

**AGREEMENT FOR THE TRANSFER OF WATER  
CERTIFICATE OF CONVENIENCE AND NECESSITY SERVICE AREA  
(Property Within City's Extraterritorial Jurisdiction)**

THIS AGREEMENT FOR THE TRANSFER OF WATER SERVICE AREA (the "Agreement") is made and entered into by and between **MANVILLE WATER SUPPLY CORPORATION** ("Manville"), a Texas non-profit water supply corporation and member-owned retail public utility, operating under the provisions of Chapter 67, Texas Water Code, and the **CITY OF PFLUGERVILLE, TEXAS** ("Pflugerville"), a Texas home rule municipality operating a retail public water utility. The parties may be referred to collectively herein as the "Parties."

**WHEREAS**, Manville holds a water certificate of convenience and necessity identified as CCN 11144 by the Texas Public Utility Commission ("Manville CCN") that authorizes and obligates Manville to provide potable water service within Manville CCN area, which includes certain lands hereinafter described that, as a result of growth of Pflugerville, now are within the extraterritorial jurisdiction of Pflugerville; and

**WHEREAS**, Manville provides retail water utility services to the public inside the Pflugerville's extraterritorial jurisdiction as defined by Manville CCN 11144; and

**WHEREAS**, Pflugerville also holds a water CCN identified as CCN 11303 by the Texas Public Utility Commission ("Pflugerville CCN") that authorizes and obligates Pflugerville to provide potable water service to the area covered by the Pflugerville CCN; and

**WHEREAS**, A location map of the "Transfer Areas" as described below is attached hereto as **Exhibit "A"**; and

**WHEREAS**, **WHEREAS**, the Parties have determined that it is in the best interests of both Parties and of future landowners and developers within the area identified herein that the full range of Pflugerville municipal water services, including fire flow protection, be available to the certificated area involved herein; and

**WHEREAS**, Pflugerville owns and operates nearby water transmission facilities with sufficient capacity to provide the level of service in the Transfer Areas, and Pflugerville desires to provide retail water service to the Transfer Areas; and

**WHEREAS**, pursuant to §13.247(a) of the Texas Water Code ("TWC") a municipality owned or operated utility may not provide retail water and sewer utility service within the area certificated to

another retail public utility without first having obtained from the utility commission a certificate of public convenience and necessity that includes the areas to be served; and

**WHEREAS**, the Parties desire to establish this Agreement as evidence of their joint and collaborative written consent and agree to amend their respective CCNs through the Texas Public Utility Commission (“PUC”) pursuant to the various processes pursuant to §13.248 of the TWC, as more specifically detailed herein, to transfer the desired portions of the Manville CCN to the Pflugerville CCN for single certification, while agreeing to interim dual certification in certain areas for Manville’s continued provision of potable water service to any existing customers until such time as the services can be transferred to Pflugerville, in accordance with the terms of this Agreement, to ensure that there will be no interruption of service or change in service to any existing Manville customers; and

**WHEREAS**, the Parties desire, consent and agree that an additional purpose of the Agreement is to serve as Manville’s consent to decertify the certificated areas involved herein for transfer to and incorporation into the Pflugerville CCN area within its extraterritorial jurisdiction; and

**WHEREAS**, the Parties agree to the modification of the Manville CCN and the Pflugerville CCN to incorporate the terms of this Agreement into their respective CCNs, and by these presents wish to designate the areas to be served by Manville and Pflugerville under the terms and conditions herein and for consideration herein set out; and

**WHEREAS**, The Transfer Areas are within Pflugerville’s extraterritorial jurisdiction, and were therefore, considered in Pflugerville’s Master Plan. Consequently, Pflugerville has planned for the provision of municipal services to this area. Likewise, the Pflugerville has, in its planning process, considered the community, recreational, historical, aesthetic, and environmental features and priorities of these areas. The location of the areas, and their role in Pflugerville’s growth, make it a logical addition to the Pflugerville’s CCN service area. Pflugerville is in the best position to provide affordable service to customers located within its extraterritorial jurisdiction.

