

**AGREEMENT FOR WHOLESALE WATER
SERVICE BETWEEN THE CITY OF
PFLUGERVILLE AND WINDERMERE UTILITY COMPANY**

THE STATE OF TEXAS)
) KNOW ALL BY THESE PRESENTS:
COUNTY OF TRAVIS)

THIS AGREEMENT (“Agreement”) for the provision of wholesale water service is made and entered into by and between the City of Pflugerville, Texas (“Pflugerville”), a Texas home rule municipal corporation, and Windermere Utility Company (“Windermere”), (collectively, “Parties”), and may be referred to as the Pflugerville-Windermere Wholesale Water Service Agreement.

WHEREAS, Pflugerville has sufficient water supply, treatment and distribution capacity to serve its current and projected needs; and

WHEREAS, Windermere desires to obtain 100,000,000 gallons per year of water supply to be divided over the 12 months of the year to serve its current and projected needs for the next three years; and

WHEREAS, Pflugerville and Windermere desire to enter into this Agreement to set forth the terms and conditions under which Pflugerville will provide Windermere with Water suitable for Windermere (see how defined in TCEQ regs) at designated delivery points; and

WHEREAS, Pflugerville and Windermere are authorized to enter into this Agreement pursuant to the provisions of Texas Water Code, Chapter 13 and the Texas Local Government Code; and

WHEREAS, the Pflugerville City Council took action on February 13, 2007 to approve this Agreement with Windermere;

WHEREAS, Windermere, by Bert James ^{AS} dated Vice President, has duly authorized the negotiation and execution of this Agreement with Pflugerville;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual undertakings herein contained, the Parties agree as follows:

ARTICLE I.

DEFINITIONS

The following terms shall have the meanings set out below:

1.01. City Manager: means the City Manager for Pflugerville or the City Manager’s authorized designee.

1.02. Commission: means the Texas Commission on Environmental Quality or its successor agency.

1.03. Connection: means a single family residential unit or each commercial or industrial establishment to which water is supplied from Windermere's system or Pflugerville's system.

1.04. Default: means the omission or failure of a party to perform their contractual duty under this agreement.

1.05. GPM: means gallons per minute.

1.06. Maximum Service Level: means the quantity of Water Windermere is entitled to receive from Pflugerville under this Agreement as specified in Section 2.01 and as may be increased from time to time as specified in Section 2.02.

1.07. Metering Facility: means the meter, meter loop, meter vault, and all metering equipment required to measure wholesale water service to Windermere at the agreed Points of Delivery. The term also includes any other facilities constructed by Windermere that are associated with the Metering Facility but does not include the Windermere system.

1.08. MGD: means million gallons per day.

1.09. Pflugerville System: means all water treatment, transmission and distribution facilities, lines, mains, reservoirs, pump stations, residential, commercial, and industrial connections and any other parts or components that comprise the public water system of City of Pflugerville, Texas.

1.10. Pflugerville Raw Water Treatment System: means the Intake Structure, Pump Station, Transmission Line, Reservoir, Water Treatment Plant and related facilities used by Pflugerville to treat raw water from the Colorado River for distribution to its customers.

1.11. Point of Delivery: means one or more points designated and approved under this Agreement at which Windermere will receive water from the Pflugerville System for distribution within the Windermere System as more particularly described below.

1.10. Windermere System: means the lines, reservoirs, pump stations, mains, residential, commercial, and industrial connections and any other parts or components that comprise the public water system of Windermere.

1.11. Water: means potable water meeting the requirements of the Commission for human consumption and other domestic uses.

1.12. Wholesale Water Service Area: means Windermere's current certificated water service area as established by the Commission as of the effective date of this Agreement.

1.13. Wholesale Water Service: means Pflugerville's provision of a Water supply to Windermere for its distribution system that serves retail connections in its Wholesale Water Service Area.

ARTICLE II.

