

allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of future revenue

(b) The cost of the retail public utility shall be determined by the area decertified as determined by the decertified area

1989 Legistat The 1989 act with the words "with the words" or "with the words" or "with the words"

1985 Legistat The 1985 act with the words "with the words" or "with the words" or "with the words"

§ 13.205

TEXAS STATE BANK

(See main volume for (a) and (b))

shall be in a lump sum or paid in installments at the discretion of the court. The court shall determine the amount of the award in the event of a judgment in favor of the applicant.

Leg. ch. 682, § 4, eff. August 30, 1989.

designated former subsection (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z).

1985 Legistat The 1985 act with the words "with the words" or "with the words" or "with the words"

*

(c) The commission shall grant single certification to the municipality. The commission shall also determine whether single certification as requested by the municipality would result in property of a retail public utility being rendered useless or valueless to the retail public utility, and shall determine in its order the monetary amount that is adequate and just to compensate the retail public utility for such property. If the municipality in its application has requested the transfer of specified property of the retail public utility to the municipality or to a franchised utility, the commission shall also determine in its order the adequate and just compensation to be paid for such property pursuant to the provisions of this section, including an award for damages to property remaining in the ownership of the retail public utility after single certification. The order of the commission shall not be effective to transfer property. A transfer of property may only be obtained under this section by a court judgment rendered pursuant to Subsection (d) or (e) of this section. The grant of single certification by the commission shall go into effect on the date the municipality or franchised utility, as the case may be, pays adequate and just compensation pursuant to court order, or pays an amount into the registry of the court or to the retail public utility under Subsection (d). If the court judgment provides that the retail public utility is not entitled to any compensation, the grant of single certification shall go into effect when the court judgment becomes final. The municipality or franchised utility must provide to each customer of the retail public utility being acquired an individual written notice within 60 days after the effective date for the transfer specified in the court judgment. The notice must clearly advise the customer of the identity of the new service provider, the reason for the transfer, the rates to be charged by the new service provider, and the effective date of those rates.

(d) In the event the final order of the commission is not appealed within 90 days, the municipality may request the district court of Travis County to enter a judgment consistent with the order of the commission. In such event, the court shall render a judgment that:

- (1) transfers to the municipally owned utility or franchised utility title to property to be transferred to the municipally owned utility or franchised utility as delineated by the commissioner's final order and property determined by the commission to be rendered useless or valueless by the granting of single certification; and

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TEXAS STATE BANK

(2) orders payment to the retail public utility of adequate and just compensation for the property as determined by the commission in its final order.

(See main volume for (e) and (f))

(g) For the purpose of implementing this section, the value of real property shall be determined according to the standards set forth in Chapter 21, Property Code, governing actions in eminent domain; the value of personal property shall be determined according to the factors in this subsection. The factors ensuring that the compensation to a retail public utility for the taking, damaging, and/or loss of personal property, including the retail public utility's business, is just and adequate, shall, at a minimum, include: impact on the existing indebtedness of the retail public utility and its ability to repay that debt, the value of the service facilities of the retail public utility located within the area in question, the amount of any expenditures for planning, design, or construction of service facilities outside the incorporated or annexed area that are allocable to service to the area in question, any of the retail public utility's contractual obligations allocable to the area in question, any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the single certification, the impact on future revenues and expenses of the retail public utility, necessary and reasonable legal expenses and professional fees, factors relevant to maintaining the current financial integrity of the retail public utility, and other relevant factors.

(See main volume for (h) and (i))

(j) This section shall apply only in a case where:

- (1) the retail public utility that is authorized to serve in the certificated area that is annexed or incorporated by the municipality is a nonprofit water supply or sewer service corporation or a special utility district under Chapter 65, Water Code; or
- (2) the retail public utility that is authorized to serve in the certificated area that is annexed or incorporated by the municipality is a retail public utility other than a nonprofit water supply or sewer service corporation, and whose service area is located entirely within the boundaries of a municipality with a population of 1.7 million or more according to the most recent federal census.

