, will be owned and controlled by the District and the Interconnected District, but shall be subject to this Agreement, including, in particular: (i) City’s right to receive Sewage Disposal Services from the WWTP as provided in Division III, and (ii) the provisions relating to the Operations Committee.

**B2.06: Start Date.** The Operating District shall set a Start Date for the current expansion and reconstruction and for each future expansion by giving a notice to the Participants. The Start Date for an expansion may not be later than thirty days following the date when all the following have occurred:

- (1) The TCEQ has approved any changes in the discharge permit necessary to allow operation of the expansion.
- (2) The expansion has been substantially completed and is operating successfully.
- (3) City has made all of its installment payments of Expansion Costs (for an expansion after the current expansion and reconstruction of the WWTP).

### **DIVISION III. Sale and Delivery of Services**

**B3.01: Delivery, Etc.** (a) Beginning on the Start Date for the current expansion and reconstruction of the WWTP and continuing during the remainder of the term of this Agreement, District agrees to provide Sewage Disposal Services to City at the Delivery Point, and City agrees to purchase such services at the Delivery Point, all subject to the terms and conditions of this Agreement. The City’s deliveries of Sewage to the Delivery Point are limited by the following parameters:

<b>Parameter</b>	<b>Limit</b>
Maximum GPD (gallons per average day)	The lesser of: (i) the City Capacity as of the time of delivery; or (ii) 150% of the City’s average deliveries (in GPD) during the

	preceding calendar month.
Maximum delivery of Sewage on any day (gallons per peak day)	The lesser of: (i) the City Capacity as of the time of delivery multiplied by the peaking factor of 4.0; or (ii) the City's average deliveries (in GPD) during the preceding calendar month multiplied by the peaking factor of 4.0.
Maximum delivery of Sewage in any minute (gallons per minute)	City Capacity as of the time of delivery, divided by 1440 (minutes per day) and multiplied by the peaking factor of 4.0.
Maximum number of ESFC's served by City System	Not limited. <i>Exception:</i> If the TCEQ imposes a limit on the ESFC's that may be served by City System (or takes the City's ESFC's into account to impose a limit on the number of ESFC's that may be served by the WWTP or another Participant), the limit on ESFC's imposed by the TCEQ shall apply to the City in the same manner that it applies to other Participants. If such a limit is imposed upon the City, the City shall have the right to seek "re-rating" of its ESFC's so that they more accurately reflect actual flow levels.

- B3.02: Billing and Payment. (a) Monthly Charges shall start accruing when the City begins physical delivery of Sewage to the WWTP. Each billing period shall be approximately one month. The Monthly Charges payable by City for each billing period shall include the following:
- (1) any fee, service charge, penalty, tax or fine required to be paid by any government or regulatory authority as a direct result of serving City; plus
  - (2) costs of reading, maintaining, calibrating, testing or replacing Sewage measuring equipment for each Interconnect; plus
  - (3) a part of the Flow-Related WWTP Expenses incurred during the billing period, such part being determined by the ratio of the measured flow of Sewage delivered by the City to the total discharge from the WWTP during the billing period; plus
  - (4) any increase in WWTP Expenses triggered by an expansion triggered by City, as provided in Section B2.04(h); plus
  - (5) any other payments required by this Appendix or agreements entered into pursuant to this Appendix.

(b) At the end of each billing period, the Operating District shall read the measuring equipment (if any) and prepare a statement showing the volume of substances delivered (if any) and the appropriate Monthly Charges. Each statement shall be sent to

the City, and payment shall be due and payable at Operating District's designated payment address (as shown on the statement) no later than the 45th day following the date of the statement.

(c) The Monthly Charges billed to City under this section shall not include any WWTP Expenses covered by the the annual Capacity Reservation Fee (or the annual actual-cost "true up" amount) under Section 4.04 of the Agreement.

