

**AGREEMENT REGARDING WHOLESALE  
WASTEWATER SERVICE**

**THIS AGREEMENT REGARDING WHOLESALE WASTEWATER SERVICE** (“Agreement”) is made by and between the City of Pflugerville, a Texas home rule city (the “City”) and New Sweden Municipal Utility District No. 2 (the “District”), a municipal utility district organized under the laws of the State of Texas.

**RECITALS**

- A. The District is located in the extraterritorial jurisdiction of the City and within the area that the City provides wholesale wastewater services (“Service”).
- B. The City is willing to provide Service to the District.
- C. The City and District desire to set forth in writing the terms and conditions for wholesale wastewater service from the City to the District.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual promises and agreements of the parties set forth below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

**I.  
WHOLESALE WASTEWATER  
SERVICE FROM PFLUGERVILLE FOR SERVICE AREA**

**1.01 Agreement to Provide Wholesale Wastewater Service.** Subject to the terms and conditions of this Agreement and all duly adopted regulations and ordinances of the City or any governing authority having jurisdiction over the Service, the City agrees to provide Service to District. Subject to the terms and conditions of this Agreement, the District accepts the provision of Service from the City.

**1.02 Description of Property to Receive Service from the City.** The Service provided under this Agreement shall include the tracts of land containing an area of approximately 426 acres, more or less, as shown on **Exhibit “A”** attached hereto (the “Service Area”) and additional lands annexed into the District. To the extent any portion of the Service Area is within the City’s Certificate of Convenience and Necessity (“CCN”), the City hereby consents to the provision of retail wastewater service to such lands by the District, and agrees to release such lands from the City’s CCN upon request of the District or any developer of lands within the Service Area provided such developer pays for all costs and expenses associated therewith. In the alternative, any developer of lands within the Service Area may petition the Public Utility Commission of Texas for decertification of its lands from the City’s CCN, in which event the City agrees to not oppose or seek any compensation in connection with said decertification.

**1.03 Maximum Limit of Service From the City.** The Service from the City to the District for the Service Area will be limited to a maximum of 1,681 Living Unit Equivalents. As utilized herein, the term “Living Unit Equivalent” or “LUE” means a unit of measurement representing the quantity of water consumed and wastewater generated on an average daily basis from a single-family, detached residence of average size and occupancy or whatever definition is written in the City Ordinances at the time that this Agreement is interpreted. Nothing herein shall prevent the parties from contracting for or agreeing to additional wastewater service pursuant in separate written agreements, however, neither party is obligated to enter into such separate agreements.

**1.04 Minimum Criteria for Service.** Wastewater service provided by the City to the District for the Service Area shall be sufficient to collect, transport, and treat all wastewater from the Service Area subject to the maximum capacity limitation set forth in Section 1.03 above, the further terms and conditions of this Agreement, and all applicable rules and regulations of governmental agencies having jurisdiction over the services provided.

**1.05 Conditions Precedent to Service.** The Parties specifically agree that the commencement of Service to the Service Area shall be subject to the following conditions precedent:

(i) The lands to be furnished service have been final platted by all governmental entities with relevant jurisdiction, unless a plat is not required by applicable laws and ordinances;

(ii) Approval of this Agreement by the Pflugerville City Council;

(iii) Construction of wastewater collection facilities (“Internal Facilities”) within the phase of development in the Service Area for which Service is required;

(iv) the Wastewater Lift Station Project and Wastewater Force Main Project (as such terms are defined in the Wastewater Facilities Financing and Construction Agreement) have been completed by the City in accordance with plans and specifications approved by City, are operational, and have been accepted by the City in accordance with the terms and conditions of the Wastewater Facilities Funding and Construction Agreement. Notwithstanding the foregoing, the Parties agree that if the City has not completed the Wastewater Lift Station Project and Wastewater Force Main Project within two (2) years after the last date of execution of this Agreement (the “Service Availability Date”), the City will otherwise furnish Service to the area by “pump and haul” or other means at the sole cost and expense of the City provided the other conditions to Service hereunder are satisfied;

(v) District’s compliance with all obligations provided for in the Wastewater Facilities and Conveyance Agreement.

