

**AMENDED AND RESTATED AGREEMENT FOR THE TRANSFER OF WATER
CERTIFICATE OF CONVENIENCE AND NECESSITY SERVICE AREA
(Property Within City Limits)**

THIS AGREEMENT FOR THE TRANSFER OF WATER SERVICE AREA (the "Agreement") is made and entered into by and between MANVILLE WATER SUPPLY CORPORATION ("Manville"), a Texas non-profit water supply corporation and member-owned retail public utility, operating under the provisions of Chapter 67, Texas Water Code, and the CITY OF PFLUGERVILLE, TEXAS ("Pflugerville"), a Texas home rule municipality operating a retail public water utility. The parties may be referred to collectively herein as the "Parties."

WHEREAS, Manville holds a water certificate of convenience and necessity identified as CCN 11144 by the Texas Public Utility Commission ("Manville CCN") that authorizes and obligates Manville to provide potable water service within Manville CCN area, which includes certain lands hereinafter described that, as a result of growth of Pflugerville, now are within the corporate limits of Pflugerville; and

WHEREAS, Pflugerville also holds a water CCN identified as CCN 11303 by the Texas Public Utility Commission ("Pflugerville CCN") that authorizes and obligates Pflugerville to provide potable water service to the area covered by the Pflugerville CCN; and

WHEREAS, the Parties have determined that it is in the best interests of both Parties and of future landowners and developers within the area identified herein that the full range of Pflugerville municipal water services, including fire flow protection, be available to the certificated area involved herein; and

WHEREAS, the Parties previously entered into an Agreement for the transfer of water and certificate of convenience and necessity service area on December 9th, 2019 (the Previous Agreement); and

WHEREAS, the Public Utility Commission ("PUC") has mandated certain requirements which make the Previous Agreement unworkable; and

WHEREAS, the Parties desire to establish this new Agreement as evidence of their joint and collaborative written consent and agree to amend their respective CCNs through the Texas Public Utility Commission ("PUC") pursuant to the various processes established by Chapter 13 of the Texas Water Code ("TWC"), as more specifically detailed herein, to transfer the desired portions of the Manville CCN to the Pflugerville CCN for single certification, while agreeing to interim dual certification in certain areas for Manville's continued provision of potable water service to its existing customers until such time as the services can be transferred to Pflugerville, in accordance with the terms of this Agreement, to ensure that there will be no interruption of service or change in service to existing Manville customers; and

WHEREAS, the Parties desire, consent and agree that one purpose of the Agreement is to serve as Manville's consent to decertify the certificated area involved herein for transfer to and incorporation into the Pflugerville CCN area.

WHEREAS, the Parties desire, consent and agree that another purpose of the Agreement is to serve as notice to Manville of Pflugerville's intent to provide service in its incorporated area as described in Rule §24.259(c) of the Texas Administrative Code ("TAC"); and

WHEREAS, the Parties agree to the modification of the Manville CCN and the Pflugerville CCN to incorporate the terms of this Agreement into their respective CCNs, and by these presents wish to designate the areas to be served by Manville and Pflugerville under the terms and conditions herein and for consideration herein set out.

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the receipt and sufficiency is hereby acknowledged, Manville and Pflugerville agree as follow:

I. Recitals

Manville and Pflugerville agree that the recitals above are hereby incorporated into this agreement as essential terms and conditions, which are enforceable, and the parties mutually rely on the recitals in entering into this agreement.

II. Transfer

Section 2.01

a. The Parties agree that those certain areas located within the corporate limits of Pflugerville, and also the Manville CCN, on the day prior to the effective date of this Agreement, consisting of 2,604.97 acres of land more specifically described by map attached hereto as **Exhibit A** (hereinafter "CCN Transfer Area") and incorporated herein, shall be immediately dual certificated and incorporated into the Pflugerville CCN while also remaining in the Manville CCN by agreement pursuant to Section 13.255(a) of the TWC and Rule §24.259(d) of the TAC. The Parties agree that dual certification is only necessary to comply with PUC requirements for those certain properties in which Manville continues to supply potable retail water service to Legacy Customers or Interim Manville Applicants, as defined in Section 4.02 of this Agreement. The Parties agree that areas within the Transfer Area that do not contain Legacy Customers or Interim Manville Applicants, as defined in Section 4.02 of this Agreement, shall be immediately decertificated from the Manville CCN and transferred to and incorporated into the Pflugerville CCN for single certification by agreement pursuant to Section 13.255(a) of the TWC and Rule §24.259(d) of the TAC.

b. Notwithstanding anything to the contrary, the Parties agree that upon a Transfer Event, as defined in Section 4.05 of this Agreement, Pflugerville may, in its sole discretion, decertify the area within the Transfer Area affected by the Transfer Event from the Manville CCN for single certification in the Pflugerville CCN. In the event Pflugerville elects to decertify an area within the Transfer Area from the

Manville CCN for single certification in the Pflugerville CCN, Pflugerville shall file an application for such transfer with the PUC, and Manville shall consent to the transfer and shall not withhold its consent.

