

RESOLUTION NO: _____

**RESOLUTION OF THE CITY OF PFLUGERVILLE, TEXAS
AUTHORIZING THE CITY MAYOR TO EXECUTE AN AGREEMENT FOR PASS-
THROUGH WASTEWATER SERVICE FOR 2300 ROWE LANE – BLACKHAWK
PLAZA WITH LAKESIDE MUNICIPAL UTILITY DISTRICT NO. 3 AND KANSAL
ESTATE LLC**

WHEREAS, the City of Pflugerville (City) is a CCN holder for wastewater service; and

WHEREAS, the City is authorized to provide wastewater service to property located within its CCN; and

WHEREAS, during the development process for 2300 Rowe Lane – Blackhawk Plaza (Development), a property located within the City’s CCN, it was determined that the closest wastewater line for connection belongs to Lakeside Municipal Utility District No. 3 (MUD); and

WHEREAS, the Developer desires to extend public (City owned/maintained) wastewater service and connect into the MUD line stub for the Development; and

WHEREAS, the MUD is agreeable to allow the Development to connect and pass-through this wastewater service for the City pursuant to the Agreement for Pass-Through Wastewater Service, attached as **Exhibit “A.”**

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PFLUGERVILLE, TEXAS:

1. The above recitals are hereby found to be true and correct by the City Council of the City of Pflugerville and incorporated herein for all purposes.
2. That the City Council authorize the City Mayor to execute the Agreement for Pass-Through Wastewater Service for 2300 Rowe Lane – Blackhawk Plaza, attached hereto as **Exhibit “A.”**

PASSED AND APPROVED this ___ day of August, 2020.

CITY OF PFLUGERVILLE, TEXAS

By: _____
Victor Gonzales, Mayor

ATTEST:

Karen Thompson, City Secretary

**AGREEMENT FOR PASS-THROUGH WASTEWATER SERVICE
[LOT 1, BLOCK 1, BLACKHAWK PLAZA]**

THIS AGREEMENT FOR PASS-THROUGH WASTEWATER SERVICE [LOT 1, BLOCK 1, BLACKHAWK PLAZA] (this "Agreement") is entered into effective as of the Effective Date (defined below), by and among LAKESIDE MUNICIPAL UTILITY DISTRICT NO. 3, a political subdivision of the State of Texas operating under Chapters 49 and 54 of the Texas Water Code (the "District"), KANSAL ESTATE LLC, a Texas limited liability company ("Kansal"), and the CITY OF PFLUGERVILLE, TEXAS, a home rule municipality located in Travis County, Texas (the "City"). The District, Kansal, and the City are sometimes referred to individually in this Agreement as a "Party" and collectively as the "Parties".

RECITALS:

A. The District purchases and receives wholesale wastewater service from the City pursuant to the Agreement Regarding Wholesale Wastewater Service dated March 22, 2007 between the District and the City (the "Wholesale Agreement").

B. Kansal is planning to develop Lot 1, Block 1, Blackhawk Plaza, a subdivision in Travis County, Texas, according to the map or plat thereof recorded under Document No. 2020_____ (the "Property"), with 12,000 square foot, single story building housing day care and retail and/or office uses. The City has represented to Kansal that 8 living unit equivalents ("LUEs") of wastewater capacity in the City's wastewater system are available for use by Kansal to serve the Property. However, because the City does not have existing wastewater lines in the area to which the Property could readily connect, Kansal has requested to use the District's wastewater system on a pass-through basis in order to obtain retail wastewater service from the City to the Property.

C. The Parties desire to enter into this Agreement to set forth the terms and conditions on which the City and Kansal may utilize the District's wastewater system to provide wastewater service to the Property on a pass-through basis.

AGREEMENT

For and in consideration of the mutual promises, covenants, obligations, and benefits of this Agreement, the Parties contract and agree as follows:

Section 1. Recitals. The above and foregoing recitals are incorporated herein by reference.

Section 2. Pass-Through Wastewater Service.

A. Authorization of Pass-Through Service. Subject to the terms and conditions of this Agreement, the City may connect a wastewater line owned by it (the "City Wastewater Line") to the District's wastewater lines (the "District Wastewater Lines") and wastewater collection system at the point of connection identified as the "Blackhawk Plaza Connection Point" on Exhibit "A" attached hereto (the "District Wastewater Point of Connection") to allow the City to provide up to 8 LUEs of retail wastewater service to the Property using the District's wastewater system on a pass-through basis. The District has reviewed its current capacity and has determined that it has the wastewater capacity to allow 8 LUEs of wastewater to pass from the

Property through its wastewater lines to the City's wastewater system in accordance with this Agreement.

B. Limitations and other Conditions of Service.

1. Notwithstanding anything else in this Agreement to the contrary, in no event will the City or Kansal, without the prior written consent of the District, deliver through the District's wastewater system more than 8 LUEs of wastewater from the Property measured at the District Wastewater Point of Connection.

