

AMENDED AND RESTATED
WATER UTILITY AND ACCESS EASEMENT AGREEMENT
(Waste Management Tract)

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

WHEREAS, Waste Management of Texas ("Grantor") and the City of Pflugerville ("Grantee") have entered into an executed agreement dated December 15, 2003 recorded and filed with Travis County as document # 2004054660 as set forth in the Water Utility And Access Easement Agreement previously signed by City Manager Steve Jones.

WHEREAS, Grantor have requested that the Grantee revise the original agreement to revise the easement to include Utility Trench Gas Vents to be installed by Grantor.

WHEREAS, the parties hereto desire to enter into this Amended and Restated agreement and effectuate such amendment and consents to the installation.

GRANT OF EASEMENT:

WASTE MANAGEMENT OF TEXAS, INC. ("Grantor"), for the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, does hereby grant, sell and convey unto **THE CITY OF PFLUGERVILLE, TEXAS**, a home-rule city located in Travis County, Texas ("Grantee"), a perpetual, exclusive 40 foot wide easement and right-of-way ("Easement") upon and across the property of Grantor which is more particularly described on Exhibit "A", attached hereto and incorporated herein by reference ("Easement Tract").

TO HAVE AND TO HOLD the same perpetually to Grantee and its successors and assigns, together with the rights and privileges and on the terms and conditions set forth below.

Grantor does hereby covenant and agree to **WARRANT AND FOREVER DEFEND** title to the Easement herein granted, unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise, subject to all title exceptions of record, to the extent the same are valid and subsisting against the Easement Tract, and the matters set forth herein.

CHARACTER OF EASEMENT:

The Easement is an easement in gross.

PURPOSE OF EASEMENT:

The Easement shall be used for the placement, construction, installation, replacement, repair, maintenance, relocation, removal, and operation of underground raw water lines and related facilities, and related appurtenances, or making connections thereto. Such raw water lines shall be buried at least 36 inches below the surface of the land. Grantor acknowledges that certain related facilities including, but not limited to, air valves will be located on and above the surface of the land.

The Easement shall also be used for the purpose of providing access for the operation, repair, maintenance, replacement and expansion of the raw water lines and related facilities.

DURATION OF EASEMENT:

The Easement shall be perpetual.

EXCLUSIVENESS OF EASEMENT:

Subject to the following sentence and the section entitled "Surface Use" below, the Easement shall be exclusive, and Grantor covenants that Grantor will not convey any other easement or conflicting rights within the Easement Tract. Grantor may alter or otherwise use the surface of the Easement Tract for purposes that do not interfere with Grantee's exercise of the rights herein granted, and may place, construct, operate, repair and maintain drainage lines and systems, and other public utility lines (including without limitation, water, wastewater, electric, telephone, cable television, and gas lines and systems) in, over and across the Easement Tract (but may not install parallel lines within the Easement Tract), and may grant public and/or private easements for such uses; provided, however, that plans for all improvements to be placed within the Easement Tract (except for landscaping improvements installed no deeper than 24 inches below the surface of the land) must be approved by Grantee before such improvements are installed or built, with such approval not to be unreasonably withheld or delayed.

TEMPORARY CONSTRUCTION EASEMENT:

In addition to the Easement granted, Grantee is hereby granted and conveyed a temporary construction easement ("Construction Easement") sixty (60) feet in width upon and across the property of Grantor which is depicted on Exhibit "B" ("Construction Easement Area"), attached hereto and incorporated herein for all purposes, for the construction and installation of the facilities, including but not limited to, the raw water lines with related facilities to be located upon the Easement Tract. The Construction Easement shall terminate and be of no further force or effect upon the earlier of (i) 365 days after the commencement of construction, or (ii) the completion of original construction of such facilities and acceptance of the facilities by Grantee for operation and maintenance, except as may be reasonably necessary, from time to time, for repair or maintenance of the raw water lines, related facilities and appurtenances or connections thereto.

