

CONTRACT FOR THE PURCHASE AND SALE  
OF WHOLESALE WATER, FOR THE  
TERMINATION OF PRE-EXISTING CONTRACTS,  
AND RELATED MATTERS

THIS AGREEMENT is made by and between Manville Water Supply Corporation, a Texas non-profit water supply corporation and member-owned retail public utility, operating under the provisions of Chapter 67, Texas Water Code (hereinafter "Manville"), and the City of Pflugerville, Texas, a Texas home-rule municipality (hereinafter the "City").

RECITALS

Whereas, on or about September 18, 1996, Manville entered into a contract (hereinafter the "Contract") to provide an exclusive wholesale water supply to North Travis County Municipal Utility District No. 5 (hereinafter, the "District"); and

Whereas, the District was absorbed into the City by annexation of the District, and the City thereby became the substitute obligor under the Contract; and

Whereas, Manville and the City entered into a modification of the Contract by a document styled First Amendment to Agreement for Providing Wholesale Water Service (hereinafter "First Amendment") and a subsequent modification of the Contract by a document styled Second Amendment to Agreement for Providing Wholesale Water Service (hereinafter "Second Amendment") ; and,

Whereas, the parties desire to cancel the existing contractual relationship created by the Contract and the First and Second Amendments and to enter into a new wholesale water supply contract as set forth in this Agreement; and

NOW THEREFORE, in consideration of the premises and the mutual promises, covenants, obligations, and benefits herein contained, the receipt, adequacy, and sufficiency of which are acknowledged, stipulated, and confessed, Manville and the City contract and agree as follows:

#### I. TERMINATION OF CERTAIN EXISTING AGREEMENTS

1.01 Upon the effective date, the Contract, First Amendment and the Second Amendment thereto are terminated and for all purposes cancelled has agreed to herein, subject to the provisions of Section 4.12 hereof. The City and Manville each release the other from any and all obligations and waive any benefit from the Contract and all Amendments.

This mutual release and waiver is unlimited, save the provisions of Section 4.12 hereof, and includes all obligations and benefits obtained by the parties derived from the Contract and Amendments, including, but are not limited to:

- A) any obligation by Manville to sell, provide and/or deliver wholesale water to serve the geographic boundaries of the former North Travis County Municipal Utility District No.5;
- B) any contractual obligation or benefit to collect impact fees attributable to the area of the former District;

1.02 In connection with the City's release of Manville's obligation to provide wholesale water to the area referred to as NTCMUD #5 and the City's assumption of the water needs previously served by Manville under the Contract, the parties recognize that certain small areas of the Manville Certificate of Convenience and Necessity lie within the area described as NTCMUD#5 and are served by the City. To the extent that Manville does not and has never provided retail water service to an area within NTCMUD#5 located within Manville's existing CCN, the parties agree to use their best efforts to identify such areas and, secure the transfer of such areas to the City's Certificate of Convenience and Necessity by appropriate regulatory action as part of this agreement and without additional consideration by either party.

#### II. 2014 PURCHASE AND SALE OF WHOLESALE WATER AGREEMENT

2.01 Manville and the City agree that Manville will sell and the City will purchase on a "take-or-pay" basis six hundred eighty five thousand (685,000) gallons per day of wholesale water, for a period of time equal to the currently remaining term of the District

wholesale Contract (terminated above), at Manville's wholesale rate as from time to time amended.

2.02 Manville will deliver the said wholesale water to the City through one or more metered points of delivery, the initial point of delivery being the Pflugerville water treatment plant. Other points of delivery may be from time to time agreed upon by the respective engineers for Manville and the City. If the respective engineers are unable to agree on a point or points of delivery, the engineer for Manville may designate the point or points.

2.03 The construction of infrastructure to implement this contract, whether on the City side of the meter(s) or the Manville side of the meter(s), shall be installed at the sole cost and expense of the City. The water shall be owned by Manville until it passes through the meter(s) at the point(s) of delivery, and thereupon shall be owned by the City. Manville shall bear no responsibility for supply, distribution, or pressure issues of any description, other than providing the quantity of water herein specified, and shall have no responsibility for pressure or distribution issues on the downstream (City) side of the meter(s). Manville does not warrant any specific pressure at the point(s) of delivery.

2.04 Manville, at the sole cost and expense of the city, and in addition to any infrastructure described in Section 2.03 hereof, shall construct sufficient infrastructure to transport 685,000 gallons of water per day from the Manville Church meter, along Pflugerville Parkway, to the east side of FM 685, and into the City's treatment plant. This is estimated to require approximately 6,800 feet of twelve inch water line, to be placed in private property easements to be owned by Manville. Upon completion of the said infrastructure and acceptance of the work by Manville, the City shall reimburse Manville for the full cost and all expenses of the work.

