

PROFESSIONAL AND UTILITY SERVICES AGREEMENT

This Professional and Utility Services Agreement (“*Agreement*”) is entered into as of the Effective Date (defined below), between Kelly Lane Water Control and Improvement District No. 2 (the “*District*”) and the City of Pflugerville (the “*City*”), each acting by and through its undersigned, duly authorized representative.

RECITALS

A. KM Avalon, Ltd. (“*Developer*”) plans to or is currently constructing a Water and Wastewater System (defined below) which will serve customers located within the geographic boundaries of the District and certain out-of-district service areas, and the District is desirous of obtaining services for the competent operation, maintenance, and management of the Water and Wastewater System.

B. Developer also plans to or is currently providing Municipal Solid Waste Disposal Services (defined below) which will serve customers located within the geographic boundaries of the District, and the District desires to obtain services for the competent operation, maintenance, and management of the Municipal Solid Waste Disposal Services.

C. The City desires to provide operations, maintenance, and management services for the Water and Wastewater System and Municipal Solid Waste Disposal Services.

D. The District and the City desire to enter into a definitive agreement pursuant to which the City will operate, maintain and manage the Water and Wastewater System and provide for Municipal Solid Waste Disposal Services.

E. 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:

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 and Utility Services Agreement” between the District and the City.

B. “*Capital Recovery Fee*” means fees properly created by applicable law designed and used to fund those capital improvements associated with the Water and Wastewater System and applied to the customers of the City.

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

D. “*Consent Agreement*” means the Comprehensive Development Agreement Between KM Kelly Lane, Ltd. and the City of Pflugerville, Texas Including Consent to the Inclusion of Land in Water Districts and the Development of a 540 Acre Tract in Travis County, Texas dated August 30, 2004, as amended and assigned.

E. “Construction Agreement” means the NPWIS Construction and Participation Agreement between the City, Rowe Lane Development, Ltd. and KM Kelly Lane, Ltd. dated effective August 30, 2004, as amended and assigned.

F. “Customer” means any individual or entity residing within the geographic boundaries of the District that requests and obtains water, wastewater and municipal solid waste service from the District and becomes obligated to remit payment for using, benefiting from, or receiving goods and services from the Water and Wastewater System and/or Municipal Solid Waste Disposal Services.

G. “Developer” means KM Avalon, Ltd.

H. “Development” means the lands within the current or future boundaries of the District, or its successors.

I. “District” means Kelly Lane Water Control and Improvement District No. 2, a political subdivision of the State of Texas operating under Chapters 49 and 51 of the Texas Water Code.

J. “Municipal Solid Waste Disposal Services” means the collection, transport and disposal and/or recycling of municipal solid waste as defined by the TCEQ.

K. “MUD Administration Fee” means a one time fee charged to Customers by the District to cover any costs and expenses associated with the District’s administration of the water and wastewater services.

L. “Rate Order” means the “Order Establishing Rates and Charges, and Adopting Rules and Policies Regarding the District’s Utility Systems” adopted by the District, as amended from time to time.

M. “TCEQ” means the Texas Commission on Environmental Quality or its successor agency.

N. “Water and Wastewater System” means the Developer or District-owned water distribution system and/or sanitary wastewater collection and transportation system, including but not limited to the meters, lines, facilities, equipment, easements, 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, and rights-of-way for the collection, transportation, storage and treatment of wastewater, and any extensions or additions thereto, to be constructed to serve wastewater customers in the Development.

O. “Wholesale Water Supplier” means Manville Water Supply Corporation.

ARTICLE II.
ADMINISTRATIVE SERVICES

The following administrative services will be provided to the District by the City.

1. Organization. The City will administer the work, activities, and operations of the Water and Wastewater System and provide for Municipal Solid Waste Services in accordance with the terms of this Agreement and the Consent Agreement.

2. Personnel. The City will provide competent, trained personnel for the operation and maintenance of the Water and Wastewater System and Municipal Solid Waste Disposal Services and the provision of water, wastewater and municipal solid waste services, supervisors and/or operators who will be licensed or certified by the appropriate State governmental authority, including accounting, billing, and field personnel who will be trained to be professional and courteous in dealing directly with the Customers.

3. Start Up. The City will:

A. Maintain all of the Customer information and records necessary to provide monthly billings to the Customers in the same manner and to the same extent such information and records are maintained and managed by the City for customers within the corporate limits of the City receiving water, wastewater and Municipal Solid Waste Disposal Services from the City.

B. Maintain an inventory and listing of all equipment of the Water and Wastewater System based on the inventory provided by the District under Section 1(B)(ii), Article XII below, in the same manner and to the same extent such data is maintained and managed by the City and as required to provide relevant information for the scheduled maintenance and repair or replacement of the equipment comprising the Water and Wastewater System.

4. Maintenance Scheduling. The City will implement a maintenance schedule for the Water and Wastewater System. The City will ensure that Water and Wastewater System and 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 TCEQ or other regulatory agency with jurisdiction, and not less than the manufacturer's recommended maintenance schedule. Because the District is under the continuing supervision of the TCEQ, the City will submit its maintenance schedule to the District for comment prior to commencing operation and maintenance of the Water and Wastewater System under this Agreement.

5. 24 Hour Service. The City will maintain 24-hour telephone and dispatch service with qualified personnel to respond to Customer problems, and Water and Wastewater System equipment malfunctions within the District and Municipal Solid Waste Disposal System issues in the same manner and fashion as for retail customers located within the City limits.

6. Automatic Telephone Alarm. The City will monitor computer or automatic dialed telephone alarm systems at any of the facilities supporting the Water and Wastewater System within the District that are installed and programmed to call the City's 24-hour telephone dispatch service. The City will submit to the District a monthly report summarizing all alarm responses it makes to District facilities.