Section 2.02 The Parties agree, consent and shall file this Agreement with the PUC to incorporate the terms of this Agreement and the CCN Transfer Area into the Pflugerville CCN for single or dual certification, as applicable, under the authority and by the virtue of TWC § 13.255(a), wherein the law provides that in the event that an area is located within the incorporated area of a municipality, the municipality and a retail public utility that provides water service to all or part of an area pursuant to a certificate of convenience and necessity may agree in writing that all or part of the area may be served by a municipality owned utility with said agreement providing for single or dual certification for all or part of the area and such other or additional terms as the parties may agree on. And, therefore, both Parties hereto agree that this Agreement qualifies as a TWC § 13.255(a) agreement and shall be filed with the PUC, and the PUC on receipt of this Agreement shall incorporate the terms of this Agreement into the respective certificates of convenience and necessity of the parties to this Agreement in accordance with the TWC and TAC.

Section 2.03 This Agreement is binding on the Parties to the extent permitted by law. Notwithstanding anything contained herein, the CCN Transfer Area acquisition and transfer consented to and agreed to by the Parties within this Agreement and this Agreement as a whole shall remain contingent upon the approval by the PUC and by the United States Department of Agriculture-Rural Development (“USDA”), if applicable, and any other governmental entity having regulatory jurisdiction over the subject matter (collectively, the “Regulatory Authorities”). Manville and Pflugerville agree to cooperate in good faith and use their best efforts to participate and assist each other in the efforts, including without limitation, the timely filing of all necessary consents, documents or satisfaction of other Regulatory Authorities requirements to obtain approval by all state and federal entities necessary to give effect to this Agreement and the incorporate of the CCN Transfer Area into the Pflugerville CCN.

Section 2.04 Pflugerville shall pay all costs associated with the PUC application process and shall be responsible for preparing and filing on behalf of the Parties all appropriate applications to the PUC. If applicable, Manville shall take all necessary actions and pay all costs associated with securing the consent of the USDA for the transfer of the CCN Transfer Area.

III. Consideration

In consideration of the foregoing transfer of the CCN Transfer Area, and as full compensation to Manville for loss of service area, Pflugerville will pay the sum of ONE THOUSAND FOUR HUNDRED DOLLARS AND NO CENTS (\$1,400.00) per acre for a total payment of THREE MILLION SIX HUNDRED FORTY-SIX THOUSAND NINE HUNDRED FIFTY-EIGHT DOLLARS AND NO CENTS (\$3,646,958.00). Payment shall be made in one lump sum, in cash and held in escrow by a mutually agreeable financial institution with offices in Pflugerville to be paid to Manville upon incorporation of the terms of this Agreement into the respective CCNs by the Public Utility Commission of Texas (“PUC”) and upon approval by any other necessary Regulatory Authorities, if any. The Parties agree and stipulate that the sum aforesaid is a reasonable

compensation to Manville for the loss of the CCN Transfer Area, and that payment is in lieu of all other forms of compensation including those provided for in TWC § 13.255.

IV. Existing Manville Customers, Interim Customers and Infrastructure

Section 4.01 No Manville real or personal property interests, easements, lines, storage or production facilities, or other utility infrastructure of any description shall convey to Pflugerville as a result of this Agreement.

Section 4.02 All existing customers, whether wholesale or retail, of Manville and Pflugerville contained within the CCN Transfer Area shall remain customers of Manville and Pflugerville, respectively. No existing customers of either of the Parties shall be required to change providers as a result of this Agreement. Manville will continue to provide service to currently existing Manville customers being served by Manville in the CCN Transfer Area as of the effective date of this Agreement (“Legacy Customers”) and will provide service to any new applicants in the CCN Transfer Area already connected to the Manville water system between the execution of this Agreement and the date the PUC incorporates terms of this Agreement into the Pflugerville and Manville CCNs (“Interim Manville Applicants”). Pflugerville shall provide service to all new applicants in the CCN Transfer Area applying for service on and after the date the PUC incorporates the terms of this Agreement into the Pflugerville and Manville CCNs pursuant to TWC § 13.255 and 16 TAC §24.229(c). Pflugerville shall thereafter provide continuous and adequate service to all applicants for service within the CCN Transfer Area.