2.05 Any expense incurred by Manville for the infrastructure to implement this contract as referenced in sections 2.03 and 2.04 or otherwise in this agreement shall be approved by the City prior to the expense being made. Failure to obtain approval of the expense waives any obligation by the City to reimburse Manville for such expense under this or any other agreement.

2.05 Any individual or retail users to whom service is provided pursuant to this agreement shall be retail customers of the City, and shall not be third-party beneficiaries of this agreement. The City shall be solely responsible for operating and managing its internal distribution and service lines, including but not limited to establishing rates, fees

and charges for its retail operations, and maintaining pressure adequate to its needs within its service area.

2.06 The City agrees to pay Manville a rate per 1000 gallons of water supplied to the City established in the manner and in accordance with the procedures herein set out. The monthly rate for the first year following the date of execution of this agreement and thereafter until changed as herein provided (the "Initial Monthly Rate") shall be \$ 3.25 per one thousand (1,000) gallons.

2.07 Beginning with calendar year 2015 and each year thereafter, the monthly rate is subject to adjustment at Manville's option, based on the supply, operation and maintenance costs incurred by Manville in providing wholesale service to the City for the preceding calendar year and in accordance with standard rate setting principles applied by state water regulatory authorities. Under no circumstances, however, shall the monthly rate fall below the Initial Monthly Rate herein set out. Manville's standard uniform wholesale rate, as from time to time amended, and for so long as Manville maintains a uniform wholesale rate, shall be conclusively deemed a reasonable and appropriate rate under this agreement.

2.08 One or more water meters will be installed, at City's expense, at each point(s) of delivery to measure the amount of water provided by Manville to the City. Each month Manville shall read the water meters and determine the number of gallons of water provided to the City for the preceding month. If the monthly amount of water taken is less than or equal to 685,000 gallons per day, Manville will submit a statement of charges to the City for 685,000 gallons of water per day for the period covered by the statement. If the amount of water taken exceeds 685,000 gallons per day for that period, Manville will submit a statement of charges for 685,000 gallons of water per day for the period covered by the statement, plus a surcharge of twenty percent (20%) of the monthly rate for any overage. Within ten (15) business days of receipt of a statement for monthly charges from Manville by the Finance Department, the City will pay the statement unless there is a dispute regarding the accuracy of the billing. The dispute will be resolved by consultation between the engineers for Manville and the City. The undisputed amount of the statement shall be paid in full within the ten day period.

2.09 Manville may, at its option, install valves at each point of delivery, to limit delivery of water to 685,000 gallons per 24 hour period.

2.10 All water meters shall be calibrated at least once a year if requested by the City. City shall have access to the water meters at all times for readings and for

observation of calibration tests. If any water meter is in error by two percent (2%) or more, Manville's charge to the City for water during the period in question shall be increased or decreased, as appropriate, based on the difference in the amount of water furnished to the City for one-half of the time period since the previous calibration, or three months, whichever is shorter.

2.11 The parties agree and stipulate that this 2014 Purchase and Sale of Wholesale Water Agreement constitutes a written contract for the purchase and sale of goods or services as described in Texas Local Government Code Sections 271.151-271.160, and that governmental immunity is waived for purposes of adjudicating claims for breach hereof.

### III. ASSIGNMENT OF CROSS COUNTY CAPACITY AGREEMENT

3.01 On or about October 23, 2008 the City and Cross County Water Supply Corporation entered into a contract styled "Water Capacity Reservation Agreement Between Cross County Water Supply Corporation and the City of Pflugerville", the purpose of which, *inter alia*, is the reservation of 500,000 gallons per day of capacity in a Cross County pipeline. Execution of this agreement shall serve as an assignment of all of the City's rights, benefits, and obligations under that contract to Manville. The City agrees to execute any other documents Manville deems necessary to give effect to the assignment granted by this agreement (Water Capacity Reservation Agreement attached as Exhibit A). To the extent that the consent of Cross County Water Supply Corporation is required to effectuate this assignment, the City shall secure all necessary consents. If consents cannot be obtained Manville, at its option, may elect to terminate this contract in its entirety, and the provisions of Section 4.12 shall apply.

### IV. MISCELLANEOUS PROVISIONS

4.01 No Manville real property interests, easements, lines, storage facilities, or other infrastructure convey to the City as a result of this agreement.

4.02 No existing retail customers of Manville shall be served by the City as a result of this agreement.

4.03 No provision of this agreement shall come into effect prior to the date on which City begins taking wholesale water from Manville under the terms of this agreement.

