

WASTEWATER BILLING SERVICES FOR A RETAIL PUBLIC UTILITY PROVIDED BY A NON-PROFIT WATER SUPPLY CORPORATION

AGREEMENT

Springs Hill Water Supply Corporation (SHWSC) and the City of Seguin, for the consideration and purposes herein expressed enter into the following agreement regarding sewer collection services provided by Seguin to various businesses and residents in the areas listed in Exhibit "A", but in no other areas:

WHEREAS, _____ is a home rule city located in Guadalupe County, Texas;

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

WHEREAS, Springs Hill Water Supply Corporation provides retail water utility service in Guadalupe County, pursuant to Texas Commission on Environmental Quality Certificate of Convenience and Necessity No. 10666;

WHEREAS, City of Seguin provides sanitary sewer service for its residents, some of whom are provided water utility service by Springs Hill Water Supply Corporation;

WHEREAS, it is recognized that the provision of sanitary sewer service to Seguin residents is integrally related to SHWSC's separate provision of water service to the same customers such that joint billing and collection practices are in the public interest; and

WHEREAS, Springs Hill Water Supply Corporation desires to enter into an agreement with City of Seguin to facilitate the billing and collection of charges due from Seguin residents for the sanitary sewer service provided;

NOW, THEREFORE, Seguin and SHWSC agree as follows:

- 1. Agency of SHWSC.** Subject to the terms of this Agreement, SHWSC agrees to serve as the agent for city for the purposes of billing and collecting sanitary sewer service fees from customers of SHWSC who: (1) are recipients of sanitary sewer services from city; and (2) have executed a copy of the application for sanitary service attached to this agreement or an application in substantially similar form. During the term of this agreement, city will be solely responsible for providing to SHWSC, and at all times maintaining, a current list of its customers to be billed by SHWSC pursuant to the terms of the Agreement, which list shall contain the following information for each customer: (a) the customer's name and address; (b) the type of sanitary sewer service to be billed by SHWSC on city's behalf; and (c) the amount to be billed.
- 2. Payment Based on Sewer Rate Ordinance for Sewer Collection.** WSC agrees to add the fees due to city in the amounts indicated by city, to its monthly bills to customers. Each fee for sanitary sewer service will be stated separately on such bills. City agrees to coordinate

with WSC so that the payment for the sanitary sewer services billed by the WSC on city's behalf shall be due at the same time and under the same terms as the payment billed by WSC for water utility services. Upon receipt of payment due city for sanitary sewer services, WSC will deposit such sums in an account in WSC's depository bank, commingled with payments made for WSC water utility services. The funds, less unpaid fees charged by WSC for services as set forth in this Agreement, shall be forwarded to city no less frequently than once a month. The funds shall be sent to city 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 such funds are forwarded to City, WSC will also forward an accounting of the customers from whom payment is received, the period and type of services for which payment is made, and the fees retained by WSC from payments made pursuant to this Agreement with prior notice of as least 72 hours and during WSC business hours.

3. **Priority.** When payment for water and sewer collection by any customer is made, WSC shall apply the funds paid first to any indebtedness of the customer to WSC and then to the payment of any indebtedness of city.
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 city from customers for sanitary sewer service. If at any time any customer fails to pay any amounts collectible by WSC pursuant to the terms of this Agreement, WSC is authorized to terminate water utility services to the customer as deemed appropriate by WSC in accordance with the procedure specified in any applicable tariff and service regulations of WSC then in effect. WSC's failure to disconnect any service shall not be an event of default under this agreement but shall entitle city to discontinue payment of the monthly fee for that account as specified in paragraph 7 below from the date service could have been disconnected under this agreement until disconnection occurs. WSC shall notify city of all customer accounts that are delinquent and have been disconnected.
5. **Reconnection.** In the event water service is disconnected for nonpayment of 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 sewer collection charges, plus any applicable charges which are then collectable in accordance with city's ordinances or other applicable law.
6. **Affect on Provision of Water.** This agreement shall 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 the Agreement and as allowed by law.
7. **Fees.** For each sanitary sewer service account collected by WSC, City agrees to pay WSC the sum of \$ 5.00 as an initial set up fee for establishing WSC billing and collection procedures. This set up fee is to be paid when city notifies WSC that a new account is to be collected by WSC. In addition, city agrees to pay to WSC monthly on or before the 15th day of each month, a service charge of \$ 1.00 for each active account. The monthly fee will be paid until the end of the month in which city removes the account from the customer list provided to WSC under paragraph 1 of this agreement. If city subsequently requests WSC to reinstate an account which has been removed from the sewer service customer list, a reinstatement fee of \$ 5.00 per account will be paid to WSC by City.

