

**AMENDMENT NO. 1
INTERLOCAL AGREEMENT
BETWEEN THE CITY OF COLLEGE STATION
AND TEXAS A&M UNIVERSITY FOR THE WHOLESALE TREATMENT OF
DOMESTIC SANITARY WASTE**

WHEREAS, CHAPTER 791 of the TEXAS GOVERNMENT CODE, also known as the INTERLOCAL COOPERATION ACT, authorizes all local governments to contract with each other to perform functions or services that each party to the contract is authorized to perform individually; and

WHEREAS, the City of College Station, a home rule municipality incorporated under the laws of the State of Texas (hereinafter referred to as "CITY") desires to amend the Interlocal Agreement dated November 11, 1998, with Texas A&M University, a land grant University and agency of the State of Texas (hereinafter referred to as "TAMU") for the purpose of authorizing TAMU to treat wastewater on behalf of CITY on a wholesale contract basis under the rates, terms and conditions set forth in this Agreement; and

WHEREAS, CITY is authorized to provide wastewater collection and treatment services for customers within its municipal limits pursuant to Section 13.242 of the TEXAS WATER CODE; and

WHEREAS, any property to be served will be within CITY's certificated service area for retail sewer service; and

WHEREAS, the CITY considers it in its best interests to direct the sanitary wastewater flow from the property to TAMU for treatment, and

WHEREAS, TAMU currently has sufficient capacity within its Texas Commission on Environmental Quality Permit at its wastewater treatment plant to treat the quantities of domestic sanitary sewer wastewater contemplated in this Agreement, and TAMU currently has, and expects to maintain for the term of this contract, sufficient capacity to treat this wastewater, and

WHEREAS, TAMU is willing to accept and treat this sanitary wastewater under the terms and consideration provided herein as long as the hydraulic and constituent characteristics of the wastewater do not cause its TCEQ Permit to be violated; and

WHEREAS, CITY desires to increase the number of connections provided for under the Interlocal Agreement dated November 11, 1998, (the "original Agreement");

NOW, THEREFORE, for and in consideration of the promises and agreements contained herein and the recitations set forth hereinabove, the parties hereby amend the original Agreement pursuant to the above-named act to authorize CITY to increase the number of connections and the amount of wastewater to be discharged under the original Agreement and to increase the amount of wholesale domestic sanitary wastewater treatment services on behalf of CITY under the following terms and conditions.

1. Description of the Waste Water

- 1.01 The estimated daily average wastewater flow rate for each designated point of delivery is as follows:
- | | | |
|--------|-----------------------------------|----------------|
| 1.01.1 | Delivery Point A (Callaway House) | 39,000 gallons |
| 1.01.2 | Delivery Point B (Pornada Tract) | 48,000 gallons |
- 1.02 The estimated daily peak wastewater flow rate for each designated point of delivery is as follows:
- | | | |
|--------|-----------------------------------|-----------------|
| 1.02.1 | Delivery Point A (Callaway House) | 117,000 gallons |
| 1.02.2 | Delivery Point B (Pornada Tract) | 144,000 gallons |
- 1.03 The estimated wastewater strength will be typical domestic waste with an average five-day biochemical oxygen demand of less than 200 milligrams per liter and suspended solids of less than 200 milligrams per liter.
- 1.04 The wastewater will comply in every regard with the Industrial Waste Regulations of the CITY, specifically including, but not limited to, prohibited discharges and stormwater and unpolluted discharges,
- 1.05 The CITY will remit to TAMU any surcharge for wastes of abnormal strength as defined in the CITY Industrial Waste Regulations.
- 1.06 Compliance with the wastewater hydraulic and constituent characteristics of this section will normally be established by a twenty-four hour flow composite sample performed by the CITY taken before the end of the third month following initial flow of wastewater to TAMU and annually thereafter. TAMU may, at its own expense, take flow, grab or composite samples of this waste stream at any time.

2. Term & Termination

- 2.01 The Agreement was automatically renewed for three (3) years, on November 12, 2001, and will continue until November 11, 2004. Thereafter this contract will automatically renew every three (3) years upon the same terms and conditions until the Agreement is terminated according to the provisions of Paragraph 2.02. This amendment does not alter the term of the original Agreement as renewed and shall take effect immediately after it is full executed in accordance with Section 13 herein.
- 2.02 Subject to the provisions of Paragraph 2.07, either party may cancel this Agreement by providing written notice to the other party. Such termination shall not be effective, and TAMU shall continue to provide domestic sanitary wastewater treatment services, until CITY is able to find an alternate method of treating said wastewater, or one (1) year from the date of receipt of notice of termination, whichever occurs first.
- 2.03 In the event the constituent characteristics of the domestic sanitary sewer wastewater as described herein causes a violation of the TAMU TCEQ

permit, TAMU may immediately disconnect, or plug, the connection to its sewer system until the condition is cured. Further, under these conditions, the CITY agrees to be liable for regulatory fines to TAMU associated with each such permit violation.