4.04 To the extent that this contract may require the approval or consent of the United States Department of Agriculture-Rural Development or any state regulatory

authority, this contract is contingent upon any such approval being granted. Manville will, upon execution of this contract by all parties, diligently seek such approval(s).

4.05 The implementation of all provisions of this agreement other than the provision of water by Manville, shall be at the sole cost and expense of the City, and without cost to Manville.

4.06 Execution of this Agreement has been authorized by lawful and appropriate action of the Board of Directors of Manville Water Supply Corporation and by the City Council of the City of Pflugerville, Texas, as a valid and official act and deed of each entity.

4.07 No waiver or waivers of any breach or default by either party hereto of any term, covenant, condition, or liability hereunder, or of performance by the other party of any duty or obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind under any circumstances.

4.08 In the event either party is rendered unable wholly or in part, by reason of force majeure to carry out any obligation under this agreement, then the obligations of such party to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time shall be suspended during the continuance of any inability so caused. As soon as reasonably possible after the occurrence of the force majeure event relied upon, the party whose obligations are affected shall give notice and full particulars of such event to the other party. Such cause, to the extent possible, shall be remedied with all reasonable diligence. The term "force majeure" shall mean acts of God, strikes, lockouts or similar industrial disturbances, acts of police, terrorism or an enemy, orders of governmental entities of the United States or the State of Texas, judicial decrees, insurrections, riot, epidemics, landslides, lightening, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, interruption of water supply, breakage of lines or infrastructure, partial or complete failure of water supplies, and other incapacities of either party similar to those enumerated which are not within the control of the party claiming inability.

4.09 By executing this contract, Manville certifies that it is eligible to contract with the City of Pflugerville pursuant to Chapter 38 of the City of Pflugerville Code of Ordinances.

4.10 This agreement is subject to change or modification only by execution of a writing signed by authorized representatives of each party hereto, upon approval by the governing board or council of each party.

4.11 Effective Date: This agreement shall be effective upon the later of the following events:

A) Execution by the Parties, or

B) All infrastructure necessary for the delivery of water provided for in this agreement, including but not limited to improvements that are outlined in this agreement and any additional improvise that are not reflected in this agreement but necessary to the delivery of water to the area served and any other additional water infrastructure shall be complete and operational, as indicated and acknowledge in writing by the parties.

4.12 Notwithstanding any term or provision herein the the contrary, if any infrastructure necessary for the delivery of water provided for in this Agreement, or for the delivery of water by the City to the former MUD 5, including but not limited to that infrastructure referred to in Sections II and IV hereof, and if the City does not initiate delivery of its own water to the former MUD 5, and if the transition to City water service is not complete and operational within two (2) years from the execution of this Agreement, Manville may, at its option, terminate this Agreement in its entirety. In that event, the Contract and the First and Second Amendments to the Contract shall be in full force and effect for the remainder of the original term thereof, as if this Agreement had never been formalized.

#### ADDRESSES FOR NOTICE

All notices to the City shall be delivered to City Hall, City of Pflugerville, Texas, Attention: City Manager, (Physical Address: 100 E. Main St., Suite #300, Pflugerville, Texas 78691, or Mailing Address: City Manager, City Hall, City of Pflugerville, P.O. Box 589, Pflugerville, Texas 78691)

All notices to Manville WSC shall be delivered to Manville WSC, Attention: General Manager (Physical Address: 108 N. Commerce St., Coupland, Texas, or Mailing Address: General Manager, Manville WSC, P.O. Box 248, Coupland, Texas 78615)

----- **Execution page follows**-----

Negotiated Final Contract for the Purchase and Sale of Wholesale Water, for the Termination of Pre-Existing Contracts and Related Matters

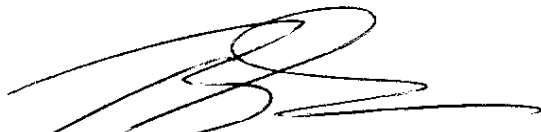
Executed in multiple originals this <sup>on</sup> 3/19<sup>th</sup> day of March, 2014.

Agreed and Executed with the authority of the Board of Directors of the Manville Water Supply Corporation:



By: David Reichel, President

Agreed and Executed with the authority of the City Council of the City of Pflugerville, Texas:



By: Brandon Wade, City Manager



**WATER CAPACITY RESERVATION AGREEMENT BETWEEN CROSS COUNTY WATER SUPPLY CORPORATION AND THE CITY OF PFLUGERVILLE**

THE STATE OF TEXAS                    §  
                                                  §  
COUNTY OF TRAVIS                   §

This Water Capacity Reservation Agreement (hereinafter, this "Agreement") is entered into as of this 23rd day of October, 2008 by and between **Cross County Water Supply Corporation**, a Texas non-profit water supply corporation created under the provisions of Chapter 67 of the Texas Water Code ("Cross County") and the **City of Pflugerville**, a Texas home-rule municipality (the "City").