B3.03: Failure to Pay when Due. Should City fail to tender payment of any amount when due, interest thereon shall accrue at the rate of ten percent per annum from the date when due until paid. In the event City fails to timely tender payment of any amount within the 45-day period established in Section 3.02 hereof, and such failure continues for 45 days after notice to City of such default, City shall not allow any new, enlarged or expanded premises to be served by the City System until the default is cured. This is in addition to all other remedies provided in this Agreement, and limitations on remedies do not apply.

B3.04: Title to and Responsibility for Sewage. Title to, possession, and control of Sewage shall remain in City until it passes through the Delivery Point, where title to, possession, and control shall pass to the Operating District.

B3.05: Regulatory Action. The obligations of the Operating District to supply Sewage Disposal Services are subject to all present and future regulatory requirements, and the parties agree to cooperate reasonably to make such applications and to take such action as may be reasonably necessary to obtain compliance therewith.

B3.06: Maintenance of City System. The City shall be responsible for operating, maintaining, repairing, replacing, extending, improving and enlarging the City System in good working condition and shall promptly repair any leaks or breaks. If a leak, break, contamination or other defect occurs within that system which, in the Operating District's reasonable opinion, could either endanger, contaminate or overload the WWTP or prejudice any Participant's ability to serve its customers, the Operating District, after providing notice to the City, shall have the right to take reasonably necessary action to protect the public health or welfare, or the City System, until such leak, break, contamination or other defect has been repaired. In these circumstances, the Operating District may at its option effect a repair and charge the City the reasonable and necessary cost thereof (including, but not limited to, engineering fees, operator fees, legal fees, and contractor costs) as part of the Monthly Charges.

B3.07: Plumbing Regulations. It is a condition of receiving service that the City adopt and enforce adequate plumbing regulations with provisions for the proper enforcement thereof, to ensure compliance with applicable regulations and to make sure that neither cross connection or other undesirable plumbing practices are permitted, including agreements with customers and regulations that allow City and the Operating District to inspect individual water and sewer facilities prior to providing service to ensure that no substandard materials are used and to prevent cross-connection and other undesirable plumbing practices. Should a condition in violation of these requirements be

discovered, City shall promptly cure same.

B3.08: Service Regulations. Operating District may establish and amend sewer service regulations required to comply with Governmental Regulations. City shall promptly comply with such regulations and cause its customers to comply.

B3.09: Measurement of Quantity. (a) The parties agree to use the best practical method for measuring Sewage delivered to the WWTP by City, as follows:

- (1) Readings of the measuring equipment for each Interconnect shall be used whenever they are available, adjusted, if necessary, as provided in Division VI.
- (2) If such readings are not available, the flow shall be estimated using the best available data, which may include pump run-time measurements and pumping rates, metered consumption of retail water at premises served by the City System and an estimate of other substances entering the City System. Any such estimate shall be made by the Operating District and shall give effect to the historical relationship between retail water consumed and Sewage deliveries, the number of customers, the weather, the condition of the facilities in question, any available field data on leaks, inflows, infiltration and other available data.

(b) City will require all users connected to the City System that receive potable water from the City's water utility to have a metering device capable of measuring the amount of water delivered to the user. City shall use reasonable diligence in installing, maintaining and repairing said retail meters and shall provide the Operating District a list of the meter readings, if requested, including the location of use and a total of the estimated amounts of water used.

B3.10: Testing of Sewage. Operating District may collect samples from the Interconnect and cause the same to be analyzed. If analysis discloses that a sample does not comply with applicable regulations, and that the likely source is the City System or premises served by that System, City must take necessary corrective action immediately and reimburse District for costs incurred by District; otherwise, the costs shall be paid as a WWTP Expense.

B3.11: Regulation of Quality. Only Sewage may be delivered to the WWTP. The chemical, biological and physical composition of Sewage delivered to the WWTP must comply with the design parameters for the WWTP's influent, including parameters for biological oxygen demand, total suspended solids, ammonia, etc. *Exception:* With the written agreement of the Operating District, City may deliver substances of other types, subject to pre-treatment or other conditions that may be imposed by the agreement.

