

WASTEWATER EASEMENT ACQUISITION AGREEMENT
BETWEEN
CITY OF BASTROP
AND
CORIX UTILITIES (TEXAS) INC.

This WASTEWATER EASEMENT ACQUISITION AGREEMENT (this "Agreement") is made and entered into by and between CITY OF BASTROP, a Texas home rule municipality ("City") and CORIX UTILITIES (TEXAS) INC., a Delaware corporation ("Corix"). In this Agreement, Bastrop and Corix are individually referred to as a "Party" and collectively referred to as the "Parties."

RECITALS

1. Corix and the City have entered into that a "Wholesale Wastewater Services Agreement" setting forth the terms and conditions pursuant to which the City has agreed to provide wholesale wastewater services to Corix, so that Corix may provide retail wastewater services to certain lands located within its certificated service territory.
2. Corix and the City have also entered into that certain "Wastewater Facility Payment Contribution Agreement" setting forth the terms and conditions pursuant to which the City has agreed to advance funds to Corix as a contribution to the costs of the wastewater line improvements required to be constructed under the Wholesale Wastewater Services Agreement (the "Wastewater Line Improvements") necessary to extend the City's wastewater system and to receive wastewater from Corix's retail customers.
3. The construction of the Wastewater Line Improvements will require the acquisition of easements for the lands in which the Wastewater Line Improvements will be located (the "Project Easements").
4. The Parties desire to commence the acquisition of Project Easements as soon as practicable, and the City has agreed to acquire the Project Easements on behalf of the Parties.
5. This Agreement sets forth the terms and conditions pursuant to which the City shall acquire the Project Easements at the sole cost and expense of Corix.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, City and Corix agree as follows.

ARTICLE I
PAYMENT MATTERS

Section 1.01 **Easement Deposit.** With thirty (30) days of the effective date of this Agreement and as a condition of commencement of easement acquisition by the City, Corix shall post monies with the City (the "Easement Cost Deposit"), to be paid by certified or cashier's check or wire transfer, in the amount of \$100,000.

Section 1.02 **Subsequent Funding.**

(a) Corix will fund and pay for all third party costs and expenses incurred by the City relating to acquisition of the Project Easements, including all third party appraisal costs, right of entry costs, condemnation costs and legal fees directly related thereto (the "Easement Acquisition Costs"). The Easement Acquisition Costs shall not include any City staff time or overhead, and shall only include out-of-pocket

expenses paid by the City to third party consultants and landowners for acquisition of the Project Easements and purchase of rights of entry. At any time the Easement Cost Deposit is drawn down below \$25,000, Corix shall replenish the Easement Cost Deposit in order to restore the balance to an amount specified by the City but not to exceed the original Easement Cost Deposit amount within 15 days after receipt of written notice from the City to do so.

(b) After final acquisition of all Project Easements: (i) if the total Easement Acquisition Costs funded by the City have exceeded the original amount of the Easement Cost Deposit plus any additional sums Corix has paid to replenish the Easement Cost Deposit, Corix will pay the shortfall to the City within thirty (30) days after a receipt of a written invoice for payment; or (ii) if there is a balance remaining in the Easement Cost Deposit after payment of all Easement Acquisition Costs, the City will refund that balance to Corix within thirty (30) days after final acquisition of all Project Easements.

(c) Upon receipt of a written request by Corix, the City will furnish to Corix from time to time a summary of all Easement Acquisition Costs funded by the City with reasonable detail and proof of payment to allow Corix to identify the specific Easement Acquisition Costs paid by the City.

ARTICLE II **EASEMENT ACQUISITION**

Section 2.01 **General.** Except as otherwise set forth herein, the City shall be responsible for acquisition of all Project Easements and shall do so with commercial diligence to allow the Wastewater Line Improvements to be constructed as quickly as practicable.