DELIVERY OF WATER

2.01. Take-or-Pay Service Level. Subject to all the terms and conditions set forth in this Agreement, Pflugerville agrees to sell and Windermere agrees to buy Water for the operation of the Windermere System for domestic, commercial and industrial uses on a take or pay basis at least 4,000,000 gallons per month, and an annual amount of at least 100,000,000 gallons as determined at the end of each fiscal year ending on September 30, at a rate not exceeding 694.4 gallons per minute (GPM) and at a minimum pressure of 35 psi (under normal operating conditions) pounds per square inch under normal operating conditions at the master meter(s) located at the Point of Delivery shown on Exhibit "A". The Parties agree that Windermere must pay the rate established in Section 4.01 per 1,000 gallons for the minimum amount of Water that it is obligated to receive regardless of whether Windermere actually uses such Water, provided that Pflugerville is able to deliver the minimum amount of Water as required under this Agreement.

2.02. Increased in Maximum Service Level. The Parties agree that when use by Windermere reaches or exceeds 4,000,000 gallons of water per month during any month, Windermere must pay Pflugerville the rate established in Section 4.01 per 1,000 gallons used above 4,000,000 gallons per month. Provided, however, that if Pflugerville determines, in its sole discretion, that there is not sufficient capacity above 4,000,000 gallons of Water per month in the Pflugerville Raw Water Treatment System to meet Pflugerville's own needs for the next three years, Pflugerville may notify Windermere of such condition and Pflugerville may refuse to increase Windermere's Maximum Service Level above 4,000,000 gallons per month.

2.03. Daily Limitation on Quantity of Water Provided. The Parties further agree that notwithstanding Sections 2.01 or 2.02 or any other provision in this Agreement, Windermere is not entitled to receive more than and the maximum amount of water provided to Windermere under this Agreement is limited to 1 MGD for any day under this Agreement.

2.04. Nondiscrimination. Water service to Windermere by Pflugerville must be nondiscriminatory and consistent with Pflugerville's policies, ordinances and regulations applicable to wholesale water services as established by the Pflugerville Council and amended from time to time.

2.05. Point of Delivery. The Point(s) of Delivery are shown on Exhibit "A", which is attached and incorporated by reference for all purposes. The Point(s) of Delivery may be changed at any time by agreement in writing between the City Manager and Windermere. If Windermere requests a change in a Point of Delivery, Windermere must bear the expense of changing such Point of Delivery. If Pflugerville requests an addition or change in a Point of Delivery, Pflugerville must bear the expense of changing such Point of Delivery.

2.06. Approval of Changes or Additional Points of Delivery. Before adding or changing any Point of Delivery to the Pflugerville System, Windermere must submit a written request to the City Manager for approval of the additional or new Point of Delivery accompanied by an engineering report and plans, prepared by a registered professional engineer and approved by

Windermere. The request must provide details regarding the proposed change or the new Point of Delivery, the area to be served, the design, size, location and configuration of meters to be installed, and other pertinent information requested by Pflugerville.

2.07. Backflow Prevention. Windermere, at its own expense, must install a backflow prevention assembly at any Point of Delivery from the Pflugerville System before service begins under this Agreement. All approved additional Points of Delivery must have a backflow prevention assembly installed at the time of construction at Windermere's expense.

2.08. Service outside Windermere; Enlargement of Windermere's Boundaries or Service Area. This Agreement provides for the purchase of wholesale water by Windermere from Pflugerville for delivery to retail customers within the Wholesale Water Service Area. Windermere may not sell, resell, or deliver water to areas outside the Wholesale Water Service Area unless it first obtains either the prior written consent of Pflugerville or is ordered to provide such service by the Commission in involuntary proceedings that are not initiated by Windermere. In the latter event, Windermere must provide written notice to Pflugerville of the proceedings at the Commission relating to the expansion of Windermere's service to areas now outside of the Wholesale Water Service Area.