SURFACE USE; CONSTRUCTION OF FACILITIES:

Grantor hereby retains, reserves, and shall continue to enjoy the use of the surface of the Easement Tract for any and all purposes which do not interfere with or prevent the use by Grantee of the Easement herein granted. Grantee has the right to trim and cut down trees and shrubbery *and* to remove other improvements and structures to the extent reasonably necessary to prevent interference with the operation or repairs to Grantee's facilities in the Easement Tract. Grantee will install temporary fencing adequate to contain and protect any livestock located on the Easement Tract during any construction activities.

To the extent not considered a "debt" within the meaning of Article XI, Section 7 of the Texas Constitution and otherwise permitted under applicable laws in the State of Texas, including, but not limited to, Op. Tex. Att'y Gen. No. DM-467 (1998), Grantee shall indemnify and hold Grantor harmless from any loss, cost, damage or expense arising from material physical

damage to the Easement Tract, or any other of Grantor's lands adjoining the Easement Tract, or claims for personal injuries to or death of any person occurring as a result of (a) actions of Grantee in the use of or the access of the Easement Tract by Grantee, its agents, employees, contractors or invitees, or (b) a spill or release of a hazardous substance caused by Grantee, its agents, employees, contractors or invitees in connection with such use.

Use of the Easement Tract shall be in conformity with all applicable statutes, ordinances, rules, regulations and orders of all governmental authorities having jurisdiction.

Grantee shall be permitted to improve the Easement Tract with a temporary roadway using such construction materials and techniques as Grantee may deem necessary in its sole discretion. Grantee shall use no substance in the Easement Tract that may contaminate the soils and/or groundwater, including but not limited to herbicides or other chemicals, for the clearance of trees, shrubs and any other obstructions either during construction or during the continuing maintenance of the Easement Tract.

RESTORATION:

Upon completion of construction of the raw water lines and related utility improvements within the Easement Tract, or upon completion of any subsequent construction, maintenance or repair which disturbs the surface of the Easement Tract or the Construction Easement Area, Grantee will fill all trenches, repair and restore any fencing damaged by the construction activities, remove all construction debris and restore, as nearly as possible, the surface of the Easement Tract or the Construction Easement Area to its condition prior to commencement of construction.

Grantee shall maintain all improvements installed by Grantee in the Easement Tract in good and safe condition and repair, make all repairs and replacements necessary to maintain such condition, and shall pay all costs and expenses incurred in constructing, maintaining and repairing all improvements installed by Grantee in the Easement Tract, unless any such repairs and replacements are made necessary by Grantor's use of the Easement Tract or acts for which Grantor is strictly liable, in which event Grantor shall pay such costs and expenses.

Grantee shall not permit or suffer any lien to be put upon or to arise or to accrue against the Easement Tract or the Grantor's lands adjoining the Easement Tract in favor of any person or persons, individual or corporate, furnishing either labor or material in connection with any work undertaken by Grantee pursuant to the rights herein granted. Grantee shall hold harmless and defend Grantor, the Easement Tract, and the Grantor's lands adjoining the Easement Tract from and against any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of Grantee, and in the event any such lien shall arise or accrue against the Easement Tract or the Grantor's lands adjoining the Easement Tract, Grantee shall promptly cause such lien to be released of record by payment or posting of an appropriate bond.

RELOCATION OF EASEMENT TRACT:

Subject to the terms and conditions set forth in this section, Grantor reserves the right, at Grantor's sole cost and expense, to relocate the Easement Tract to another location on Grantor's adjoining lands in the event any alteration, expansion, upgrade, relocation or other change in Grantor's operations interferes or conflicts with Grantee's use of the Easement Tract. In such event, Grantor shall notify Grantee in writing of such proposed change and the conflict posed by this agreement or the presence of Grantee's facilities on the Easement Tract. Within a reasonable period of time after receipt of such notice, Grantor and Grantee shall use