(k) The following conditions apply when a municipality or franchised utility makes an application to acquire the service area or facilities of a retail public utility described in Subsection (j)(2):

- (1) the commission or court must determine that the service provided by the retail public utility is substandard or its rates are unreasonable in view of the reasonable expenses of the utility;
- (2) if the municipality abandons its application, the court or the commission is authorized to award to the retail public utility its reasonable expenses related to the proceeding hereunder, including attorney fees; and
- (3) unless otherwise agreed by the retail public utility, the municipality must take the entire utility property of the retail public utility in a proceeding hereunder.

(l) The compensation provided under Subsection (g) shall be determined by a qualified individual or firm to serve as independent appraiser, who shall be selected by the affected retail public utility. The determination of compensation by the independent appraiser shall be binding on the commission. The costs of the independent appraiser shall be borne by the municipality.

(m) The commission shall deny an application for single certification by a municipality that fails to demonstrate compliance with the commissioner's minimum requirements for public drinking water systems.

Amended by Acts 1989, 71st Leg., ch. 687, § 32, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 328, § 1, eff. Aug. 29, 1989; Acts 1996, 74th Leg., ch. 814, §§ 1 to 4, eff. Aug. 28, 1995.

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FILE -
WALKER
COUNTY
WSC

**DRAFT
FOR REVIEW ONLY
DATE: October 4, 1996
TIME: 4:19pm**

SETTLEMENT AND SERVICE AGREEMENT

This Settlement and Service Agreement ("Agreement") is made and entered into by and between the City of Huntsville, Texas, a municipal corporation operating pursuant to Texas Law and a home rule charter, its assigns, successors, and transferees, whether in whole or in part, hereinafter referred to as "City", and Walker County Rural Water Supply Corporation, duly incorporated under the Laws of the State of Texas, its assigns, successors, and transferees, whether in whole or in part, hereinafter referred to as "WSC". The purpose of this Agreement is to settle each party's respective rights as to that overlapping portion of territory in which both parties have made application to the Texas Natural Resource Conservation Commission ("TNRCC") for a certificated water service area, and to specify other terms and conditions under which water service will be afforded to customers of the City and WSC, irrespective of their certificated service areas.

PREAMBLE

WHEREAS, the City and WSC are each "retail public utilities" as defined in Section 13.002 of the Texas Water Code; and

WHEREAS, the City and WSC have each filed applications with the TNRCC to certificate water service areas they propose to serve in Walker County, and such proposed service areas overlap to some extent; and

WHEREAS, the City has protested WSC's application to certificate a water service area in Walker County and WSC has protested the City's application to certificate a water service area in Walker County; and

WHEREAS, WSC has sued the City in federal court, seeking to enjoin the City from pursuing its TNRCC application and from protesting WSC's TNRCC application; and

WHEREAS, Section 13.248 of the Texas Water Code provides that contracts between retail public utilities designating areas to be served and customers to be served by those utilities, when approved by the Commission, are valid and enforceable; and

WHEREAS, the City and WSC enter into this Agreement to specify the terms, conditions, and limitations on providing water service within proposed certificated service areas as specified herein, and to specify other terms and conditions under which water service will be afforded to customers of the City and WSC, irrespective of their certificated service areas; and

WHEREAS, the Agreement further provides for the dismissal of the protests of the Parties to the TNRCC applications of the Parties, and the dismissal of WSC's lawsuit against the City; and

WHEREAS, the TNRCC's acceptance and approval of this Agreement under Section 13.248 of the Texas Water Code is a prerequisite to the effectiveness of this Agreement and is a condition of the Parties' withdrawal of their protests to each other's applications, but this Agreement does not make the TNRCC a party hereto and does not limit the jurisdiction of the TNRCC pursuant to Chapter 13 of the Texas Water Code or otherwise limit the TNRCC's enforcement discretion; and

WHEREAS, the acceptance and approval of this Agreement by the TNRCC does not bind the TNRCC to approval of any future applications concerning the subject service areas filed pursuant to Chapter 13 of the Texas Water Code.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, benefits and obligations hereinafter set forth, the City of Huntsville and the Walker County Rural Water Supply Corporation agree as follows:

I. AGREEMENTS OF BOTH THE CITY AND WSC

1.1 Agreement to Certificated Service Areas. Except as provided for herein, the Parties agree to the designation by TNRCC of the proposed certificated service areas as depicted on Exhibit A, attached hereto. The Parties agree to propose such areas for the issuance and approval by TNRCC of Certificates of Convenience and Necessity ("CCNs") to them and, once such CCNs are so issued and approved, the areas depicted on Exhibit A and identified in CCNs to the Parties shall be considered the areas within which the Parties will, respectively, have the sole and exclusive right to provide retail water service

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(i.e., the area within which a party has "single certification" for CCN purposes). Notwithstanding the foregoing, the Parties have entered into this Agreement in consideration of the terms and conditions herein, and with the express understanding and agreement concerning single and dual certification for specific areas as enunciated in Paragraphs 1.4 and 1.5 herein.

1.2 Continued Service. The City and WSC each agree to continue service to any presently existing customers within their proposed certificated service areas, as depicted on Exhibit A.

1.3 Interference with Customers. The City and WSC each agree to refuse and abstain from marketing to or servicing of any of the other party's presently existing customers or those authorized to be serviced by the preceding Paragraph 1.2. Both Parties agree to notify the other of an application or service request concerning service within an area to which the other Party has single certification pursuant to the terms of Paragraphs 1.1 and 1.4 herein.

1.4 Single Certification to WSC Within City's Extraterritorial Jurisdiction. Pursuant to the terms of this Paragraph, the Parties agree that WSC shall be entitled to single certification under its CCN to areas it provides service to within the City's extraterritorial jurisdiction ("ETJ"), as the ETJ currently exists at the time of execution of this Agreement. The area of such single certification

shall be the area where the WSC's water lines exist and any area within two hundred feet (200') of such water lines. Such areas currently exist at the time of execution of this Agreement, and are identified on the attached Exhibit B.

1.5 Dual Certification to City and WSC Within City's ETJ. The Parties agree that both WSC and the City shall be entitled to certification (i.e., "dual certification") to areas within those portions of WSC's CCN which are located within the City's ETJ (as the ETJ currently exists at the time of execution of this Agreement), except for those areas of single certification to WSC as identified in Paragraph 1.4. Such areas of dual certification are also depicted on Exhibit B. Within such areas of dual certification either Party is fully authorized to provide retail water service, consistent with the provisions of this Agreement, state, federal and local laws, and the City's Development Code as such laws currently exist or as they may exist in the future.

1.6 Proposed Service Within Other Party's CCN. When either Party receives an application or service request from a proposed customer within the single certification area of the other Party, that Party agrees to direct the person requesting service to the Party which has single certification pursuant to the terms of Paragraphs 1.1 and/or 1.4 herein. Further, when it is necessary for a Party to increase its water line capacity or to construct or have constructed a new water line in order to provide a proposed customer with requested or

required service within an area to which it has single certification pursuant to the terms of Paragraphs 1.1 and/or 1.4 herein, that Party shall notify the other Party of such service request and shall thereafter comply with the provisions of Paragraphs 1.7, 1.8 and 1.9 herein.

1.7 Parties' Response to Service Request. The City and WSC each agree to work together to afford water service to a potential customer who has requested service pursuant to the provisions of Paragraph 1.6 herein, so as to afford requested or required service to the proposed customer as cost-efficiently and timely as possible. To that end the Parties agree to respond to such service requests, and to provide such service, in accordance with the provisions of this Agreement. The Parties agree that the determination of which of them should be the service provider to such proposed customers shall be determined by consideration of a number of factors, and pursuant to the terms of Paragraph 1.8 of this Agreement. Such factors include (i) the location of the proposed customer connection in relation to the certificated service area within which such customer is located, (ii) the extent to which each Party is able to provide the requested service through existing facilities, (iii) the total costs to the proposed customer of the provision of requested service through facilities that will be required to be constructed by either Party in order to afford such service, (iv) the level or extent of service required by the proposed customer by virtue of the customer's need or demand for service, and/or any statutory or

regulatory requirements associated with the customer's proposed service, and (v) the timeframe within which such service is desired or required by the customer and within which the Parties can provide such service. The Parties agree that the determination of which party will provide service to the proposed customer shall be made within thirty (30) days of the written request of the customer, in accordance with the provisions of this Paragraph and Paragraph 1.8, and shall be governed principally by a consideration of the best interests of the proposed customer, taking into account the costs to the customer of each Party's extension of service to the proposed customer and the timeliness with which such service can be afforded, as well as the other factors included in this Paragraph, and further, by the interest of the Parties, acknowledged hereby, to facilitate and encourage the sound economic development of the community within which the City and WSC operate their respective water utilities.

