

**AGREEMENT REGARDING WHOLESALE  
WASTEWATER SERVICE**

**THIS AGREEMENT REGARDING WHOLESALE WASTEWATER SERVICE** (“Agreement”) is made by and between the City of Pflugerville, a Texas home rule city (the “City”) and Lakeside Municipal Utility District No. 5 (the “District”), a municipal utility district organized under the laws of the State of Texas.

**RECITALS**

- A. The District is located in the extraterritorial jurisdiction of the City and within the area that the City provides wholesale wastewater services (“Services”) to the District.
- B. The City is willing to provide wholesale wastewater service to the District.
- C. The City and District desire to set forth in writing the terms and conditions for wastewater service from the City to the District.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual promises and agreements of the parties set forth below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

**I.  
WHOLESALE WASTEWATER  
SERVICE FROM PFLUGERVILLE FOR SERVICE AREA**

**1.01 Agreement to Provide Wholesale Wastewater Service.** Subject to the terms and conditions of this Agreement and all duly adopted regulations and ordinances of the City or any governing authority having jurisdiction over the Services, the City agrees to provide wholesale wastewater service to District. Subject to the terms and conditions of this Agreement, the District accepts the provision of wholesale wastewater service from the City.

**1.02 Description of Property to Receive Service from the City.** The Service provided under this Agreement shall include the tracts of land containing an area of approximately 452 acres, more or less, as shown on **Exhibit “A”** attached hereto (the “Service Area”). The Service Area is within the City’s Certificate of Convenience and Necessity (“CCN”).

**1.03 Maximum Limit of Service From the City.** The Service from the City to the District for the Service Area will be limited to a maximum of 1,045 Living Unit Equivalents. As utilized herein, the term “Living Unit Equivalent” or “LUE” means a unit of measurement 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 or whatever definition is written in the City Ordinances at the time that this Agreement is interpreted. Nothing herein

shall prevent the parties from contracting for or agreeing to additional wastewater service pursuant in separate written agreements, however, neither party is obligated to enter into such separate agreements.

**1.04 Minimum Criteria for Service.** Wastewater service provided by the City to the District for the Service Area shall be sufficient to collect, transport, and treat all wastewater from the Service Area subject to the maximum capacity limitation set forth in Section 1.03 above, the further terms and conditions of this Agreement, and all applicable rules and regulations of governmental agencies having jurisdiction over the services provided.

**1.05 Conditions Precedent to Service.** The Parties specifically agree that the commencement of Service to the Service Area shall be subject to the following conditions precedent:

- (i) Approval of this Agreement by the Pflugerville City Council;
- (ii) Construction of wastewater collection facilities (“Internal Facilities”) within the Service Area, at no cost to the City;
- (iii) District’s construction of the wastewater transportation facilities located at the Vine Creek List Station, as defined and depicted in the Amended and Restated Comprehensive Development Agreement, dated June 7, 2019, by and between Rowe Lane Development, Ltd., Robert M Tiemann and Carrie P. Tiemann, and the City (“Interconnection Facilities”) that will connect to the City’s existing wastewater collection system (“City’s System”), at no cost to City;
- (iv) The Interconnection Facilities and any new or replacement District Internal Facilities constructed after the effective date of this Agreement within the Service Area shall 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 Agreement, and other applicable law;
- (v) final inspection and approval by City of the Interconnection Facilities required to transport wastewater to the agreed points of connection to the City’s System, as defined in Section 1.06 of this Agreement;
- (vi) dedication of all Interconnection Facilities to the City;
- (vii) payment of all fees, including inspection fees to the City, costs, attorneys’ fees, and consulting fees associated with providing Service to the Service Area;
- (viii) 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 Service, and that Wholesale Service to District shall commence, which authorization shall not be unreasonably withheld or delayed.

(b) The City shall commence Wholesale Service to District within eight business days after satisfaction of the conditions set forth in this Section.

