

THE STATE OF TEXAS

COUNTY OF TRAVIS

WATER SUPPLY CONTRACT

This contract is made this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between the City of Pflugerville, Texas, a Municipal Corporation of Travis and Williamson Counties, Texas, (hereinafter referred to as "City" or "Pflugerville"), acting by and through its City Manager, who has been duly authorized to act by the City Council of Pflugerville, and SWWC Utilities, Inc. d/b/a Windermere Utility Co., Inc. (hereinafter referred to as "Purchaser").

WITNESSETH:

That for and in consideration of the covenants, promises and agreements set forth herein, it is mutually agreed as follows:

I. GENERAL PROVISIONS

A. Purpose

The purpose of this Contract is for Pflugerville to sell and provide water to the Purchaser for commercial and residential uses under the provisions of this Contract.

Pflugerville shall act by and through its agent (Director of Utilities or his/her duly authorized representative) unless otherwise stated in this Contract. Purchaser shall act by and through its agent (its duly authorized representative) unless otherwise stated in this Contract.

B. Modification

This Contract may be changed or modified only with the consent of the Parties through action by the City Council of Pflugerville and the Purchaser's Board of Directors. Any modification shall be in writing. Such modification may be requested by either party, and shall

be considered within ninety (90) days after the giving of such notice. No such change or modification may be made which will affect adversely the prompt payment, when due, of all monies required to be paid by Purchaser under the terms of this Contract.

C. Assignment

Purchaser shall not assign nor transfer in whole or in part the rights and obligations granted in this Contract without first obtaining the written consent of Pflugerville's agent, which consent shall not be unreasonably withheld, except that Purchaser may pledge this Contract as part of the security for any loan and/or assign this Contract to an affiliate of Purchaser.

D. Duration, Termination

This Contract shall be effective for a period of ten (10) years, beginning \_\_\_\_\_, 2024, through \_\_\_\_\_, 2034.

a) Upon the breach by Pflugerville of any of the provisions of this Contract, Purchaser may terminate this Contract by giving written notice within thirty (30) days of such breach to Pflugerville's Director of Utilities .

The notice shall explain in detail the provision(s) of the Contract that is breached and the circumstances giving rise to the breach. Pflugerville shall have ninety (90) days upon receipt of written notice to correct any violation of the Contract.

b) Upon the breach by Purchaser of any of the provisions of this Contract, Pflugerville may terminate this Contract after providing written notice to the Purchaser shall have ninety (90) days upon receipt of notice to correct any violation of the contract..

It is specifically provided that a failure to pay Pflugerville for water supplied under this Contract under Pflugerville's billing schedule; and any changes thereto is breach of this Contract.

Should Purchaser pay the amount of money owed to Pflugerville after Pflugerville has given notice, this Contract shall remain in full force and effect. If Purchaser pays the monthly charges, Pflugerville, by accepting the payments, shall not be considered as having waived any of its rights under this Contract.

E. Notices

All notices required under the terms of this Contract shall be in writing and sent by registered or certified mail to the address shown on the signature page.

F. Venue

Venue for any legal proceeding shall be Travis County, Texas. The laws of Texas as to interpretation and performance govern this Contract.

G. Force Majeure

That in case by reason of force majeure either party hereto shall be rendered unable wholly or in part to carry out its obligations under this agreement, other than the obligation of the Purchaser to make payment required under the terms hereof, then if such party shall give notice and full particulars of such force majeure in writing to the other party within ten (10) days after occurrence of the event or cause relied on, the obligation of the party filing such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "force majeure" includes, but is not limited to, acts of God, strikes, or other industrial disturbances, acts of war, orders of any kind of the government of the United States or the State of Texas or any civil or military authority, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, drought, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or

entire failure of water supply, and inability on part of Pflugerville to deliver water under, or of Purchaser to receive water hereunder, on account of any other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts as acceding to the demands of the opposing party or parties when such course is unfavorable in the judgement of the party having the difficulty.

H. Paragraph Headings

The paragraph headings contained herein are for convenience in reference to this Contract and are not intended to define or to limit the scope of any provision of this Contract.

J. Pay Delinquent Accounts

Purchaser agrees that no legally enforceable obligations owed by it to Pflugerville, including payment in advance for service charges or any sums of any character whatsoever, shall become delinquent or in arrears.

K. Attorney's Fees

If either party brings legal action to enforce the terms of this Contract, and prevails, that party shall be entitled to reasonable attorney's fees.