B3.12: WWTP Account. (a) The Operating District shall establish the WWTP Account and account for it separately. The annual Capacity Reservation Fee and all of City's monthly payments or other assessments made under this Appendix will be made into the WWTP Account, and all WWTP Expenses and Expansion Costs shall be paid from the

WWTP Account.

(b) The District will cause the WWTP Account to be covered by the District's general annual audits and will provide a copy of each such audit report to City upon request. City shall have the right to have special or detailed audits of the WWTP Account performed, at the sole expense of City.

**DIVISION IV.  
Operations Committee, Budgets, Etc.**

B4.01: Operations Committee. The City may designate a representative to attend and participate in all meetings and deliberations of the committee beginning when the City begins physical delivery of Sewage. The City representative will not have a vote. The City may designate one or more alternate representatives.

B4.02: Annual Budget; Allocations. (a) By September 30 of each year, or as soon thereafter as practicable, the Operations Committee shall adopt a budget for WWTP Expenses for the upcoming calendar year. The Operations Committee may amend a budget after it is adopted.

(b) All WWTP Expenses shall be categorized and allocated between Flow-Related WWTP Expenses and Non-Flow-Related WWTP Expenses by the annual budget. A sample budget template showing categories and the allocation factors is shown below:

Categories and Amounts		Flow-Related		Non-Flow-Related	
		%	\$	%	\$
<b>LINE EXPENSES</b>	\$			100	
6221 AUDIT FEES				100	
6222 ENGINEERING				100	
6224 LAB FEES				100	
6226 PERMIT FEES				100	
6230 SLUDGE MANAGEMENT		100			
6232 OPERATOR				100	
6233 BOOKKEEPING				100	
6234 MOWING				100	
6235 MAINT & OPERATIONS				100	
6240 GENERAL OFFICE EXP				100	
6242 CHEMICALS		100			
6251 TELEPHONE				100	
6252 UTILITIES		50		50	
6253 INSURANCE				100	
6331 GENERAL MANAGER				100	
6358 MISC				100	
<b>CAPITAL OUTLAY</b> (major repairs, replacements, betterments, etc.)				100	
<b>TOTALS</b>					

(c) By notice to the Operations Committee, any Participant may propose to re-categorize expenses or change the allocation of an expense between Flow-Related WWTP Expenses and Non-Flow-Related WWTP Expenses. If the Operations Committee does not approve the proposed change within 30 days following the notice, the operator of the WWTP shall rule upon the proposed change (based upon the criteria set out in this Appendix). Changes so approved—or ruled upon by the operator—shall be applied to the current budget and the most recently-issued bills (at the time of the original request) as well as future budgets and bills, but not to prior budgets or bills.

B4.02: Books and Records. Each party, at its own expense, may inspect and copy the books and records of the other party (or under control of the other party) that are related to this Appendix, except for items that are confidential by law.

## **DIVISION V. Performance by the Parties**

B5.01: Force Majeure. In the event either party is rendered unable, wholly or in part, by Force Majeure, to carry out any of its obligations under this Appendix, it is agreed that upon such party's giving notice and full particulars of such Force Majeure in writing to the other party as soon as possible after the occurrence of the Force Majeure, the obligations of the party giving such notice, to the extent it is affected by Force Majeure and to the extent that due diligence is being used to resume performance, shall be suspended for the duration of the Force Majeure. Such cause shall, as far as possible, be remedied with all reasonable dispatch.

B5.02: Force Majeure Defined. The term "Force Majeure," as used herein, shall include, but not be limited to, acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, war, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of government and people, explosions, breakage or damage to machinery, pipelines or canals, and any other incapacities of either party, whether similar to those enumerated or otherwise, and not within the control of the party claiming such inability, which by the exercise of due diligence and care such party could not have avoided.

B5.03. Duties Not Affected. Generally, the duties of the District and the Interconnected District owed to each other, including ownerships and divisions of costs, are not affected by this Appendix.