**RECITALS**

**WHEREAS**, Cross County is in the process of constructing a water pipeline for purposes of providing a water supply to municipalities, private corporations and other entities (the "Pipeline");

**WHEREAS**, Cross County desires to acquire an easement across real property owned by the City for the proposed right-of-way for the Pipeline;

**WHEREAS**, the City desires to reserve capacity within the Pipeline;

**WHEREAS**, the City and Cross County desire to enter into this Agreement setting forth the terms and conditions pursuant to which the City will grant an easement interest in real property owned by the City for purposes of constructing the Pipeline, and pursuant to which Cross County will grant the City a guaranteed reservation and commitment of capacity within the Pipeline.

Therefore, for and in consideration of the mutual promises, covenants, obligations and benefits of this Agreement, the receipt and sufficiency of which are acknowledged, Cross County and the City contract and agree as follows:

**I. DEFINITIONS**

1.01 Definitions. In addition to the terms defined elsewhere in this Agreement or in the City's ordinances, the following terms and phrases used in this Agreement will have the meanings set out below:

Connection Facilities: "Connection Facilities" means the improvements to be constructed at the Point of Entry to deliver, measure and monitor water introduced by the City into the Pipeline at the Point of Entry.

Effective Date: The date when one or more counterparts of this Agreement, individually or taken together, bear the signature of all parties.

Point of Entry: "Point of Entry" means the point of connection between the Connection Facilities and the Pipeline, said Point of Entry being the Point of Entry Meter.

Point of Entry Meter: "Point of Entry Meter" means the meter to be installed, owned and operated by Cross County at the Point of Entry for purposes of measuring the quantity of water introduced into the Pipeline by the City.

## II. CONVEYANCE OF EASEMENT

2.01 Grant of Easement. The City agrees to convey to Cross County a Waterline Easement substantially in the form attached hereto as **Exhibit "A"** for the ownership, operation, installation, repair, replacement and maintenance of a water line (the "Easement"). The City agrees that it shall execute the Easement simultaneously upon execution of this Agreement. Cross County agrees to record the executed Easement in the Real Property Records of Travis County, Texas and to provide a copy of the recorded easements to the County upon receipt.

## III. RESERVATION OF CAPACITY

3.01. Guarantee and Reservation of Capacity. Upon completion of the Pipeline, 500,000 gallons per day of capacity in the Pipeline shall be reserved for and committed to the City for a period of ten (10) years beginning on the effective date of this Agreement, subject to renewal under Section 5.01 below. The City shall not transfer such capacity to any other entity or person without the prior written consent of the City, which consent will not be unreasonably withheld.

3.02 Ownership. Title to all water introduced into the Pipeline by the City shall remain in the City prior, and subsequent, to passing through the Point of Delivery Meter.

3.03 Initial Rate. Cross County shall charge and the City shall pay Cross County for City owned water actually introduced into the Pipeline at the applicable rate and under the billing, payment, and collection procedures as established by Cross County and as amended from time to time. The initial rate for water introduced by the City into the Pipeline at the Point of Entry shall be \$0.25 per 1000 gallons; the quantity of water introduced shall be determined by the Point of Entry Meter. Cross County will notify the City at least 60 days before any rate increase for the City becomes effective. Any increase in rate for the City must be based upon an increase in the actual cost of operating and maintaining the Pipeline.

3.04 Quality. The water delivered by Seller to Buyer at the Point of Delivery will be potable water of a quality conforming to the applicable requirements of the Texas Commission on Environmental Quality, as amended, for wholesale water to be used for human consumption or other domestic use and shall not adversely impact the operation of the Pipeline.

3.05 Credit. The City shall receive a credit of twenty thousand dollars (\$20,000.00) towards any payments due to Cross County under this agreement as additional consideration.

#### IV.

#### CONSTRUCTION OF FACILITIES

4.01 Construction by Cross County. Cross County shall construct, or cause the construction of, the Pipeline in a good and workmanlike manner, and all material used in such construction will be substantially free from defects and fit for its intended purpose. Cross County agrees to maintain the Pipeline in proper working order. Only upon completion of the Pipeline shall the City be entitled to exercise any rights under this agreement.

4.02 Construction by City. If and when the City desires to exercise its rights under this Agreement, the City, at its sole expense, will design and construct, or cause the design and construction of, the Connection Facilities and all facilities required to introduce water into the Pipeline at the Point of Entry. The City will coordinate the construction of the Connection Facilities with Cross County to ensure that the Connection Facilities and all facilities required to deliver a supply of water to the Point of Entry are properly installed and connected to the Pipeline. The City shall be solely responsible for, and shall promptly pay, the costs of the Connection Facilities including, without limitation, all costs of design, engineering, materials, labor, construction and inspection arising in connection with the Connection Facilities. The City agrees to maintain all of these facilities in proper working order.