1.8 Service Decision Committee. Both the City and WSC agree to create a Service Decision Committee ("Committee") to determine the appropriate water service provider for potential customers requesting service pursuant to the provisions of Paragraph 1.6 herein, and utilizing the factors and considerations identified in Paragraph 1.7 herein. The Committee shall be made up of three (3) appointees of the Mayor of the City and three (3) appointees of the President of the Board of Directors of WSC, and shall meet as necessary to make service

decisions in accordance with the terms of this Agreement. The Committee shall be chaired by one of its members, to be appointed by the Mayor of the City in odd-numbered years and the President of the Board of Directors of WSC in even-numbered years. Such appointees and such chairpersons shall serve on the Committee at the will of the person or entity who appointed them. The Committee is authorized to conduct its meetings by telephonic conference, or at a meeting place designated by the chairperson, with at least 24 hours notice to each Committee member, if practicable, and with notice to the City Manager of the City and the General Manager of WSC, as provided for herein. Such determination shall be rendered in accordance with the time limit included in Paragraph 1.7 for the Committee's determination of the appropriate service provider. If a majority of the Committee members are unable to reach a decision on the appropriate service provider, the Parties agree to refer the matter to the Mediator as provided for in Paragraph 1.9 herein. (Open Meetings Act requirements?)

1.9 Mediation. In the event a majority of the Committee members are unable to agree on the appropriate service provider to a customer requesting service pursuant to the provisions of Paragraph 1.6, the Parties agree to enter into non-binding mediation of the issue. Such mediation shall be conducted by a Mediator appointed by the Alternative Disputes Resolution Coordinator of the Texas Natural Resource Conservation Commission, or if unavailable, by

alternative disputes resolution personnel as may be offered by other state or federal agencies. Such mediation shall be commenced and completed as soon as practicable, and the Parties shall assist the Mediator and shall strive to have the mediation completed within thirty (30) days of the Committee's referral of the matter for mediation. While such mediation decision is not binding on either Party, the Parties agree to give full consideration to the Mediator's recommendation concerning service issues. If following mediation the Parties cannot agree on the appropriate service provider the Party possessing the CCN for the property or customer to be served shall be entitled to provide such service.

1.10 Non-Interference with Decision. The City and WSC each agree to not interfere with, stop or otherwise attempt to prohibit the other party from entering into or performing under such contracts or agreements for water service with developers or customers within the other party's certificated service area, after the Committee has made its decision as to which water provider shall provide the customer with service. The Parties also agree to not interfere with the ability of a party to propose, bid, negotiate, and otherwise make any offer of service and to provide service to any person or developer who has requested service of the Party so long as such party is complying with the terms of this Agreement. Following the provision of service by one of the Parties to a customer, that Party shall have the sole and exclusive right to

provide retail water service to the customer, except as otherwise required by TNRCC or as mutually agreed to by the Parties.

1.11 TNRCC Proceedings. The City and WSC each agree to formally withdraw their protests of the other party's CCN application at the TNRCC, to petition the TNRCC to approve this Agreement pursuant to the provisions of Section 13.248 of the Texas Water Code, and to approve the certificated service areas the Parties have agreed to as reflected on Exhibits A and B of this Agreement.

1.12 CCN Issuance. With regard to the submission to TNRCC of this Agreement, and the attached Exhibits to this Agreement, the Parties hereby contemplate that the terms herein are critical to their resolution of the dispute which exists between them, and that this Agreement shall serve to define the extent to which they seek to have their respective CCNs approved. The Parties further agree that this Agreement and the attached Exhibits are intended to be used by TNRCC in approving the authorized service areas and CCNs of the Parties.

