

## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”) is made and entered into on the dates set forth below, by and among Lakeside Municipal Utility District No. 5 (the “District”) and the City of Pflugerville (the “City”), a municipal corporation, each acting by and through its undersigned, duly authorized representative.

### RECITALS

A. Rowe Lane Development, Ltd (“Developer” or “Rowe Lane”) is currently constructing a water distribution system and a sanitary wastewater collection and transportation system (collectively, the “System” as further defined and limited below) which will serve customers located within the geographic boundaries of the District as shown in Exhibit “A,” attached hereto. Pursuant to the terms of the Amended and Restated Wastewater Treatment Agreement, the City will be providing wholesale wastewater treatment services (“Wastewater Services”) to the District.

B. The District will receive wholesale water service for the Service Area from Manville Water Supply Corporation (“Manville”) by separate agreement with Manville.

C. The District is desirous of obtaining services for the competent operation, maintenance, and management of the wastewater and water system (“Professional Services”).

D. The City agrees to provide Professional Services to the District in consideration of the mutual agreements herein set forth and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the District agree as follows regarding the Professional Services:

### ARTICLE I. DEFINITIONS

The following terms and expressions when used in the Agreement have the following meanings unless the context clearly indicates otherwise:

A. “Agreement” means this Professional Services Agreement between Lakeside Municipal Utility District No. 5 and the City of Pflugerville.

B. “City” means the City of Pflugerville, Texas, a municipal corporation with its principal offices at 100 E. Main Street in Pflugerville, Travis County, Texas.

C. “Consent Agreement” means the Amended and Restated Comprehensive Development and Consent Agreement for Lakeside MUD No. 5, dated June 7, 2019, between Rowe Lane Development, Ltd., Robert M. Tiemann and Carrie P. Tiemann, and the City.

D. “Development” means the lands within the current or future boundaries of Lakeside Municipal Utility District No. 5, or its successors.

E. “District” means the Lakeside Municipal Utility District No. 5. Such terms shall also mean each additional district which may be created by Developer as provided in the Consent Agreement.

F. "System" means the Developer or District owned meters, lines, facilities, equipment, lands and rights-of-way for the storage, transportation and distribution of a potable water supply, and any extensions or additions thereto, that may be constructed to serve water customers in the Development, and the Developer or District owned facilities, equipment, lands and rights-of-way for the collection and transportation of wastewater, and any extensions or additions thereto, to be constructed to serve wastewater customers in the Development. Except upon subsequent written agreement of the parties, the wastewater component of the System contemplated hereunder shall be limited to those portions of the wastewater collection and transportation assets necessary to provide wastewater service only to customers served in the Wilbarger Basin, it being the intent of the parties under this Agreement to specifically exclude those wastewater collection and transportation assets necessary to provide wastewater service to customers served in the Cottonwood Basin, as more specifically described and defined in the Consent Agreement

ARTICLE II.  
ADMINISTRATIVE SERVICES  
FOR ALL PROFESSIONAL  
SERVICIES

The following administrative services regarding billing and District customer relations for the Professional Services outlined in this Agreement shall be provided to the District by the City.

1. Organization. The City shall operate, repair, maintain, and manage the System in accordance with the terms of this Agreement and the Consent Agreement.
2. Personnel. The City shall provide competent, trained personnel to provide the services set out in this Agreement. System supervisors and/or operators shall be licensed or certified by the appropriate State governmental authority. Accounting, billing, and field personnel shall be trained to be professional and courteous in dealing directly with the District's customers.
3. Start Up. The City shall:
  - A. Maintain all the District's customer information and records necessary to provide monthly billings to the District's customers.
  - B. Inventory and maintain a listing of all the District's equipment including manufacturers' model and serial numbers, motor frame numbers, and other such data ("District Data") as required to provide relevant information for the scheduled maintenance and repair or replacement of the equipment comprising the System. The District will provide the City with an inventory of District Data upon the completion of the construction of the System or upon the execution of this Agreement, whichever is later.
4. Maintenance Scheduling. The City shall implement a Scheduled Maintenance Program for System equipment. The City shall ensure that System equipment is maintained in the same fashion and with the same frequency as equipment owned and operated by the City or as may be required by the Texas Commission on Environmental Quality or other regulatory agency with jurisdiction over the System. Because the District is under the continuing supervision of the Texas Commission on Environmental Quality, City shall submit its Scheduled Maintenance Program to the District for

comment.

5. 24 Hour Service. The City shall maintain 24-hour telephone and dispatch service with qualified personnel to respond to emergency customer problems and equipment malfunctions within the District in the same manner and fashion as for retail customers located within the City limits.

6. Automatic Telephone Alarm. The City shall monitor computer or automatic dialed telephone alarm systems at any of the water and wastewater facilities within the District which are installed and programmed to call the City's 24-hour telephone dispatch service.