#### V.

#### MISCELLANEOUS PROVISIONS

5.01 Term. This Agreement shall be effective as of the Effective Date, and shall continue in effect for ten (10) years unless this Agreement is terminated sooner by its terms or by agreement of the Parties. The City shall have the option to renew and extend this Agreement for three (3) successive terms of (10) years each, on the same terms and conditions listed herein, with the rates to be adjusted as stated in Section 3.03 herein. The City shall provide written notice of its option to renew and extend any such term of this Agreement by providing not less than sixty (60) days prior written notice of such option to Cross County. If the City fails to provide said written notice, the Agreement shall be automatically renewed and extended for the ten (10) year option term noted above.

5.02 Termination

(a) Only if the City is current on all payments due to the Cross County under this Agreement, the City may terminate this Agreement without recourse at any time by providing at least thirty (30) days prior written notice to Cross County. Any such termination shall be effective thirty (30) days after such notice is given.

(b) Cross County, at its sole option, may terminate this Agreement without recourse should the City fail to comply with the terms and conditions for payment, after giving notice and opportunity to cure in accordance with this Agreement.

(c) Upon termination of this Agreement, the City shall discontinue introducing water into the Pipeline. Cross County may physically seal or disconnect the Pipeline from the Connection Facilities as may be necessary to prevent the further delivery of water at the Point of Entry.

(d) Upon termination for any reason, the City shall remain liable for all fees and charges accruing under the Agreement through the date of termination. In no event shall termination of this Agreement affect the title of Cross County in the interest conveyed by the Easement.

5.03 Severability; Waiver. If any provision of this Agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the parties that the remainder of this Agreement not be affected, and, in lieu of each illegal, invalid, or unenforceable provision, that a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms to the illegal, invalid or enforceable provision as is possible.

Any failure by a party to insist upon strict performance by the other party of any material provision of this Agreement will not be deemed a waiver thereof or of any other provision, and such party may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement.

5.04 Applicable Law and Venue. The interpretation, performance, enforcement and validity of this Agreement is governed by the laws of the State of Texas. Venue will be in a court of appropriate jurisdiction in Travis County, Texas.

5.05 Entire Agreement. This Agreement contains the entire agreement of the parties. There are no other agreements or promises, oral or written, between the parties regarding the subject matter of this Agreement. This Agreement can be amended only by written agreement signed by the parties. This Agreement supersedes all other agreements between the parties concerning the subject matter.

5.06 Exhibits, Headings, Construction and Counterparts. All exhibits referred to in or attached to this Agreement are incorporated into and made a part of this Agreement for all purposes. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs. Wherever appropriate, words of the masculine gender may include the feminine or

neuter, and the singular may include the plural, and vice-versa. The parties acknowledge that each of them have been actively and equally involved in the negotiation of this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting party will not be employed in interpreting this Agreement or any exhibits hereto. If there is any conflict or inconsistency between the provisions of this Agreement and otherwise applicable City ordinances, the terms of this Agreement will control. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument. This Agreement will become effective only when one or more counterparts, individually or taken together, bear the signatures of all of the parties.

5.07 Authority for Execution. The City certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with its City Charter and City ordinances. Cross County hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with Cross County's certificate of formation, bylaws and applicable State law.

5.08 Force Majeure. If, by reason of force majeure, either party is rendered unable, in whole or in part, to carry out its obligations under this Agreement, the party whose performance is so affected must give notice of such force majeure to the other party within a reasonable time after the occurrence of the event or cause relied upon, and the obligation of the party giving such notice, will, to the extent it is affected by such force majeure, be suspended during the continuance of the inability but for no longer period. The party claiming force majeure must endeavor to remove or overcome such inability with all reasonable dispatch.

The term "force majeure" 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 the State of Texas, or of any court or agency of competent jurisdiction or any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, vandalism, explosions, breakage or accidents to machinery, pipelines or canals, or inability on the part of a party to perform due to any other causes not reasonably within the control of the party claiming such inability.