Section 4.03 In accordance with section 4.02 above, both parties hereto acknowledge and agree that the Agreement shall serve as written consent to allow the other Party, as a retail public utility, to continue to provide service in the CCN Transfer Area before and after the transfer of the CCN Transfer Area to Pflugerville as provided in Section II above as contemplated by TWC § 13.255(a) until such time as said services ultimately transition to Pflugerville, in accordance with this Agreement.

Section 4.04 To the extent permitted by law, following the incorporation of the terms of this Agreement and single or dual certification, as applicable, to Pflugerville of the CCN Transfer Area, Pflugerville shall be solely obligated under TWC § 13.250 to provide continuous and adequate service to all new applicants within the CCN Transfer Area and all customers within the CCN Transfer Area that are not Manville’s Legacy Customers or Interim Manville Applicants, unless otherwise agreed to by the Parties. Upon incorporation of the terms of this Agreement into the respective CCNs, Manville shall not establish new service to any new customers in the CCN Transfer Area, regardless of whether that customer has acquired real property previously served by Manville. Further, upon a Transfer Event, as described in Section 4.05, water service for Manville’s Legacy Customers, Interim Manville Applicants and any other customers located within the CCN Transfer Area affected by such Transfer Event shall transfer from Manville to Pflugerville. Manville shall inform and require the Legacy Customer, Interim Manville Applicant and any other customer located within the CCN Transfer Area affected by a Transfer Event to contact Pflugerville for service and shall provide Pflugerville a copy of such notice. Notwithstanding anything herein to the contrary, the Parties may agree based on extenuating circumstances that it would

be more appropriate and feasible for Manville to continue to serve such customers until such time as may be agreed to between the Parties.

Section 4.05 A Transfer Event is defined as an event in which a Manville Legacy Customer, Interim Applicant or any other customer located within the CCN Transfer Area shall be required to apply for water service with Pflugerville rather than Manville. A Transfer Event shall consist of the following:

1. A new certificate of occupancy has been requested by a Manville Legacy Customer, Interim Applicant, or other customer located within the CCN Transfer Area which Pflugerville determines is necessary for the proposed change of use and that a Pflugerville water line is available;
2. Redevelopment consisting of demolition of existing structures or other actions that result in the disconnection of water service from Manville's water system;
3. Mutual agreement among Pflugerville, Manville, and a customer to transfer service;
4. Request by a Manville Legacy Customer, Interim Applicant, or other customer located within the CCN Transfer Area and where a Pflugerville water line is available; or
5. Construction of new structures, buildings, or accessory dwellings requiring new water service or that result in a change of LUE in water service.

V. General Provisions

Section 5.01 Previous Agreement Terminated, Entire Agreement, Modifications and Amendments. The Previous Agreement is hereby terminated and this Agreement constitutes the sole agreement between the Parties hereto relating to the subject matter, and supersedes any and all prior understandings, negotiations, representations, letters of intent or agreements, whether written or oral including but not limited to the Previous Agreement. This Agreement shall be subject to change, amendment or modification only with the mutual written consent of both Parties.

Section 5.02 Severability. The provisions of this Agreement are not severable. If any provision or part of this Agreement or the application thereof to any person or circumstance shall ever be held by any agency, regulatory authority, or court of competent jurisdiction to be unenforceable, invalid, or unlawful for any reason, this Agreement shall terminate and be deemed null and void, and the Parties shall return to their positions prior to the execution of this Agreement.

Section 5.03 Good Faith. Each Party agrees that neither Party will unreasonably withhold or unduly delay any consent, approval, decision, determination, or other action which is reasonably required or permitted under the terms of this Agreement, it being agreed and understood that each Party shall act in good faith and shall at all times deal fairly with the other Party.

Section 5.04 Governing Law and Venue. The terms and provisions hereof shall be governed by and in accordance with the laws of the State of Texas and the United States of America as may be from

time to time in effect. Travis County, Texas shall be the place of venue for all proceedings arising under this Agreement.

Section 5.05 Counterparts. This Agreement may be executed in as many counterparts as may be convenient or required. All counterparts shall collectively constitute a single instrument and it shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart.