7. Employee Identification. The City's operating and maintenance employees will be readily identifiable to Customers by distinctive clothing and identification badges with a photograph of the employee of the City. Service vehicles will have the City emblem prominently displayed.

8. Coordination with Consultants. The City will coordinate with other consultants, such as attorneys, engineers, general managers, contractors, auditors, tax assessors, and financial advisors hired by the Developer and/or the District as necessary to maintain efficient operation of the Water and Wastewater System, and, upon request by the District or as needed, the City will attend all meetings of the District during the term of this Agreement in that regard.

9. Inquiries and Correspondence. The City will 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. The District will provide the City with a copy of the District's meeting agenda and any related materials at least seven days prior to the meeting. Upon receipt of the agenda, the City will contact the District's engineer to determine if a representative of the City needs to attend the meeting. A City representative will attend any District meeting that has an agenda relating to the services provided under this Agreement if requested to do so by the District's engineer or the President of the District's Board of Directors (the "Board"). The City representative will have direct knowledge of the District's on-going operations or agenda items as appropriate.

11. Customer Relations. The City will render reasonable assistance in the promotion of good relations with the Customers and act in the same manner as if providing service to retail customers located within the City limits.

12. District Bond Financing Information. The City acknowledges that the District will finance the Water and Wastewater System as well as other costs and expenses, as permitted by TCEQ rules, through the issuance of bonds. The City agrees to cooperate with the District in connection with its bond financing, and agrees, upon the District's request, to provide (a) written confirmation that a water and wastewater service connection inspection program is in force for all new connections within the District; (b) certification by the City's inspector of compliance with all applicable City rules; (c) documentation confirming the amount of wastewater capacity existing and committed to serve the District; and (d) any other certifications or documentation reasonably requested by the District to satisfy any applicable rule or requirement of the TCEQ in connection with the District's issuance of bonds.

ARTICLE III.
WHOLESALE WATER SERVICE

Wholesale water service will be provided to the District by the Wholesale Water Supplier in accordance with the Wholesale Water Supply Contract dated effective April 8, 2005 (the "Manville Contract"). The Manville Contract requires that contractual capacity charges ("Manville Capital Charges") be paid to the Wholesale Water Supplier within 30 days of the date a final subdivision of land within the District is recorded, and at least 30 days before service to the subdivision is to commence. The Developer or the District will pay all Manville Capital Charges. All other fees and amounts due for water service will be paid by the Customer to the City pursuant to Articles V and VIII.

ARTICLE IV.
WHOLESALE WASTEWATER SERVICE

Wholesale wastewater service to the District will be provided by the City pursuant to the Consent Agreement and the Construction Agreement and in accordance with the Wholesale Wastewater Service Addendum attached as **Exhibit A**.

ARTICLE V.
WATER AND WASTEWATER MANAGEMENT SERVICES

1. Water and Wastewater System Operations. The City will provide personnel, vehicles, hand tools, spare parts, and other equipment necessary for the operation of the Water and Wastewater System.

2. Applications. The City will review all applications for connections to the Water and Wastewater System. No connection to the Water and Wastewater System may be made until (a) the City's subdivision process has been complied with and, (b) with respect to wastewater service, Wastewater Capital Recovery Fees, as defined in the attached Wholesale Wastewater Service Addendum, have been paid to the City.

3. Meter Reading, Billing and Collection, Customer Deposits. The City will read the Customer's water meters each month and bill the Customers at rates and fees set by the District. A Customer will be billed for wastewater service at rates set by the District. The City and the District agree that the initial rates, charges and fees, including but not limited to the water and wastewater rates and the tap fees, charged to the Customers will be those rates and fees listed in **Exhibit B**, attached and incorporated herein. The City will collect all revenues arising from the rates, fees, and charges set by the District. The City is authorized to make adjustments to water bills for clerical errors, over or under registration of water meters, erroneous meter readings, and establishment of water usage during times when a meter has been inoperative and other similar adjustments. The City will resolve billing disputes with individual Customers consistent with its in-City procedure. The City will collect and maintain security deposits on the District's behalf, and the District agrees that such deposits and interest earned thereon may be maintained in the City's accounts.

4. Water and Wastewater System Inspection. The City assumes the obligations and responsibilities for and will at its own expense monitor daily, including weekends and holidays as required by state regulations, the Water and Wastewater System, including but not limited to any lift stations and equipment. City employees, whenever they are within the District boundaries, will monitor the Water and Wastewater System in order to observe condition of fire hydrants, leaks, defects, damages and be alert for missing District equipment. The City will be responsible for resolving issues relating to damage to the Water and Wastewater System with the cooperation of the District. As part of its inspection program, the City will:

- a. Routinely inspect all District water lines and wastewater collection lines if required by TCEQ regulations, and maintain a written, inspector certified log of each inspection, reflecting the date and time of each inspection, the personnel performing the inspection, and any action taken.
- b. Monitor the Water and Wastewater System as may be necessary to protect the integrity of the Water and Wastewater System.
- c. Inspect the District's fire hydrants annually, lubricate as necessary, and repair or replace as needed.
- d. Diligently investigate for suspected leaks in the Water and Wastewater System or other causes of water losses from the Water and Wastewater System, and take prompt corrective action to identify and repair any leaks and to identify and resolve any other causes of water losses.