**1.06 Points of Connection for Service.** So that the City may provide the Service, the City System shall be connected to the wastewater facilities of the District at the agreed points of connection (the “Points of Connection”) as shown in that certain “NPWIS Construction and Participation Agreement” effective November 22, 2004, as amended, and as shown in that certain Vine Creek Wastewater Facilities Cost Sharing, Allocation/Reservation and Escrow Agreement, dated January 29, 2019, which is incorporated in the Amended and Restated Comprehensive Development and Consent Agreement (Lakeside MUD No. 5) dated June 7, 2019, and recorded in Document No. 2019089789, Official Public Records, Travis County, Texas.

**1.07 Manner of Connection.** The District’s Internal Facilities will be connected to the City System by the District’s construction of the Interconnection Facilities at the Points of Connection. The District will ensure that the Interconnection Facilities and Internal Facilities are constructed by the District in compliance with the approved plans and specifications, with such plans and specifications being designed in accordance with applicable regulations and construction standards of the City and the Texas Commission on Environmental Quality (“TCEQ”). In the event that there is any conflict between these regulations, standards and specifications, the more stringent regulations, standards and specifications will apply.

**1.08 Platting Process.** In accordance with the Amended and Restated Comprehensive Development and Consent Agreement (Lakeside MUD No. 5) dated June 7, 2019, the District will not make any connections in the Service Area unless the City platting process for the connections is complied with and the City’s Capital Recovery Fees have been paid as set forth in this Agreement.

**1.09 Approval of Plans.**

(a) All plans and specifications for Internal Facilities and Interconnection Facilities to be constructed by District shall be engineered and designed by a Texas Registered Professional Engineer hired by the District (“District Engineer”) and subject to the review and approval by a Texas Registered Professional Engineer engaged or employed by the City (“City Engineer”) prior to commencement of construction.

(b) City Engineer shall review and approve all plans and specifications of the Interconnection Facilities in accordance with this paragraph prior to District’s commencement of construction. District shall not commence construction of the Interconnection Facilities unless and until City Engineer provides its approval of all plans and specifications for the Interconnection Facilities in accordance with this paragraph. Approval shall be granted if it is issued by the City Engineer in writing either via electronic or postal mail, or otherwise deemed granted as set forth in this paragraph. City Engineer shall review and either (i) approve, or (ii) provide comments and/or request revisions with respect to, any plans or specifications submitted by District Engineer within twenty (20) business days after the District Engineer’s submission of the same. If City Engineer provides detailed comments or requested revisions to any plans, specifications, or both submitted by District Engineer, District Engineer shall resubmit any plans, specifications, or both addressing City Engineer’s comments or requested revisions within ten (10) business days of District Engineer’s receipt of such comments or requests, and City Engineer shall either (i) approve, or (ii) provide detailed comments and/or request revisions with

respect to, any resubmissions within ten (10) business days of such resubmission. Any extensions to the time periods set forth in this paragraph may be made so long as the Parties agree to the extension in writing before such time expires.

(c) If, after approval of plans and specifications for the Internal Facilities and Interconnection Facilities, District fails to enter a construction contract for those facilities within 1 year of the date of approval of such plans, District's Engineer must resubmit the plans and specifications for review and approval by the City Engineer to assure their conformity with City's or TCEQ's then current specifications, laws, ordinances, and regulations. If such plans and specifications do not conform to those existing standards, then, District will revise the plans and specifications to meet the City's or TCEQ's standards before commencement of construction.

**1.10 Notification of Commencement of Construction.** After all required approvals for construction of the Internal Facilities and the Interconnection Facilities are obtained, but prior to commencement of construction, District shall provide at least seven (7) days 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.

**1.11 Inspection and Acceptance of Facilities.**

(a) Notwithstanding City's final inspection of the Interconnection Facilities, District agrees that City has the right to make periodic inspections during the construction phase of the Internal Facilities and the Interconnection Facilities. Upon request, District shall 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 Interconnection Facilities by the City. Acceptance of Internal Facilities and the Interconnection Facilities is subject to final inspection and approval by the City.