- 2.04 During the term of this Agreement, TAMU agrees to and shall treat the quantities of domestic sanitary sewer wastewater described herein.
- 2.05 If the average daily wastewater flows exceed those estimated herein by more than fifty percent (50%) over a three-month period, either party may initiate termination.
- 2.06 If the TAMU wastewater flows approach the planning for expansion threshold established in the TCEQ permit, either party may initiate termination.
- 2.07 For either of the hydraulic situations described in paragraphs 2.05 or 2.06 above, TAMU and the CITY agree to explore other alternatives to termination such as a CITY offsetting contribution toward costs associated with planning for and providing additional treatment capacity.

3. Terms and Conditions of Service

- 3.01 CITY will deliver to TAMU at each point of delivery designated by TAMU during the term of this Agreement domestic sanitary sewer waste in the amounts and constituent characteristics as described in Section 1 above and facilities contained thereon.
- 3.02 At each point of delivery designated herein, title and responsibility for the domestic sanitary sewer wastewater shall pass from CITY to TAMU.
- 3.03 CITY will design, construct, own and maintain an adequately sized sewer system to connect to each point of delivery. The diagrams attached hereto as Exhibits "A" and "B" depict the layouts for the location of the improvements required for Delivery Points A and B respectively. The parties hereto agree that the sanitary sewer line constructed shall be according to CITY's plans and specifications in compliance with TCEQ requirements.
- 3.04 Prior to connection to the TAMU sewer, the CITY shall show the point of delivery in a scaled drawing and deliver it to TAMU. No construction upon TAMU property will be initiated prior to written authorization from TAMU, which authorization shall not be unreasonably withheld.
- 3.05 The City and TAMU mutually agree to the normal and customary practice in restoring any service interruption.
- 3.06 CITY agrees to obtain TAMU concurrence for any construction or maintenance activities with this connection.
- 3.07 CITY agrees to restore any damaged landscaping, paving, irrigation etc. disturbed as a result of construction or maintenance of this connection.

4. Wholesale Contract Rate

The rate charged by TAMU and paid by CITY on a monthly basis shall be the rate TAMU charges Auxiliary Enterprises on campus.

5. Metering

The parties agree that the monthly quantity of domestic sanitary sewer waste for billing purposes will be equal to 100% of the quantity of potable water delivered by CITY to any facility served by this connection, as metered and billed to the facility by CITY. CITY will furnish, install, operate, and maintain at its expense the necessary equipment and devices of standard type required for properly measuring the quantity of potable water furnished to the facilities. TAMU shall have access to such metering equipment at all reasonable times for inspection and examination. If CITY is unable to read any meter at the end of a month, CITY shall estimate the quantity of potable water furnished to the facility in accordance with its standard billing practice. Reconciliation of actual to estimated billing will be made within three (3) months of the estimated billing.

6. Payment

6.01 CITY shall provide TAMU with metered monthly quantities on or about the 5th day of each month. Billing shall be rendered by TAMU on or about the 25th day of each month. CITY shall make payment not later than thirty (30) days after the billing date of each month.

6.02 The obligation of the CITY to make payments under this Agreement shall constitute an operating expense of its wastewater system payable solely from the revenues and receipts of such system.

7. Capacity

TAMU represents that it currently has sufficient capacity at its wastewater treatment plant to accept and treat the domestic sanitary sewer wastewater, of hydraulic and constituent characteristics described herein. Additionally, TAMU represents that accepting the additional estimated flows, of the hydraulic and constituent characteristics described herein, will not violate any current terms of their wastewater permit issued by the TCEQ or the EPA.

8. Hold Harmless

To the extent permitted by law and subject to the limitations as to damages in the Texas Tort Claims Act, CITY and TAMU agree to hold each other harmless from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any person, for damage to any property, or for any breach of contract, arising out of or in connection with the work done under this Agreement to the extent authorized by the laws and Constitution of the State of Texas.