II. WSC's AGREEMENT

2.1 Compliance with City Requirements. The WSC agrees to conform with and require developers and other individuals requesting water service from WSC

within the City's extra-territorial jurisdiction ("ETJ") (as that jurisdiction currently exists or may exist in the future) to conform with the City's Development Code, as such Code relates to water-utility services as such Code applies to water utility services. The WSC agrees to allow the City to inspect its facilities within the City's ETJ as it currently exists at the time of execution of this Agreement, or as it may exist in the future to ensure conformity to applicable City requirements or standards.

2.2 Utility Revenues. The WSC agrees to permit the City to collect revenues from customers within the WSC's certificated service area, who are served by the City as authorized by this Agreement.

2.3 Billing Agreement. The WSC agrees to amend its TNRCC Water Utilities Tariff to provide for the termination of water service to any WSC retail water customer who is identified by the City, in writing to WSC, as being delinquent in payment of a retail wastewater or other utility bill of the City, in accordance with the terms and conditions of the Billing Agreement included in Exhibit C. The WSC agrees to comply with the terms and conditions of such Billing Agreement.

2.4 Litigation. The WSC agrees to dismiss the litigation filed in Cause No. H-96-1829, styled Walker County Rural Water Supply Corporation vs. City of Huntsville in the United States District Court for the Southern District of Texas.

2.5 Waiver. The WSC agrees to waive any claims or rights it may have pursuant to the provisions of 7 U.S.C. § 1926(b) with regard to service authorized to be offered or provided by the City pursuant to the terms of this Agreement.

III. THE CITY'S AGREEMENT

3.1 City Standards. The City agrees to develop and update, as necessary, standards and specifications for water utility system improvements in the City's extraterritorial jurisdiction, deliver a copy of said standards and specifications to the office of WSC and make timely inspections of construction activities involving WSC's water utility system. These standards and specifications shall be adequate for both water supply and fire protection purposes, as determined by the City and consistent with the other terms and conditions of this Agreement.

3.2 Utility Revenues. The City agrees to permit WSC to collect revenues from customers within the City's certificated service area who are serviced by WSC as authorized by this Agreement.

3.3 Billing Agreement. The City agrees to comply with the terms and conditions of the Billing Agreement included as Exhibit C.

IV. MISCELLANEOUS PROVISIONS

4.1 Service Line Extensions. Each party agrees to allow the other party to extend transmission lines through the party's certificated service area for the purpose of serving any existing or future water utility customers of the other party.

4.2 Modification. No provisions of this Agreement may be modified except by mutual written consent of the parties.

4.3 Entire Agreement. This document embodies the entire Agreement between the parties relative to the subject matter hereof and no verbal Agreement of any kind shall be binding or recognized or serve in any manner to modify the express terms of this Agreement.

4.4 Severability Clause. If any word, phrase, clause, paragraph, part or provision of this Agreement or the subparagraphs contained herein or the application thereof to any person, governmental entity, water supply corporation, or circumstances shall be held to be invalid or unconstitutional, the remainder of this Agreement shall nevertheless be valid, and WSC and the City hereby declare that this

Agreement would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, part or provision.

4.5 Notices. Any notices required to be given herein shall be deemed to have been sufficiently given to either party for all purposes if mailed by certified mail, postage prepaid, and addressed as follows:

If to City:

City Manager
City of Huntsville, Texas
1212 Avenue M
Huntsville, Texas 77340

If to WSC:

General Manager
Walker County Rural WSC
Route 1, Box 427-E
Huntsville, Texas 77340

or to such other respective address as the parties may designate from time to time in writing in accordance with this notice provision.

4.6 Incorporation. The Preamble set forth before Section I of this Agreement is hereby incorporated by reference as if fully set forth in this paragraph.

4.7 Captions and Construction. All section and paragraph titles and captions contained in this Agreement shall not be deemed a part of this Agreement and shall not affect the meaning or interpretation of this Agreement or any provision hereof. Both parties have participated in the preparation of this Agreement so that it shall not be construed either more or less favorably for or against either party.