(b) The Interconnection Facilities will be dedicated to the City by District for ownership, operation, and maintenance at such time that the developer has been reimbursed for the costs of such facilities and the District has obtained ownership of such facilities.

**1.12 As-Built or Record Drawings Required.** District shall provide as-built or record drawings of all completed treatment facilities, lift stations, force mains, and other facilities comprising District Sewer Facilities within the Service Area and the Interconnection Facilities to the City within 30 calendar days of the commencement of Service under this Agreement.

**1.13 Access to Interconnection Facilities.** Although the Interconnection Facilities are dedicated to the City by the District for operation and maintenance, upon providing at least 24-hours notice to the City, the District will have access to and the right to inspect the Interconnection Facilities at all times. The District will immediately notify the City of any necessary repairs that are discovered during any inspection conducted by the District.

**1.14 Minimization of Inflow and Infiltration.** The District agrees to have the District operator inspect, maintain, monitor and operate all Internal Facilities and Interconnection Facilities as often as necessary for the purpose of ensuring that inflow and infiltration into the

Internal Facilities and the Interconnection Facilities is minimized and the quantity of wastewater that the City must process for as part of the Service is minimized.

**1.15 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 Services delivered to District. The City shall impose such curtailments in a nondiscriminatory fashion. The parties agree that it will not be a breach of this Agreement if the City curtails 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. City shall use reasonable efforts to minimize the duration of the period of curtailment and, if the curtailment is due to the sole fault of the City, shall pay for or provide facilities and equipment necessary to pump and haul all District wastewater to alternate treatment facilities ("Pump and Haul") during the curtailment period. If the curtailment occurs due to circumstances not the sole fault of the City, then the District shall be responsible for paying for Pump and Haul during the curtailment period.

**1.16 Cooperation During Maintenance or Emergency.** The District shall cooperate with the City during periods of emergency or required maintenance. In the event the District enters into a Professional Services Agreement (PSA) with the City, the City shall 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, the protection of the public health, safety, and welfare and as required by TCEQ any other regulatory body having jurisdiction over the Services, and state and federal law.

**1.17 District and City Fees.** Except as otherwise set forth in this Agreement, the customers shall 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 Service under this Agreement, as a Capital Recovery Fee. Capital Recovery Fees will be collected and paid as described in Article II of this Agreement.

**1.18 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 shall 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 District will timely make payment to the City in accordance with the City's utility service requirements and regulations as amended from time to time.

(b) The City's wholesale wastewater rates may be subject to change from time to time by the City Council of the City as outlined in Section 1.20 below; provided, however, the initial rate under this Agreement is \$41.67 per LUE per month, and the monthly rate shall not fall below the \$41.67 per month per LUE rate.

**1.19 Pflugerville Policies and Ordinances Applicable to Service.** Unless otherwise provided in this Agreement, the Service provided from the City to the Service Area under this

Agreement shall not be unreasonably discriminatory and shall be consistent with the policies and ordinances of the City applicable to wholesale wastewater service.

**1.20 Rates Sufficient to Cover Pflugerville's Costs.** The monthly rate stated in Section 1.18 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 any and all of the City's costs of treatment of the wastewater from the Service Area. The City may initiate a cost of service study on an annual basis. The District will increase retail rates within thirty (30) day following an increase in rates by the City Council of the City to ensure that the City does not have to pay for the costs of treatment of the wastewater from the Service Area. The District will also reimburse the City as soon as possible, and no later than sixty (60) days following an increase in rates by the City Council of the City for any costs incurred by the City as a result of the rate increase prior to the District raising retail rates.

**1.21 Service Not Assignable or Transferable.** The District may not assign this Agreement, in whole or in part, to property outside of the Service Area.

## **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 the City's applicable Impact Fee for wastewater connections within the platted subdivision where the connection is located. The Capital Recovery Fee shall be paid to the City for each connection at the time of submittal of a building permit application for the connection. Upon payment of the Wastewater Capital Recovery Fee, the District shall have a guarantee of service for each LUE for which a Wastewater Capital Recovery Fee has been paid.