2.09. Curtailment and Conservation Restrictions. Delivery, volume, and pressure of potable Water to Windermere under this Agreement is subject to and limited by Pflugerville's available water supply and water system intake, transportation, and treatment capabilities. Pflugerville may curtail or ration wholesale service to Windermere in times of high system demand in the same manner and to the same extent that Pflugerville imposes such curtailment or water rationing on other wholesale customers of Pflugerville. Pflugerville will notify Windermere in writing when it implements or terminates any conservation and user restrictions it imposes, and Windermere must impose and enforce on its customers the same voluntary and mandatory conservation and use restrictions Pflugerville imposes on its customers within three business days of receipt of notice from Pflugerville.

2.10. Temporary Curtailment of Service for Maintenance, Capital Replacement or Emergency Operations. Pflugerville may, at any time, curtail Wholesale Water Service in the event of a required maintenance operation, replacement of capital facilities or emergency for a reasonable period necessary to complete such maintenance operations or capital replacement, complete emergency repairs or otherwise respond to the emergency conditions. For any curtailment other than one caused by an emergency, Pflugerville will, if possible, give at least 72 hours telephonic notice to Windermere. In the event of an emergency curtailment, Pflugerville will give telephonic notice as soon as possible.

2.11. Cooperation during Maintenance or Emergency. Windermere must cooperate with Pflugerville during periods of emergency or required maintenance or replacement of capital facilities and, if necessary, Windermere will, at its sole expense, discontinue, cycle, test, inspect, or otherwise operate and maintain its pumps or other Windermere System facilities in a manner necessary to allow the safe and efficient operation of both the Windermere System and the Pflugerville System until completion of such operations by Pflugerville or until the end of such emergency period, as determined by the City Manager.

2.12. Master Meters Required. Water consumed by Windermere must be measured at the Point(s) of Delivery by master water meters of a design, size, location and configuration approved by the City Manager and Windermere.

2.13. Metering Facility Installations. A Metering Facility must be installed at each Point of Delivery. Windermere, at its own expense, must install and provide the Metering Facility, unless such expense is related to Pflugerville's desire to change the Point of Delivery, in which case Pflugerville will provide and install each master meter(s) and the meter(s) will be the property of Pflugerville for all purposes hereunder. If Windermere requests a change in a Point of Delivery, Windermere must bear the expense of providing the new Metering Facility and installing the meter. If Pflugerville requests an addition or change in a Point of Delivery, Pflugerville must bear the expense of providing and installing the Metering Facility.

2.14. Approval of Plans and Specifications. All Metering Facilities must be constructed or installed to City of Pflugerville Standard Specifications and in accordance with plans and specifications approved by Pflugerville, the Commission, the Texas Department of Health and any other agency having jurisdiction thereof.

All plans and specifications for Metering Facilities to be constructed by Windermere must be reviewed and approved by the City Manager prior to commencement of construction, which approval will not be unreasonably withheld or delayed. The City Manager will review and approve or disapprove any plans submitted under this subsection within 30 days of submittal. Upon request by the City Manager, Windermere will timely submit all documents that are needed for the review and approval of plans and specifications. If any plans are not approved, the City Manager will provide written comments to Windermere specifying in detail the changes that will be required for approval of the plans and specifications. Windermere agrees not to advertise for bids until approval from the City Manager has been secured with respect to the plans and specifications.

If, after approval of the plans and specifications for particular Metering Facilities by Pflugerville, Windermere fails to enter a construction contract for those facilities within two years, Windermere must resubmit the plans and specifications for review and approval by the City Manager to assure their conformity with Pflugerville's then current specifications, current laws, ordinances, and regulations. If such plans and specifications do not conform to the then existing standards, then, upon the request of the City Manager, Windermere agrees to revise the plans and specifications to meet Pflugerville's standards before commencement of construction.

2.15. Operation and Maintenance of Metering Facility. Pflugerville will operate and maintain the Metering Facility and will calibrate the metering equipment annually and more frequently upon request by Windermere; provided that, the additional cost of calibrating the metering equipment must be directly borne by Windermere if requested more frequently than annually. Any meter registering within American Water Works Association standards for that type and size of meter will be deemed to be accurate. Unless otherwise agreed in writing, if any meter fails to register accurately for any period, Pflugerville's charge for the amount of water furnished during such period may be determined by Pflugerville using reasonable methods for estimating the actual usage.