**DIVISION VI.**  
**Measuring Equipment**

B6.01: In General. As provided above, each Interconnect shall include Sewage measuring equipment. It shall transferred to, read and maintained by the Operating District after installation, and the costs are passed-through to the City as part of the Monthly Charges. The City must make appropriate access arrangements for reading and maintenance.

B6.02: Access. During any reasonable hours, the Operating District and City shall have access to the measuring equipment. City shall have access to Operating District's records pertinent to determining the measurement and quantity of Sewage actually delivered, but the Operating District will read the measuring equipment for the purpose of billing.

B6.03: Billing Adjustments for Inaccurate Measurement. Should the test of the measuring equipment show that the equipment registers either more than 105% or less than 95% of the Sewage delivered for a given flow rate of flow: (i) District shall calibrate the equipment to the manufacturer's specifications for the given rate of flow, or replace it, and (ii) the billings shall be adjusted to the actual Sewage delivered, using the percentage of inaccuracy disclosed by the test. Any billing adjustment under this Section shall be for a period extending back to the time when the inaccuracy began, if such time is ascertainable; and if such time is not ascertainable, for a period extending back to the last test of the measuring equipment or 120 days, whichever is shorter. As used in this paragraph, the expression "given rate of flow" means one of the following selected by District for each calibration or test:

- 1) the total quantity of Sewage delivered during the preceding period (usually a calendar month) as reflected by the totalizer, converted to gallons per minute
- 2) high, low, and intermediate rates of flow in the flow range, as reflected by the flow recording devices;
- 3) the applicable maximum daily quantity converted to gallons per minute; or
- 4) AWWA-specified test flow rates for that size and type of measuring equipment.

B6.04: Disputes as to Testing. In the event of dispute between Operating District and City as to the accuracy of the testing equipment used by Operating District to conduct the accuracy test, an independent check shall be mutually agreed upon between City and the Operating District to be conducted by an independent measuring equipment company acceptable to both City and the Operating District. The cost of such test will be at the requesting party's sole expense. The Operating District and City shall accept and be bound by the test results of the independent measuring equipment company, provided that the calibration procedure and test equipment are mutually agreeable to City and to the Operating District. City may as a matter of right require independent third party testing on

an annual basis.

B6.05: Check Meters. City may install, at its own cost and expense, such check meters or other devices as it deems appropriate in each Interconnect, but Operating District shall have the right of ingress and egress to such check meters or devices during all reasonable hours; provided, however, that billing computations shall be on the basis of the results of the measuring equipment set forth above.

## **DIVISION VII. Miscellaneous Provisions**

B7.01: Quality, Quantity, Etc. Subject to the other provisions of this Agreement, the Operating District will make Sewage Disposal Services available to City on substantially the same basis they are made available to other users of the WWTP, it being understood that there may be interruptions, stoppages and variations in quality, quantity and other attributes. **DISTRICT MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, REGARDING THE QUALITY, QUANTITY OR OTHER ATTRIBUTE OF SEWAGE DISPOSAL SERVICES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR WORKMANLIKE PERFORMANCE. DISTRICT DISCLAIMS ALL SUCH OTHER WARRANTIES.**

B7.02: Ingress and Egress. During the term of this Agreement, District shall have the right of ingress and egress in, upon under and over any and all land, easements and rights-of-way of City relating to the City System. Each party agrees that the other party may conduct inspections from time to time to determine if conditions exist in the other's facilities or connections to its customers' premises which would or might adversely affect the inspecting party's facilities.

B7.03: Subject to Laws and Regulations. This Appendix shall be subject to Governmental Regulations, and all rights and duties shall be interpreted and applied in accordance therewith. The parties agree to cooperate to obtain compliance therewith. In the event that District is required by any regulatory authority to pay any fee, service charge, penalty, or fine because of, or as a condition to, providing service to City pursuant to this Appendix, said fee, service charge, penalty, or fine shall be billed to City as part of the Monthly Charges. If a certificate of convenience and necessity or similar authorization from the TCEQ is required for one party to serve the other under this Agreement, the party receiving the service shall be responsible for obtaining same.