- e. Operate valves, flush all dead end water lines and operate fire hydrants as necessary.
 - f. At the time that residential meters are read each month, read the master meters calculating the quantity of water supplied by the Wholesale Water Supplier in order to determine any difference in the quantity of water supplied by the Wholesale Water Supplier and the quantity charged to Customers.
5. Daily Preventive Maintenance. The City assumes the obligations and responsibilities for and will provide at its own expense all personnel and equipment necessary for preventive maintenance tasks.
6. Bulk Chemicals. The City assumes the obligations and will be responsible, at its own expense, for maintaining an adequate inventory of chlorine and other bulk chemicals required to operate the Water and Wastewater System.
7. Expendable Items. The City assumes the obligations and responsibilities for and will, at the City's expense, replace those items expended in the daily operation of the Water and Wastewater System, including but not limited to brooms, mops, dip nets, rakes, shovels, trash cans, hoses, nozzles, padlocks, and other such items.
8. Monthly Operations Report. The City will provide a monthly operations report to the District's attorneys at least 10 days prior to the District's monthly Board meeting. The monthly operations report will include the following information, or other information to which the parties can agree:
- A. Daily and monthly water flow data.
 - B. The number of gallons of water purchased by the District and the number of gallons billed to the Customers and, to the extent an identifiable cause is known (such as a water leak), a written explanation of the resulting difference.
 - C. Total number of service connections, water and wastewater.
 - D. Records regarding equipment repairs and replacements.
 - E. Abnormal, significant changes in the condition of the District's equipment.
 - F. Insurance claims filed on behalf of the District with the concurrence of the District.
 - G. Regular billing and collection reports including cash receipts, billings, receivables, penalties charged, and adjustments made.
 - H. Delinquent Customer reports, including information on termination of water service and protests or appeals made by Customers.
 - I. Summary of meters installed, inspections performed and fees collected.
 - J. Damage to the Water and Wastewater System and the possible causes thereof. In instances where the damage may be attributable to a contractor, builder, utility company or other entity, the City will use its best efforts to identify the party responsible for such damage, including administrative costs thereof, and include such information in the

monthly report. The District will assess and collect the cost of repairs from the responsible party and remit to City.

K. Statistics relating to overall Water and Wastewater System operations, as appropriate.

L. Summary of alarm responses in accordance with Section 6, Article II above.

9. Regulatory Reports. The City assumes the obligations and will prepare and submit reports and other documents required by regulatory authorities for the District. The City will include copies of all reports submitted to regulatory authorities relating to the District in the monthly operations report and use good faith efforts to provide the District the opportunity to review any reports related to pending enforcement actions prior to its submittal to the appropriate regulatory authority.

10. Regulatory Inspections. The City will advise the District of inspections of the Water and Wastewater System by regulatory authorities. The City will notify a representative of the District, such as the District's engineer, in advance of any schedule regulatory inspections in order to provide the representative with an opportunity to attend such inspections.

11. District Audits. Upon request by the District, the City will timely provide any information and reports required for the annual audit of the District's accounts and cooperate with the District's auditor in connection with the preparation of the District's annual audit. The District agrees to file a copy of its annual financial dormancy affidavit, annual financial report or annual audit of its debt service and general fund accounts, whichever is required under the Texas Water Code, with the City after approval of each financial dormancy affidavit, financial report or audit by the Board.

ARTICLE VI.

INSTALLATION AND INSPECTION SERVICES

1. General. All meters and installation materials will meet American Water Works Association standards and be in compliance with applicable city, county, state or federal codes. All installation and inspection fees will be collected from the Customers in advance of initiation of water or wastewater service at rates set by the District. The City will maintain permanent records of meter services installed and tap fees paid. This includes a plat or map, as available, which shows the location of each meter installed and each sewer inspection performed.

2. Residential Meters. Residential, 5/8 inch, water meter sets made to a visible curb stop set near ground level will be installed at rates set by the District. Non-standard residential water meter sets, including location buried curb stops, will be installed by the City at rates set by the District.

3. Commercial Meters. Commercial meter tie-ins will be made by the City at rates set by the District.

4. Water Tap Inspections. Inspection of water taps and service lines will be made as necessary at no cost to the District but subject to a fee for inspections, said fee to be set by the District.

5. Sanitary Sewer Inspections. The City will inspect each new sanitary sewer connection to the Water and Wastewater System to assure compliance with the District's and the City's specifications and procedures when and as necessary, at no cost to the District but subject to the

fee for inspections, said fee to be set by the District. The fee will be collected from the Customer requesting service.

6. Other Inspections. The City will perform other inspections as required by TCEQ rules, State law or the District's Rate Order. Such inspections include, but are not limited to, grease traps, lead and coppering testing, cross connections or new facilities prior to acceptance by the District; however, the City will not conduct plumbing inspections, which will be performed by an independent plumbing inspector retained by the District. The City may also participate in site inspections with the Developer and/or contractors prior to the start of building activity to assist in verifying the condition of the Water and Wastewater System. All such other inspections will be subject to such fees set by the District.

7. Fees. All fees set by the District under this Article must equal or exceed the fees charged for such services to retail customers of the City.

8. Customer Service Inspection Certificates. Prior to changing a Customer account from the name of a builder to that of a homeowner and providing continuous water and wastewater service to that Customer account, the City must receive a customer service inspection certificate required by 30 *Texas Administrative Code* §290.46(j) and the Rate Order. The City will maintain a record of the customer service inspection certificates that it receives.

ARTICLE VII.

MAINTENANCE, REPAIR AND REPLACEMENT SERVICES

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

A. Maintenance or replacement of pumps, motors, valves and other equipment of 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 will be solely responsible for and will provide all personnel and equipment necessary to perform repairs on, and will bear sole cost responsibility for repair of, meters, lines, facilities, equipment, collection and distribution systems including, but not limited to, 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 will not, however, bear cost responsibility for initial repair of any equipment or facilities identified by the City as in need of repair on the date of assumption of repair responsibility pursuant to the terms of this Agreement. The District will assign contractors' warranties to the City, and the City will cause repairs to be made under the terms of the warranty. Subsequent to acceptance of facilities by the City, the City will be responsible for all repairs or replacement of same.