2.16. Required Rights-of-Way. Windermere must obtain any easements or rights-of-way necessary for the construction of the Metering Facility. The form and content of easements for any Metering Facility to be dedicated to Pflugerville under this Agreement must be reviewed and approved by the City Manager and the City Attorney of Pflugerville or his designee before final acceptance of such facilities by Pflugerville, which approval will not be unreasonably withheld or delayed.

2.17. Inspection by Pflugerville. Pflugerville may inspect all phases of the construction and installation of the Metering Facility and may charge Pflugerville inspection fees for the inspections of the Metering Facility. Inspection fees for the Metering Facility will be determined in accordance with applicable Pflugerville ordinances as such ordinances may be amended from time to time.

2.18. Notification of Commencement of Construction. After all required approvals for construction of the Metering Facility are obtained, but before construction commences, Windermere must provide written notice to the City Manager of the date on which construction of the facilities is scheduled to commence to allow Pflugerville to assign an inspector.

2.19. Dedication of Metering Facility. Any metering Facility constructed by Windermere must be dedicated to Pflugerville for ownership, operation, and maintenance upon completion of construction and acceptance by Pflugerville.

2.20. As-Built or Record Drawings upon Completion of Construction. Following completion of construction of the Metering Facility or any portion thereof, Windermere must provide, at Windermere's expense, to the City Manager as-built drawings or record drawings of the completed project within 30 days of Windermere receiving them.

2.21. Water Line Breaks. Windermere must notify Pflugerville of any water line breaks inside the Wholesale Water Service Area in this Agreement. Windermere is responsible for timely providing any required notice to Federal, State, and local government officials regarding water line breaks.

ARTICLE III.

COMPLIANCE WITH STATE LAWS AND CITY REGULATIONS

3.01. Legal Lots Required. Windermere may not sell taps or otherwise permit the connection of water service to any customer within the Wholesale Water Service Area unless the property is exempt from or in compliance with the provisions of Chapter 212, Texas Local Government Code, as amended.

3.02. Water Conservation Program. Windermere will adopt and enforce a water conservation program sufficient to meet the requirements of the Texas Commission on Environmental Quality ("TCEQ") water conservation rules, as amended.

3.03. Drought Contingency Program. Separate from the requirements of Section 3.02, Windermere agrees to adopt and enforce rules with provisions at least as stringent as

Pflugerville's drought contingency plan, as in effect on the date of this Agreement, within the Wholesale Water Service Area in this Agreement. If the Pflugerville ordinance is amended, Pflugerville will give written notice to Windermere of those amendments and will request that Windermere amend its rules to include similar provisions.

3.04. Penalty Provision. If Windermere fails to comply with all the terms of this Agreement with respect to adopting and enforcing water conservation measures or a drought contingency plan, Pflugerville may impose on Windermere a monthly water surcharge equal to 25% of the rate being charged to Windermere for as long as Windermere remains out of compliance. Before imposing such a surcharge, Pflugerville will give Windermere written notice of any such failure, specifying in detail the alleged non-compliance. Windermere will have 90 days for the date of the notice to cure the failure. If Pflugerville or Windermere do not agree on the satisfaction of any of the terms of this Section, either party may request mandatory mediation to resolve the conflict.

3.05. Fire Flow. Windermere must provide fire flow within the City limits and extraterritorial jurisdiction of Pflugerville for all new construction. Fire flow means providing the minimum duration, supply, and pressure requirements in accordance with the latest edition of the International Fire Code.

ARTICLE IV.