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations contained herein, the receipt and sufficiency is hereby acknowledged, Manville and Pflugerville agree as follow:

**I. Recitals**

Manville and Pflugerville agree that the recitals above are hereby incorporated into this Agreement as essential terms and conditions, which are enforceable, and the parties mutually rely on the recitals in entering into this Agreement.

## II. Transfer

### Section 2.01

a. The Parties agree that those certain Manville CCN areas located within the extraterritorial jurisdiction of Pflugerville, on the day prior to the effective date of this Agreement, consisting of 438.4 total acres of land more specifically identified in blue ( 51.6; 22.8; 123.2; 19.6; 208.2; 7.1 and 5.9 acres) by map attached hereto as **Exhibit "A"** ("Proposed Pflugerville Water CCN Expansion with Neighboring CCN Jurisdictions" described therein as the "Proposed Request Area") and described in this Agreement as the "Transfer Areas" shall be immediately dual certificated and incorporated into the Pflugerville CCN while also remaining in the Manville CCN by agreement pursuant to §13.248 of the TWC. The Parties agree that dual certification is only necessary to comply with PUC requirements for those certain properties in which Manville continues to supply potable retail water service to any Legacy Customers or Interim Manville Applicants, as defined in Section 4.02 of this Agreement. The Parties agree that areas within the "Transfer Areas" that do not contain Legacy Customers or Interim Manville Applicants, as defined in Section 4.02 of this Agreement, shall be immediately decertificated from the Manville CCN and transferred to and incorporated into the Pflugerville CCN for single certification through the PUC.

b. Pursuant to TAC §24.245 (d) (1) (E), Manville has consented to the revocation and/or amendment of its water CCN 1114. In accordance with subsection (2) of §24.245, the Parties agree that upon a Transfer Event, as defined in Section 4.05 of this Agreement, Pflugerville may, in its sole discretion, decertify the area within the "Transfer Areas" affected by the Transfer Event from the Manville CCN for single certification in the Pflugerville CCN. In the event Pflugerville elects to decertify an area within the Transfer Areas from the Manville CCN for single certification in the Pflugerville CCN, Pflugerville shall file an application for such transfer with the PUC, and Manville shall consent to the transfer and shall not withhold its consent.

Section 2.02 The Parties agree, consent and shall file this Agreement with the PUC to incorporate the terms of this Agreement and the CCN Transfer Areas into the Pflugerville CCN for single or dual certification, as applicable, under the authority and by the virtue of §13.248 of the TWC wherein the law provides that retail public utilities that provide water service to all or part of an area pursuant to a certificate of convenience and necessity may agree in writing designating areas to be served and customers to be served by those retail public utilities. And, therefore, both Parties hereto agree that this Agreement qualifies as a TWC § 13.248 agreement and shall be filed with the PUC, and the PUC on receipt of this Agreement shall incorporate the terms of this Agreement into the respective certificates of convenience and necessity of the parties to this Agreement in accordance with the TWC and TAC.

Section 2.03 This Agreement is binding on the Parties to the extent permitted by law. Notwithstanding anything contained herein, the CCN Transfer Area acquisition and transfer consented to and agreed to by the Parties within this Agreement and this Agreement as a whole shall remain contingent upon the approval by the PUC and by the United States Department of Agriculture-Rural Development ("USDA"), if applicable, and any other governmental entity having regulatory jurisdiction over the subject matter (collectively, the "Regulatory Authorities"). Manville and Pflugerville agree to cooperate in good

faith and use their best efforts to participate and assist each other in the efforts, including without limitation, the timely filing of all necessary consents, documents or satisfaction of other Regulatory Authorities requirements to obtain approval by all state and federal entities necessary to give effect to this Agreement and the incorporate of the CCN Transfer Area into the Pflugerville CCN.

Section 2.04 Pflugerville shall pay all costs associated with the PUC application process and shall be responsible for preparing and filing on behalf of the Parties all appropriate applications to the PUC. If applicable, Manville shall take all necessary actions and pay all costs associated with securing the consent of the USDA for the transfer of the CCN Transfer Area.