(vi) The Interconnection Facilities and any new or replacement District Internal Facilities (as defined in the Wastewater Facilities Funding and Construction Agreement), if any, constructed after the effective date of this Agreement within the Service Area shall be built in accordance with the City’s Design Criteria and Standards, TCEQ Design Criteria for Sewage

Systems in Chapters 309, 312, and 317 of the Texas Administrative Code, this Agreement, and other applicable law;

(vii) final inspection and approval by City of the Interconnection Facilities required to transport wastewater to the agreed points of connection, as defined in Section 1.06 of this Agreement, to the City's System;

(viii) payment of all fees, including inspection fees to the City, costs, attorneys' fees, and consulting fees associated with providing Service to the Service Area;

(ix) written authorization from the City Manager acknowledging that District has satisfied all conditions and requirements of this Agreement for connection to the City's System and commencement of Service, and that Service to District shall commence, which authorization shall not be unreasonably withheld, delayed or conditioned.

(b) The City shall commence Service to District within eight business days after satisfaction of the conditions set forth in this Section.

**1.06 Manner of Connection.** The District's Internal Facilities will be connected to the City System by the District's construction (or construction by a developer of lands in the District) of the Interconnection Facilities at the Points of Connection. The District will ensure that the Interconnection Facilities and Internal Facilities are constructed by or on behalf of the District in compliance with the approved plans and specifications, with such plans and specifications being designed in accordance with applicable regulations and construction standards of the City and the Texas Commission on Environmental Quality ("TCEQ"). In the event that there is any conflict between these regulations, standards and specifications, the more stringent regulations, standards and specifications will apply.

**1.07 Minimization of Inflow and Infiltration.** The District agrees to have the District operator inspect, maintain, monitor and operate all Internal Facilities and Interconnection Facilities as often as necessary for the purpose of ensuring that inflow and infiltration into the Internal Facilities and the Interconnection Facilities is minimized and the quantity of wastewater that the City must process for as part of the Service is minimized.

**1.08 Curtailment of Service.** District agrees that, if wastewater service is curtailed within the City or to other customers of the City's System, the City may impose a like curtailment on Service delivered to District. The City shall impose such curtailments in a nondiscriminatory fashion. The parties agree that it will not be a breach of this Agreement if the City curtails Service completely in the event of a maintenance operation or emergency for a reasonable period necessary to complete such maintenance operations or repairs or respond to an emergency circumstance. City shall use reasonable efforts to minimize the duration of the period of curtailment and, if the curtailment is due to the sole fault of the City, shall pay for or provide facilities and equipment necessary to pump and haul all District wastewater to alternate treatment facilities ("Pump and Haul") during the curtailment period. If the curtailment occurs due to circumstances not the sole fault of the City, then the District shall be responsible for paying for Pump and Haul during the curtailment period.

**1.09 Monthly Billing.** Wastewater billings during the provision of Service will be determined based on the number of wastewater LUEs connected to the Internal Facilities.

(a) Each monthly bill shall contain a statement of the number of LUEs connected during the billing period, the rate on which the bill is calculated, and any other fees or administrative charges included in the bill. The District will timely make payment to the City in accordance with the City's utility service requirements and regulations as amended from time to time.

(b) The City's wholesale wastewater rates may be subject to change from time to time by the City Council of the City as outlined in Section 1.11 below; provided, however, the initial rate under this Agreement is \$50.73 per LUE per month, and the monthly rate shall not fall below the \$50.73 per month per LUE rate.

**1.10 Pflugerville Policies and Ordinances Applicable to Service.** Unless otherwise provided in this Agreement, the Service provided from the City to the Service Area under this Agreement shall not be unreasonably discriminatory and shall be consistent with the policies and ordinances of the City applicable to the Service.