4.8 State and Federal Approval. This Agreement is subject to and contingent upon the approval by the Texas Natural Resource Conservation Commission and the United States Department of Agriculture, as provided for herein.

4.9 Governing Law and Venue. This Agreement is to be governed by the Laws of the State of Texas and, except as otherwise provided by law, exclusive venue for any action arising under this Agreement shall lie in Walker County, Texas.

IN WITNESS WHEREOF, the Parties, acting under authority of their respective governing bodies, have caused this Agreement to be duly executed in several counterparts, each of which shall constitute an original, on this ____ day of _____, 1996.

CITY OF HUNTSVILLE, TEXAS

BY: _____
William Green
Mayor

**WALKER COUNTY RURAL WATER
SUPPLY CORP.**

BY: _____
Milton Walters
President, Board of Directors

• • • •

This Agreement is APPROVED by the Texas Natural Resource Conservation Commission on this ____ day of _____, 1996.

**TEXAS NATURAL RESOURCE
CONSERVATION COMMISSION**

BY: _____
Barry McBee
Chairman

ATTEST:

* * * *

This Agreement is APPROVED by the United States Department of Agriculture within ____ days of _____, 1996.

**UNITED STATES DEPARTMENT OF
AGRICULTURE**

BY: _____

ATTEST:

APPENDIX "B"

STATE OF TEXAS §

BILLING AGREEMENT

COUNTY OF WALKER §

The City of Huntsville and the Walker County Water Supply Corporation (WSC), for the consideration and purposes herein expressed, enter into this Agreement regarding billing of garbage and/or sewer collection services provided by City of Huntsville to various businesses and residents.

WHEREAS The City of Huntsville is a home rule municipality in Walker County, Texas;

WHEREAS Walker County Water Supply Corporation is a nonprofit water supply corporation organized pursuant to Tex. Rev. Civ. Stat. Art. 1434a;

WHEREAS The City of Huntsville provides garbage and/or sanitary sewer service for persons inside and outside the City, some of whom are provided water utility service by Walker County Water Supply Corporation; and

WHEREAS The provision of garbage and/or sanitary sewer service to persons by the City is integrally related to the provision of water service to the same customers such that joint billing and collection practices are in the public interest;

NOW, THEREFORE, The City of Huntsville and Walker County Water Supply Corporation (WSC) agree as follows:

1. Agency of WSC. Subject to the terms of this Agreement, WSC agrees to serve as the agent for City for the purposes of billing and collecting garbage service and/or sanitary sewer service fees from customers of WSC who are recipients of sanitary sewer services or garbage services from the City. During the term of this agreement, the City will be solely responsible for providing to WSC a list of the City's customers that WSC will bill pursuant to the terms of this Agreement, which list will contain the following information for each customer: a) the customer's name and address; b) the type of garbage and/or sanitary sewer service that WSC will bill on the City's behalf; and c) the rates to be billed by WSC.
2. Payment Based on City Rate Ordinances. WSC agrees to compute and add the fees due to the City in the amounts indicated by the City, to WSC's monthly bills to customers. Garbage fees are a flat rate monthly charge; the WSC will compute the sanitary sewer fee based upon the customer's water usage and the City's applicable rate schedule. WSC agrees to state each fee for garbage and/or sanitary sewer service separately on such bills. The City agrees to coordinate with WSC so that the payment for the garbage and/or sanitary sewer services billed by WSC on City's behalf will be due at the same time and under the same terms as the payment billed by WSC for water utility services. When WSC

receives a payment due the City for garbage and/or sanitary sewer services, WSC will deposit such sums (including late payment fees, if any) in an account in WSC's depository bank, commingled with payments made for WSC water utility services. WSC will forward to the City the funds, less fees charged by WSC for services as set forth in this Agreement, at least once a month. WSC will send to the City the funds in the amounts due as reflected on the monthly bills to the customers, less WSC's unpaid fees as set forth in this Agreement. At the time WSC forwards such funds to the City, WSC will also forward an accounting of the City's customers the WSC bills, from whom it received payments, the period and type of services for which payments were made, and the fees retained by WSC from payments made by the customers. The City may audit the billings and payments made pursuant to this Agreement with prior notice of at least 72 hours and during WSC business hours.