### III. Consideration

In consideration of the foregoing transfer of the CCN Transfer Area, and as full compensation to Manville for loss of service area, Pflugerville will pay the sum of ONE THOUSAND FOUR HUNDRED DOLLARS AND NO CENTS (\$1,400.00) per acre for 438.3 acres for a total payment of **SIX HUNDRED THIRTEEN THOUSAND SEVEN HUNDRED SIXTY DOLLARS AND NO CENTS (\$613,620.00)**. Payment shall be made in one lump sum and paid to Manville upon incorporation of the terms of this Agreement into the respective CCNs by the Public Utility Commission of Texas (“PUC”) and upon approval by any other necessary Regulatory Authorities, if any. The Parties agree and stipulate that the sum aforesaid is a reasonable compensation to Manville for the loss of the CCN Transfer Area, and that payment is in lieu of all other forms of compensation.

### IV. Existing Manville Customers, Interim Customers and Infrastructure

Section 4.01 No Manville real or personal property interests, easements, lines, storage or production facilities, or other utility infrastructure of any description shall convey to Pflugerville as a result of this Agreement.

Section 4.02 All existing customers, whether wholesale or retail, of Manville and Pflugerville contained within the CCN Transfer Areas shall remain customers of Manville and Pflugerville, respectively. No existing customers of either of the Parties shall be required to change providers as a result of this Agreement. Manville will continue to provide service to currently existing Manville customers being served by Manville in the CCN Transfer Area as of the effective date of this Agreement (“Legacy Customers”) and will provide service to any new applicants in the CCN Transfer Area already connected to the Manville water system between the execution of this Agreement and the date the PUC incorporates terms of this Agreement into the Pflugerville and Manville CCNs (“Interim Manville Applicants”). Pflugerville shall provide service to all new applicants in the CCN Transfer Area applying for service on and after the date the PUC incorporates the terms of this Agreement into the Pflugerville and Manville CCNs. Pflugerville shall thereafter provide continuous and adequate service to all applicants for service within the CCN Transfer Area.

Section 4.03 In accordance with section 4.02 above, both parties hereto acknowledge and agree that the Agreement shall serve as written consent to allow the other Party, as a retail public utility, to continue to provide service in the CCN Transfer Area before and after the transfer of the CCN Transfer Area to Pflugerville as provided in Section II above as contemplated by TWC § 13.248 until such time as said services ultimately transition to Pflugerville, in accordance with this Agreement.

Section 4.04 To the extent permitted by law, following the incorporation of the terms of this Agreement and single or dual certification, as applicable, to Pflugerville of the CCN Transfer Area, Pflugerville shall be solely obligated under TWC § 13.250 to provide continuous and adequate service to all new applicants within the CCN Transfer Area and all customers within the CCN Transfer Area that are not Manville's Legacy Customers or Interim Manville Applicants, unless otherwise agreed to by the Parties. Upon incorporation of the terms of this Agreement into the respective CCNs, Manville shall not establish new service to any new customers in the CCN Transfer Area, regardless of whether that customer has acquired real property previously served by Manville. Further, upon a Transfer Event, as described in Section 4.05, water service for Manville's Legacy Customers, Interim Manville Applicants and any other customers located within the CCN Transfer Area affected by such Transfer Event shall transfer from Manville to Pflugerville. Manville shall inform and require the Legacy Customer, Interim Manville Applicant and any other customer located within the CCN Transfer Area affected by a Transfer Event to contact Pflugerville for service and shall provide Pflugerville a copy of such notice. Notwithstanding anything herein to the contrary, the Parties may agree based on extenuating circumstances that it would be more appropriate and feasible for Manville to continue to serve such customers until such time as may be agreed to between the Parties.

Section 4.05 A Transfer Event is defined as an event in which a Manville Legacy Customer, Interim Applicant or any other customer located within the CCN Transfer Area shall be required to apply for water service with Pflugerville rather than Manville. A Transfer Event shall consist of the following:

1. A new certificate of occupancy has been requested by a Manville Legacy Customer, Interim Applicant, or other customer located within the CCN Transfer Area which Pflugerville determines is necessary for the proposed change of use;
2. Redevelopment consisting of demolition of existing structures or other actions that result in the disconnection of water service from Manville's water system;
3. Mutual agreement among Pflugerville, Manville, and a customer to transfer service;
4. Request by a Manville Legacy Customer, Interim Applicant, or other customer located within the CCN Transfer Area; or
5. Construction of new structures, buildings, or accessory dwellings requiring new water service or that result in a change of LUE ("Living Unit Equivalent") in water service.

