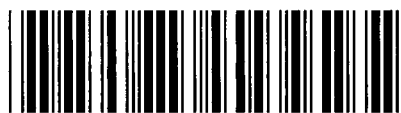




Control Number: 50861



Item Number: 10

Addendum StartPage: 0



## **Water Supply Agreement**

This Water Supply Agreement (the "Agreement") is entered into between Blue Water Project 130 LP ("Blue Water"), a Texas limited partnership and Manville Water Supply Corporation ("Manville"), a Texas non-profit, member-owned water supply corporation (also referred to individually herein as "Party", or in the plural, the "Parties") for the purpose of providing the terms for sale of water by Blue Water to Manville.

### RECITALS

Manville is a retail potable water provider in Travis County, Texas, within the area described later in these Recitals (the "Service Area").

Blue Water is engaged in the business of acquiring and developing groundwater resources and production systems within Texas, including groundwater resources and associated production systems within the Carrizo-Wilcox Aquifer.

Manville holds a Certificate of Convenience and Necessity ("CCN") No. 2270033 issued by the Texas Commission on Environmental Quality ("TCEQ") to provide retail potable water utility service. Under this Agreement, the Service Area will be defined by the CCN service area of Manville and to wholesale customers of Manville, as the CCN and wholesale contracts may be amended from time to time.

As provided hereafter in this Agreement, Manville desires to reserve the right to take a water supply of up to 1.0 million gallons per day ("MGD") of potable water from Blue Water to meet the demands of its customers in the Service Area, and Manville will pay for (i) 0.5 MGD of that water (the "Take or Pay Water") whether taken or not as hereafter provided and (ii) for the additional 0.5 MGD of that water (the "Volumetric Water") only on the basis of water actually taken by Manville, all as hereafter provided.

Blue Water desires to supply, reserve and make available to Manville the Take or Pay Water and the Volumetric Water on the terms provided herein and Blue Water agrees to provide such potable water from sources it has acquired and will acquire, and from production facilities it has constructed, and will construct, at its own cost and in a timely manner, in certain areas located within the Carrizo-Wilcox Aquifer in Burleson and Milam Counties, Texas (the "Groundwater Area").

NOW, THEREFORE, it is hereby agreed between the Parties as follows:

### AGREEMENT

1. Blue Water has acquired groundwater resources by lease(s) ("Lease" or "Leases") from private landowners and related Groundwater Permits ("Permits") from the Post Oak

Savannah Groundwater Conservation District (the "District") in the Groundwater Area. Blue Water agrees to provide the potable water to Manville contracted for under this Agreement.

2. From and after the "Delivery Date" (the date that Blue Water initiates service to Manville), during the "Term" of this Agreement (as hereinafter defined) and subject to the terms and conditions of this Agreement, Blue Water shall provide potable water to Manville in the volumes and amounts as provided in the following subsections (a) and (b) and (c) below.

(a) **Take or Pay Water.** Blue Water will make available and provide to Manville, and Manville shall pay for, 0.5 MGD (560 acre-feet per year of water) of potable water on a take or pay basis whether the water is used or not (the "Take or Pay Water") at the rates and within the times provided in this Agreement.

(b) **Volumetric Water.** In addition to the 0.5 MGD of Take or Pay Water, Blue Water shall reserve for and make available to Manville from the Leases and the related Groundwater Permits, and Manville shall pay for only if and to the extent it is used, up to an additional 0.5 MGD (560 acre-feet per year of water) at the rates and within the times provided in this Agreement. Manville may take the Volumetric Water only after having taken the Take or Pay Water.

The water shall be delivered at interconnect facility located at 12801 Gregg Lane, Manor, Texas (the "Delivery Point") at a minimum pressure of 35 psi. Further, the parties understand and agree that Blue Water's obligation to supply water shall only require Blue Water to supply such water to Manville at a rate (expressed in gallons per day) not to exceed the rate produced by taking the annual amount of the water to be supplied and dividing such annual amount by 365 days per year to arrive at a maximum delivery rate expressed in gallons per day. Blue Water shall have the right to install a flow restriction valve and related equipment at the Delivery Point (and at any other delivery points agreed to in the future as herein provided) to limit the flow of water to said maximum daily amount. The number of acres of Leases held by Blue Water to support the water at any given time during the term of this Agreement is hereafter referred to as the "Leased Acres." Blue Water may from time to time release Leased Acres or add additional Leased Acres in the Groundwater Area so long as Blue Water has Leased Acres sufficient to reserve and provide the water to Manville, in addition to all other water Blue Water is contracted to provide pursuant to contract with third parties, in accordance with the Groundwater Permits and any other permits/approvals pursuant to this Agreement. Additionally, Blue Water shall obtain and maintain any necessary permits and/or approvals ("Permits") from the District to drill, operate, produce and transport the water for use by Manville in the Service Area.