Section 2.02 **Surveying.** Corix shall be responsible for engaging licensed surveyors to prepare metes and bounds descriptions and surveys for all Project Easements. The City shall have the right to approve all surveys that relate to easements for facilities to be owned by the City and located on the City's side of the Point of Entry, as defined in the Wholesale Wastewater Services Agreement. Corix shall be responsible for payment to the surveying firm for all costs of the surveys.

Section 2.03 **Land Acquisition Consultant.** The City shall engage Seven Arrows Land Staff to provide easement acquisition services on behalf of the Parties. The form of the contract shall be subject to Corix's prior written approval, which approval shall not be unreasonably withheld, delayed or conditioned. All payments made by the City to said consultant related to acquisition of the Project Easements shall qualify as Easement Acquisition Costs for which Corix shall be responsible for payment. The Parties may change the City's Project Easement acquisition consultant by mutual written approval.

Section 2.04 **Form of Easements.** The Parties shall agree upon the form of Project Easements prior to presentation of each easement to a landowner. The Parties agree that the City shall be the grantee of all Project Easements, but that the easements shall be assignable.

Section 2.05 **Appraisals.** The City shall retain any third party appraisal required to appraise the value of any Project Easement. The selection of the appraisal firm shall be subject to Corix's prior written approval, which approval shall not be unreasonably withheld, delayed or conditioned. All payments made by the City to the appraisal firm shall qualify as Easement Acquisition Costs for which Corix shall be responsible for payment.

Section 2.06 **Condemnation.** The City agrees that it shall use its power of eminent domain if necessary to acquire the Project Easements. All third party costs and expenses incurred by the City in connection therewith, including court costs, witness fees, appraisal fees and legal fees shall qualify as Easement Acquisition Costs for which Corix shall be responsible for payment.

Section 2.07 **Payment to Landowners.** The amount of compensation to be paid by the City to any landowner for a Project Easement shall be subject to Corix's prior approval, which approval shall not be

unreasonably withheld, delayed or conditioned. The easement purchase price shall qualify as Easement Acquisition Costs for which Corix shall be responsible for payment.

Section 2.08 Assignment to Corix. Upon final acquisition of any Project Easements for facilities to be located on Corix's side of the Point of Entry (as defined in the Wholesale Wastewater Service Agreement), the City shall assign each such Project Easement to Corix by instrument reasonably approved by the Parties. The costs of preparation and recordation of any such easement assignments shall qualify as Easement Acquisition Costs for which Corix shall be responsible for payment.

Section 2.09 Rights of Entry. To the extent that the City acquires any rights of entry on any of the lands in which the Project Easements shall be located before the final easement purchase price is determined by agreement or condemnation, the City agrees that such rights of entry shall be assignable to Corix to allow Corix to enter the property and commence construction of the Wastewater Line Improvements as quickly as practicable.

ARTICLE III **TERM, TERMINATION, DEFAULT, REMEDIES**

Section 3.01 Term and Termination. This Agreement shall become effective upon the Effective Date and shall remain in effect until all Project Easements have been secured and all Easement Acquisition Costs have been paid to the City.

Section 3.02 Default.

(a) In the event Corix shall default in the payment of any amounts due to City under this Agreement, or in the performance of any material obligation to be performed by Corix under this Agreement, then City shall give Corix at least 30 days' written notice of such default and the opportunity to cure same. In the event such default remains uncured, the City shall have the right to pursue any remedy available at law or in equity.

(b) In the event City shall default in the performance of any material obligation to be performed by City under this Agreement, then Corix shall give City at least 30 days' written notice of such default and the opportunity to cure same. In the event such default remains uncured, Corix shall have the right to pursue any remedy available at law or in equity, pending cure of such default by City.