Section 5.06 Titles and Headings. The title of this Agreement, titles and headings of articles or sections hereof are inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be given effect in construing this Agreement for any provision hereof or in ascertaining intent.

Section 5.07 Authority. By their execution hereof each of the undersigned parties represents and warrants to the other Party that he or she has full authority to execute the document in the capacity shown. Approval of this document, and execution thereof has been approved by lawful action of the City Council of Pflugerville, Texas, and the Board of Directors of Manville Water Supply Corporation. Pflugerville further represents that the CCN Transfer Area is duly within Pflugerville's incorporated area pursuant to ordinance or other actions as described in **Exhibit B**, attached hereto.

Section 5.08 Attorney's Fees. If either Party retains an attorney to enforce this Agreement, the Party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

Section 5.09 Binding Effect. This Agreement shall bind and inure to the benefit of the Parties and their respective successors and permitted assigns.

Section 5.10 Waiver of Default. It is not a waiver of or consent to default if the non-defaulting Party fails to declare immediately default or delays in taking any action. Pursuit of any remedies set forth in this Agreement does not preclude pursuit of other remedies in the Agreement or provided in law.

Section 5.11 Notices. 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, 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.

Notice to Pflugerville shall be sent to the following:

City of Pflugerville
P.O. Box 589
Pflugerville, Texas 78691
512-990-6100

Notice to Manville shall be sent to the following:

Manville Water Supply Corporation
13805 S. SH 95
Coupland, Texas 78615
512-856-2488

Section 5.12 Recitals/ Exhibits. Any recitals in this Agreement are represented by the Parties to be accurate and constitute a part of the substantive agreement. All exhibits referenced herein are attached hereto and incorporated by reference herein for all purposes.

Section 5.13 Assignability. The Agreement may not be assigned by either Party, their respective successors or permitted assigns, without the prior written consent of the other Party, said consent shall not be unreasonably conditioned, delayed or withheld.

Section 5.14 Counterparts. This Agreement may be executed in multiple counterparts. Each counterparts will be deemed an original instrument, but all of the counterparts will constitute one and the same instrument.

Section 5.15 Specific Performance. The Parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they are entitled at law or in equity.

EXECUTED IN MULTIPLE ORIGINALS THIS _____ day of _____, 2020.

Manville Water Supply Corporation

By: _____
Jack Atterstrom, President

Attest: _____

Name, Title: _____

City of Pflugerville

By: _____
Sereniah Breland, City Manager

Attest: _____
Karen Thompson, City Secretary

Exhibit A

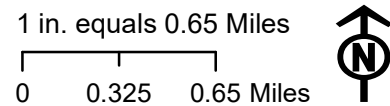
Pflugerville City Limits Requested CCN Acquisition Area with Dual and Single Certification Boundaries