5.09 Notice. Any notice given under this Agreement must be in writing and may be given: (i) by depositing it in the United States mail, certified, with return receipt requested, addressed to the party to be notified and with all charges prepaid; or (ii) by depositing it with Federal Express or another service guaranteeing "next day delivery", addressed to the party to be notified and with all charges prepaid; (iii) by personally delivering it to the party, or any agent of the party listed in this Agreement, or (iv) by confirmed facsimile with a confirming copy sent by one of the other described methods of notice set forth. Notice by United States mail will be effective on the earlier of the date of receipt or 3 days after the date of mailing. Notice given in any other manner will be effective only when received. For purposes of notice, the addresses of the parties will, until changed as provided below, be as follows:

CROSS COUNTY: Cross County Water Supply Corporation  
309 E. Main Street  
Round Rock, Texas 78664  
Attn: President

CITY: City Manager  
P.O. Box 589  
Pflugerville, Tx. 78691

The parties may change their respective addresses to any other address within the United States of America by giving at least five days' written notice to the other party.

**5.10 Representations and Warranties by Cross County.** If Cross County is a corporation, partnership or a limited liability company, Cross County warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of Cross County has been duly authorized to act for and bind Cross County.

**5.11 Franchise Tax Certification.** If Cross County is a corporate or limited liability company contractor, Cross County certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

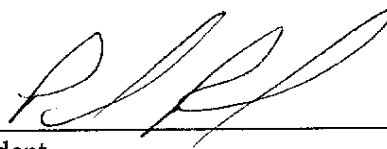
**5.12 Eligibility Certification.** Cross County certifies that the individual or business entity named in the Agreement is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate.

**5.13 Payment of Debt or Delinquency to the State or Political Subdivision of the State.** Pursuant to Chapter 38, *City of Pflugerville Code of Ordinances*, Cross County agrees that any payments owing to Cross County under the Agreement may be applied directly toward any debt or delinquency that Cross County owes the City of Pflugerville, State of Texas or any political subdivision of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

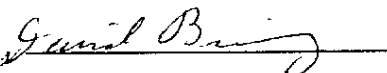
**5.14 Texas Family Code Child Support Certification.** Cross County certifies that none of the officers of the corporation are delinquent in child support obligations and therefore Cross County is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be signed, sealed and attested in duplicate by their duly authorized officers, as of the Effective Date.

**CROSS COUNTY WATER  
SUPPLY CORPORATION**

By:   
President

**CITY OF PFLUGERVILLE**

By:   
Name: David Buesing  
Title: City Manager

**WATERLINE EASEMENT**  
Cross County WSC

**THE STATE OF TEXAS**           §  
                                          §           **KNOW ALL BY THESE PRESENTS:**  
**COUNTY OF TRAVIS**           §

That City of Pflugerville, Texas, ("Grantor"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by CROSS COUNTY WATER SUPPLY CORPORATION ("Grantee"), the receipt and sufficiency of which is hereby acknowledged, does hereby GRANT, SELL, DEDICATE and CONVEY unto Grantee certain rights and interests in the nature of a perpetual waterline easement to construct, install, operate, maintain, inspect, reconstruct, enlarge, relocate, rebuild, repair, upgrade, abandon in place and remove lines, facilities, improvements and all necessary appurtenances, together with the express right to maintain the easement area by clearing and removing vegetation, silt and debris which interfere with the purposes of the easement therefrom, in, upon, over, under, above and across the following described property, to-wit:

A tract of land being approximately 2.90 acres, more or less, a part of the 72.883 acres out of the Sumner Bacon Survey No. 62, Abstract 63 owned by Grantor in Travis County, Texas, which is more particularly described on Exhibit "A" attached hereto and made a part hereof. Prior to the time the first water line and related facilities are installed the final location of the Easement shall be determined by metes and bounds survey and shall be limited to a strip of land fifty (50) feet in width.

The perpetual easement, right-of-way, rights and privileges herein granted shall be used for the purposes of location, placement, relocation, construction, operation, enlargement, maintenance, alteration, repair, rebuilding, removal and patrol of waterline facilities, to-wit: lines, access facilities and related equipment, all necessary conduits, valves, vaults, manholes, ventilators and appurtenances, drainage pipes and all other subsurface waterline structures, and any necessary accessories, operations or facilities.

This conveyance is made and accepted subject to any and all conditions and restrictions, if any, relating to the hereinabove described property to the extent, and only to the extent, that the same may still be in force and effect and shown of record in the office of the County Clerk of Travis County, Texas.

Except as otherwise noted, the easement, rights and privileges herein granted shall be perpetual, provided however that said easement, rights, and privileges shall cease and revert to Grantor in the event the utilities are abandoned, or shall cease to be used, for a period of five (5) consecutive years.





Other than as specifically provided herein, the easement, rights and privileges granted herein are exclusive, and Grantor covenants that it will not convey any other easement or conflicting rights within the premises covered by this grant, without the express written consent of Grantee, which consent shall not be unreasonably withheld. Grantee shall have the right to review any proposed easement or conflicting use of the easement to determine the effect, if any, on the facilities contemplated herein. Prior to granting its consent for other easements, Grantee may require reasonable safeguards to protect the integrity of the facilities thereon.