7. Employee Identification. The City's operating and maintenance employees shall be readily identifiable to customers within the District by distinctive clothing. Service vehicles shall have the City emblem prominently displayed.

8. Coordination with Consultants. The City shall reasonably coordinate with other consultants, such as attorneys, engineers, auditors, tax assessors, and financial advisors hired by the Developer and/or the District as necessary to maintain efficient operation of the System.

9. Inquiries and Correspondence. The City shall respond to inquiries or correspondence from governmental or regulatory authorities and the District's directors, customers, or consultants in a prompt, professional manner.

10. District Meetings. Upon the District's request, the City's Water and Wastewater System Manager, or other City representative designated by the City Manager, shall attend District meetings which have an agenda item relating to the District's operations. The District will provide the City with at least seven (7) days' notice prior to any District meeting requiring the attendance of a City representative. The City representative will have direct knowledge of the District's on-going operations or agenda items as appropriate.

11. Customer Relations. The City shall render reasonable assistance in the promotion of good relations with the customers located within the District.

ARTICLE III.  
WHOLESALE WATER AND WASTEWATER SERVICE

Wholesale water service to the District shall be provided by Manville Water Supply Corporation. Wholesale wastewater service to the District for the portions of the District that will be served in the Wilbarger Basin, as more specifically described and defined in the Consent Agreement, shall be provided by the City. Developer shall pay capacity fees due under the wholesale contracts directly to the wholesale supplier. All other fees and amounts due under the wholesale water and wastewater contracts shall be paid by the City directly to the wholesale supplier, which shall be recovered by the City as part of the service charges assessed to the District classification of customers established periodically by the City.

ARTICLE IV.  
RETAIL WATER AND WASTEWATER MANAGEMENT SERVICES

The City will operate and manage the water and wastewater systems within the Service Area in the

following manner:

1. System Operations. The City shall provide: personnel, vehicles, hand tools, spare parts, and other equipment necessary for the operation of the System.
2. Bookkeeping Service. The City shall provide bookkeeping services including: accounting for all transactions involving the District's construction and operating, in accordance with the requirements of the Texas Commission on Environmental Quality as outlined in the WATER DISTRICT ACCOUNTING MANUAL.
3. Meter Reading, Billing and Collection. The City shall read the District's water meters once each month and bill the customers at rates set by the District, which such rates being sufficient to cover the City's fee for providing retail water management services. The City is authorized to make adjustments to water bills for clerical errors, over or under registration of water meters, erroneous meter readings, establishment of water usage during times when a meter has been inoperative, and other similar adjustments. City will resolve billing disputes with individual customers.
4. System Inspection. The City shall monitor the District's facilities daily, including weekends and holidays as required by state regulations. This shall include lift stations, if required. City employees who assist with maintaining the System, whenever they are within the District boundaries, shall monitor the System in order to observe the condition of fire hydrants, leaks, defects, damages, and be alert for missing District equipment.
5. Daily Preventative Maintenance. The City shall provide all personnel and equipment necessary for preventative maintenance tasks in order to promote the continued efficient operation of the System.
6. Bulk Chemicals. The City shall be responsible for maintaining treatment chemicals as needed to operate the System.
7. Expendable Items. The City shall replace those items expended in the daily operation of the System. Those items include, but are not limited to, water distribution appurtenances, wastewater collection appurtenances, brooms, mops, dip nets, rakes, shovels, trash cans, hoses, nozzles, padlocks, and other such items.
8. Monthly Operations Report. Upon the request by the District, the City shall render a monthly operations report which shall include the following information:
  - A. Daily or monthly water flow data.
  - B. The number of gallons of water purchased by the District and the number of gallons billed to District's customers and a written explanation of the resulting difference, if any.
  - C. Total number of water and wastewater service connections.
  - D. Records regarding equipment repairs and replacements.
9. Residential Meters. Residential water meter sets made to a visible curb stop set near ground level will be made for a fee equal to the then current charge assessed for the District classification of customers ("District Customers"), with such fees being established periodically by the City to recover

associated operational, maintenance, and improvements costs directly or indirectly related to operating the System. Non- standard residential water meter sets, including locating buried curb stops, will be made by the City for the charge established for the District Customers, with such fees being established periodically by the City to recover associated operational, maintenance, and improvements costs directly or indirectly related to operating the System.

10. Commercial Meters. Commercial meter installations will be made by the City for a price fee for each installation in accordance with the applicable installation specifications. The quoted fee will be equal to the then current charge assessed for the District Customers, with such fees being established periodically by the City to recover associated operational, maintenance, and improvements costs directly or indirectly related to operating the System.

11. Water Tap Inspections. Inspection of water taps and service lines will be made as necessary at no cost to the District. Inspection fees will be the responsibility of the District Customers and will be established periodically by the City to recover associated inspection costs directly or indirectly related to providing such service to the System.