L. Violation of Contract

If Purchaser does any of the following, it shall be liable and owe to Pflugerville a fee of \$1,000 per violation per month that violation continues:

1. Fails to comply with Pflugerville's Water Conservation Plan, which is attached as Exhibit A and made a part of this Contract.

2. Sells water in violation of this Contract (e.g. sells water for large industrial or large commercial uses).
3. Purchaser fails to prohibit service to any structure existing in a designated floodplain area after the date of public environmental notification.
4. Purchaser fails to scrutinize any service applications in areas where wetlands exist to verify that potential users have obtained, where applicable, Section 404 permits from the U.S. Army Corps of Engineers, prior to any modification of an aquatic or wetland area.

M. Conflict

In the event any provision of this Contract shall conflict with any state or federal rules, orders, regulations, laws or constitutions, , the state or federal rules, orders, regulations, laws or constitutions shall control.

## II. FURNISHING WATER

A. Delivery Point

Pflugerville agrees to sell and to provide water to Purchaser at a point of metering which shall be known as the "Delivery Point(s)".

"Delivery Point No. 1" of the water supply line shall be located at the City's ground storage tank and pump station located on the southwest corner of FM1825 and Windermere Blvd. Additional "Delivery Points" may be designated as negotiated between Pflugerville and Purchaser.

Purchaser agrees to purchase and to take delivery of said water at the delivery point for Purchaser's own use for customers that exist at the time of the signing of the Contract. Pflugerville shall be obligated to treat and to filter the water to be delivered to and received by

Purchaser so that the water is the same quality as that supplied to the customers of Pflugerville and in compliance with applicable laws and regulations.

Purchaser shall protect its storage and distribution system from cross connections under the specifications required by the health standards of the State of Texas, and any changes thereto.

#### B. Quantity and Demand

Purchaser represents that its estimated quantity of water will be 100,000,000 gallons per year which shall be known as the "Base Contract Amount". Purchaser agrees that Pflugerville's capability to provide increases of water in quantity is subject to available supply and deliverability, as determined by Pflugerville's agent.

"Demand" means the quantity of water used by Purchaser within a water year.

"Water Year" means the year beginning January 1 and ending December 31.

"Base Contract Amount" will be 100,000,000 gallons per year or the highest water year demand established during the preceding three years, whichever is greater.

Pflugerville will use its best efforts to remain in a position to furnish water sufficient for the reasonable demands of Purchaser but Pflugerville's obligation under this Contract shall be dependent on the amount of water available to Pflugerville from its own supply source.

If unavoidable distribution problems arise, Pflugerville reserves the right to further limit Purchaser's quantity of water to be taken on an hourly, daily, and/or monthly basis as Pflugerville determines necessary to preserve adequate water for both parties.

#### Water Conservation Plan

Pflugerville has adopted a Water Conservation Plan that provides for year round Water Conservation measures. The Purchaser hereby agrees to comply with all provisions of Pflugerville's Water Conservation Plan that is in effect or hereafter adopted. See attached

Exhibit A. If there is a change in Pflugerville's Water Conservation Plan, written notice of such change shall be mailed to the Purchaser.

C. Rates

Purchaser agrees to purchase water at the rate of \$ \_\_\_\_ 4.97 \_\_\_\_ /1,000 gallons, hereinafter referred to as the Contract Rate, which shall be the effective rate from the date of execution of this agreement until one (1) year thereafter; provided, that the price of the water to Purchaser shall never be less than the amount charged any "Commercial Class" water user for the same quantity under Pflugerville's standard established rate making schedules. Purchaser agrees that the Pflugerville City Council has the right to revise the rate schedule from time to time to cover all reasonable, actual, and expected costs, including the costs of future water supplies. It is specifically understood and agreed that, in increasing or decreasing the standard established rate for "Commercial Class" customers of Pflugerville within its corporate limits, Pflugerville shall act in good faith, and any such increase or decrease in such standard rate shall be based upon valid economic reasons substantially relating to the costs of Pflugerville supplying such water. Pflugerville shall give sixty (60) days advance written notice of any rate change to Purchaser. If the rate hereunder increases by more than 100% at any given time, Purchaser may terminate this Contract by providing at least thirty (30) days written notice to Pflugerville.