3. Replacement. The City will use a reasonable degree of care with respect to replacement of equipment or facilities but will 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 will maintain personnel and equipment for emergency response 24 hours per day, seven days per week, 365 days per year. Emergencies include, without limitation, water leaks, water line breaks, loss of water pressure, and blockage in the sewage collection system. Emergencies exclude degradation of water quality occurring within the Wholesale Water Supplier's water supply system or other damage attributable to negligent acts or omissions of the Wholesale Water Supplier. Additionally, the City will undertake reasonable efforts to respond to requests by the District or its representatives or insistent residents.

5. Materials and Supplies. The cost of all materials and supplies used to provide services under this Agreement will be borne solely by the City.

ARTICLE VIII.
COLLECTION, PAYMENT, AND REMITTANCE

The City and the District agree that City's compensation for water and wastewater operation, maintenance and management services provided by the City, will be equal to those amounts shown due to the City in Exhibit B, which rates and fees may be adjusted from time to time by mutual agreement of the City and the District. City and the District also agree that the MUD Administration Fees will be satisfied from the revenues collected by the City from the Customers for water and wastewater services. All fees and charges assessed to the Customers by the City will be set by the District to recover the costs of operating the District, operating and maintaining District facilities, obtaining wholesale water and sewer service, and adequately compensating the City for services provided under this Agreement. No additional charges, fees or the like will be assessed against the District for such services. The City will collect all revenues arising from rates set by the District, timely pay all expenses arising from the services provided under this Agreement, including amounts payable to the Wholesale Water Supplier and amounts set by the District to compensate the City, and remit any remainder to the District, including but not limited to the MUD Administration Fees, within 30 days of collection by the City. Provided that the City has collected sufficient water service revenues from residents of the District, any penalties assessed by the Wholesale Water Supplier for late payments will be an obligation of the City. Notwithstanding any provision in this Article or any other provision in this Agreement, the City will not be obligated to collect increased rates or pay the District for any increased rates unless and until the City receives written notice from the District of a rate increase.

ARTICLE IX.
INCREASES IN RATES DUE TO WHOLESALE WATER SUPPLIER SERVICE

The District will increase rates within 30 days following an increase in rates by the Wholesale Water Supplier to ensure that the City does not have to pay for the cost of providing water to Customers under this Agreement. The District will also reimburse City as soon as possible, and no later than 60 days following a rate increase by the Wholesale Water Supplier for any costs incurred by the City as a result of the rate increase by the Wholesale Water Supplier prior to the District raising rates. If the Wholesale Water Supplier charges any fee or cost without designating such a fee or cost a rate increase, the District agrees to repay the City for such costs within 60 days. No additional charges, fees or the like will be assessed against the District for such services.

ARTICLE X.
INCREASES IN RATES DUE TO CITY WHOLESALE WASTEWATER SERVICE

The District will increase rates within 30 days following an increase in rates by the City to ensure that the City does not have to pay for the cost of providing wholesale wastewater to Customers under this Agreement. The District will also reimburse the City as soon as possible, and no later than 60 days following a wholesale wastewater rate increase for any costs incurred by the City as a result of the rate increase prior to the District raising rates.

ARTICLE XI.
SOLID WASTE DISPOSAL SERVICES

The City will make available Municipal Solid Waste Disposal Services (as hereinafter defined) to properties and residents located within the boundaries of the District. The City will bill such retail customers directly and contract directly with a municipal solid waste disposal service provider to carry out its duties under this Article. Charges by the City to Customers will not exceed the charges paid by in-City customers except for an administrative fee that may be charged by the City to recoup its costs in administering such services within the District not to exceed \$2.00 per account per month. The parties acknowledge that this Article does not create an exclusive contract with the City or any municipal solid waste service provider contracted by the City to provide services within the boundaries of the District. In the event that the District ever converts to a municipal utility district, the parties agree that such municipal utility district will be the successor in interest to the District for the purposes of this Agreement, and upon such conversion, this Agreement will be exclusive for the purposes of the provision of municipal solid waste disposal services within the boundaries of the municipal utility district; provided however, neither the District nor the City will be required to take any action that terminates or interferes with the rights of parties to a contract for solid waste disposal services.

ARTICLE XII.
MISCELLANEOUS PROVISIONS

1. Responsibilities.

A. City Responsibilities. The City will exercise a reasonable degree of care and diligence in the operation and maintenance of the Water and Wastewater System and Municipal Solid Waste Disposal Services in conformity with applicable laws, rules and regulations.

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

i. All utilities and facilities necessary to commence operation of the Water and Wastewater System in a manner required to meet applicable regulations.

ii. A complete set of record drawings of the Water and Wastewater System, an inventory of the Water and Wastewater System, and any other information for the administration of the Water and Wastewater System.

iii. A letter from the District's engineer certifying that the applicable facilities comprising the Water and Wastewater System are designed to be compliant with City fire flow requirements.

2. Relationship of the District and the City. The City will serve in the capacity of an independent contractor for the District during the period of this Agreement.