Section 3.03 Additional Remedies Upon Default. It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies existing at law or in equity may be availed of by any party and shall be cumulative of the remedies provided. Recognizing however, that City's undertaking to provide and maintain the services of the City System is an obligation, to the extent that City's failure in the performance of which cannot be adequately compensated in money damages alone, City agrees, in the event of any default on its part, that Corix shall have available to it the equitable remedies of mandamus and specific performance in addition to any other legal or equitable remedies (other than termination of this Agreement) that may also be available. In recognition that failure in the performance of Corix's obligations could not be adequately compensated in money damages alone, Corix agrees in the event of any default on its part that City shall have available to it the equitable remedies of specific performance in addition to any other legal or equitable remedies that may also be available to City. If either party institutes legal proceedings to seek adjudication of an alleged default under this Agreement, the prevailing party in the adjudication shall be entitled to its reasonable and necessary attorneys' fees. Notwithstanding any provision herein to the contrary, neither Party shall be responsible for consequential damages in the of a breach.

ARTICLE IV **GENERAL PROVISIONS**

Section 4.01 Assignability. Assignment of this Agreement by either party is prohibited without the prior written consent of the other party; provided however that the City hereby consents to the assignment of this Agreement to any affiliate of Corix, to and successor entity created by merger or consolidation with Corix, or to any entity that acquires all or substantially all of the assets of Corix. Corix shall provide written notice to the City of any such assignment to an affiliate or successor entity. Other than assignment by Corix to an affiliate, or successor entity created by merger or consolidation, any assignment of this Agreement by Corix requires prior consent of the City evidenced by adoption of a resolution, which consent shall not be unreasonably withheld, delayed or conditioned.

Section 4.02 Amendment. This Agreement may be amended or modified only by written agreement duly authorized by the respective governing bodies of Corix and City and executed by duly authorized representatives of each.

Section 4.03 Necessary Documents and Actions. Each Party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.

Section 4.04 Entire Agreement. This Agreement constitutes the entire agreement of the Parties regarding the subject matter hereof and this Agreement supersedes any prior or contemporaneous oral or written understandings or representations of the Parties regarding acquisition of the Project Easements.

Section 4.05 Applicable Law. This Agreement will be construed under and in accordance with the laws of the State of Texas.

Section 4.06 Venue. All obligations of the Parties created in this Agreement are performable in Bastrop County, Texas, and venue for any action arising under this Agreement will be in Bastrop County, Texas.

Section 4.07 No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer upon any person or entity, other than to the Parties, any rights, benefits, or remedies under or by reason of this Agreement.

Section 4.08 Duplicate Originals. This Agreement may be executed in duplicate originals each of equal dignity.

Section 4.09 Notices. Any notice required under this Agreement may be given to the respective Parties by deposit in regular first-class mail or by hand-delivery to the address of the other Party shown below:

Corix:

Corix Utilities (Texas) Inc.
1812 Centre Creek Dr., Suite 100
Austin, TX 78754
Attn: Darrin Barker

City:

City of Bastrop, TX
1311 Chestnut Street
Bastrop, Texas 78602
Attn: City Manager

Notices shall be deemed received on the date of hand delivery or within three days of deposit in first-class mail.

Section 4.10 Consents and Approvals. Wherever this Agreement requires any Party, or its agents or employees to provide a consent, approval or similar action, the parties agree that such consent, approval or similar action will not be unreasonably withheld or delayed.

Section 4.11 Severability. Should any court declare or determine that any provisions of this Agreement is invalid or unenforceable under present or future laws, that provision shall be fully severable; this Agreement shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in place of each such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. Texas law shall govern the validity and interpretation of this Agreement.

Section 4.12 Records. City and Corix each agree to preserve, for a period of at least three years from their respective dates of origin, all books, records, test data, charts and other records pertaining to this Agreement. City and Corix shall each, respectively, have the right during reasonable business hours to inspect such records to the extent necessary to verify the accuracy of any statement, charge or computation made pursuant to any provisions of this Agreement.

Section 4.13 Force Majeure. If any party is rendered unable, wholly or in part, by Force Majeure to carry out any of its obligations under this Agreement, other than an obligation to pay or provide money, then such obligations of that party to the extent affected by such Force Majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. Such cause, as far as possible, shall be remedied with all reasonable diligence. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the affected party, and that the above requirements that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demand of the opposing party or parties when such settlement is unfavorable to it in the judgment of the affected party.