3. Blue Water, at its sole expense, shall be responsible for constructing, operating and maintaining, or causing to be constructed, operated and maintained, any facilities and/or property necessary or appropriate to withdraw, collect, treat, transport and store water (hereinafter sometimes collectively referred to as the "potable water") obtained from the Leases to the Delivery Point as shown on **Exhibit A** hereto (the "Delivery System") for delivery to

Manville. Title to, possession of and control of the potable water shall remain with Blue Water until the potable water reaches the Delivery Point at which point title to, and possession and control of, the potable water shall pass to Manville. Manville agrees that any potable water furnished by Blue Water will be withdrawn and placed to beneficial use only in accordance with all applicable regulatory requirements in the Service Area, including any requirements of the Groundwater Permits and/or other permits/approvals.

Manville, at its sole expense, shall be responsible for constructing, operating and maintaining any pumping, storage, treatment and distribution facilities or properties to receive the water at the Delivery Point and to make the same available for use by Manville and its customers. Manville agrees to consult with Blue Water's engineers in the design of any such facilities located in the Delivery Point to ensure the design is compatible with Blue Water's facilities. Notwithstanding anything herein to the contrary, Blue Water understands and agrees that Manville intends, and shall have the right, to transmit and sell the water purchased by Manville pursuant to this Agreement to its wholesale and retail customers in the Service Area.

4. Blue Water will own, operate and maintain the meter located at the Delivery Point. The meter shall be tested for accuracy by, and at the expense of, Blue Water, at least once each calendar year at intervals of approximately every twelve (12) months, and a report of such test shall be furnished to Manville within thirty (30) days after completion of the test. The meter shall also be calibrated by, and at the expense of Blue Water, at any time the meter is not found to be operating within five (5) percent high or low of accuracy. Blue Water shall give Manville notice at least two (2) weeks in advance and allow Manville to witness the test. In addition, the meter may be tested and calibrated at any other reasonable time by either Party to this Agreement, provided that the Party making the test or calibration shall notify the other Party in writing at least two (2) weeks in advance and allow the other Party to witness the calibration. The expense of such additional test or calibration shall be borne by the Party requesting the test if the meter is found to be operating within five (5) percent high or low of accuracy and by Blue Water if the meter is found to not be operating within five (5) percent high or low of accuracy.

If, as a result of any test, the meter is found to be registering inaccurately (not operating within five (5) percent high or low of accuracy) the readings of the meter shall be corrected at the rate of its inaccuracy for any period which is definitely known or agreed upon or, if no such period is known or agreed upon, the shorter of:

- (1) a period extending back either sixty (60) days from the date of demand for the test or, if no demand for the test was made, sixty (60) days from the date of the test; or
  - (2) a period extending back one half of the time elapsed since the last previous test;
- and the records of the readings, and of all payments which have been made on the basis of such readings, shall be adjusted accordingly. Nothing in this Agreement shall prevent Manville from installing a meter or meters at or in the vicinity of the Blue Water meter to check the accuracy of

Blue Water's meter. The parties may agree on additional delivery points by amendments to this Agreement in the future.

5. Manville shall pay for the water at the rates and within the time periods provided in this section, as follows:

For the right to have Blue Water make available TakeorPay Water as provided by this Agreement, Manville agrees to pay monthly to Blue Water, from and after the Delivery Date, an amount of money equal to the product of (i) the "Rate" (as hereafter defined) times (ii) the amount of Take or Pay Water (expressed in terms of 1,000 of gallons per day) regardless of whether any water is actually used by Manville.

For the right to have Blue Water make available Volumetric Water after the Delivery Date as provided by this Agreement, Manville agrees to pay monthly to Blue Water, from and after the Delivery Date, an amount of money equal to the product of (i) the "Rate" (as hereafter defined) times (ii) the amount of Volumetric Water (expressed in terms of 1,000 of gallons per day) actually received by Manville at the Delivery Point.