## **III. TERM AND TERMINATION**

**3.01 Term.** Unless terminated by mutual agreement of the parties hereto, this Agreement will continue in full force and effect for a period of fifty (50) years from the Effective Date hereof.

**3.02 Termination.** If either Party breaches any term or condition of this Contract, the non-breaching Party may provide the breaching Party with a notice of the breach within sixty (60) days of discovery of the breach by the non-breaching Party. Upon notice of breach, the breaching Party shall have sixty (60) days to cure the breach. If the breaching Party does not cure the breach within the sixty (60) days, the non-breaching Party shall have all rights at law and in equity, including the right to enforce specific performance of this Contract by the breaching Party, the right to perform the obligation in question and to seek restitution for all damages incurred in connection therewith, or the right to terminate this Agreement.

**3.03 Remedies Upon Default.** It is not intended hereby to specify (and this Agreement will not be considered as specifying) an exclusive remedy for a default by any party hereunder, but all remedies existing at law or in equity, including specific performance and

mandamus, will be cumulative and available to the non-defaulting party in the event of a default by any other party as to its duties or obligations hereunder.

**3.04 No Waiver Implied.** No waiver or waivers of any breach or default (or any breaches or defaults) by any party hereto of any term, covenant, condition, or liability hereunder, or of performance by any 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.

#### **IV. INDUSTRIAL DISCHARGE PROHIBITED**

##### **4.01 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, being more particularly described in Ordinances 1508-21-08-24 and 1509-21-08-24 ("IPP and FOG Ordinances"), which may be amended, modified, revised, and/or restated by the City Council of the City of Pflugerville;

(ii) discharge prohibitions for certain substances, being more particularly described in the IPP and FOG Ordinances, which may be amended, modified, revised, and/or restated by the City Council of the City of Pflugerville;

(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 the covenants set forth hereunder which occurs outside of the portion of the Service Area owned by such owner.

(c) District agrees to seek injunctive or other appropriate relief to prohibit wastewater discharges that District becomes 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 Agreement 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 District when and as such action is deemed necessary by the City.

## V. GENERAL PROVISIONS

**5.01 Authority.** This Agreement is made pursuant to the authority conferred in Texas Local Government Code, Section 552.001.

**5.02 Liability of District.** Liability for damages to third persons arising from the reception, transportation, delivery, and disposal of all wastewater discharged shall 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 shall 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. Notwithstanding the foregoing, nothing in this Agreement shall waive, or be construed to waive, any immunity of the District under applicable law.

**5.03 Liability of the City.** Subject to the foregoing, the City shall bear the responsibility as between the parties for the proper reception, transportation, treatment, and disposal of all wastewater properly delivered to the Points of Connection by District. The parties agree that this Agreement does not absolve District of liability for damages to the City's System or to third persons arising from the delivery by District of prohibited wastes or wastewater that is corrosive or otherwise damaging to the City's System or to persons or property. Notwithstanding the foregoing, nothing in this Agreement shall waive, or be construed to waive, any immunity of the City under applicable law.

**5.04 Severability.** If any word, phrase, clause, sentence, paragraph, section or other portion of this Agreement is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of this Agreement shall not be affected thereby and this Agreement shall be construed as if such invalid portion had never been contained herein and the provisions of this Agreement are expressly deemed severable for this purpose.

**5.05 Cooperation.** The parties hereto agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement.

**5.06 Entire Agreement.** This Agreement contains the entire agreement of the parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, respecting the subject matter hereof.

**5.07 No Presumption Against Drafter.** The parties understand, agree, and acknowledge that: (i) this Agreement has been freely negotiated by both parties; and (ii) that, in the event of any controversy, dispute, or contest over the meaning, interpretation, validity, or



enforceability of this Agreement, or any of its terms or conditions, there shall be no inference, presumption, or conclusion drawn whatsoever against either party by virtue of that party having drafted this Agreement or any portion thereof.