2. The District has and will continue to have its guaranteed reservation and commitment of 1,300 LUEs of wastewater capacity from the City under the Wholesale Agreement. None of the LUEs of capacity guaranteed and reserved to the District under the Wholesale Agreement will be utilized to serve the Property under this Agreement. Instead, the City is committing 8 LUEs of wastewater capacity directly to the Property and will simply be using the District's wastewater system to provide retail wastewater service to the Property on a pass-through basis.

3. To the extent that Kansal desires to make improvements to the Property that would impact wastewater generation, Kansal will submit all plans and specifications for such improvements to the District prior to construction of such improvements so that the District may confirm that wastewater generated from such improvements will not exceed the maximum limit set forth in this Agreement. Each submission will include an engineer's calculation of LUEs of wastewater service proposed and the peak wet weather wastewater flows that will be generated by the improvements, and such calculation will be subject to confirmation and approval by the District. Further, within ten days after approval by the applicable governmental authority, Kansal will provide the District with copies of all approved site plans, and amendments thereto. Kansal will be solely responsible for the cost of any infrastructure improvements to Kansal's or the City's wastewater systems that are necessary to enable the City to provide retail wastewater service to the Property. Upon Kansal's completion of the City Wastewater Line in accordance with the approved site plan for the Property, the City will accept the City Wastewater Line for operation and maintenance.

4. **THE DISTRICT WILL HAVE NO LIABILITY OF ANY KIND OR NATURE WITH RESPECT TO WASTEWATER FACILITIES LOCATED ON THE PROPERTY OR THE CITY WASTEWATER LINE, AND KANSAL WILL INDEMNIFY, DEFEND, AND HOLD THE DISTRICT AND ITS DIRECTORS, OFFICERS, EMPLOYEES, CONSULTANTS, AGENTS, AND REPRESENTATIVES HARMLESS FROM AND AGAINST ANY AND ALL COSTS, DAMAGES, LIABILITIES (INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS OF LITIGATION), SUITS, ACTIONS, LEGAL, OR ADMINISTRATIVE PROCEEDINGS, DEMANDS, FINES, PUNITIVE DAMAGES, LOSSES, COSTS, OR CLAIMS OF ANY KIND OR NATURE (COLLECTIVELY, "COSTS") THAT ARISE BECAUSE OF OR IN CONNECTION WITH THE USE, OPERATION, OR MAINTENANCE OF WASTEWATER FACILITIES LOCATED ON THE PROPERTY OR THE**

CITY WASTEWATER LINE. SUCH OBLIGATION APPLIES WHETHER ACTUAL OR ALLEGED NEGLIGENT ACTS OR OMISSIONS OF THE DISTRICTS CAUSED THE LOSS IN WHOLE OR IN PART; PROVIDED HOWEVER, IN THE EVENT OF ANY JOINT OR CONCURRENT LIABILITY BETWEEN THE DISTRICT AND KANSAL, KANSAL'S OBLIGATIONS HEREIN WILL BE REDUCED BY THE PERCENTAGE OF NEGLIGENCE OR FAULT APPORTIONED TO THE DISTRICT.

5. Kansal and the City will be responsible for ensuring that all discharges of industrial waste from the Property comply with federal, state, and municipal requirements regarding pretreatment and monitoring of industrial waste and other prohibited waste. Any compliance or enforcement efforts or pretreatment requirements will be established and monitored by the City in accordance with the City's ordinances; however, the District will be entitled to inspect the facilities constructed to serve the Property and the connections at the District Wastewater Point of Connection and to test the wastewater received at the District Wastewater Point of Connection. If any test reflects that any wastewater other than domestic wastewater is being received at the District Wastewater Point of Connection, pretreatment of such wastewater will be required, in accordance with the City's ordinances, at the expense of the discharging party. The District will not have any obligations regarding the required pretreatment of such wastewater. The City will not impose any fee, charge, or fine upon the District for any violation of any ordinance, rule, regulation, or agreement caused by wastewater received at the District Wastewater Point of Connection, nor will the City impose upon the District any surcharge that is caused by wastewater received at the District Wastewater Point of Connection.

6. The 8 LUEs of wastewater service authorized under this Agreement may only be used to provide wastewater service to Kansal for the Property. Except as expressly authorized by this Agreement for pass-through wastewater service to the Property, neither Kansal nor the City may connect, or allow any other person or entity to connect, directly or indirectly, any other facilities, persons, or property to the District's wastewater system without the prior written consent of the District. If Kansal or the City does so, the District may immediately terminate this Agreement and/or require Kansal or the City, as applicable, to immediately terminate service to the facilities, persons, or property that have been connected in violation of this Agreement. The District reserves the right to deny for any reason any request by Kansal or the City to increase the level of service under this Agreement or to serve any other facilities, persons, or property.