8. **Purpose of Agreement/Indemnity.** This Agreement is made for the purpose of facilitating the billing and collection of fees for sanitary sewer services provided by city. No partnership or joint venture is intended to be created hereby. WSC's sole responsibility is that of the city's agent for billing and collection purposes and WSC shall have no responsibility for, and 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 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 on the part of city, its agents, employees, or representative. This indemnity shall also extend to, but shall not be limited to, any cost, expense or fee, including attorney's 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. **Right to Terminate.** This Agreement may be terminated by any party at any time by giving the other party sixty (60) days advance notice of its intent to terminate the Agreement.
10. **Automatic Termination.** If any provision of the Agreement is determined by any regulatory or judicial body to be invalid, in violation of any law, or to be contrary to the rules, regulations, or orders of such body, or if any party to the Agreement is ordered or required by such body not to comply with any provision of this Agreement, the Agreement automatically and without notice terminates without penalty at the time such order becomes final and no longer appealable.
11. **Termination Upon Default.** Any party may terminate this Agreement following a default by the other party in the performance of this Agreement and the failure to correct said default within thirty (30) days after written notice of default has been provided by the nondefaulting party.
12. **Attorney's Fees.** The prevailing party in any legal proceeding against any other party to this Agreement brought under or which relates to the Agreement or a breach thereof shall, in addition to its damages, shall be entitled to recover its costs and reasonable attorney's fees.
13. **Notices.** Any notice or communication required or permitted to be given hereunder shall be sufficiently given when received by any other party and must be: (1) delivered by hand delivery; or (2) mailed by certified mail, postage prepaid, return receipt requested, to the address indicated on the signature page of this Agreement, or at such other addresses as may hereafter be furnished in writing by any party to all other parties, and such notice shall be deemed to have been given as of the date so delivered or mailed.
14. **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.
15. **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; provided that, except as otherwise provided in this Agreement, no party may assign its interest in this Agreement without prior written consent of all the other parties. 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 section and subsection headings in this Agreement are for convenience. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

16. **Binding Arbitration.** It is agreed that all questions as to rights and obligations arising under the terms of this Agreement are subject to binding arbitration, as governed by the provisions of the Texas General Arbitration Act, TEX. REV. CIV. STAT. ANN. ART. 224 et. seq. as amended. This paragraph is to be broadly construed.

17. Any amount due and unpaid more than thirty (30) days shall accrue interest at the maximum rate allowed by law.

EXECUTED on the ____ day of _____, 20____.

THE CITY OF Seguin

SPRINGS HILL WSC

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

City Secretary: _____

App. # _____

Application For Sanitary Sewer Service

Date: _____ Permit #: _____ Amount: _____

Name: _____

Street Address: _____

Mailing Address: _____

Legal Description: _____

I/we _____ agree to pay monthly sanitary sewer service fees to the City of Seguin through the WSC's billing office. If I/we fail to pay the monthly fees for sanitary sewer service, I/we authorize and agree to allow WSC to disconnect my/our water meter and to withhold water service until such delinquency is made current.

Signature of Applicant(s) _____ Date _____

Permit Issued By _____ Date _____

(For use by the City Utility Billing Department)

The City of Seguin requests that WSC begin charging _____ for monthly sanitary sewer service at a rate of _____. Services commence on _____ (application date).