WATER RATES, CHARGES, FEES AND BILLING

4.01. Wholesale Water Rates. Windermere agrees to make payments to Pflugerville for all water Windermere is entitled to under this Agreement in accordance with the wholesale water rate established and amended from time to time by the Pflugerville City Council for Windermere. Windermere must pay a minimum of \$9,000 each month, and a minimum of \$225,000 each fiscal year ending September 30, regardless of whether the calculated payments for the amount of water taken by Windermere is a lesser amount, provide that Pflugerville is able to deliver the minimum amount of Water as required under this Agreement in Section 2.01. Pflugerville's initial Wholesale Water Rate for Windermere is \$2.25 per 1,000 gallons. Pflugerville's initial Wholesale Water Rate for Windermere may not be amended any sooner than two years after the effective date of this Agreement. If the Wholesale Water Rate is amended, the amended rate must be calculated based upon Pflugerville's actual cost of service as determined by a cost of service study completed by Pflugerville. Windermere will be given written notice and an opportunity to participate in the ratemaking process before any final amended wholesale rate is adopted. The parties agree that the Wholesale Water Rate will never be less than \$2.25 per 1000 gallons. If the Wholesale Water Rate increases by more than 100% at any given time, Windermere may terminate this Agreement by providing at least 30 days prior written notice to Pflugerville, notwithstanding anything in this Agreement.

4.02. Windermere Water Rates and Charges. Windermere will be solely responsible for establishing and collecting rates and charges for retail water service to its customers. Windermere must collect rates and charges that are sufficient to allow Windermere to pay for Wholesale Water Service under this Agreement.

4.03. Customer Connection Fees. Windermere is solely responsible for the proper exercise of its authority to assess and collect fees, rates, taxes or other charges and for ensuring that the assessment and collection of the same is in compliance with applicable law.

4.04. Billing and Payment. Pflugerville will bill Windermere monthly for the Maximum Service Level as determined by Pflugerville in accordance with this Agreement's periodic readings of the master meter(s) installed at the Point of Delivery. Each bill must include a due date and the total amount owed to Pflugerville based on the Maximum Service Level multiplied by Pflugerville's wholesale water rate for Windermere as amended from time to time by the Pflugerville City Council. Windermere must pay the total amount owed to Pflugerville by the due date on each bill for wholesale water service. If Windermere in good faith, questions the amount of the bill, Windermere must pay the bill and then send Pflugerville a written request for a good faith reevaluation within 30 days. Pflugerville shall make all reasonable efforts to respond within 30 days.

4.05. Effect of Default for Non-Payment. With respect to monthly billings, if Pflugerville has not received payment from Windermere by the due date, the bill will be considered delinquent, unless contested in good faith. In such event, Pflugerville will notify Windermere of such delinquency in writing. If Windermere fails to make payment of the delinquent billing within 30 calendar days from the due date, then Pflugerville may, at its discretion, temporarily terminate service to Windermere until payment is made, subject to Windermere's right of continuity of service during a good faith appeal of a disputed bill.

ARTICLE V.

CONSTRUCTION AND OPERATION OF WATER SYSTEMS

5.01. Construction by Windermere. Unless otherwise agreed in writing, Windermere is solely responsible for design, engineering, financing, construction, installation, inspection, operation, maintenance, repair and replacement of all Windermere capital facilities necessary to transport Water from the Delivery Point to Windermere's customers for the transmission and delivery of water within the Wholesale Water Service Area.

5.02. Right of Entry. During the term of this Agreement, after providing notice to Windermere and during reasonable times, Pflugerville may enter and access at all times to facilities comprising or connected to the Windermere System for any purpose related to receiving Wholesale Water Service hereunder or activities preparatory or incident hereto, to inspect the Windermere System and the Metering Facility, to investigate the source of operational or maintenance problems or for preventative purposes intended to detect, minimize or avert operational or maintenance problems.

5.03. Operation and Maintenance. Pflugerville is responsible for operation and maintenance of the Pflugerville System and the Metering Facility constructed for the purpose of transporting water to Windermere or its customers. Unless otherwise agreed in writing, Windermere is responsible and assumes all liability for operation, maintenance, and leakage of water of the Windermere System, including any facilities constructed for transportation and delivery of water

to Windermere's retail customers whether within or outside the Wholesale Water Service Area from Pflugerville's master meters.