As used in this Agreement the term "Rate" means the following: a rate of \$2.90 per thousand gallons for the first period of this Agreement ending December 31, 2013, and for each ensuing twelve (12) month period thereafter beginning January 1 of the next ensuing year, (1) the product of multiplying the rate specified above times a fraction, the denominator of which shall be the Consumer Price Index- All Urban Consumers, 1982-1984 = 100) published by the Bureau of Labor Statistics of the U. S. Department of Labor, South Region (or if such index shall cease to be published, then a regularly published index derived by using the same or substantially the same data and methodologies) for the initial month of this Agreement and the numerator of which shall be the same index for the month in which the Rate is recalculated, plus (2) an appropriate pro-rata increase to reflect the increased amounts incurred by Blue Water for (i) any increase in costs of Blue Water for obtaining groundwater from the leases and the permits under the terms of the leases or permits from the District in excess of those costs as they exist at the date of execution of this Agreement, (ii) any increase in energy related costs or costs of electricity incurred by Blue Water in excess of the rate per KWH as it exists at the date of execution of the Agreement (iii) any additional costs incurred by Blue Water to treat the water (other than cooling and chlorination costs), after the Delivery Date, mandated by new regulatory requirements so that at the Delivery Point(s) the water is capable of meeting potable water standards, and (iv) any additional ad valorem taxes incurred by Blue Water after the Delivery Date, in connection with the pumping, collection, storage and transmission rights, facilities and appurtenances owned by Blue Water and used to provide water to Manville under this Agreement. The term "pro rata" when used above in regard to items (i) and (iv) shall mean a fraction, the numerator of which is the amount of water committed to Manville under this Agreement (1 MGD) and the denominator of which is the total capacity of the Blue Water system (17.854849 MGD). The term "pro rata" when used above in regard to items (ii) and (iii)

shall mean a fraction, the numerator of which is the amount of water used during a given period of time by Manville under this Agreement to which the increase applies and the denominator of which is the total usage during that same period by all customers of the Blue Water system.

The amounts owed by Manville hereunder shall be due and payable thirty (30) days after receipt by Manville of an invoice from Blue Water. Any unpaid amounts after the due date shall bear interest of twelve (12) percent per annum unless any amount invoiced by Blue Water is disputed by Manville, which amount shall be the basis of mediation between the parties and which amount shall not be subject to the interest rate referenced herein unless such amount, or any portion thereof, is found to be owed by Manville pursuant to the mediation.

6. Water provided to the Initial Delivery Point by Blue Water shall be potable and meet the minimum criteria for water suitable for public consumption established from time to time by any state or federal agency with jurisdiction. If the quality of the groundwater produced from wells in the Groundwater Area producing water for Manville pursuant to this Agreement shall change such that the potable water does not meet this agreed standard, then Blue Water shall (a) notify Manville immediately and in writing within one (1) day after Blue Water becomes aware of such condition and specify the reasons for the failure of the water to meet the necessary conditions, if known, and (2) be responsible for any additional costs incurred to cause the water to meet the quality agreed to in this Section.

7. If either Party is rendered unable, wholly or in part, by Force Majeure, to carry out any of its obligations under this Agreement, then such obligations of that 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 to the extent provided but for no longer period. Such cause, as far as possible, shall be remedied with all reasonable diligence. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of either Party hereto, and that the above requirements that any Force Majeure shall be remedied with all reasonable dispatch, and shall not require the settlement of strikes and lockouts by acceding to the demand of the opposing Party or Parties when such settlement is unfavorable to it in the judgment of either Party hereto. This section shall not be applicable, however, to breaches of this Agreement related to obligations to meet quality standards or quantity amounts for the water to be supplied hereunder.

8. 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 shall ever be held by any agency or court of competent jurisdiction to be unenforceable, invalid or unlawful for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons or circumstances shall not be affected thereby; provided, however, in such event the Parties mutually covenant and agree to attempt to implement the unenforceable, invalid or unlawful provision in a manner which is enforceable, valid or lawful.

9. There are no oral agreements between the Parties hereto with respect to the subject matter hereof. This Agreement shall be subject to change or modification only with the mutual written consent of Manville and Blue Water.