9. Force Majeure

If for any reason of "force majeure," either CITY or TAMU shall be rendered

unable, wholly or in part, to carry out its obligation under this Agreement, other than the obligation of CITY to make the payments required under the terms of this Agreement, then if the party shall give notice of the reasons in writing to the other party within a reasonable time after the occurrence of the event, or cause relied on, the obligation of the party giving the notice, so far as it is affected by the "force majeure," shall be suspended during the continuance of the inability then claimed, but for no longer period. The term "force majeure" as used in this Agreement shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders or actions of any kind of government of the United States or of the State of Texas, or any civil or military authority, insurrections, riots, epidemics, land slides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accident to machinery, pipelines, or other structures, partial or entire failure of wastewater collection and treatment system including pollution (accidental or intentional), and any inability on the part of TAMU to transport or treat wastewater on account of any other cause not reasonably within the control of the party claiming the inability.

10. Invalidity

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.

11. Notices and Payments

11.01 Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person to the individual listed in Paragraph 11.02 herein, or if it is delivered or sent certified mail to the address listed in Paragraph 11.02 herein.

11.02 All notices and payments shall be sent and provided to the parties at the addresses and telephone numbers listed below:

CITY OF COLLEGE STATION
Attention: Director of Public Utilities
1601 Graham Road
College Station, Texas 77845

With a copy to: City Manager and City Attorney
1101 Texas Avenue
College Station, TX 77840

TEXAS A&M UNIVERSITY
Attention: Vice President for Administration
Mail Stop 1247
TAMU
College Station, Texas 77843

11.03 The parties may change addresses for billing and payment upon thirty (30) days written notice sent certified mail, return receipt requested. Any other notices provided or required in this Agreement, except for change of address for billings and payments, may be provided by written notice or other means as provided in this Agreement.

12. Entire Agreement

It is understood that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent or employee of CITY, either before or after the execution of this Agreement, shall affect or modify any of the terms or obligations hereunder.

13. Amendment

The parties may amend this Agreement upon mutual agreement of the parties. No amendment to this Agreement shall be effective and binding unless and until it is reduced to writing, approved by the appropriate authority of each respective entity, and signed by duly authorized representatives of both parties.

14. Texas Law

This Agreement has been made under and shall be governed by the laws of the State of Texas.

15. Place of Performance and Venue

Performance and all matters related thereto shall be in Brazos County, Texas, United States of America and venue shall lie in a court of competent jurisdiction in Brazos County, Texas.

16. Authority to Enter Contract

Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective entities.

17. Waiver

Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof or the right of either party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

18. Agreement Read

The parties acknowledge that they have read, understand and intend to be bound by the terms and conditions of this Agreement.

19. Assignment

This Agreement and the rights and obligations contained herein may not be assigned by TAMU or CITY without the prior written approval of the other party.

20. Multiple Originals

It is understood and agreed that this Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

SIGNED this the _____ day of _____ 2003.

TEXAS A&M UNIVERSITY

CITY OF COLLEGE STATION

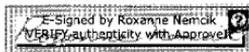
By: _____

By: _____
Ron Silvia, Mayor

ATTEST:

Connie Hooks, City Secretary

APPROVED:



City Attorney

Thomas E. Brymer, City Manager

Charles Cryan, Director/Fiscal Services

STATE OF TEXAS
COUNTY OF BRAZOS

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ACKNOWLEDGMENT

This instrument was acknowledged before me on this day of _____
2003, by _____ in his capacity as _____ of Texas A&M
University, an agency of the State of Texas, on its behalf.

Notary Public in and for
the State of Texas

STATE OF TEXAS
COUNTY OF BRAZOS

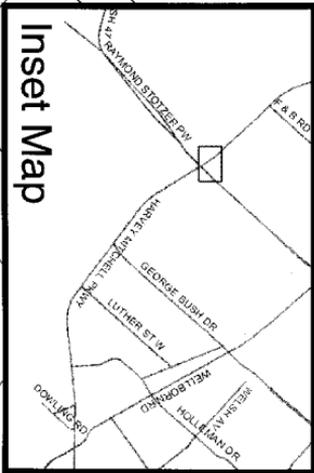
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ACKNOWLEDGMENT

This instrument was acknowledged before me on this day of _____
2003, by Ron Silvia in his capacity as Mayor of the City of College Station, a Texas
home-rule municipal corporation, on its behalf.

Notary Public in and for
the State of Texas

Inset Map



Pomada Tract

HARVEY MITCHELL PKWY.

Existing TAMU Sanitary Sewer Line

Proposed City of College Station
Sanitary Sewer Line

Connection Point B

RAYMOND STOTZER PKWY.

Connection Point B for Pomada Tract
Exhibit B