Acreage by Section

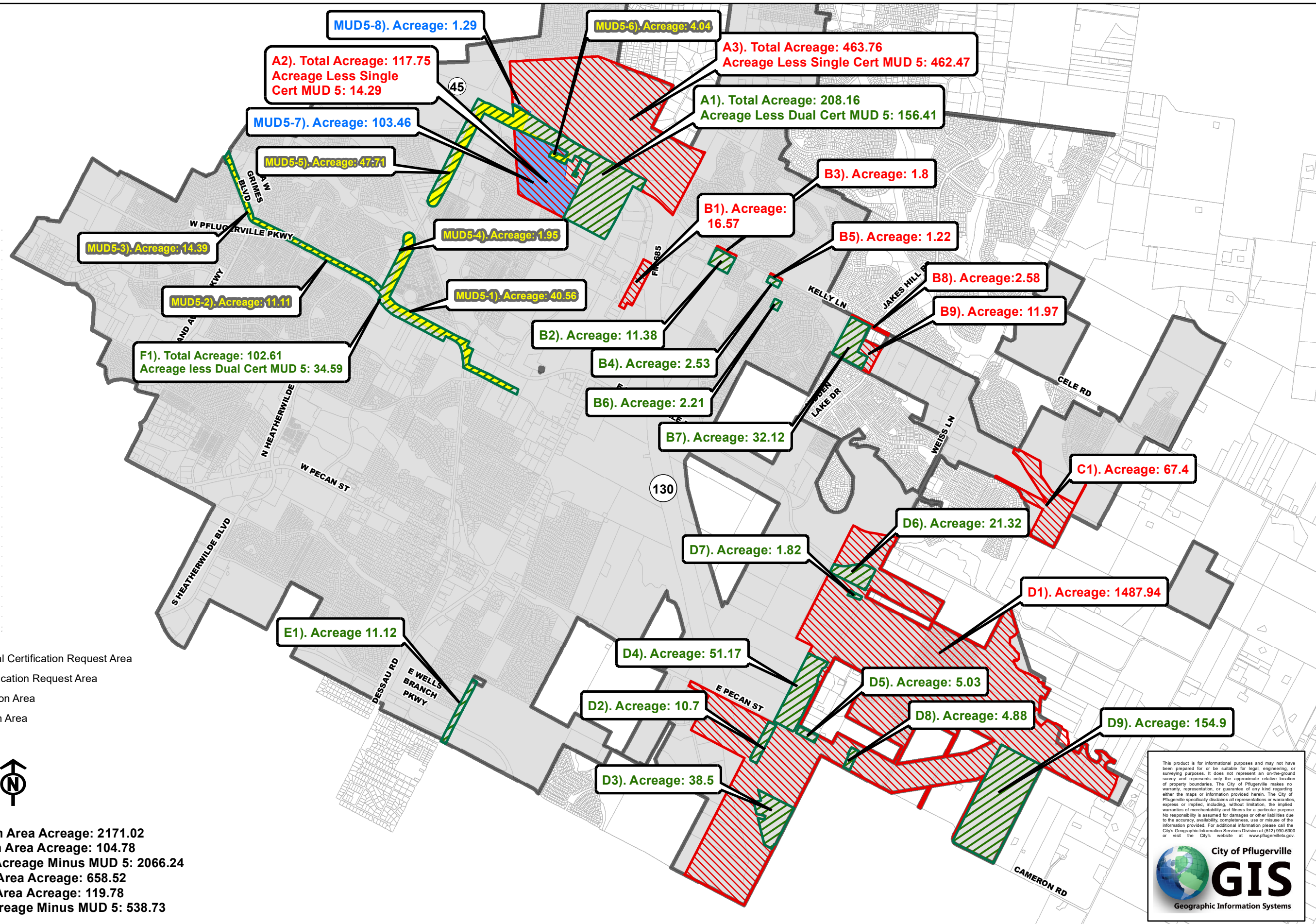
Section Number	Certification	Acreage
A1	Dual	208.16
B2	Dual	11.38
B4	Dual	2.53
B6	Dual	2.21
B7	Dual	32.12
D2	Dual	10.7
D3	Dual	38.5
D4	Dual	51.17
D5	Dual	5.03
D6	Dual	21.32
D7	Dual	1.82
D8	Dual	4.88
D9	Dual	154.9
E1	Dual	11.12
F1	Dual	102.61
F1	Dual	102.61
Dual Certification Area Acreage Total		658.52
A2	Single	117.75
A3	Single	463.76
B1	Single	16.57
B3	Single	1.8
B5	Single	1.22
B8	Single	2.58
B9	Single	11.97
C1	Single	67.4
D1	Single	1487.94
Single Certification Area Acreage Total		2171.02
MUD5-1	Dual	40.56
MUD5-2	Dual	11.11
MUD5-3	Dual	14.39
MUD5-4	Dual	1.95
MUD5-5	Dual	47.71
MUD5-6	Dual	4.04
Dual Certification MUD 5 Acreage Total		119.78
MUD5-7	Single	103.46
MUD5-8	Single	1.29
Single Certification MUD 5 Acreage Total		104.78

Arterials For Labels

-  Pflugerville/Manville Dual Certification Request Area
-  Pflugerville Single Certification Request Area
-  MUD 5 Single Certification Area
-  MUD 5 Dual Certification Area
-  Pflugerville City Limits



TOTAL Single Certification Area Acreage: 2171.02
MUD 5 Single Certification Area Acreage: 104.78
Single Certification Area Acreage Minus MUD 5: 2066.24
TOTAL Dual Certification Area Acreage: 658.52
MUD 5 Dual Certification Area Acreage: 119.78
Dual Certification Area Acreage Minus MUD 5: 538.73



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. The City of Pflugerville makes no warranty, representation, or guarantee of any kind regarding either the maps or information provided herein. The City of Pflugerville specifically disclaims all representations or warranties, express or implied, including, without limitation, the implied warranties of merchantability and fitness for a particular purpose. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, completeness, use or misuse of the information provided. For additional information please call the City's Geographic Information Services Division at (512) 995-6300 or visit the City's website at www.pflugerville.gov.




Exhibit B