10. Blue Water warrants and represents as follows:

(a) Each of the persons executing this Agreement on behalf of Blue Water is duly authorized to do so. Blue Water has full right and authority to enter into this Agreement and to consummate the transaction described in this Agreement. This Agreement constitutes the valid and legally binding obligations of Blue Water and is enforceable against Blue Water in accordance with its terms; and neither the execution or delivery of this Agreement nor the performance of Blue Water's obligations under this Agreement violates, or will violate, any contract or agreement to which Blue Water is a party or by which Blue Water is otherwise bound;

(b) The water quality data provided on **Exhibit B** hereto is an accurate representation of test results obtained by Blue Water on its initial production well producing water from the Leases dated 10/23/03 and 3/14/05;

(c) Blue Water has obtained permits from the District, attached hereto as **Exhibit C** and incorporated by reference, authorizing the drilling, operation, production and transport of 20,000 acre-feet of groundwater per year from, six (6) wells utilizing the Leases, and the transfer of the groundwater from the District to Travis County;

(d) The Leases are valid and in full force and effect and are binding on the Parties thereto; Blue Water has an ownership interest in the development rights in, and will maintain, the Leases in at least the amount necessary to maintain the Permits and support the applications referred to in subparagraphs "c" and "d" above; and such Leases are, and Blue Water will use its best efforts to ensure that such Leases remain, valid and binding on the Parties thereto, in full force and effect; Blue Water is entitled to all of the production rights as Lessee under the Leases; Blue Water will not hypothecate, encumber or otherwise pledge its ownership rights in the Leases without the prior written consent of Manville, which consent shall not be unreasonably withheld, delayed or conditioned if the purpose of same is to secure financing for Blue Water to meet its financial obligations under this Agreement and the financing agreement adequately protects the ability of Manville to obtain the benefits of this Agreement;

(f) Blue Water has not entered into, and will not enter into, any other agreements that will impair its ability to comply with its obligations under this Agreement,

(g) Blue Water is financially capable of performing its obligations under this Agreement.

(h) If Blue Water discovers that any of its warranties and representations shall be or become untrue, then Blue Water shall (a) notify Manville in writing as soon as possible but no later than ten (10) days after Blue Water becomes aware of such condition, and Blue Water shall specify the nature of the untrue warranty or representation and (b) shall immediately remedy such untrue warranty or representation, and (c) Blue Water shall be responsible for any additional costs incurred by Blue Water and/or Manville to remedy such untrue warranty or representation. If Blue Water fails to remedy such untrue warranty or representation as soon as reasonably possible, Manville may, after providing written notice to Blue Water within thirty (30) days, take actions reasonably required to remedy such untrue warranty or representation, if material, and Blue Water shall reimburse Manville for all costs incurred by Manville in connection with remedying such material, untrue warranty or representation. If Manville is not reasonably satisfied with Blue Water's efforts to remedy the untrue warranty or representation, Manville shall provide Blue Water with thirty (30) days written notice of its election to terminate this Agreement, without prejudice to Manville.

11. Manville warrants and represents as follows:

- (a) each of the persons executing this Agreement on behalf of Manville is duly authorized to do so;
- (b) Manville has full right and authority to enter into this Agreement and to consummate the transaction described in this Agreement;
- (c) this Agreement constitutes the valid and legally binding obligation of Manville and is enforceable against Manville in accordance with its terms;
- (d) neither the execution or delivery of this Agreement nor the performance of Manville's obligations under this Agreement violates, or will violate, any contract or agreement to which Manville is a party or by which Manville is otherwise bound;
- (e) Manville will not enter into, any other agreements that will impair its ability to comply with its obligations under this Agreement.

12. Manville covenants that all moneys required to be paid by Manville under this Agreement shall constitute an operating expense of Manville's waterworks system authorized by the Constitution and laws of the State of Texas. Manville further covenants and agrees to compute, ascertain, fix, levy and collect such rates and charges for the facilities and services provided by it which will be consistent with this Agreement and adequate to permit Manville to make prompt and complete payments pursuant to this Agreement so long as Blue Water is in compliance with the terms of this Agreement.



13. Manville agrees to maintain other water supplies as alternative, supplemental and emergency backup sources in the event the District restricts Blue Water's usage under the Permits so long as alternative, backup supplies are technically, legally and economically feasible.

