

RESOLUTION NO. _____

RESOLUTION OF THE CITY OF PFLUGERVILLE PROVIDING GUIDELINES AND MINIMUM REQUIREMENTS NECESSARY TO CONSIDER THE CREATION OF A MUNICIPAL UTILITY DISTRICT TO BE KNOWN AS LAKESIDE MUD 5 EXPANSION AND LAKESIDE MUD 7.

WHEREAS, pursuant to Texas Local Government Code, Chapter 42, Texas Water Code, Chapters 49 and 54 and the Texas Constitution, Article XVI, Section 59, the City is empowered to condition or deny its consent to the creation of a municipal utility district (MUD) within the corporate limits of the City and the City’s Extra-Territorial Jurisdiction (ETJ); and

WHEREAS, the City of Pflugerville holds the Certificate of Convenience and Necessity (CCN) in accordance with Texas Water Code, Chapter 13 providing the City the exclusive right to provide retail wastewater utility service to an extensive portion of land located within the City’s ETJ and, therefore, has a substantial interest in managing land development and growth within the City’s ETJ; and

WHEREAS, in accordance with the City’s 2030 Comprehensive Plan and State law, the City will continue to exercise its authority to regulate land development and growth to ensure the public health, safety and welfare of the citizens within the City limits and within the ETJ are preserved by establishing policies to encourage cost-effective, sustainable compact development growth patterns that will benefit the current and future residents and stakeholders of the City; and

WHEREAS, the City has determined that it is necessary to consider the creation of, or the inclusion of additional land into, a municipal utility district, water control and improvement district, or other legally authorized water district (collectively the “District” whether one or more) within the northeast portion of the City’s ETJ in order to determine if such District is in the best interest of the City’s current and future residents and stakeholders; and

WHEREAS, the City has further determined that it is necessary to provide policy direction and guidelines for the purposes of negotiating agreements providing for City consent to the creation of the District, or the annexation of land by the District, with final consent of any agreement being at all times subject to City Council’s ultimate discretion; and

WHEREAS, Rowe Lane Development, Ltd. and Robert M. Tiemann (collectively the “Developer”) and the City of Pflugerville, Texas (the “City”) have previously entered into that certain Comprehensive Development and Consent Agreement for Lakeside WCID No. 5 dated November 22, 2004, as amended by that certain First Amendment to Comprehensive Development and Consent Agreement for Lakeside WCID No. 5 dated July 3, 2006, and by that certain Second Amendment to the Comprehensive Development Agreement dated October 14, 2011 (collectively referred to as the "Consent Agreement") and Lakeside Municipal Utility District No. 5 has been created pursuant to the Consent Agreement; and

WHEREAS, pursuant to another City Council Resolution of even date herewith, City Council will consider an action exempting certain actions, contemplated between the Developer and the current landowner that are projected to occur while the feasibility of a land purchase is being pursued by the Developer, from triggering certain provisions relating to annexation as provided in that certain non-annexation agreement between City and landowner; and

WHEREAS, Section 3.14 of the City of Pflugerville City Charter requires general legislative acts to be adopted by Resolution or Ordinance.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PFLUGERVILLE:

The City Council of the City of Pflugerville, Texas hereby authorizes the City Manager to negotiate terms with the Developer and other property owners, if any, relating to the documents required for creation of a District for, or for the annexation by an existing District of, all or part of the area provided for within **Exhibit A** (the "Land"), said negotiations to be in accordance with the following minimum requirements:

1. If in the best interest of the City and feasible, the City shall provide water and/or wastewater services necessary to serve the Land in accordance with the Texas Local Government Code, the Texas Water Code, and other applicable law, and in accordance with the City's water and wastewater service and extension policies; and
2. The proposed District shall be geographically situated within a preferred development area, to be determined in City Council's discretion, to minimize non-contiguous and disjointed development patterns necessary to improve the growth efficiency of the City and minimize City costs associated with providing rate-based and tax-based services.
3. The proposed District consent agreement shall acknowledge a commitment and the obligation to enter into appropriate agreements, which may include a development agreement, an amendment to the Consent Agreement, and associated agreements (collectively the "Agreement" whether one or more), such Agreement to include, but not be limited to, the following minimum provisions:
 - a. The proposed development will include a Land Plan that is consistent with the City's Comprehensive Plan, including without limitation, those portions of Comprehensive plan detailing the City's water, wastewater, thoroughfare and drainage master plans, as amended;
 - b. The proposed development will substantially contribute to funding the expansion of perimeter arterial streets as necessary to address and offset the projected impacts of the development on the surrounding roadway network.

Specifically, the Agreement will provide that the Developer and the City will take all actions necessary or appropriate to cause the District to allocate \$0.10 of such District's tax rate, on an annual basis, which shall be used exclusively for transportation improvements in the immediate area of the development. The Agreement shall provide that the liability of the Developer or the District for payment of the road infrastructure fee required under the Consent Agreement shall be reduced by all amounts expended by the Developer on constructing improvements to Rowe Lane, Melber Lane, and any county road;

- c. The development will be located within the City's Water and Wastewater CCN or, in the alternative, the Developer will use its best efforts to secure the applicable CCN for the City at the Developer's expense;
- d. All public infrastructure will be designed in accordance with City standards and regulations and all municipal utility district-owned amenity, recreational or other

vertical facilities shall be designed contemplating dual-use to facilitate public use upon transfer of ownership to the City following annexation of the district;

- e. The proposed development shall, at a minimum, demonstrate that it will be a superior development that exceeds the minimum requirements established by the City's Code of Ordinances, including without limitation, enhanced:
 - i. Architectural design;
 - ii. Public parkland dedication and development (consistent with the Consent Agreement as it currently exists);
 - iii. Streetscaping;
 - iv. Public Art; and
 - v. Other amenities.