## **V. General Provisions**

Section 5.03 Good Faith. Each Party agrees that neither Party will unreasonably withhold or unduly delay any consent, approval, decision, determination, or other action which is reasonably required

or permitted under the terms of this Agreement, it being agreed and understood that each Party shall act in good faith and shall at all times deal fairly with the other Party.

Section 5.04 Governing Law and Venue. The terms and provisions hereof shall be governed by and in accordance with the laws of the State of Texas and the United States of America as may be from time to time in effect. Travis County, Texas shall be the place of venue for all proceedings arising under this Agreement.

Section 5.05 Counterparts. This Agreement may be executed in as many counterparts as may be convenient or required. All counterparts shall collectively constitute a single instrument and it shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart.

Section 5.06 Titles and Headings. The title of this Agreement, titles and headings of articles or sections hereof are inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be given effect in construing this Agreement for any provision hereof or in ascertaining intent.

Section 5.07 Authority. By their execution hereof each of the undersigned parties represents and warrants to the other Party that he or she has full authority to execute the document in the capacity shown. Approval of this document, and execution thereof has been approved by lawful action of the City Council of Pflugerville, Texas, and the Board of Directors of Manville Water Supply Corporation.

Section 5.08 Attorney's Fees. If either Party retains an attorney to enforce this Agreement, the Party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

Section 5.09 Binding Effect. This Agreement shall bind and inure to the benefit of the Parties and their respective successors and permitted assigns.

Section 5.10 Waiver of Default. It is not a waiver of or consent to default if the non-defaulting Party fails to declare immediately default or delays in taking any action. Pursuit of any remedies set forth in this Agreement does not preclude pursuit of other remedies in the Agreement or provided in law.

Section 5.11 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, 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.

Notice to Pflugerville shall be sent to the following:

City of Pflugerville  
Attention: City Manager

P.O. Box 589  
Pflugerville, Texas 78691  
512-990-6100

Notice to Manville shall be sent to the following:

Manville Water Supply Corporation  
Attention General Manager  
13805 S. SH 95  
Coupland, Texas 78615  
512-856-2488

Section 5.12 Recitals/ Exhibits. Any recitals in this Agreement are represented by the Parties to be accurate and constitute a part of the substantive agreement. All exhibits referenced herein are attached hereto and incorporated by reference herein for all purposes.

Section 5.13 Assignability. The Agreement may not be assigned by either Party, their respective successors or permitted assigns, without the prior written consent of the other Party, said consent shall not be unreasonably conditioned, delayed or withheld.

Section 5.14 Counterparts. This Agreement may be executed in multiple counterparts. Each counterparts will be deemed an original instrument, but all of the counterparts will constitute one and the same instrument.

Section 5.15 Severability. Should any provision of this Agreement be declared invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement shall remain in full force and effect.

Section 5.16 Specific Performance. The Parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they are entitled at law or in equity.

EXECUTED IN MULTIPLE ORIGINALS THIS \_\_\_\_\_ day of \_\_\_\_\_, 2021.