3. Priority. When a WSC customer makes a partial payment for garbage and/or sanitary collection or water service, WSC will prorate funds paid to the indebtedness of the customer to WSC and the City in proportion to the amount owed for each service.
4. Delinquency/Disconnection. WSC agrees to use its best efforts, in the exercise of the discretion granted under this Agreement, to collect amounts due to the City for customers for garbage and/or sanitary sewer service. WSC will collect late payment fees from City customers in the same manner as it collects such fees for its water service. When a customer fails to pay any amounts collectible by WSC pursuant to the terms of this Agreement, the City authorizes WSC, and WSC agrees to stop water utility services to the customer as deemed appropriate by WSC according to the procedure specified in any applicable water tariff and service regulations of WSC then in effect. WSC shall notify City of all customer accounts that are delinquent and have been disconnected.
5. Reconnection. If WSC disconnects water service for nonpayment of garbage and/or sanitary sewer service charges, except as otherwise required by law or as agreed to by City, WSC agrees not to provide water services to that customer until WSC's receipt of payment of all delinquent garbage and sanitary sewer collection charges, plus any applicable charges that are then collectible according to City's ordinances or other applicable law.
6. Effect on Provision of Water. This agreement will not affect or in any way impair WSC's rights and obligations with respect to its customers or the provision of water utility services except as specifically and expressly set forth in this Agreement and as allowed by law.
7. Fees for Billing Services. For each garbage and/or sanitary sewer service account of the City billed by WSC, the City agrees to pay WSC \$5.00 as an initial set up fee for establishing WSC billing and collection procedures. The City agrees to pay to WSC monthly a service charge of \$1.00 for each active account. The City will pay the monthly fee until the end of the month in which City removes the account from the customer list provided to WSC under paragraph one of this agreement. If the City subsequently requests WSC to reinstate an account that the City removes from the garbage and/or sewer

service customer list, the City will pay a reinstatement fee of \$5.00 per account. Any amount due and unpaid by any Party to this Agreement for more than thirty days shall accrue interest at one percent each month.

- 8. Purpose of Agreement/Indemnity. The Parties make this Agreement for purpose of simplifying the billing and collection of fees for garbage and/or sanitary sewer services provided by the City. The Parties do not intend to create a partnership or joint venture. WSC's sole responsibility is that of the City's agent for billing and collection purposes and WSC shall have no responsibility for, and the City shall indemnify, defend and hold WSC harmless from any damage, claims, demands, or causes of action arising from: 1) the construction, operation, maintenance, repair or existence of the sewer collection system; 2) the provision of sewer collection service; 3) any act or omission relating to such services; or 4) any act or omission of WSC or the City, their agents, employees, or representatives in the performance or nonperformance of their obligations under this Agreement, specifically including the negligence or breach of this Agreement by WSC or by the City, which does not amount to gross negligence or willful misconduct by the City, its agents, employees, or representative. This indemnity shall also extend to, but shall not be limited to, any cost, expense or fee, including attorneys' fees, costs of court or expert fees, incurred by WSC relating to or arising from any such damages, claims, demands or causes of action.

- 9. No Third Party Beneficiaries. This Agreement is not executed for the benefit of any third party and its terms shall not be enforceable by or in favor of any person or entity other than the express parties to the Agreement.

- 10. Miscellaneous Provisions. This Agreement contains all of the understandings and agreements between the parties with respect to the subject matter hereof, and the terms and conditions of the Agreement may be changed only by written amendments agreed to by both parties. This Agreement replaces and supersedes all prior Agreements of the parties with respect to the subject matter hereof. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns. A waiver by any party of a breach of this Agreement shall not be construed as a waiver of any subsequent breach of this Agreement. The headings in this Agreement are for convenience. This Agreement shall be governed by and construed according to the laws of the State of Texas.

EXECUTED on the _____ day of _____, 1996.

THE CITY OF HUNTSVILLE

WALKER COUNTY WATER
SUPPLY CORPORATION

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

ATTEST:

Danna Welter, City Secretary

APPROVED:

Scott Bounds, City Attorney