ARTICLE VI.

SERVICE AREA AND LIMITATIONS ON SERVICE

6.01. Limitation of Service. Windermere acknowledges that, as the provider of water service to other properties in this region, Pflugerville must retain the ability to plan, fund and operate Pflugerville System to serve not only Windermere but all other customers of Pflugerville System and that the increase in service by any customer without the consent of Pflugerville detrimentally affects the capability of Pflugerville to plan, fund and operate the Pflugerville System for the benefit of all Pflugerville water customers. Accordingly, the Parties agree to the following:

(a) This Agreement is for a specific level of wholesale water service for the wholesale service area. Windermere may not take more flow than authorized by this Agreement without the prior approval of the Pflugerville City Council.

(b) Pflugerville's City Council reserves the right to deny for any reason any or all requests by Windermere to expand the level of the wholesale water service under this Agreement.

(c) If Windermere authorizes and provides water service outside the Wholesale Water Service Area or takes more flow than authorized by this Agreement, without the approval of Pflugerville, as reflected by a written amendment to this Agreement duly approved by the governing body of Pflugerville and Windermere, Pflugerville may terminate this Agreement, or require Windermere to terminate service to the land outside the Wholesale Water Service Area.

(d) Windermere may not connect any customer that Windermere knows provides water service directly or indirectly to another person or entity outside the Wholesale Water Service Area. Windermere will immediately terminate the service of any such customer once it discovers any such connection.

6.02. Consideration for Wholesale Water Service. Windermere acknowledges that Pflugerville has entered into this Agreement based in part on Windermere's Agreement to limit its use of Water from Pflugerville to the Wholesale Water Service Area in this Agreement, limit its maximum volume of water usage to 1 MGD and comply with the requirements Article III.

ARTICLE VII.

TERM AND RENEWALS

7.01. Term of Agreement. This Agreement shall be effective from the date of due execution by the authorized representatives of Pflugerville and Windermere and will continue in effect for a period of three years unless earlier terminated in accordance with the provisions hereof.

7.02. Termination. Without prejudice to any provision hereof setting forth terms for automatic expiration, this Agreement may be terminated by Pflugerville or Windermere in the event of default of any of the provisions in this Agreement by the other party by giving 12

months written notice to the other party. If either party elects to terminate this Agreement, Windermere must exercise reasonable diligence to timely secure an alternative supply of Water prior to the effective date of such termination. In the event of termination hereunder for any reason, Pflugerville is not responsible for any costs and expenses of Windermere related, directly or indirectly, to securing alternative water service to Windermere.

7.03. Default. If one party believes that the other party is in default of any of the provisions in this Agreement, the non-defaulting party will make written demand to cure to the defaulting party and give the defaulting party up to 90 days to cure the default or, if the curative action cannot reasonably be completed within 90 days, the defaulting party will commence the curative action within 90 days and thereafter diligently pursue the curative action to completion. This period must pass before the non-defaulting party may initiate any remedies available to the non-defaulting party due to such default. The non-defaulting party must mitigate direct or consequential damages arising from any default to the extent reasonably possible under the circumstances. The Parties agree that they will use their best efforts to resolve any disputes and may engage in non-binding arbitration or other alternative dispute resolution methods as recommended by the laws of the State of Texas before initiating any lawsuit to enforce their rights under this Agreement. Nothing in this Agreement may be construed to limit either party's right to recover damages or to seek other appropriate curative remedies if a breach of contract action is filed by a non-defaulting party to this Agreement.

7.04. Renewal. This Agreement may be renewed or extended by mutual agreement of the Parties in writing for such additional periods as may be approved by the governing bodies of Windermere and Pflugerville. No continuation of water service obligation is expressed or implied by Pflugerville to Windermere beyond the term of this Agreement.

ARTICLE VIII.