14. Unless otherwise notified in writing by the other, the addresses of Manville and Blue Water are and shall remain as follows:

**Manville:**  
Manville Water Supply Corporation  
P.O. Box 248  
Coupland, Texas 78615  
Attn: Manager

**Blue Water:**  
Blue Water Systems LP  
Stonebridge Plaza One  
9606 North Mopac, Suite 125  
Austin, Texas 78759  
Attn: Ross M. Cummings

15. This Agreement may be assigned by either Party to any other entity with notice to and subject to the prior, written approval of, the other Party. However, the assignor shall remain liable hereunder, unless released in writing by the other Party, which release shall not be unreasonably withheld or delayed.


16. Whenever this Agreement requires a Party to give an approval or consent or to take an action, the Parties agree that such consent, approval or action will not be unreasonably withheld, delayed or conditioned.

17. This Agreement shall be for a term of twenty-five (25) years from the effective date of the Agreement (the "Term"); provided, however, beginning one (1) year prior to expiration of the first term of this Agreement, the Parties agree to negotiate in good faith for an extension of this Agreement under substantially the same terms and conditions as provided herein with such changes as may be appropriate under the then-existing circumstances. Notwithstanding any other provision in this Agreement, Manville shall have the right to enforce by specific performance, terminate or renegotiate this Agreement if Blue Water violates or breaches any provision of this Agreement.

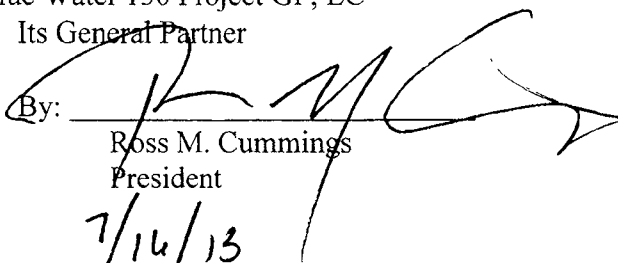
18. The recitals are incorporated herein and made a part of this Agreement as if incorporated verbatim.

EXECUTED TO BE EFFECTIVE THE 15 DAY OF August, 2013.

MANVILLE WATER SUPPLY CORPORATION

By:   
Name: David Reichel  
Title: President B.O. D.  
Date: 7-11-2013

BLUE WATER 130 PROJECT LP  
a Texas limited partnership  
By: Blue Water 130 Project GP, LC  
Its General Partner

By:   
Ross M. Cummings  
President  
Date: 7/16/13

## **Amended and Restated Water Supply Agreement**

This Amended and Restated Water Supply Agreement (the "Agreement") is entered into between Blue Water Project 130 LP ("Blue Water"), a Texas limited partnership and Manville Water Supply Corporation ("Manville"), a Texas non-profit, member-owned water supply corporation (also referred to individually herein as "Party", or in the plural, the "Parties") for the purpose of providing the terms for sale of water by Blue Water to Manville.

### **RECITALS**

Manville is a retail potable water provider in Travis County, Texas, within the area described later in these Recitals (the "Service Area").

Blue Water is engaged in the business of acquiring and developing groundwater resources and production systems within Texas, including groundwater resources and associated production systems within the Carrizo-Wilcox Aquifer.

Manville holds a Certificate of Convenience and Necessity ("CCN") No. 11144 issued by the Texas Commission on Environmental Quality ("TCEQ") to provide retail potable water utility service. Under this Agreement, the Service Area will be defined by the CCN service area of Manville and to wholesale customers of Manville, as the CCN and wholesale contracts may be amended from time to time.

The parties are currently parties to that certain "Water Supply Agreement" dated on or about July 16, 2013 (the "Prior Agreement") that provides that Manville can take a water supply of up to 1.0 million gallons per day of potable water from Blue Water to meet the demands of its customers in the Service Area, and Manville will pay for (i) 0.5 million gallons per day of that water (referred to therein as the "Take or Pay Water") whether taken or not and (ii) for the additional 0.5 million gallons per day of that water (referred to therein as the "Volumetric Water") only on the basis of water actually taken by Manville, all as provided in the Prior Agreement.