**1.11 Rates Sufficient to Cover Pflugerville's Costs.** The monthly rate stated in Section 1.09 is currently sufficient to cover all of the City's cost of treatment of the wastewater from the Service Area. Should the City determine through a cost-of-service study that a rate increase is necessary, the District agrees to establish retail rates sufficient to cover any and all of the City's costs of treatment of the wastewater from the Service Area. The City may initiate a cost-of-service study on an annual basis. The District will adopt increased retail rates within thirty (30) day following an increase in rates by the City Council of the City to ensure that the City does not have to pay for the costs of treatment of the wastewater from the Service Area. Notwithstanding the foregoing, the District may utilize available maintenance tax revenues to pay any costs of wholesale wastewater services from the City, as determined in the discretion of the Board of Directors of the District, in which event the District shall not be obligated to increase its retail sewer rates. The District will also reimburse the City as soon as possible, and no later than sixty (60) days following an increase in rates by the City Council of the City for any costs incurred by the City necessitating the rate increase prior to the District raising retail rates.

**1.12 Service Not Assignable or Transferable.** The District may not assign this Agreement, in whole or in part, to property outside of the Service Area.

## II. CAPITAL RECOVERY FEES AND OTHER FEES

**2.01 Pflugerville Impact Fees for the Service Area.** The District, developers within the District, or District customers will pay to the City a Wastewater Impact Fee per service unit for each new service connection within the District for which payment of impact fees is not credited under the Wastewater Facilities and Conveyance Agreement. The Wastewater Impact Fee shall be the applicable fee assessed in accordance with the City's Code of Ordinances and Chapter 395 of the Texas Local Government Code. The Impact Fee shall be collected by the District for each connection within the District for which impact fees are not credited by the City

pursuant to the Wastewater Facilities and Conveyance Agreement, and shall be due and payable to the City within thirty (30) days after the end of each calendar monthly period in which the new retail wastewater connection is made. The District shall have a guarantee of service for each LUE for which a Wastewater Impact Fee has been paid to, or credited by, the City.

### **III. TERM AND TERMINATION**

**3.01 Term.** Unless terminated by mutual agreement of the parties hereto, this Agreement will continue in full force and effect for a period of fifty (50) years from the Effective Date hereof. The District may renew this Agreement for additional ten (10) year terms by providing written notice of renewal to the City not less than one year prior to the expiration of the initial or any renewal term.

**3.02 Termination.** If either Party breaches any term or condition of this Contract, the non-breaching Party may provide the breaching Party with a notice of the breach within sixty (60) days of discovery of the breach by the non-breaching Party. Upon notice of breach, the breaching Party shall have sixty (60) days to cure the breach. If the breaching Party does not cure the breach within the sixty (60) days, the non-breaching Party shall have all rights at law and in equity, including the right to enforce specific performance of this Contract by the breaching Party, the right to perform the obligation in question and to seek restitution for all damages incurred in connection therewith, or the right to terminate this Agreement.

**3.03 Remedies Upon Default.** It is not intended hereby to specify (and this Agreement will not be considered as specifying) an exclusive remedy for a default by any party hereunder, but all remedies existing at law or in equity, including specific performance and mandamus, will be cumulative and available to the non-defaulting party in the event of a default by any other party as to its duties or obligations hereunder.

**3.04 No Waiver Implied.** No waiver or waivers of any breach or default (or any breaches or defaults) by any party hereto of any term, covenant, condition, or liability hereunder, or of performance by any other party of any duty or obligation hereunder shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind under any circumstances.

### **IV. INDUSTRIAL DISCHARGE PROHIBITED**

#### **4.01 Industrial Discharges and Prohibited Wastes.**

(a) District acknowledges that the City has the responsibility and authority under federal and state law to establish:

(i) types and quantities of discharges that are prohibited for entry into the City's System, with the current types and quantities of prohibited discharges being more particularly described in Ordinances 1508-21-08-24 and 1509-21-08-24, attached as Exhibit B hereto ("IPP and FOG Ordinances");

(ii) discharge prohibitions for certain substances, being more particularly described in the IPP and FOG Ordinances;

(iii) pretreatment, permitting, monitoring, and other requirements for persons who discharge prohibited substances; and

(iv) measures to protect the City's System, including, without limitation, any portion of the sanitary sewer, and any receiving stream receiving a discharge of wastewater effluent from harmful discharges.