3. Insurance. The City will 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. All insurance will be provided by insurers licensed and approved to do an insurance business in the State of Texas. Before commencement of work hereunder, the City agrees to furnish the District and Developer certificates of insurance or other evidence satisfactory to the District to the effect that such insurance has been procured and is in force. The City will carry the following types of insurance in at least the limits specified below:

<u>Coverages</u>	<u>Limits of Liability</u>
Worker’s Compensation	Statutory
Employers’ Liability	\$500,000.00
Bodily Injury Liability Except Automobile	\$500,000.00 each occurrence \$1,000,000.00 aggregate
Property Damage Liability Except Automobile	\$500,000.00 each occurrence \$1,000,000.00 aggregate
Automobile Bodily Injury Liability	\$500,000.00 each person \$1,000,000.00 each occurrence
Automobile Property	\$250,000.00 each occurrence Damage Liability
Excess Umbrella Liability	\$2,000,000.00 each occurrence

4. Indemnity. To the extent allowed by law, the City will indemnify and save harmless the District, the Developer and/or their assignees, and their officers, agents, and employees from all suits, actions, losses, damages, claims, or liability of any character, type, or description, including without limitation, any claim and damages arising from strict liability imposed in the District by statute, regulations, or common law, and all expenses of litigation, court costs, or attorney’s fees for injury or death to any person, or injury to any property, received or sustained by any person or persons or property, arising out of, or occasioned by, the negligent acts of City, its agents or employees, in the execution or performance of this Agreement. The liability that is assumed by City under the terms of this paragraph will not exceed the sum of \$2,000,000 per occurrence which sum is the amount of liability insurance coverage required to be carried by City pursuant to this Agreement or maximum liability allowed by law, whichever is less. The City’s duty to indemnify the Developer under this paragraph will end when the Developer assigns its rights and obligations under the Agreement to the District as required herein.

5. Force Majeure. In the event that the City or the District is rendered unable, wholly or in part, by force majeure to carry out its obligations under this Agreement, it is agreed that each party will give written notice of such force majeure to the other party as soon as possible after the occurrence of the cause relied on and will, therefore, be relieved of its obligations, so far as they are affected by such force majeure, during the continuance of any incapacities so caused, but for no longer. The term “force majeure,” as employed herein, means 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, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, disturbances, explosions, partial or entire failure of utilities, shortages of labor, material, supplies or transportation, or any other similar or different cause not reasonably within the control of the party claiming such inability.

6. Full Compensation. The compensation to be paid to the City herein is 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.

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

8. Notice. Whenever the provisions of this Agreement require notice to be given, such notice will be given in writing by certified or registered mail and addressed to the party for whom intended at its then address of record and such notice will be deemed to have been given when the notice was then mailed. For purposes of notice, the addresses of the parties will, until changed as provided below, be as follows:

City: City of Pflugerville
Attn: City Manager
100 East Main Street, Suite 300
Pflugerville, TX 78660
Phone: (512) 990-4363
Fax: (512) 990-4364
E-Mail: citymanager@cityofpflugerville.com

District: Kelly Lane Water Control and Improvement District No. 2
c/o Patrick M. Carlson
Armbrust & Brown, PLLC
100 Congress Ave., Suite 1300
Austin, TX 78701
Phone: (512) 435-2366
Fax: (512) 435-2360
E-Mail: pcarlson@abaustin.com

7. Term of Agreement. As to all services and agreements relating to the Water and Wastewater System and wastewater treatment and disposal by the City (the "Wastewater Services"), the term of this Agreement will commence on the date of execution by all parties (the "Effective Date") and will continue until the earlier to occur of (i) 40 years thereafter or (ii) annexation of the District by the City. As to all services and agreements other than the Wastewater Services (the "Other Services"), the term of this Agreement will commence on the Effective Date and will continue in force for three years thereafter, unless terminated earlier as provided in this Agreement. Unless either party gives written notice of its election to terminate this Agreement as to the Other Services at least 180 days prior to the end of any three-year period, this Agreement will automatically be renewed as to the Other Services for an additional three-year period at the expiration of each period.

8. Assignability and Resale. This Agreement may be assigned by the District to an entity to be created for the purpose of development of the land within the District and/or to a municipal utility district for the purpose of development of the land within the District and/or to a municipal utility district or water control and improvement district created for the purpose of

providing water, wastewater, drainage services and recreational facilities to the land within the District, subject to approval by the City and in accordance with the City's rules and ordinances.

9. 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, will 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 will continue in full force and effect.

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

11. Captions. The captions appearing at the first of each numbered section in this Agreement are included solely for convenience and will 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.

12. 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 will 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 will be not affected thereby.

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

14. Other Instruments. The parties hereto covenant and agree that they will take such further actions, and will 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.

15. 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 will be controlling.

16. Termination. This Agreement will be terminated at the time the land within the District has been annexed by the City, at which time this Agreement will be terminated by mutual agreement of the parties to the Agreement. Additionally, this Agreement may be terminated by the District if the City has failed to adequately operate and maintain the Water and Wastewater System pursuant to the terms and conditions of this Agreement; provided, however, that this right of termination may be enforced only after written notice has been given to the City of such failure and a reasonable opportunity is given to the City to cure the deficient performance, which in no event will be less than 60 days from the date of the notice. Upon termination of this Agreement prior to the City's annexation of the land within the District, the City agrees to immediately turn over all District books, records, checkbooks, funds security deposits and other property to the District's designated representative and the District will pay the City any compensation due under the terms of this Agreement up to the date of termination. Computer records relating to the District, including those relating to the District's accounts, connections, financial records, equipment, and customers are District property, and the City will provide such records to the District or its representative on a disk or by transferring all records that are

maintained on computer via computer, in a format that will allow such computer records to be accessed and duplicated by the District.

17. Binding Effect; Counterparts and Facsimile Signatures. This Agreement will be binding upon and will inure to the benefit of the City, the Developer and the District and their respective heirs, successors, assigns, and legal representatives. This Agreement may be signed in multiple counterparts which, when taken together, will be deemed a single binding document. Facsimile signatures will be enforceable and binding in the same manner as an original signature.

[SIGNATURE PAGE FOLLOWS]

EXECUTED in multiple copies, each of which constitute an original, on the dates set forth below, to be effective as of the Effective Date:

CITY OF PFLUGERVILLE, TEXAS

Brandon Wade, City Manager

Date:_____

ATTEST:

KELLY LANE WATER CONTROL AND
IMPROVEMENT DISTRICT NO. 2

Mark E. Kalish
President, Board of Directors

Date: _____

ATTEST:

Christopher H. Whitworth
Secretary, Board of Directors

Exhibit A

WHOLESALE WASTEWATER SERVICE ADDENDUM

I. SERVICE PROVISIONS

1.01 Description of Property to Receive Wholesale Service from the City. The Wholesale Service provided under this Addendum will include the area within the boundaries of Kelly Lane Water Control and Improvement District No.2 (the "District") and authorized out-of-district service areas (collectively the "Service Area").