Section 4.14 Good Faith. Each party agrees that, notwithstanding any provision herein to the contrary (i) it will not unreasonably withhold or condition or unduly delay any consent, approval, decision, determination or other action which is required or permitted under the terms of this Agreement, and (ii) it will act in good faith and shall at all times deal fairly with the other party.

Section 4.15 Authority of Parties Executing Agreement, Validity. By their execution, each of the individuals executing this Agreement on behalf of a party represents and warrants to the other party that it has the authority to execute the document in the capacity shown on this document. Each of the parties further represent and warrant that this Agreement constitutes a valid and binding contract, enforceable against it in accordance with its terms.

Section 4.16 **Governmental Contract Certifications.**

- a. **Boycott Israel Certification.** For purposes of Chapter 2270 of the Texas Government Code, at the time of execution and delivery of the Agreement, neither the Corix, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Corix, boycotts Israel. Corix agrees that, except to the extent otherwise required by applicable federal law, including, without limitation, 50 U.S.C. Section 4607, neither the Corix, nor any wholly-owned subsidiary, majority-owned subsidiary, parent company, or affiliate of the Corix will boycott Israel during the term of the Agreement. The terms “boycotts Israel” and “boycott Israel” as used in this clause has the meaning assigned to the term “boycott Israel” in Section 808.001 of the Texas Government Code.
- b. **Terrorist Organization Certification.** For purposes of Subchapter F of Chapter 2252 of the Texas Government Code, at the time of execution and delivery of the Agreement, neither the Corix, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the Corix,
 - (i) engages in business with Iran, Sudan or any foreign terrorist organization as described in Chapters 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or
 - (ii) is a company listed by the Texas Comptroller under Sections 806.051, 807.051 or 2252.153 of the Texas Government Code. The term “foreign terrorist organization” as

used herein has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.

- c. **Firearms Certification.** Corix hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code. As used in the foregoing verification, “discriminate against a firearm entity or firearm trade association” means: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; but does not include (a) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; or (b) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association.

- d. **Disclosure of Interested Parties.** Corix acknowledges that Texas Government Code Section 2252.908 (“Section 2252.908”) requires business entities entering into a contract with a local government entity such as the Owner to complete a FORM 1295 promulgated by the TEC (which is available on the TEC website at <https://www.ethics.state.tx.us/forms/1295.pdf>) and to file it electronically with the TEC before the time the business entity executes and submits the contract to the local governmental entity. Corix confirms that it has reviewed Section 2252.908, electronically filed a FORM 1295 with the TEC, and has provided the Owner with a completed FORM 1295 and certification of filing generated by the TEC’s electronic filing application, as required by Section 2252.908.

- e. **Conflict of Interest Certification.** Corix acknowledges that Texas Local Government Code Chapter 176 requires a vendor that seeks to or enters into a contract with a local governmental entity to file a conflicts of interest questionnaire if the vendor: (i) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer; (ii) has given a local government officer, or a family member of the officer, one or more gifts that exceed certain values; (iii) has a family relationship with a local government officer. Similarly, the Texas Penal Code prohibits the acceptance any benefit as consideration for a decision, opinion, recommendation, vote, or other exercise of discretion by a public servant. By execution of this Agreement, Corix certifies as follows: (i) Corix has fully complied with the applicable requirements of Chapter 176 of the Texas Local Government Code; (ii) Corix has not provided any gift, payment or other benefit to any director or employee of the Owner; and (iii) Corix has no other conflict of interest with the Owner, or any director or employee of the Owner.

Section 4.17 Effective Date. This Agreement will be effective from and after the last date of due execution by all Parties.

CORIX UTILITIES (TEXAS) INC., a Delaware corporation

By: _____

Name: R. Darrin Barker

Title: President

Date: _____

CITY OF BASTROP:

By: _____

Name: Sylvia Carrillo

Title: City Manager

Date: _____

Attest: _____
City Secretary