C. Capacity Charge. For the 8 LUEs of pass-through wastewater service capacity made available to the Property under this Agreement, Kansal will pay a non-refundable capacity charge of \$18,550 to the District (the "Capacity Charge"). The Capacity Charge must be paid on or before the Effective Date.

D. Operation & Maintenance Payment. The District will invoice Kansal for a prorata portion of the costs of the operation and maintenance of the District Wastewater Lines used to provide pass-through wastewater service to the Property under this Agreement (the "Operation & Maintenance Payments"). The Operation & Maintenance

Payments will be allocated based on the ratio of the number of LUEs of pass-through wastewater service capacity made available under this Agreement to the Property (provided that such number will not include any LUEs for which the Capacity Charges have been paid until such LUEs are actually being utilized) to the total number of wastewater LUE capacity in the District Wastewater Lines, as set forth on **Exhibit "B"** attached hereto (the "*Prorata Allocation*"). The Operation & Maintenance Payments will be paid by Kansal within thirty days after receipt of the invoice. The Operation & Maintenance Payments will be in addition to any other payments required by this Agreement. Interest charges for any overdue Operation & Maintenance Payments will be paid by Kansal in accordance with Texas Government Code Section 2251.025.

E. **Payment for Retail Service.** The City will bill wastewater customers within the Property directly for retail wastewater services furnished to such customers.

Section 3. Default. In the event of default by a Party, each nondefaulting Party may give to the defaulting Party written notice of such default specifying the failure or default in question. If the defaulting Party fails to fully cure the default specified in such notice within thirty days after receipt of such notice, each nondefaulting Party will have the right to terminate this Agreement as of the date of the event of the default and/or pursue all other legal or equitable remedies. Each nondefaulting Party may employ attorneys to pursue its legal rights and, if it prevails before any court or agency of competent jurisdiction, the defaulting Party will be obligated to pay all expenses incurred by the nondefaulting Party, including reasonable attorneys' fees. In addition to all other remedies available to the District, if, for any reason, Kansal or the City violates any provision of this Agreement, the District will, after the notice and opportunity to cure period described above, have the right to disconnect the Property from the District's wastewater system and to terminate this Agreement, in which event, Kansal will be solely responsible for all actual costs and standard District fees related to disconnection from the District's wastewater system.

Section 4. Severability. The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person or circumstance is ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons or circumstances will not be affected thereby.

Section 5. Modification. This Agreement will be subject to change or modification only with the mutual written consent of all Parties.

Section 6. Assignability. This Agreement may not be assigned by Kansal or the City, in whole or in part, without the prior written consent of the District. This Agreement will be recorded in the Official Public Records of Travis County, Texas, will run with the land comprising the Property, and will be binding upon and inure to the benefit of the Parties, their respective successors and permitted assigns, and all future owners or occupants of any portion of the Property.

Section 7. Applicable Law. This Agreement will be governed by, and construed in accordance with the laws of the State of Texas. All of the obligations contained in this Agreement are performable in Travis County, Texas.

Section 8. Parties at Interest. This Agreement will be for the sole and exclusive benefit of the Parties hereto and will never be construed to confer any benefit to any third party.

Section 9. Waiver. Each Party may specifically, but only in writing, waive any breach of this Agreement by another Party, but no such waiver will be deemed to constitute a waiver of similar or other breaches by such other Party.

Section 10. Notices. All notices to the District will be in writing and mailed by Certified Mail, Return Receipt Requested, addressed to:

Lakeside Municipal Utility District No. 3
c/o Armbrust & Brown, PLLC
Attn: Kevin M. Flahive
100 Congress Avenue, Suite 1300
Austin, Texas 78701

with copy to:

Armbrust & Brown, PLLC
Attn: Kevin M. Flahive
100 Congress Avenue, Suite 1300
Austin, Texas 78701

All notices to Kansal will be in writing and mailed by Certified Mail, Return Receipt Requested, addressed to:

Kansal Estate LLC
Attn: Priyanka Kansal
2431 Salorn Way
Round Rock, Texas 78681

All notices to the City will be in writing and mailed by Certified Mail, Return Receipt Requested, addressed to:

City of Pflugerville
Attn: City Manager
100 East Main Street, Suite 300
Pflugerville, Texas 78660

with a copy to:

Denton Navarro Rocha Bernal & Zech, P.C.
Attn: Charles E. Zech
2500 W. William Cannon Drive, Suite 609
Austin, Texas 78745

Any Party may change its address by giving written notice of such change to the other Parties.

Section 11. Term. This Agreement will be in force and effect for a term of twenty years from the Effective Date.