1.02 Maximum Limit of Wholesale Service From the City. The Wholesale Service from the City to the District for the Service Area will be limited to a maximum of 970 Living Unit Equivalents. As utilized herein, the term "Living Unit Equivalent" or "LUE" means a unit of measure representing the quantity of water consumed and wastewater generated on an average daily basis from a single-family, detached residence of average size and occupancy. Nothing herein will prevent the parties from contracting for or agreeing to additional wastewater service pursuant to separate written agreements.

1.03 Minimum Criteria for Service. Wastewater service provided by the City to the District for the Service Area will be sufficient to collect, transport and treat all wastewater from the Service Area subject to the maximum capacity limitation set forth in Section 1.02 above and the further terms and conditions of this Addendum.

1.04 Conditions Precedent to Service. The Parties specifically agree that the commencement of Wholesale Wastewater Service to the Service Area will be subject to the following conditions precedent:

- i Construction of Internal Facilities within the Service Area at no cost to the City;
- ii District's construction of the Points of Entry at no cost to City;
- iii The District Internal Facilities constructed after the effective date of this Addendum within the Service Area will be built in accordance with the City's Design Criteria and Standards, TCEQ Design Criteria for Sewage Systems in Chapters 309, 312, and 317 of the Texas Administrative Code, this Addendum, and other applicable law;
- iv final inspection and approval by City of the connections into the City's System;
- v payment of all fees, including inspection fees to the City;
- vi the submittal of a current copy of District's Drought Contingency Plan and Water Conservation Plan to the City;
- vii written authorization from the City Manager acknowledging that District has satisfied all conditions and requirements of this Agreement for connection to the City's System and commencement of Wholesale Wastewater Service, and that Wholesale Wastewater Service to District

shall commence, which authorization shall not be unreasonably withheld or delayed.

The City will commence Wholesale Wastewater Service to District within five business days after satisfaction of the conditions set forth in this Section.

1.05 Points of Connection for Service. To provide the Service, the District wastewater facilities will be connected to the wastewater facilities of the City at any manhole location within Segments C, D, E, or F (the "Areas of Connection") as shown on the attached **Exhibit "A"** in the "NPWIS Construction and Participation Agreement" dated effective August 30, 2004, as amended.

1.06 Manner of Connection. The District's internal wastewater facilities constructed to serve the Service Area (the "Internal Facilities") will be connected to the City wastewater facilities by the District's construction of the connections to manholes in the Areas of Connection shown on **Exhibit "A"** (the "Points of Entry") in accordance with the "NPWIS Construction and Participation Agreement" dated effective August 30, 2004, as amended. The District will ensure that the Points of Entry and Internal Facilities are constructed by the District in compliance with applicable regulations and construction standards of the City and the TCEQ. In the event that there is any conflict between these regulations, standards and specifications, the more stringent regulations, standards and specifications will apply.

1.07 Platting Process. The District will not make any retail service connections in the Service Area unless the City platting process is complied with and the City's Capital Recovery Fees as set forth in this Addendum have been paid.

1.08 Approval of Plans.

(a) All plans and specifications for Internal Facilities within the Service Area and for Points of Entry to be constructed by District will be subject to review and approval of the City prior to commencement of construction.

(b) If, after approval of plans and specifications for particular Internal Facilities within the Service Area and Points of Entry by the City, District fails to enter a construction contract for those facilities within two years of the date of approval of such plans, District must resubmit the plans and specifications.

1.09 Notification of Commencement of Construction. After all required approvals for construction of Internal Facilities within the Service Area and the Points of Entry are obtained but prior to commencement of construction, District will provide written notice to the City of the date on which construction of the same is scheduled to commence to allow the City to assign an inspector.

1.10 Inspection and Acceptance of Facilities. District agrees that City has the right to make periodic inspections during the construction phase of Internal Facilities within the Service Area and the Points of Entry. Upon request, District will arrange to provide lawful and reasonable access to the City for such purposes. District will pay all applicable fees for the inspection of Internal Facilities and the Points of Entry by the City. Acceptance of Internal Facilities and the Points of Entry is subject to final inspection and approval by the City.

1.11 As-Built or Record Drawings Required. District will provide as-built or record drawings of all completed treatment facilities, lift stations, force mains, and other facilities

comprising District Wastewater Facilities within the Service Area and the Points of Entry to the City within 14 days of the commencement of Wholesale Wastewater Service under this Addendum.

1.12 Minimization of Inflow and Infiltration. As operator for the District, the City agrees to inspect, maintain, monitor and operate all Internal Facilities and Points of Entry as often as necessary to ensure that inflow and infiltration into the Internal Facilities and the Points of Entry is minimized and the quantity of wastewater that the City must process for as part of the Wholesale Service is minimized.

1.13 Curtailment of Service. District agrees that, if wastewater service is curtailed within the City or to other customers of the City's System, the City may impose a like curtailment on Wholesale Wastewater Service delivered to District. The City will impose such curtailments in a nondiscriminatory fashion. The parties agree that they will not construe this Addendum to prohibit the City from curtailing service completely in the event of a maintenance operation or emergency for a reasonable period necessary to complete such maintenance operations or repairs or respond to an emergency circumstance. The City will use its best efforts to minimize the duration of the period of curtailment and will pay for or provide facilities and equipment necessary to pump and haul all District Wastewater to alternate treatment facilities during the curtailment period.