(b) The IPP and FOG Ordinances are subject to the amendment, modification, revision, and/or restatement by the City Council of the City of Pflugerville. If the IPP and FOG Ordinances are altered in any way by the City Council of the City of Pflugerville, the updated version of the IPP and FOG Ordinances will apply to this Agreement without requiring a written amendment.

(c) The District agrees that the Service Area may be used and improved solely for residential uses and commercial uses that generate only normal domestic wastewater, as determined by applicable policies and regulations of the City. No industrial uses will be permitted. Notwithstanding any provision herein to the contrary, however, no owner of any portion of the Service Area will be responsible or liable for any breach or violation of the covenants set forth hereunder which occurs outside of the portion of the Service Area owned by such owner.

(d) District agrees to seek injunctive or other appropriate relief to prohibit wastewater discharges that District becomes aware will damage or pass through City's System without adequate treatment, interfere with the treatment system, or otherwise pose an imminent danger to public health, or when the specific person or industry is not making sufficient progress toward implementing an approved pretreatment system.

(e) The parties agree that they will not construe this Agreement to limit, modify, restrict, or otherwise alter the responsibility or authority of the City to enforce its ordinances governing the pretreatment, monitoring, and discharge of wastewater containing industrial waste or other prohibited waste with respect to District when and as such action is deemed necessary by the City.

## V. INTERIM SERVICE

**5.01 Interim Service.** The City acknowledges and agrees that the District may provide retail sewer services within its boundaries prior to the Service Availability Date (as defined in Section 1.05(iv) above) through "pump and haul" or other means, but the City shall have no obligations with respect thereto, and the District shall be solely responsible for all costs and expenses associated with such interim service.

## VI. GENERAL PROVISIONS

**6.01 Authority.** This Agreement is made pursuant to the authority conferred in Texas Local Government Code, Section 552.001.

**6.02 Liability of District.** Liability for damages to third persons arising from the reception, transportation, delivery, and disposal of all wastewater discharged shall remain with District to the Points of Connection. With the exception of incompatible wastes or the delivery by District of prohibited wastes or wastewater that is corrosive or otherwise injurious to the City's System or to persons or property, upon passing the Points of Connection, liability for damages to third persons caused by the City shall pass to the City. Incompatible wastes are substances not amenable to wastewater treatment processes that will damage or interfere with the operation of the publicly owned treatment works or any portion of the City's System, including interference with the use or disposal of municipal sludge as well as pollutants that will pass through the treatment works unchanged by the treatment processes. Notwithstanding the foregoing, nothing in this Agreement shall waive, or be construed to waive, any immunity of the District under applicable law.

**6.03 Liability of the City.** Subject to the foregoing, the City shall bear the responsibility as between the parties for the proper reception, transportation, treatment, and disposal of all wastewater properly delivered to the Points of Connection by District. The parties agree that this Agreement does not absolve District of liability for damages to the City's System or to third persons arising from the delivery by District of prohibited wastes or wastewater that is corrosive or otherwise damaging to the City's System or to persons or property. Notwithstanding the foregoing, nothing in this Agreement shall waive, or be construed to waive, any immunity of the City under applicable law.

**6.04 Severability.** If any word, phrase, clause, sentence, paragraph, section or other portion of this Agreement is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of this Agreement shall not be affected thereby and this Agreement shall be construed as if such invalid portion had never been contained herein and the provisions of this Agreement are expressly deemed severable for this purpose.

**6.05 Cooperation.** The parties hereto agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement.

**6.06 Entire Agreement.** This Agreement contains the entire agreement of the parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, respecting the subject matter hereof.

**6.07 No Presumption Against Drafter.** The parties understand, agree, and acknowledge that: (i) this Agreement has been freely negotiated by both parties; and (ii) that, in the event of any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Agreement, or any of its terms or conditions, there shall be no inference, presumption, or conclusion drawn whatsoever against either party by virtue of that party having drafted this Agreement or any portion thereof.