Section 12. Effective Date. The effective date of this Agreement (the "Effective Date") will be the date that the District execute this Agreement after receipt of fully executed original counterparts from Kansal and the City.

Section 13. Multiple Originals. This Agreement may be executed in a number of counterparts, each of which will for all purposes, be deemed to be an original, and all such counterparts will together constitute and be one and the same instrument.

Section 14. Entire Agreement. This Agreement, including Exhibits, constitutes the entire agreement of the Parties and supersedes all prior agreements and understandings related to the subject matter hereof.

Section 15. Authority. Each Party represents and warrants that it has the full right, power, and authority to execute this Agreement and all related documents. Each person executing this instrument on behalf of a Party represents that he or she is an authorized representative of and has the authority to sign this document on behalf the respective Party.

[counterpart signature pages follow]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed effective as of the Effective Date.

THE DISTRICT:

LAKESIDE MUNICIPAL UTILITY DISTRICT NO. 3

By: _____
J.D. Scott, President
Board of Directors

Date: August 14, 2020



THE STATE OF TEXAS

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§
§

COUNTY OF TRAVIS

This instrument was acknowledged before me on the 14 day of August, 2020, by J.D. Scott, President of the Board of Directors of Lakeside Municipal Utility District No. 3, on behalf of said district.



Kevin M. Flahive
Notary Public Signature

KANSAL:

KANSAL ESTATE LLC,
a Texas limited liability company

By: *Priyanka*
Priyanka Kansal, Managing Partner

Date: 08/18/2020

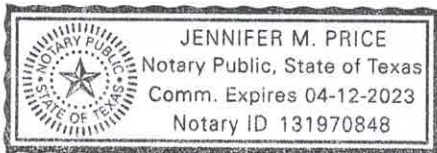
THE STATE OF TEXAS

COUNTY OF WILLIAMSON

§
§
§

This instrument was acknowledged before me on the 18th day of August, 2020, by Priyanka Kansal, Managing Partner of Kansal Estate LLC, a Texas limited liability company, on behalf of said limited liability company.

(seal)



Jennifer M. Price
Notary Public Signature

CITY:

CITY OF PFLUGERVILLE, TEXAS

By: _____
Victor Gonzales, Mayor

Date: _____

THE STATE OF TEXAS

§
§
§

COUNTY OF _____

This instrument was acknowledged before me on the ____ day of _____, 2020,
by Victor Gonzales, Mayor of the City of Pflugerville, Texas, on behalf of said city.

(seal)

Notary Public Signature

EXHIBIT "B"

PRORATA ALLOCATION

EXHIBIT "B"

PRO RATA ALLOCATION

REV DATE: 6/24/2020

PROJECT: BLACKHAWK PLAZA CONNECTION

BY: SM

GEI JOB NUMBER: 1500-11407.98

CHECKED BY: DWG

PROPOSED LUE'S:

8 LUE

PROPOSED ACREAGE:

1.12 ACRES

PROPOSED FLOW:

6.51 GPM

STUB - MH 3 EX LUE - 0 PRO LUE - 8, 769 GPM CAPACITY

ITEM	DESCRIPTION	QUANTITY	UNIT
1	8" PVC SDR-26	76	LF
2	STANDARD WASTEWATER MANHOLE (0'-8')	1	EA
3	8" STUB	1	EA
4	TRENCH SAFETY	76	LF
PRO RATA PERCENTAGE			0.85%

MH 3 -MH 2 EX LUE - 0 PRO LUE - 8, 1146 GPM CAPACITY

ITEM	DESCRIPTION	QUANTITY	UNIT
1	8" PVC SDR-26	167	LF
2	STANDARD WASTEWATER MANHOLE (0'-8')	1	EA
4	TRENCH SAFETY	167	LF
PRO RATA PERCENTAGE			0.57%


MH 2 -MH 38 EX LUE - 75 PRO LUE - 83, 385 GPM CAPACITY

ITEM	DESCRIPTION	QUANTITY	UNIT
1	8" PVC SDR-26	261	LF
2	STANDARD WASTEWATER MANHOLE (0'-8')	1	EA
4	TRENCH SAFETY	261	LF
PRO RATA PERCENTAGE			1.69%

MH 38 -MH 1 EX LUE - 77 PRO LUE - 85, 544 GPM CAPACITY

ITEM	DESCRIPTION	QUANTITY	UNIT
1	8" PVC SDR-26	261	LF
2	STANDARD WASTEWATER MANHOLE (0'-8')	1	EA
4	TRENCH SAFETY	261	LF
PRO RATA PERCENTAGE			1.20%

PROJECT NO. 1500-11407	DRAWN BY: SM
DATE: 06/24/2020	CHECKED BY: DWG



8834 N. Capital of Texas Hwy.
Austin, Texas 78758
Suite 140
(512)452-0371
FAX(512)454-9933
TSP# FIRM #2946