Grantor further grants to Grantee:

- (a) the right to remove any stone, earth, gravel or caliche which may be excavated in the opening, construction or maintenance of any waterline structure, improvement or facility;
- (b) the right of ingress to and egress from the easement over and across Grantor's property by such route or routes as shall occasion the least practicable damage and inconvenience to Grantor, and to install gates in any fencing of Grantor if necessary to provide access to the Easement area;
- (c) the right from time to time to trim and to cut down and clear away any and all trees and brush now or hereafter on the easement and to trim and to cut down and clear away any trees on either side of the easement which now or hereafter in the opinion of Grantee may be a hazard to any of the facilities thereon, by reason of the danger of falling thereon or root infiltration therein, or which may otherwise interfere with the exercise of Grantee's rights hereunder.
- (d) the right to mark the location of the easement by suitable markers set in the ground; provided that such markers shall be placed in fences or other locations which will not interfere with any reasonable use of the easement.
- (e) In addition to the permanent easement area granted above, Grantor also grants Grantees a temporary workspace easement which shall not exceed 50 feet in width. Said 50 foot wide temporary workspace easement shall run along and parallel to the eastern boundary of the permanent easement. The temporary construction easement shall terminate and the easement rights and improvements constructed within the easement area shall revert to and become the responsibility of the Grantor, Grantor's successors, and assigns, and all interest conveyed shall terminate upon the expiration of Eighteen (18) months after beginning of construction of the Project within the permanent easement area, or on the date of completion of construction of the Project, whichever occurs first.

Grantee hereby covenants and agrees:

- (a) Grantee shall either cause to be replaced, or provide compensation for replacement of, any fence on Grantor's property which is relocated as a result of

the activities described herein;

- (b) Grantee shall promptly backfill any trench made by it on the easement and repair any damage it shall do to Grantor's property;
- (c) Grantee shall indemnify Grantor against any loss and damage which shall be caused by the exercise of the rights of ingress and egress or by any wrongful or negligent act or omission of Grantee's agents or employees in the course of their employment.

Grantor also retains, reserves, and shall continue to enjoy the surface of such easement for any and all purposes which do not interfere with and prevent the use by Grantee of the easement. Grantor shall have and retain the right to use and install wastewater lines and water lines owned by the Grantor in the easement area provided that the installation, location, maintenance and operation of such wastewater lines and water lines shall comply with all applicable State and Federal Regulations regarding separation and placement of such additional facilities at all times and shall not otherwise adversely affect Grantee's use of the easement. Prior to installation Grantee shall be allowed to review any plans for water and wastewater lines of Grantor in the easement, and may require reasonable safeguards if necessary to protect the integrity of Grantee's facilities.


Grantee shall have the right and privilege at any and all times to enter said premises, or any part thereof, for the purpose of constructing and maintaining said waterline facilities, and for making connections therewith; all upon the condition that Grantee will at all times after doing work in connection with the construction or repair of said facilities restore the surface of said premises which are outside the scope, purposes, or required use of the easement as nearly as is reasonably possible to the condition in which the same was in before the work was undertaken.

Grantor agrees to execute a Memorandum of Waterline Easement upon request of Grantee. Grantee will have the option of recording such Memorandum, in lieu of recording this agreement, in the appropriate County Records for such purposes.

TO HAVE AND TO HOLD the rights and interests described unto Grantee and its successors and assigns, forever, and Grantor does hereby bind itself, and its successors and assigns, and legal representatives, to warrant and forever defend, all and singular, the above-described easement and rights and interests unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming, or to claim same, or any part thereof.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed this 16<sup>th</sup> day of October, 2008.

GRANTOR

  
\_\_\_\_\_  
City of Pflugerville, Texas

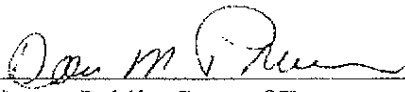
ACKNOWLEDGMENT

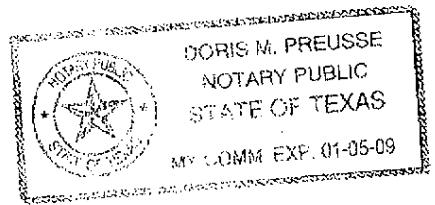
THE STATE OF TEXAS

§  
§  
§

COUNTY OF Travis

This instrument was acknowledged before me on this the 16<sup>th</sup> day of October, 2008, by Doris M. Preusse, for the purposes and consideration and in the capacity therein expressed.