1.14 Cooperation During Maintenance or Emergency. District will cooperate with the City during periods of emergency or required maintenance. As operator for the District, the City will operate and maintain the District's Internal Facilities in a manner reasonably determined by the City to be necessary to the safe and efficient completion of repairs or the replacement of facilities, the restoration of service, and the protection of the public health, safety, and welfare. The City may be required to discontinue use of, cycle, test, inspect, or otherwise operate and maintain the District's Internal Facilities in a manner determined by the City.

1.15 District and City Fees. Except as otherwise set forth in this Addendum or the Agreement, customers will be required to pay all applicable City and District inspection fees, plan review fees and other fees and charges for services, labor and materials provided by the City and the District, respectively, in aid of the provision of Wholesale Service under this Addendum.

1.16 Monthly Billing. Wastewater billings during the provision of Service will be determined based on the number of wastewater LUEs connected to the Internal Facilities.

(a) Each monthly bill will contain a statement of the number of LUEs connected during the billing period, the rate on which the bill is calculated and any other fees or administrative charges included in the bill. The City's wholesale wastewater rates are subject to change from time to time by the City Council of the City. The District will make payment to the City in accordance with the City's utility service requirements and regulations as amended from time to time.

(b) The rate under this Agreement is \$40.00 per LUE per month. The City's wholesale wastewater rates may be subject to change from time to time by the Pflugerville City Council based on changes in the City's cost of service as determined by a cost of service study.

1.17 Pflugerville Policies and Ordinances Applicable to Service. Unless otherwise provided in this Addendum, the Service provided from the City to the Service Area under this Addendum will not be unreasonably discriminatory and will be consistent with the policies and

ordinances of the City applicable to wholesale wastewater service. The Wholesale Service may be limited or curtailed in the same manner and proportion as such service is curtailed or limited to other customers of the City.

1.18 Rates Sufficient to Cover Pflugerville's Costs. The rate of \$40.00 per LUE per month is currently sufficient to cover all of the City's cost of treatment of the wastewater from the Service Area. Should the City determine through a cost of service study that a rate increase is necessary, the District agrees to establish retail rates sufficient to cover all of the City's costs of treatment of the wastewater from the Service Area.

1.19 Coordination. The City and the District agree to coordinate and cooperate with each other in all respects regarding the implementation of the provisions of this Addendum.

1.20 Wholesale Service Not Assignable or Transferable. The Wholesale Service described in this Addendum will not be assignable, in whole or in part, for use by any other property.

II. CAPITAL RECOVERY FEES

2.01 Pflugerville Capital Recovery Fees for the Service Area. The District, or developers within the District, will pay to the City a Wastewater Capital Recovery Fee that is equal to Pflugerville's then current Impact Fee for all wastewater connections within the Service Area. The Capital Recovery Fee will be paid to the City at the time a final plat for a subdivision is recorded in the real property records. Upon payment of the Wastewater Capital Recovery Fee, the District will have a guarantee of service for each LUE for which a Wastewater Capital Recovery fee has been paid.

III. INDUSTRIAL DISCHARGE PROHIBITED

3.01 Industrial Discharges and Prohibited Wastes

(a) District acknowledges that the City has the responsibility and authority under federal and state law to establish:

- (i) types and quantities of discharges that are prohibited for entry into the City's System;
- (ii) discharge prohibitions for certain substances;
- (iii) pretreatment, permitting, monitoring, and other requirements for persons who discharge prohibited substances; and
- (iv) measures to protect the City's System, including, without limitation, any portion of the sanitary sewer, and any receiving stream receiving a discharge of wastewater effluent from harmful discharges.

(b) The District agrees that the Service Area may be used and improved solely for residential uses and commercial uses that generate only normal domestic wastewater, as determined by applicable policies and regulations of the City. No industrial uses will be permitted. Notwithstanding any provision herein to the contrary, however, no owner of any portion of the Service Area will be responsible or liable for any

breach or violation of this Article III that occurs outside of the portion of the Service Area owned by such owner.

(c) District agrees to cooperate with the City in seeking injunctive or other appropriate relief to prohibit wastewater discharges that the District or the City become aware will damage or pass through City's System without adequate treatment, interfere with the treatment system, or otherwise pose an imminent danger to public health, or when the specific person or industry is not making sufficient progress toward implementing an approved pretreatment system.

(d) The parties agree that they will not construe this Addendum to limit, modify, restrict, or otherwise alter the responsibility or authority of the City to enforce its ordinances governing the pretreatment, monitoring, and discharge of wastewater containing industrial waste or other prohibited waste with respect to Service Area when and as such action is deemed necessary by the City.

IV. GENERAL PROVISIONS

4.01 Liability of District. Liability for damages to third persons arising from the reception, transportation, delivery, and disposal of all wastewater discharged will remain with District to the Point of Entry. With the exception of incompatible wastes or the delivery by District of prohibited wastes or wastewater that is corrosive or otherwise injurious to the City's System or to persons or property, upon passing the Point of Entry, liability for damages to third persons caused by the City will pass to the City. Incompatible wastes are substances not amenable to wastewater treatment processes that will damage or interfere with the operation of the publicly owned treatment works or any portion of the City's System, including interference with the use or disposal of municipal sludge as well as pollutants that will pass through the treatment works unchanged by the treatment processes.

4.02 Liability of the City. Subject to the foregoing, the City will bear the responsibility as between the parties for the proper reception, transportation, treatment, and disposal of all wastewater properly delivered to the Points of Entry by District. The parties agree that this Addendum does not absolve District of liability for damages to the City's System or to third persons arising from the delivery by the District of prohibited wastes or wastewater that is corrosive or otherwise damaging to the City's System or to persons or property.