PERFORMANCE AND FORCE MAJEURE

8.01. Effect of Force Majeure. If either party is rendered unable by force majeure to carry out any of its obligations under this Agreement, whether in whole or in part, then the obligations of that party, to the extent affected by the force majeure, is suspended during the continuance of the inability; provided, however, that due diligence must be exercised to resume performance at the earliest practicable time. As soon as reasonably possible after the occurrence of the force majeure relied upon to suspend performance, the party whose contractual obligations are affected thereby must give notice and full particulars of the force majeure to the other party. The cause, as far as possible, must be remedied with all reasonable diligence. The term "force majeure" includes acts of God, strikes, lockouts or other industrial disturbances, 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, 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, and any other inability of either party, whether similar to those enumerated or otherwise, that are not within the control of the party claiming their ability 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 is entirely within the discretion of the party having the difficulty and that the requirement that any force majeure be remedied with all reasonable dispatch does 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 that party in the judgment of the party having the difficulty. Force majeure relieves Pflugerville from liability to Windermere or any water customer of Windermere for failure to provide water service due to an inability covered by this Article.

ARTICLE IX.

GENERAL PROVISIONS

9.01. Good Faith. Pflugerville and Windermere agree to cooperate with each other and act in good faith in the performance of this Agreement.

9.02. Proration at Beginning of Contract. The annual take or pay requirement established in Section 2.01 and the minimum annual payment established in Section 4.01 shall be prorated to reflect the portion of the fiscal year in which this Agreement was in effect between October 1, 2006 and September 30, 2007.

9.03. Notices. Any notice required or permitted to be delivered under this Agreement shall be forwarded via hand-delivery or the United States Postal Service, postage prepaid, to the addresses shown below:

City of Pflugerville
P.O. Box 589
Pflugerville, Texas 78767-8828
Attn: City Manager

Windermere Water Utility
2700 Pecan Street West, Suite 403
Pflugerville, Texas 78660
Attn: Bill Jasura

Each party shall forward to the other within twenty four (24) hours of the filing thereof in the Commission or other court or agency of competent jurisdiction a true copy of any petition, application or other instrument affecting this Agreement, whether directly or indirectly.

9.04. Address Change Procedure. The addresses of the Parties shall, until changed as hereinafter provided, be as shown above. The Parties may at any time to change their respective addresses by giving written notice of same to the other party.

9.05. Interlocal Cooperation. Pflugerville and Windermere must cooperate with each other at all times so as to promote the efficient performance of the utility services provided to Windermere hereunder. Pflugerville and Windermere agree to use a third-party mediation service for any unresolved disputes prior to seeking legal remedies through lawsuits or court actions. This requirement does not preclude the actions available to both Parties specifically identified in this contract.

9.06. Provision of Data, Documents. Windermere agrees to timely provide to Pflugerville at Windermere's expense all requested data, records, plans and specifications, computer tapes, or other documents or information necessary or incidental to the provision of Water service to

Windermere under this Agreement. Pflugerville agrees to timely provide to Windermere at Pflugerville's expense all requested data, records, plans and specifications, computer tapes, or other documents or information necessary or incidental to the provision of Water service to Windermere.

9.07. Provision of Further Documents. Windermere and Pflugerville will execute and deliver such other and further requested legal documents or instruments and perform such other and further acts as are reasonably necessary to effectuate the purposes and intent of this Agreement.

9.08. Severability. The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application thereof to any person or circumstances is ever held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstances will not be affected thereby and this Agreement will be construed as if such invalid or unconstitutional portion had never been contained herein.

9.09. Entire Agreement. This Agreement, including any exhibits attached hereto and made a part hereof by reference for all purposes, constitutes the entire agreement between the Parties relative to the subject matter of this Agreement and supersedes all prior or contemporaneous agreements, representations, covenants or warranties, whether oral or in writing, respecting the subject matter hereof.