their best efforts to identify the best possible site for the new Easement Tract subject to the approval of the Texas Commission on Environmental Quality or any governmental authorities having jurisdiction; provided, however, in no event shall the relocation result in a reduction in the benefits enjoyed or an increase in the costs incurred by Grantee or its customers by virtue of the location of the original Easement Tract. Grantor and Grantee shall in good faith agree upon the estimated construction commencement and completion dates. Grantee shall make such agreed changes in Grantee's facilities, at Grantor's sole cost and expense, The contractor, construction methods, construction materials and scope of the costs described in the preceding sentence shall be determined by Grantee in its sole judgment and shall include a reasonable allowance for Grantee's administrative costs. Grantor agrees to permit access by Grantee to Grantor's adjoining property (beyond the Easement Tract) as may reasonably be required by Grantee to effect any **required** relocation of Grantee's facilities. Grantor shall make payment to Grantee of all amounts due under this section in advance within thirty (30) days after Grantee's demand therefore. Relocation shall not become effective until such time as (i) all relocation work has been completed to the reasonable satisfaction of Grantee; and (ii) Grantor has obtained such agreements as Grantee may reasonably require in order that this agreement may retain its priority as to the new Easement Tract. Upon completion of all relocation work, Grantor and Grantee shall execute, acknowledge and record an amendment to this agreement to reflect the relocation of the Easement Tract and the termination of this agreement as to the original Easement Tract.

ENTIRE AGREEMENT:

This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representation or modification concerning this instrument shall be of no force and effect except for any subsequent modification in writing, signed by the party to be charged.

BINDING EFFECT:

This agreement shall bind and inure to the benefit of the respective parties hereto, their heirs, legal representatives, successors and assigns.

ASSIGNABILITY:

This Easement and Construction Easement and the rights of Grantee hereunder may be assigned in whole or in part by Grantee so long as the assignee utilizes the Easement as contemplated herein.

UTILITY TRENCH GAS VENTS:

Grantor will install utility trench gas vents to be located below, on and above the surface of the land on the easement tract (Exhibit "C"), in accordance with approved permit requirements. The utility trenches will be vented and monitored quarterly along with other perimeter probe monitoring. Grantor shall construct, install, maintain, repair and replace the utility trench gas vents in the event that the gas vents are damaged due to future water line construction by Grantee.

NO WATER TAPS:

Grantor is prohibited from tapping into or using water from the raw water lines constructed on the Easement Tract.

MISCELLANEOUS:

This agreement supersedes any prior approved version of this agreement.

Grantee joins in the execution of this Agreement for purposes of evidencing its agreement to be bound by Grantee's covenants and agreements hereinabove set forth. Either party may enforce this Agreement by appropriate action and should it prevail in such litigation, it shall recover as part of its costs a reasonable attorney's fee.

The rule of strict construction does not apply to this Agreement.

All notices and other communications hereunder shall be in writing and shall be deemed given if delivered by hand, mailed by registered or certified mail (return receipt requested) or telecopied (with corresponding confirmation) to the parties at the following addresses (or at such other addresses for a party as shall be specified by like notice) and shall be deemed given on the date on which so hand delivered, telecopied or on the third business day following the date on which so mailed:

To Grantee: City of Pflugerville
P.O. Box 589
Pflugerville, Texas 78691-0589
Attention: Brandon Wade, City Manager
Telecopier: (512) 990-4364

with a copy to: George Hyde
City Attorney
P O Box 589
Pflugerville, Texas 78691-0589
Telecopier: (512) 990-4364

To Grantor: WASTE MANAGEMENT OF TEXAS, INC.
720 East Butterfield Road
Lombard, Illinois 60148
Attention: Vice President of Real Estate
Telecopier: 630/268-9521

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

In witness whereof, this instrument is executed this ___ day of _____,
2012.

WASTE MANAGEMENT OF TEXAS, INC.,

a _____

By: _____

Printed Name: _____

Title: _____

RECEIVED, ACCEPTED AND
AGREED TO BY GRANTEE:

CITY OF PFLUGERVILLE, TEXAS

By: _____

Brandon Wade, City Manager

ADDRESS OF GRANTEE:

City of Pflugerville

P. O. Box 589

Pflugerville, Texas 78691