Manville now desires, effective at the date on which Manville has substantially completed construction of its new 2 million gallon ground storage tank and pump station and the facilities are ready to be placed into service (the "Effective Date"), to reserve the right to take a water supply of up to 3.0 million gallons per day ("MGD") of potable water from Blue Water to meet the demands of its customers in the Service Area, and Manville will (i) initially pay for (i) 1.5 MGD of that water (the "Take or Pay Water") whether taken or not as hereafter provided beginning on the Effective Date and (ii) for the additional 1.5 MGD of that water (the "Volumetric Water") only on the basis of water actually taken by Manville over the course of one year, all as hereafter provided. Provided, however, thereafter on the 4<sup>th</sup> annual anniversary of the Effective Date, the amount of Take-or-Pay Water (which will be paid for by Manville whether taken or not) will increase by 0.5 MGD until such time as the Take-or-Pay Water

reaches 3.0 MGD and on each such increase the amount of Volumetric Water shall decrease accordingly.

Blue Water desires to supply, reserve and make available to Manville the increased amount of Take or Pay Water and Volumetric Water on the terms provided herein and Blue Water agrees to provide such potable water from sources it has acquired and will acquire, and from production facilities it has constructed, and will construct, at its own cost and in a timely manner, in certain areas located within the Carrizo-Wilcox Aquifer in Burleson and Milam Counties, Texas (the "Groundwater Area").

Accordingly, the parties hereby agree to completely amend, restate and replace the Prior Agreement with this Agreement effective as of the Effective Date in order to provide for additional water supply from Blue Water to Manville and to revise certain other terms of the Prior Agreement as provided herein. The Prior Agreement will remain in effect until the Effective Date of this Agreement.

NOW, THEREFORE, it is hereby agreed between the Parties as follows:

#### AGREEMENT

1. Blue Water has acquired groundwater resources by lease(s) ("Lease" or "Leases") from private landowners and related Groundwater Permits ("Permits") from the Post Oak Savannah Groundwater Conservation District (the "District") in the Groundwater Area. Blue Water agrees to provide the potable water to Manville contracted for under this Agreement.

2. From and after the Effective Date, during the "Term" of this Agreement (as hereinafter defined) and subject to the terms and conditions of this Agreement, Blue Water shall provide potable water to Manville in the volumes and amounts as provided in the following subsections (a) and (b) and (c) below.

(a) **Take or Pay Water.** Blue Water will initially make available and provide to Manville, and Manville shall pay for, 1.5 MGD (1,680.22 acre-feet per year of water) of potable water on a take or pay basis whether the water is used or not (the "Take or Pay Water") at the rates and within the times provided in this Agreement.

(b) **Volumetric Water.** In addition to the 1.5 MGD of Take or Pay Water, Blue Water shall reserve for and make available to Manville from the Leases and the related Groundwater Permits up to an additional 1.5 MGD (i.e., an additional 1,680.22 acre-feet per year) during the term of this Agreement. At the end of each calendar year after the Effective Date of this Agreement, Blue Water shall calculate the total amount of water taken by Manville during said year and any water taken in excess of the Take or Pay Water (i.e., in excess of 1,680.22 acre feet) shall be deemed to be "Volumetric

Water” and Manville shall pay for the amount of Volumetric Water taken that year at the end of the year, all as provided below in Section 5.

(c) **Increase in Take or Pay Water; Corresponding Decrease in Volumetric Water.** The parties agree that on each 4<sup>th</sup> annual anniversary of the Effective Date, the amount of Take-or-Pay Water (which will be paid for by Manville whether taken or not) will increase by 0.5 MGD until such time as the Take-or-Pay Water reaches 3.0 MGD (3,360.44 acre-feet of water per year) and on each such increase the amount of Volumetric Water shall decrease accordingly and the terms “Take-or-Pay Water” and “Volumetric Water” shall be adjusted accordingly for purposes of this Agreement.