9.10. Compliance with Rules. Windermere must file a copy of this Agreement with the Executive City Manager of the Texas Commission on Environmental Quality, it being fully recognized by the Parties hereunder that the effectiveness of this contract is dependent upon and subject to compliance with all valid rules, regulations, and applicable laws of the United States of America, the State of Texas, Pflugerville, Windermere, or any other governmental body or agency having lawful jurisdiction or any authorized representative or agency of any of them.

9.09. Liability. Windermere will hold Pflugerville harmless from any and all liability or claims or demands whatsoever for personal injury, property damage, damages to Windermere's Water System, or other loss, penalty, or expense arising directly or indirectly from the provision of water service under this Agreement, to which Pflugerville may be subjected to by reason of any injury to any person or damage to any property resulting or in any way connected with any and all actions and activities (or failure to act) of Windermere under this Agreement. To the extent allowed by law, Pflugerville will hold Windermere harmless from any and all liability or claims or demands whatsoever for personal injury, property damage, damages to Pflugerville's Water System, or other loss, penalty, or expense arising directly or indirectly from the provision of water service under this Agreement, to which Windermere may be subjected to by reason of any injury to any person or damage to any property resulting or in any way connected with any and all actions and activities (or failure to act) of Pflugerville under this Agreement. Nothing in this section may be construed to limit either Parties' right to recover damages or to seek other appropriate curative remedies if a breach of contract action is filed by a non-defaulting party to this Agreement.

9.10. Amendment. No amendment of this Agreement is effective unless and until it is duly approved by the governing bodies of each party and reduced to a writing signed by the authorized representatives of Pflugerville and Windermere.

9.11. Independent Contractor. Pflugerville is an independent contractor hereunder and is solely responsible for the proper direction of its employees hereunder and Pflugerville's employees may not be considered employees or borrowed servants of Windermere for any reason.

9.12. No Third Party Beneficiary. This Agreement will be construed as an interlocal contract respecting the performance of governmental services and nothing herein may be construed to confer any right, privilege or benefit on any person or entity not a party hereto or otherwise creates any vested right or third party beneficiary relationship.

9.13. Governing Law. This Agreement will be construed under the laws of the State of Texas and all obligations of the Parties are deemed performable in Travis County, Texas.

9.14. Venue. Venue for any suit arising under this Agreement is in Travis County.

9.15. Assignment. Neither party may assign its rights and obligations hereunder without the prior written consent of the other.

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

9.17. Effective Date. This Agreement becomes effective on the date of execution by the authorized representatives of Pflugerville and Windermere.

IN WITNESS WHEREOF, the authorized representatives of Pflugerville and Windermere have executed this Agreement as of the date(s) set forth below.

ATTEST:

Karen Thompson
Karen Thompson, City Secretary

CITY OF PFLUGERVILLE:

By: Catherine T. Callen
Catherine T. Callen, Mayor

Date: February 20, 2007

WINDERMERE WATER UTILITY:

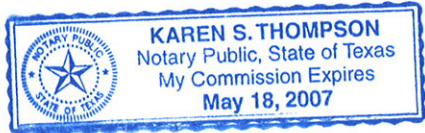
By: Bill Jasura
Name: BILL JASURA

Title: Vice President

Date: 2.22.07

THE STATE OF TEXAS)
)
COUNTY OF TRAVIS)

THIS INSTRUMENT is acknowledged before me on this 20th day of February, 2007, by Catherine T. Callen as Mayor of Pflugerville, Texas, a municipal corporation, on behalf of said municipal corporation.



Karen S. Thompson
Notary Public, State of Texas
Karen S. Thompson
Printed/Typed Name of Notary

My Commission Expires: 05/18/07

THE STATE OF TEXAS)
)
COUNTY OF TRAVIS)

THIS INSTRUMENT is acknowledged before me on this 22 day of Feb., 2007, by Bill Jasura as General Manager of Windermere Water Utility, a public water utility.

Jessica A. Chavez
Notary Public, State of Texas
Jessica A. Chavez
Printed/Typed Name of Notary

My Commission Expires: _____

