

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF PFLUGERVILLE, TEXAS, ESTABLISHING A PUBLIC NECESSITY FOR THE ACQUISITION OF CERTAIN PRIVATELY OWNED PROPERTY INTERESTS OWNED BY WINDERMERE WATER CO.; AUTHORIZING THE ACQUISITION OF THE WATER AND WASTEWATER UTILITY COMPANY SERVING A PORTION OF THE CITY, INCLUDING ALL RELATED PROPERTY RIGHTS, REGULATORY RIGHTS AND AUTHORITY TO SERVE THE AREAS AND PUBLIC CURRENTLY SERVED AND AFFECTED AND FOR OTHER PUBLIC PURPOSES PERMITTED BY LAW; AUTHORIZING THE USE OF EMINENT DOMAIN PROCEEDINGS FOR THE PUBLIC PURPOSE OF ACQUIRING A LOCAL WATER AND WASTEWATER UTILITY COMPANY SERVING THE CITY OR FOR OTHER PUBLIC PURPOSES PERMITTED BY LAW**

**WHEREAS**, the City of Pflugerville, Texas (the “City”), is a Home Rule municipality located in Travis and Williamson counties, and is operating pursuant to the enabling legislation of the State of Texas and the City’s Home Rule Charter; and

**WHEREAS**, the City Council finds portions of the City are currently served with water and wastewater by a privately owned utility company, that appears to be owned by Windermere Water Co. (the “Utility”); and

**WHEREAS**, the City Council finds acquiring the Utility will extend, protect, preserve and better manage available water supplies, reduce the risk of water shortages, reduce water and wastewater utility operating costs, reduce customer costs for water service, enhance wastewater discharge quality, enhance water quality and the environment; and

**WHEREAS**, the City Council finds acquiring the complete Utility, including without limitation, the real property, buildings, easements, wells, pipes and transmission lines, meters, storage tanks, equipment, contractual interests permitting the service of all areas currently served by the Utility, all water rights, and all certificates of convenience and necessity (“CCNs”) (both water and wastewater) so that the City may merge this Utility within its own water and wastewater systems (the “Project”) is in the public interest and serves the public good, and preserves the general health, safety and welfare of the entire City; and

**WHEREAS**, the City Council finds the City has in good faith attempted to reach an agreement with the owners of the Utility on the acquisition of the Utility by the City, but the owners of the Utility have been unwilling to reach an agreement on the acquisition of the Utility by the City; and

**WHEREAS**, the City Council now deems it necessary to authorize the City Manager of the City of Pflugerville, Texas, and the City Attorney, the law firm of Denton, Navarro, Rocha & Bernal, P.C. to take all steps necessary to acquire the Utility and vest such

property and interests in the City of Pflugerville, Texas, including the use of its eminent domain power in order to acquire the Utility.

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

Section 1: That the City Council hereby finds and determines that the recitals made in the preamble of this Resolution are true and correct, and incorporates such recitals herein.

Section 2: That the City Council hereby finds and determines that a public necessity and purpose exist for the Project and to acquire the Utility described above.

Section 3: That the City Attorney, the law firm of Denton, Navarro, Rocha & Bernal, P.C. is hereby authorized to bring condemnation proceedings against the owners, and any and all other parties having an interest in the Utility, for the purpose of acquiring the Utility through the exercise of the City's power of eminent domain, provided that the following conditions are first met:

- (a) The City will obtain/confirm all ownership information of the Utility to be acquired;
- (b) The City Manager, or his designated representative, will:
  - (1) Make a final offer to the owners for the purchase of the Utility;
  - (2) When the final offer to purchase is made, the City Manager or his representative will disclose to the owners, all existing appraisal reports or value studies produced or acquired by the City relating to the Utility and used by the City in determining the amount of the final offer;
  - (3) If the owners fail or refuse to accept the City's final offer, the City Manager and the City Attorney, the law firm of Denton, Navarro, Rocha & Bernal, P.C. are authorized to complete all necessary eminent domain proceedings to acquire the property.
- (c) If any of the owners and/or other parties having an interest in the Utility cannot be located through the exercise of due diligence, the City Attorney, the law firm of Denton, Navarro, Rocha & Bernal, P.C. may skip the actions described in paragraph (b) and may file eminent domain proceedings against such owners and/or other parties, and shall cite owners and/or other parties, who cannot be located, by publication in the manner authorized by law.

(d) The City Council hereby authorizes the City Manager or his designee to make final offers to the owners of such Utility in such amount and under such terms and conditions as the City Manager determines to be just compensation for conveyance to the City of such Utility, based upon appraisals or market studies available to the City Manager.

Section 4: That the City Council hereby finds and determines that acquisition of the above described Utility by the City is a public purpose and is necessary to serve the public health, safety and welfare.

Section 5: That the City Council hereby finds and determines that the meeting at which this resolution was passed was held in accordance with the Texas Open Meetings Act.

**AND IT IS SO RESOLVED.**

Passed and approved this 28<sup>th</sup> day of February 2012.

CITY OF PFLUGERVILLE, TEXAS

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Jeff Coleman, Mayor

ATTEST:

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Karen Thompson, City Secretary