**6.08 Amendments.** Any amendment hereof must be in writing and shall be effective only if signed by the authorized representatives of the City and the District.

**6.09 Effect of Force Majeure.** If either party is rendered unable, wholly or in part, by force majeure to carry out its obligations under this Agreement, it is agreed that each party shall give written notice of such force majeure to the other party as soon as commercially reasonable after the occurrence of the cause relied on and shall, therefore, be relieved of its obligations, so far as they are affected by such force majeure, during the continuance of any inability so caused, but for no longer. The term “force majeure” includes acts of God, strikes, lockouts or other industrial disturbances, shortage of supply or supply chain issues, criminal conduct or sabotage, acts of the public enemy, orders of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, pandemics, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and civil disturbances, explosions, breakage, or accidents to equipment, pipelines, or canals, partial or complete failure of water supply or wastewater systems, and any other inability of either party, whether similar to those enumerated or otherwise, that are not within the control of the party claiming the inability and that could not have been avoided by the exercise of due diligence. It is understood and agreed that the settlement of strikes, lockouts and other industrial or labor disturbances shall be entirely within the discretion of the party having the difficulty and that the requirement that any force majeure be remedied with all reasonable dispatch shall not require the settlement of strikes, lockouts or other industrial or labor disturbances by acceding to the demands of the opposing party if the settlement is unfavorable to it in the judgment of the party having the difficulty. Force majeure shall relieve the City from liability to the District or any customer of the District for failure to provide wastewater service due to an inability covered by this Article. Force majeure shall not relieve the District of its obligation to make payment to the City for Service provided under this Agreement.

**6.10 No Amendment of Other Agreements.** This Agreement is separate from and shall not constitute an amendment or modification of any other agreement between the parties.

**6.11 No Third Party Beneficiaries.** This Agreement shall inure only to the benefit of the parties hereto and third persons not privy hereto shall not, in any form or manner, be considered a third party beneficiary of this Agreement.

**6.12 Assignment** The rights and obligations of the District arising under this Agreement shall only be assignable if (i) the assignee assumes all of the obligations of the District hereunder in writing, and (ii) written notice of the assignment, together with a fully executed copy of the written assignment and assumption document, is furnished to the City and the District.

**6.13 Applicable Law.** This Agreement shall be construed in accordance with Texas law.

**6.14 Venue.** Venue for any action arising hereunder shall be in Travis County, Texas.

**6.15 Notices.** Any notice required or permitted under this Agreement must be in writing. Any notice required by this Agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return



receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, electronic mail, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

For the purposes of this Agreement, notice will be delivered to:

**THE DISTRICT:**

New Sweden Municipal Utility District No. 2  
c/o Montoya and Monzingo  
P.O. Box 2029  
Pflugerville, TX 78691  
Email: jeff@jeffmcpa.com

**CITY OF PFLUGERVILLE:**

City Manager  
City of Pflugerville  
P. O. Box 589  
Pflugerville, Texas 78691  
Email: \_\_\_\_\_

**6.16 Exhibits.** The following exhibits are attached to this Agreement and incorporated herein by reference:

- Exhibit A - Description of the Service Area
- Exhibit B - IPP and FOG Ordinances

**6.17 Counterparts.** This Agreement may be executed simultaneously in two (2) or more counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument. Each party represents and warrants that it has the full right, power and authority to execute this Agreement.

**6.18 Effective Date.** This Agreement shall be effective from and after the date of due execution hereof by all parties and approved by the City Council of the City of Pflugerville.

EXECUTED in multiple copies, to be effective upon the last date of execution below, each of which shall constitute an original:

**New Sweden Municipal Utility District No. 2**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary

**CITY OF PFLUGERVILLE:**

By: \_\_\_\_\_  
Sereniah Breland, City Manager  
Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Trista Evans, City Secretary

**EXHIBIT “A”**

**SERVICE AREA**

**NEW SWEDEN MUNICIPAL UTILITY DISTRICT NO. 2 BOUNDARY MAP**

**EXHIBIT B**  
**IPP AND FOG ORDINANCES**