**5.08 Amendments.** Any amendment hereof must be in writing and shall be effective only if signed by the authorized representatives of the City and the District.

**5.09 Effect of Force Majeure.** If either party is rendered unable, wholly or in part, by force majeure to carry out its obligations under this Agreement, it is agreed that each party shall give written notice of such force majeure to the other party as soon as commercially reasonable after the occurrence of the cause relied on and shall, therefore, be relieved of its obligations, so far as they are affected by such force majeure, during the continuance of any inabilities so caused, but for no longer. The term “force majeure” includes acts of God, strikes, lockouts or other industrial disturbances, shortage of supply or supply chain issues, criminal conduct or sabotage, acts of the public enemy, orders of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, pandemics, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and civil disturbances, explosions, breakage, or accidents to equipment, pipelines, or canals, partial or complete failure of water supply or wastewater systems, and any other inabilities of either party, whether similar to those enumerated or otherwise, that are not within the control of the party claiming the inability and that could not have been avoided by the exercise of due diligence. It is understood and agreed that the settlement of strikes, lockouts and other industrial or labor disturbances shall be entirely within the discretion of the party having the difficulty and that the requirement that any force majeure be remedied with all reasonable dispatch shall not require the settlement of strikes, lockouts or other industrial or labor disturbances by acceding to the demands of the opposing party if the settlement is unfavorable to it in the judgment of the party having the difficulty. Force majeure shall relieve the City from liability to the District or any customer of the District for failure to provide wastewater service due to an inability covered by this Article. Force majeure shall not relieve the District of its obligation to make payment to the City for Service provided under this Agreement.

**5.10 No Amendment of Other Agreements.** This Agreement is separate from and shall not constitute an amendment or modification of any other agreement between the parties.

**5.11 No Third Party Beneficiaries.** This Agreement shall inure only to the benefit of the parties hereto and third persons not privy hereto shall not, in any form or manner, be considered a third party beneficiary of this Agreement.

**5.12 Assignment** The rights and obligations of the District arising under this Agreement shall only be assignable if (i) the assignee assumes all of the obligations of the District hereunder in writing, and (ii) written notice of the assignment, together with a fully executed copy of the written assignment and assumption document, is furnished to the City and the District.

**5.13 Applicable Law.** This Agreement shall be construed in accordance with Texas law.

**5.14 Venue.** Venue for any action arising hereunder shall be in Travis County, Texas.

**5.15 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, electronic mail, 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.

For the purposes of this Agreement, notice will be delivered to:

**THE DISTRICT:**

Lakeside Municipal Utility District No. 5  
c/o Montoya and Monzingo  
P.O. Box 2029  
Pflugerville, TX 78691  
Email: \_\_\_\_\_

**CITY OF PFLUGERVILLE:**

City Manager  
City of Pflugerville  
P. O. Box 589  
Pflugerville, Texas 78691  
Email: \_\_\_\_\_

**5.16 Exhibits.** The following exhibits are attached to this Agreement and incorporated herein by reference:

- Exhibit A - Description of the Service Area
- Exhibit B - Points of Connection and Interconnection Facilities for Service Area

**5.17 Counterparts.** This Agreement may be executed simultaneously in two (2) or more counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument. Each party represents and warrants that it has the full right, power and authority to execute this Agreement.

**5.18 Effective Date.** This Agreement shall be effective from and after the date of due execution hereof by all parties and approved by the City Council of the City of Pflugerville.

EXECUTED in multiple copies, on the \_\_\_\_\_ day of \_\_\_\_\_, each of which shall constitute an original, on the dates set forth below:

**Lakeside Municipal Utility District No. 5**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary

**CITY OF PFLUGERVILLE:**

By: \_\_\_\_\_  
Sereniah Breland, City Manager  
Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Trista Evans, City Secretary

**EXHIBIT “A”**

**SERVICE AREA**

**LAKESIDE MUD NO. 5 BOUNDARY MAP**