Manville Water Supply Corporation

By: \_\_\_\_\_  
Jack Atterstrom, President

Attest: \_\_\_\_\_

Name, Title: \_\_\_\_\_

City of Pflugerville

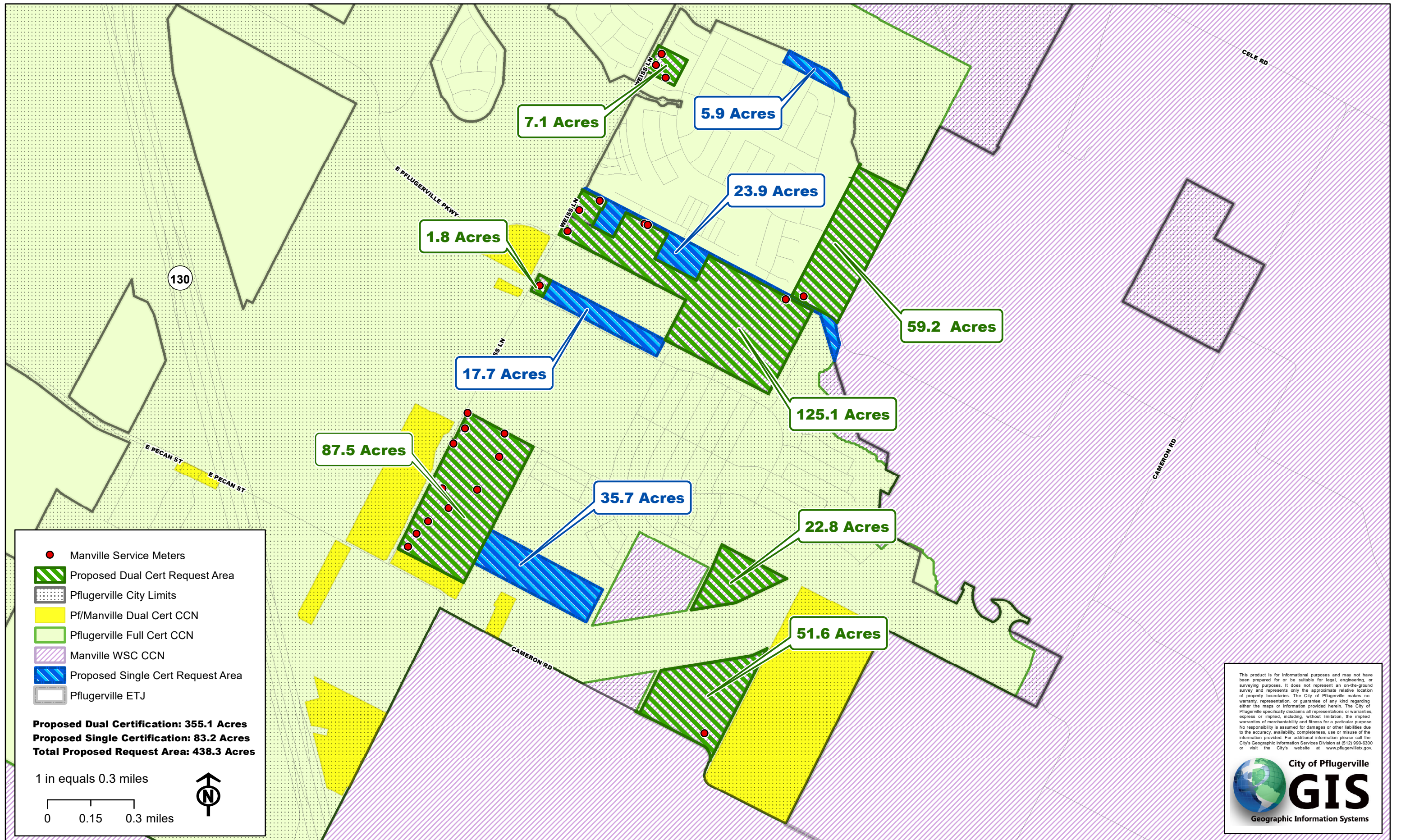
By: \_\_\_\_\_  
Sereniah Breland, City Manager

Attest: \_\_\_\_\_  
Karen Thompson, City Secretary



**Exhibit A**

# Proposed Pflugerville Water CCN Expansion Area by Dual & Single Certification



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. The City of Pflugerville makes no warranty, representation, or guarantee of any kind regarding either the maps or information provided herein. The City of Pflugerville specifically disclaims all representations or warranties, express or implied, including, without limitation, the implied warranties of merchantability and fitness for a particular purpose. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, completeness, use or misuse of the information provided. For additional information please call the City's Geographic Information Services Division at (512) 990-6300 or visit the City's website at [www.pflugervilletx.gov](http://www.pflugervilletx.gov).