The water shall be delivered at interconnect facility located at 12801 Gregg Lane, Manor, Texas (the “Delivery Point”) at a minimum pressure of 35 psi. Further, the parties understand and agree that Blue Water’s obligation to supply water shall only require Blue Water to supply such water to Manville at a rate (expressed in gallons per day) not to exceed the rate produced by taking the annual amount of the water to be supplied and dividing such annual amount by 365 days per year to arrive at a maximum delivery rate expressed in gallons per day. Blue Water shall have the right to install a flow restriction valve and related equipment at the Delivery Point (and at any other delivery points agreed to in the future as herein provided) to limit the flow of water to said maximum daily amount. The number of acres of Leases held by Blue Water to support the water at any given time during the term of this Agreement is hereafter referred to as the “Leased Acres.” Blue Water may from time to time release Leased Acres or add additional Leased Acres in the Groundwater Area so long as Blue Water has Leased Acres sufficient to reserve and provide the water to Manville, in addition to all other water Blue Water is contracted to provide pursuant to contract with third parties, in accordance with the Groundwater Permits and any other permits/approvals pursuant to this Agreement. Additionally, Blue Water shall obtain and maintain any necessary permits and/or approvals (“Permits”) from the District to drill, operate, produce and transport the water for use by Manville in the Service Area.

3. Blue Water, at its sole expense, shall be responsible for constructing, operating and maintaining, or causing to be constructed, operated and maintained, any facilities and/or property necessary or appropriate to withdraw, collect, treat, transport and store water (hereinafter sometimes collectively referred to as the “potable water”) obtained from the Leases to the Delivery Point as shown on **Exhibit A** hereto (the “Delivery System”) for delivery to Manville. The facilities constructed by Blue Water may include a flow restriction device to limit the water provided to Manville to not more than the 3 MGD agreed to be made available hereunder. Title to, possession of and control of the potable water shall remain with Blue Water until the potable water reaches the Delivery Point at which point title to, and possession and control of, the potable water shall pass to Manville. Manville agrees that any potable water furnished by Blue Water will be withdrawn and placed to beneficial use only in accordance with all applicable regulatory requirements in the Service Area, including any requirements of the Groundwater Permits and/or other permits/approvals.

Manville, at its sole expense, shall be responsible for constructing, operating and maintaining any pumping, storage, treatment and distribution facilities or properties to receive the water at the Delivery Point and to make the same available for use by Manville and its customers. Manville agrees to consult with Blue Water's engineers in the design of any such facilities located in the Delivery Point to ensure the design is compatible with Blue Water's facilities. Notwithstanding anything herein to the contrary, Blue Water understands and agrees that Manville intends, and shall have the right, to transmit and sell the water purchased by Manville pursuant to this Agreement to its wholesale and retail customers in the Service Area.

4. Blue Water will own, operate and maintain the meter located at the Delivery Point. The meter shall be tested for accuracy by, and at the expense of, Blue Water, at least once each calendar year at intervals of approximately every twelve (12) months, and a report of such test shall be furnished to Manville within thirty (30) days after completion of the test. The meter shall also be calibrated by, and at the expense of Blue Water, at any time the meter is not found to be operating within five (5) percent high or low of accuracy. Blue Water shall give Manville notice at least two (2) weeks in advance and allow Manville to witness the test. In addition, the meter may be tested and calibrated at any other reasonable time by either Party to this Agreement, provided that the Party making the test or calibration shall notify the other Party in writing at least two (2) weeks in advance and allow the other Party to witness the calibration. The expense of such additional test or calibration shall be borne by the Party requesting the test if the meter is found to be operating within five (5) percent high or low of accuracy and by Blue Water if the meter is found to not be operating within five (5) percent high or low of accuracy.

If, as a result of any test, the meter is found to be registering inaccurately (not operating within five (5) percent high or low of accuracy) the readings of the meter shall be corrected at the rate of its inaccuracy for any period which is definitely known or agreed upon or, if no such period is known or agreed upon, the shorter of:

(1) a period extending back either sixty (60) days from the date of demand for the test or, if no demand for the test was made, sixty (60) days from the date of the test; or

(2) a period extending back one half of the time elapsed since the last previous test; and the records of the readings, and of all payments which have been made on the basis of such readings, shall be adjusted accordingly. Nothing in this Agreement shall prevent Manville from installing a meter or meters at or in the vicinity of the Blue Water meter to check the accuracy of Blue Water's meter. The parties may agree on additional delivery points by amendments to this Agreement in the future.

5. Manville shall pay for the water at the rates and within the time periods provided in this section, as follows:

For the right to have Blue Water make available Take or Pay Water as provided by this Agreement, Manville agrees to pay monthly to Blue Water, from and after the Effective Date, an amount of money equal to the product of (i) the "Rate" (as hereafter defined) times (ii) the one-twelfth of the annual amount of Take or Pay Water (expressed in terms of 1,000 of gallons per day) regardless of whether any water is actually used by Manville during said month or the amount of water used by Manville during said month.