D. Payment

Pflugerville agrees to render a statement of charges for the base rate monthly. Payment is due upon receipt of the statement. Purchaser agrees to pay promptly. Payment will be in a lump sum which is due thirty (30) days from receipt of the statement.

E. Additional Water Supplies

If Purchaser develops or acquires additional water supplies from any source other than Pflugerville, resulting in reduced quantity needed from Pflugerville, then Pflugerville is released from the obligation to supply the contract amount mutually established under Part II. B. of this Contract. In such event, Pflugerville may adjust its supply obligation to levels commensurate with Purchaser's reduced demand.

F. Maintain Facilities and Equipment

Purchaser agrees to construct and install all pipeline, valves, Master Meter(s), fittings and appurtenances required to meet the quantity and demand requirements set forth in paragraph B. of this Section. All facilities constructed by the Purchaser, including the Master Meter(s), in order to meet quantity and demand requirements as set forth in paragraph B of this Section, will be owned and maintained by the Purchaser.

Both parties to this Contract shall have access to such meter equipment at all reasonable times. It shall be the duty of either party to this Contract to notify the other party in the event that the meter(s) is registering inaccurately or malfunctioning so the meter(s) can be promptly repaired. Each meter will be operated and maintained so as to record with commercial accuracy. Pflugerville will notify Purchaser prior to any meter tests. Either party has the right to request a meter be tested with the other party having the right to witness such test; provided however that Pflugerville shall test the meters at least once annually. If Purchaser requires that an independent testing service be used, Purchaser shall pay the cost of said testing service if the meter(s) is found to be accurate. If the meter(s) is found to be inaccurate, Pflugerville shall pay the costs of said testing service.

G. Unit of Measurement



The unit of measurement for water delivered hereunder shall be 1,000 gallons of water, U. S. Standard Liquid Measure.

H. Title to water

Title to all water supplied hereunder shall remain in Pflugerville to the delivery point(s). From such point(s) (whether metered there or not), title shall pass to Purchaser.

I. Hold Harmless

**To the extent permitted by law, Purchaser agrees to indemnify, hold harmless, and defend Pflugerville and its officers, agents, and employees from and against all liability for any and all claims, liens, suits, demands, and/or actions for damages, injuries to persons (including death), property damage (including loss of use), and expense, including court costs, attorneys' fees, and other reasonable costs occasioned in connection with the transportation, delivery and disposal of said water while title to the water remains with Purchaser unless caused by the negligence or willful misconduct of Pflugerville.**

J. Acquisition of Facilities

If Purchaser moves or abandons the designated delivery point(s), Purchaser shall pay all costs incurred in relocating the delivery point(s).

If Pflugerville annexes any area in which the equipment, facilities, or easements of the Purchaser are located, the ownership and/or title to such equipment, facilities, or easements shall remain with the Purchaser subject to the rights and liens of the lending agency to the Purchaser. In the event Pflugerville requests the removal, replacement, or relocation of any equipment or facilities such as meters, pumps, or air gap reservoirs, the expense for such removal, replacement, or relocations, shall be borne by Pflugerville. The parties agree this agreement controls over any current/future annexation provisions enacted.

In the event Pflugerville purchases any facilities under this contract, Pflugerville shall pay present fair market value less depreciation as set forth in this paragraph.

The present fair market value shall be based on the present total cost of pipe, labor, and installation less depreciation. The usable life shall be 40 years from the date of actual installation. For example, if the line was installed 10 years previous to the time of acquisition, the line shall be depreciated 1/4 of its present cost of installation and the Purchaser shall be paid 3/4 of the present cost of installation.

These two provisions shall mean that Purchaser shall be paid (1) all expense for removal, replacement, or relocation of facilities, and (2) fair market value for any facilities acquired by Pflugerville, if Pflugerville requests relocation of facilities.

The provisions of this paragraph II. J. are limited to the water supply line, pump station, storage tank and appurtenances thereto located along the water supply line routing between Pflugerville and Purchaser as defined in paragraph II. A. Any facility acquisition, relocation, or removal by Pflugerville shall not affect Pflugerville's obligation to provide water to Purchaser under this Contract.

CITY OF PFLUGERVILLE, TEXAS  
WINDERMERE UTILITY CO., INC.

Business Address:  
Director of Utilities

\_\_\_\_\_  
Pflugerville, Texas 79604

By: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Secretary (City Seal)

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

SWWC UTILITIES, INC. D/B/A

Business Address:

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_