Additionally, the Agreement will provide that the Developer shall be allowed to develop a variety of residential lot sizes throughout the development that will be further articulated and defined on an amended and/or new land use concept plan for the Land consistent with the City's Comprehensive Plan;

- f. The development proposal will be subject to specific criteria to establish strict limitations relating to issuance, use and repayment of infrastructure bonds (i.e., maximum amount of debt issued, term limits, net effective interest rates, minimum par, reserved redemption rights, etc.) to ensure the timely dissolution of the municipal utility district and to ensure that ad valorem tax rates assessed by the municipal utility district are at or above the City's existing ad valorem during the time of the municipal utility district's existence;
- g. The development will promote water quality, conservation and environmental preservation and betterment;
- h. The Agreement will include dedications of land for necessary public facilities, the size and location of which will be based on actual and projected need, such as infrastructure facility sites (i.e.: elevated storage tank sites), public facilities and public school sites, etc.
- i. The Agreement will include a related strategic partnership agreement that includes provisions relating to the ultimate dissolution and annexation of the municipal utility district upon or near build out, including the establishment of a full-purpose annexation date, limited purpose annexation and imposition of sales and use taxes, limitations on debt, liabilities and obligations, and authorization to construct additional facilities or dispose of existing property;
- j. If applicable, the Agreement will include a related allocation agreement as provided under Texas Water Code Chapter 54 to additionally ensure a seamless transition to City services following annexation of the municipal utility district;
- k. The Agreement will include the legal description of the Land depicting the area authorized to be included within the boundaries of the District;
- l. The Agreement will increase, to an amount to be determined based on an approved land use concept plan, the authorized number of living unit equivalents (LUEs) for wholesale wastewater service provided by the City to the District;

- m. The Agreement will provide that the Developer will cooperate with Mid-Tex Partners Ltd. for the design and construction of the Vine Creek Lift Station at size of 1,200 LUEs, on terms agreeable to Mid-Tex Partners, Ltd. and the Developer;
 - n. The Agreement will provide that the Developer will fund an annual “take or pay” purchase of not less than 100 Cottonwood Creek Basin wastewater LUEs from the City beginning upon the commencement of construction of the New Sweden Wastewater Treatment Plant. For each year after the commencement of construction of the New Sweden Wastewater Treatment Plant, the Developer’s annual purchase obligation shall be reduced by credits for any purchases of Cottonwood Creek Basin wastewater LUEs made (i) prior to the commencement of construction of the New Sweden Wastewater Treatment Plant, or (ii) in excess 100 LUEs in any prior year. Developer’s purchase obligation shall terminate when Developer has purchased a cumulative total amount of 1,000 Cottonwood Creek Basin wastewater LUEs;
 - o. The Agreement will provide that the authorized amount of bonds to be issued by the District shall be increased above the amount currently provided in the Consent Agreement by a proportionate amount for each acre of the additional Land included within the District; and
 - p. Developer agrees to request annexation of the City for a minor portion of the Developer’s property in order to maintain contiguousness of the existing City limits for properties currently owned by Pflugerville Independent School District including commercial nodes, if any.
4. The Agreement shall provide a commitment to reimburse the actual costs incurred by the City for legal, engineering, administrative and financial advisory services and fees in connection with vetting the Developer’s proposal requesting the City’s consent and negotiating any associated development, strategic partnership or allocation agreement associated with the municipal utility district. This commitment shall be limited to Fifty Thousand Dollars (\$50,000), unless otherwise agreed to between the Developer and the City, and shall be deemed to cover periods of negotiation commencing on January 1, 2018 through the date upon which City consent is granted, if so granted.
 5. The Agreement may provide that the District may have all powers authorized for either a water control and improvement district or a municipal utility district, including without limitation, water, wastewater, drainage, road, park and recreational facilities, and other powers authorized to water control and improvement or municipal utility districts under the Texas Constitution and laws, including the power to exclude portions of the Land from the District, subject to the provisions of the Agreement.
 6. The District shall demonstrate economic feasibility in accordance with State law and the rules established by the Texas Commission on Environmental Quality or successor agency.

Notwithstanding any provision herein to the contrary, consent to a municipal utility district is within and will remain within the ultimate discretion of the City Council and no provision herein shall be construed to obligate City Council to grant or deny its consent to any specific petition.

PASSED AND APPROVED this ____ day of _____, 2018.

CITY OF PFLUGERVILLE, TEXAS

By: _____
VICTOR GONZALES, Mayor

ATTEST:

KAREN THOMPSON, City Secretary

APPROVED AS TO FORM:

CHARLES E. ZECH, City Attorney
Denton Navarro Rocha Bernal & Zech, PC

EXHIBIT A