12. Sanitary Sewer Inspections. The City shall inspect each sanitary sewer connection to the District's system to assure compliance with the District's specifications and procedures when and as necessary. Inspection fees will be the responsibility of the District Customers and will be established periodically by the City to recover associated inspection costs directly or indirectly related to providing such service to the System.

13. Other Inspections. The City shall perform other inspections as requested or authorized by the District. Such inspections include, but are not limited to, grease traps, sample wells, cross connections, or new facilities prior to acceptance by the District. The City may also participate in site inspections with contractors prior to the start of building activity to assist in verifying the condition of the District's system. All such other inspections shall be subject to such fees established periodically for the District Customers by the City to recover associated inspection costs directly or indirectly related to providing such service to the System.

ARTICLE VI.  
WATER AND WASTEWATER MAINTENANCE, REPAIR,  
AND REPLACEMENT SERVICES

1. Maintenance. The City shall provide all personnel, tools, spare parts, and equipment necessary to perform maintenance on the District's water and wastewater system facilities and equipment. Maintenance shall include, but not be limited to, the following:

- A. Maintenance or replacement of pumps, motors, valves, and other equipment or facilities.
- B. Calibration and servicing of instrumentation, control systems, and other equipment.
- C. Other maintenance as necessary which requires special skills and/or tools, performed in conformance with equipment manufacturer's recommendations to maintain warranties and to extend the useful life of the equipment.

2. Repair. The City shall provide all personnel and equipment necessary to perform repairs on

System meters, lines, facilities, equipment, collection and distribution systems, including, but not limited to, service line leaks, leaks at water meters, water main breaks, repairs to valves and fire hydrants, manhole repairs, and sewer line repair and cleaning, as needed. The City shall not bear the cost for any repairs needed prior to entering into this Agreement. The District will assign all contractors' warranties to the City, and the City will cause repairs to be made under the terms of the warranty.

3. Replacement. The City shall use a reasonable degree of care with respect to replacement of equipment or facilities but shall not be responsible to the District for any guarantees or warranties offered by others in connection with such equipment or facilities.

4. Emergency Response. The City shall maintain personnel and equipment for emergency response 24 hours per day, seven days per week, 365 days per year. Emergencies shall include, without limitation, water leaks, water line breaks, loss of water pressure, degradation of water quality occurring within the water supply system, and blockage in the sewage collection system. Additionally, the City shall undertake reasonable efforts to respond to requests by the District or its representatives or insistent District Customers.

5. Materials and Supplies. The City will be responsible for the initial cost of all materials and supplies used to provide services under this Agreement. The fees assessed to the District pursuant to this Agreement will be sufficient to cover the costs incurred by the City in connection with this Agreement.

#### ARTICLE VII PAYMENT

1. The City and the District agree that City's compensation for retail water and wastewater operation, maintenance, and management services provided by the City, shall be satisfied from the revenues collected by the City from the District's retail water and wastewater customers for retail water and wastewater service, excluding any amounts collected by the City on behalf of the District. All fees and charges assessed to the District's retail water and wastewater customers by the City shall recover the costs of operating the District, operating and maintaining District facilities, obtaining wholesale water and sewer service, and compensating the City for services provided under this Agreement.

2. If the District, or a service provided on behalf of the District, collects revenues directly from the District retail water and/or wastewater customers, the City will submit an invoice to the District for outstanding unpaid fees. The District will remit payment for any outstanding fees within thirty (30) days of the date of the City's invoice. In the event the District fails to remit payment to the City, the City will provide the District with a notice of the failure to pay the fees. Upon notice of the failure to pay the fees, the District will have thirty (30) days to the outstanding fees. If the District does not remit the outstanding payment, the City shall have the right to terminate this Agreement along with all other rights at law and in equity.

#### ARTICLE VIII. FEES

1. Billing for Professional Services will be determined based on the number of wastewater LUEs and water customers within the Service Area.

2. The initial fees under this Agreement include \$14.21 per LUE for wastewater services and \$41.17 per customer for water services.

3. The fees to be paid to the City herein are inclusive of any tax, assessment, or other charge which may be imposed upon the City by any governmental authority as a result of performing its obligations pursuant to this Agreement.

4. The City may initiate a cost of service study on an annual basis to determine the fees associated with providing services under this Agreement. The District will increase service fees within thirty (30) day following an increase in fees by the City Council of the City to ensure that the City is adequately compensated for providing services under this Agreement. The District will also reimburse the City as soon as possible, and no later than sixty (60) days following an increase in fees by the City Council of the City for any costs incurred by the City as a result of the fee increase prior to the District raising the rates or fees assessed to District Customers.