4.03 Exhibits. The following exhibits are attached to this Addendum and incorporated herein by reference: **Exhibit "A"** - Areas of Connection for the Wholesale Service Area.

EXHIBIT "A"

AREAS OF CONNECTION FOR THE WHOLESALE SERVICE AREA

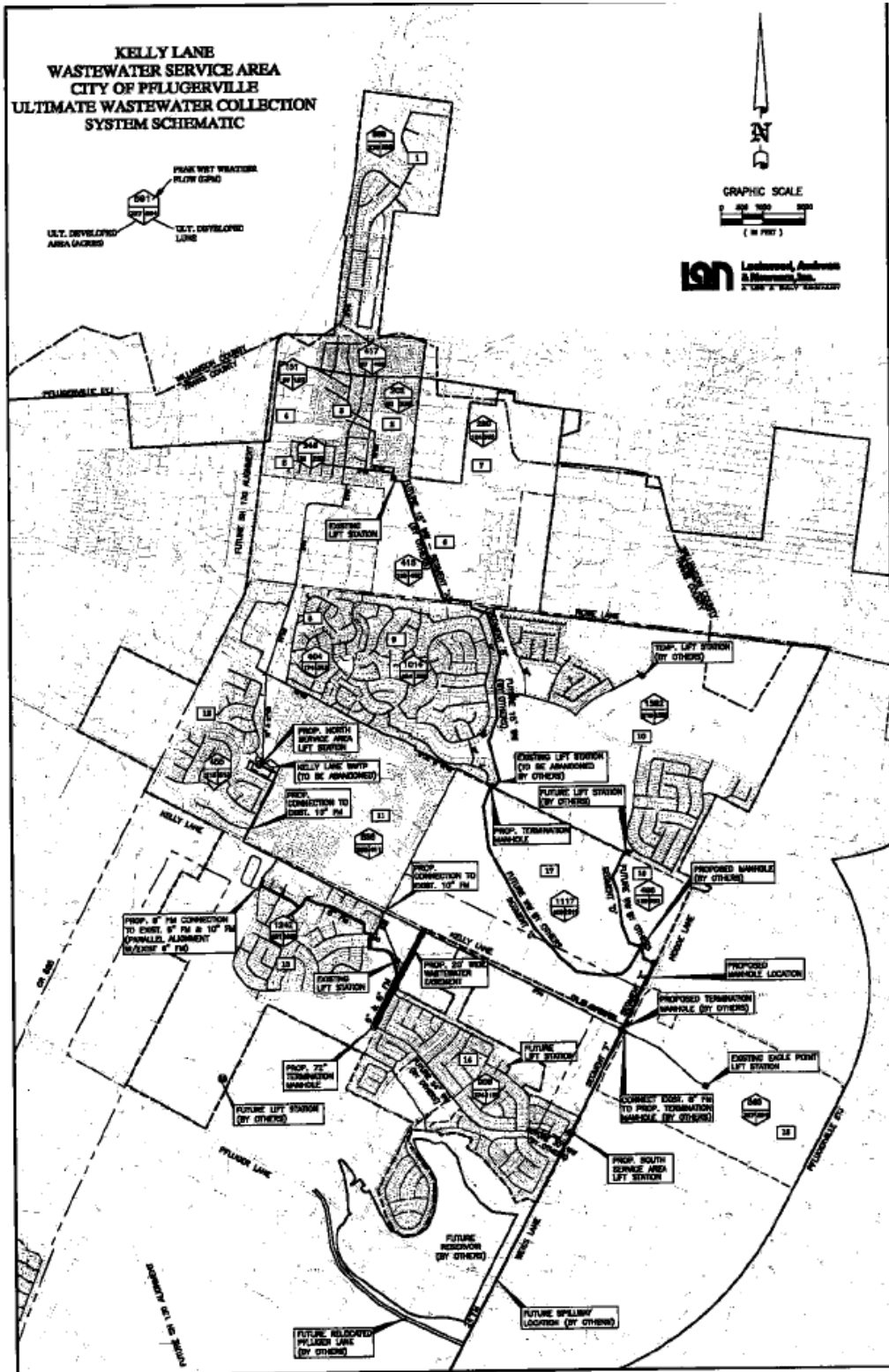


Exhibit B

RATE ALLOCATION SCHEDULE

Monthly In-District Sewer Rates:

<u>Flat Rate</u>	<u>Pflugerville</u>	<u>District</u>
\$40.00 per LUE	\$40.00	\$0.0

Monthly In-District Water Rates:

<u>Meter Size</u>	<u>Base Charge</u>	<u>Pflugerville</u>	<u>District</u>
5/8" simple	\$13.68	\$6.38	\$7.30
3/4" simple	\$13.68	\$6.38	\$7.30
1" simple	\$22.84	\$13.55	\$9.29
1 1/2" simple	\$45.11	\$33.49	\$11.62
2" simple	\$72.85	\$59.97	\$12.88

Water Service Volume Charge:

<u>Usage</u>	<u>Charge</u>	<u>Manville</u>	<u>Pflugerville</u>	<u>District</u>
(0- 7,000 gallons)	\$4.00 per 1,000 gallons	\$3.25	\$0.45	\$0.30
(7,001- 15,000 gallons)	\$4.20 per 1,000 gallons	\$3.25	\$0.70	\$0.25
(over 15,000 gallons)	\$4.90 per 1,000 gallons	\$3.25	\$1.00	\$0.65

Increased Commodity Charge for Irrigation Meters and Fire Hydrant Meters:

<u>Charge</u>	<u>Manville</u>	<u>Pflugerville</u>	<u>District</u>
\$5.25 per 1,000 gallons	\$3.25	\$1.00	\$1.00

All rates, charges, and fees will be set by the Order Establishing Rates and Charges, and Adopting Rules and Policies Regarding the District's Utility Systems, as amended from time to time.