  
Notary Public, State of Texas



Prepared in the office of:

Sheets & Crossfield, P.C.  
309 East Main Street  
Round Rock, Texas 78664

After recording return to:

Spitzer & Associates, Inc.  
1406 Hether Street  
Austin, Texas 78704



Professional Land Surveying, Inc.  
Surveying and Mapping

Office: 512-443-1724  
Fax: 512-441-6987

2807 Manchaca Road  
Building One  
Austin, Texas 78704

72.883 ACRES

SUMNER BACON SURVEY NO. 62, ABSTRACT NO. 63

A DESCRIPTION OF 72.883 ACRES OF LAND, MORE OR LESS, OUT OF THE SUMNER BACON SURVEY NO. 62, ABSTRACT NO. 63, TRAVIS COUNTY, TEXAS, AND BEING ALL OF THAT CERTAIN 72.95 ACRE TRACT CONVEYED TO CLIFTON L. GONZENBACH, BY WARRANTY DEED DATED FEBRUARY 12, 1982, RECORDED IN VOLUME 9414, PAGE 408 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS; SAID 72.883 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS.

BEGINNING at a Mag nail with shiner set in the north right-of-way line of Gregg Lane (right-of-way width varies) for the southwest corner of said 72.95 acre tract and the apparent southeast corner of an 101.50 acre tract described in Volume 1094, Page 157 of the Deed Records of Travis County, Texas, from which a 1/2" rebar found in the north right-of-way line of said Gregg Lane and south line of said 101.50 acre tract, bears North 62°49'09" West, a distance of 1543.87 feet;

THENCE North 27°42'35" East, with the west line of the 72.95 acre tract and apparent east line of the 101.50 acre tract, a distance of 2535.49 feet to a fence post for corner found for the northwest corner of the 72.95 acre tract and apparent northeast corner of the 101.50 acre tract, from which a 1/2" rebar found bears North 62°33'15" West, a distance of 1704.84 feet;

THENCE South 62°54'25" East, with the north line of the 72.95 acre tract, a distance of 1022.62 feet to a 1/2" rebar with cap set for the northeast corner of the 72.95 acre tract and the northwest corner of a 85.85 acre tract described in Document No. 2001084245 of the Official Public Records of Travis County, Texas, from which a 1/2" rebar found for the northeast corner of said 85.85 acre tract and also being the southeast corner of a 170.00 acre tract described in Volume 2802, Page 475 of the Deed Records of Travis County, Texas, bears South 62°54'25" East, a distance of 1221.53 feet;

THENCE with the east line of the 72.95 acre tract and west line of the 85.85 acre tract, the following nine (9) courses:

1. South 27°19'24" West, a distance of 62.75 feet to a 1/2" rebar found;
2. South 08°39'20" East, a distance of 391.55 feet to a 1/2" rebar found;
3. South 42°27'13" East, a distance of 342.43 feet to a 1/2" rebar found;

EXHIBIT "A"

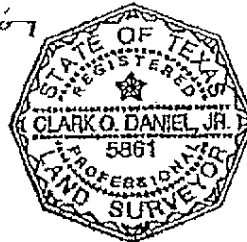
4. South 12°07'07" East, a distance of 202.89 feet to a 1/2" rebar found;
5. South 22°15'41" East, a distance of 176.99 feet to a 1/2" rebar with cap set;
6. South 05°41'16" West, a distance of 230.74 feet to a 1/2" rebar with cap set;
7. South 21°17'16" West, a distance of 465.91 feet to a 1/2" rebar with cap set;
8. North 59°26'44" West, a distance of 1218.97 feet to a 1/2" rebar found;
9. South 25°56'18" West, passing at a distance of 1150.32 feet a fence post found and passing at a distance of 1154.32 feet, a 1/2" rebar with cap set in the north right-of-way line of Gregg Lane, being the southwest corner of the 85.85 acre tract and continuing for a total distance of 1159.38 feet to a 1/2" rebar with cap set for the southeast corner of the 72.95 acre tract;

**THENCE** North 62°49'09" West, with the north right-of-way line of Gregg Lane and the south line of the 72.95 acre tract, a distance of 799.77 feet to the **POINT OF BEGINNING**, containing 72.883 acres of land, more or less.

Surveyed on the ground in March, 2007. Bearing Basis: Grid Azimuth for Texas Central Zone, 1983/93 HARN Values from LCRA control network. Attachments: Drawing 271-004-TL1.

*Clark O. Daniel* | 03.30.2007

Clark O. Daniel, Jr.  
Registered Professional Land Surveyor  
State of Texas No. 5861



After Recording Please Return To:

City of Pflugerville

PO Box 589 Ste. 300

Pflugerville TX 78691

*City Manager's Office*

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

*Dana DeBeauvoir*

2008 Aug 01 11:30 AM 2008130172

BARTHOD \$36.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS

*Recorder's Memorandum-At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.*