#### ARTICLE IX.

##### TERM

1. Term. This Agreement shall take effect upon approval by the City Council of the City of Pflugerville and upon execution by the City and District and shall continue in force for three years after execution unless terminated earlier as provided in this Agreement or upon the mutual agreement by the City and the District.

2. Termination. If either Party breaches any term or condition of this Agreement, 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.

#### ARTICLE X. MISCELLANEOUS PROVISIONS

1. Responsibilities.

A. City Responsibilities. The City shall exercise a reasonable degree of care and diligence in the operation and maintenance of the System in conformity with applicable state and federal laws and rules and regulations established by state or federal agencies with jurisdiction.

B. District Responsibilities. The District represents that the System is in good working order, does not contain any known defective equipment or facilities, is suitable and adequate for the needs of the District Customers, and that all of its facilities are, or shall be, built in accordance with local, state, and federal regulations. The District shall provide:

- i. All utilities and plant facilities necessary to commence operation of the System in a manner required to meet applicable regulations.
- ii. A complete set of record drawings of the System and any other information necessary for the administration of the System.

2. Relationship of the District and the City. The City shall serve in the capacity of an independent

contractor for the District during the period of this Agreement.

3. Insurance. The City shall at all times during the effectiveness of the Agreement maintain in full force and effect Liability and Worker's Compensation Insurance covering the City's performance under this Agreement. City may also provide evidence of self-insurance or other security to satisfy this requirement. All insurance shall be provided by insurers licensed and approved to do an insurance business in the State of Texas, as applicable. Before commencement of work hereunder, the City agrees to furnish the District Certificates of insurance or other self-insurance or security evidence satisfactory to the District to the effect that such insurance has been procured and is in force. The City shall carry insurance in amounts of not less than \$2,000,000.00 combined single limits for bodily injury and property damage per occurrence, in amounts required by law and, at a minimum, in amounts necessary to cover liability up to the thresholds provided by the Texas Tort Claims Act.

4. 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 inabilities so caused, but for no longer. The term "force majeure," as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States or of the state or any civil or military authority, insurrections, riots, pandemics, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, disturbances, explosions, partial or entire failure of utilities, shortages of labor, material, supplies or transportation, supply chain issues, or any other similar or different cause not reasonably within the control of the party claiming such inability. Force majeure shall relieve the City from liability to the District or any customer of the District for failure to provide services due to an inability covered by this Section. Force majeure shall not relieve the District or district customers of the obligation to make payment to the City for services provided under this Agreement.

5. Applicable Law. Venue and jurisdiction of any suit, right or cause of action arising under, or in connection with this Agreement shall lie exclusively in Travis County, Texas.

6. Notice. 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:**

Lakeside Municipal Utility District No. 5  
c/o Montoya and Monzingo  
P.O. Box 2029  
Pflugerville, TX 78691



Email: \_\_\_\_\_

**CITY OF PFLUGERVILLE:**

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

7. No Additional Waiver Implied. The failure of any party hereto to insist, in any one or more instances, upon performance of any of the terms, covenants or conditions of the Agreement, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition by any other party hereto, but the obligation of such other party with respect to such future performance shall continue in full force and effect.

8. Modification. Except as otherwise provided in this Agreement, this Agreement shall be subject to change or modification only with the mutual written consent of the parties hereto or their successors and assigns.

9. Caption. The captions appearing at the first of each numbered section in this Agreement are inserted and included solely for convenience and shall never be considered or given any effect in construing this Agreement, or any provision hereof, or in connection with the duties, obligations, or liabilities of the respective parties hereto or in ascertaining intent, if any question of intent should arise.

10. Severability. The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person or circumstance shall ever be 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 provision or part of this Agreement to other persons or circumstances shall be not affected thereby.

11. Construction of Agreement. The parties agree that this Agreement shall not be construed in favor of or against any party on the basis that the party did or did not author this Agreement.

12. Other Instruments. The parties hereto covenant and agree that they shall take such further actions, and shall execute and deliver such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the intent of this Agreement.

13. Conflict Among Agreements. In the event a conflict is determined to exist between the terms and conditions of the Consent Agreement and this Agreement, the parties agree that the language of the Consent Agreement shall be controlling.

14.

15. 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.

16. Governmental Immunity. Notwithstanding any provision or requirement herein to the contrary, nothing in this Agreement shall be construed or deemed a waiver of the City's governmental immunity for any purpose, except as otherwise provided by law.

EXECUTED in multiple copies, on the \_\_\_\_\_ day of \_\_\_\_\_, 2023, each of which shall constitute an original, on the dates set forth below:

**Lakeside Municipal Utility District No. 5**

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

ATTEST:

\_\_\_\_\_  
Secretary

**CITY OF PFLUGERVILLE:**

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

ATTEST:

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

**EXHIBIT "A"**  
**LAKESIDE MUD NO. 5 BOUNDARY MAP**