For the right to have Blue Water make available Volumetric Water, if any, after the Effective Date as provided by this Agreement, Manville agrees to pay to Blue Water, from and after the Effective Date, at the end of each calendar year after the Effective Date of this Agreement an amount of money equal to the product of (i) the "Rate" (as hereafter defined) times (ii) the amount of Volumetric Water, if any, (expressed in terms of 1,000 of gallons per day) actually received by Manville at the Delivery Point during the year (i.e., the amount of water received during the year in excess of the Take or Pay Water).

The provisions of this section related to calculating the amount of Volumetric Water shall be prorated during any partial year during the term of this Agreement.

As used in this Agreement the term "Rate" means the following: an initial rate per thousand gallons for the first period of this Agreement beginning on the Effective Date and ending December 31 of the year during which the Effective Date occurs which is equal to the "Rate" in effect on the Effective Date for Take-or-Pay Water under the Prior Agreement, and for each ensuing twelve (12) month period thereafter beginning January 1 of the next ensuing year, (1) the product of multiplying the rate specified above times a fraction, the denominator of which shall be the Consumer Price Index- All Urban Consumers, 1982-1984 = 100) published by the Bureau of Labor Statistics of the U. S. Department of Labor, South Region (or if such index shall cease to be published, then a regularly published index derived by using the same or substantially the same data and methodologies) for the initial month of this Agreement and the numerator of which shall be the same index for the month in which the Rate is recalculated, plus (2) an appropriate pro-rata increase to reflect the increased amounts incurred by Blue Water for (i) any increase in costs of Blue Water for obtaining groundwater from the leases and the permits under the terms of the leases or permits from the District in excess of those costs as they exist at the date of execution of this Agreement, (ii) any increase in energy related costs or costs of electricity incurred by Blue Water in excess of the rate per KWH as it exists at the date of execution of the Agreement (iii) any additional costs incurred by Blue Water to treat the water (other than cooling and chlorination costs), after the Effective Date, mandated by new regulatory requirements so that at the Delivery Point(s) the water is capable of meeting potable water standards, and (iv) any additional ad valorem taxes incurred by Blue Water after the Effective Date, in connection with the pumping, collection, storage and transmission rights, facilities and appurtenances owned by Blue Water and used to provide water to Manville under this Agreement. The term "pro rata" when used above in regard to items (i) and (iv) shall mean a fraction, the numerator of which is the amount of water committed to Manville under this Agreement (3.0 MGD) and the denominator of which is the total capacity of the Blue Water system (17.854849 MGD). The term "pro rata" when used above in regard to items (ii) and (iii) shall mean a fraction, the numerator of which is the amount of water used during a given period of time by Manville under this Agreement to which the increase applies and the denominator of which is the total usage during that same period by all customers of the Blue Water system.

The amounts owed by Manville hereunder shall be due and payable thirty (30) days after receipt by Manville of an invoice from Blue Water. Any unpaid amounts after the due date shall bear interest of twelve (12) percent per annum unless any amount invoiced by Blue Water is disputed by Manville, which amount shall be the basis of mediation between the parties and which amount shall not be subject to the interest rate referenced herein unless such amount, or any portion thereof, is found to be owed by Manville pursuant to the mediation.

6. Water provided to the Initial Delivery Point by Blue Water shall be potable and meet the minimum criteria for water suitable for public consumption established from time to time by any state or federal agency with jurisdiction. If the quality of the groundwater produced from wells in the Groundwater Area producing water for Manville pursuant to this Agreement shall change such that the potable water does not meet this agreed standard, then Blue Water



shall (a) notify Manville immediately and in writing within one (1) day after Blue Water becomes aware of such condition and specify the reasons for the failure of the water to meet the necessary conditions, if known, and (2) be responsible for any additional costs incurred to cause the water to meet the quality agreed to in this Section.

7. If either Party is rendered unable, wholly or in part, by Force Majeure, to carry out any of its obligations under this Agreement, then such obligations of that 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 to the extent provided but for no longer period. Such cause, as far as possible, shall be remedied with all reasonable diligence. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of either Party hereto, and that the above requirements that any Force Majeure shall be remedied with all reasonable dispatch, and shall not require the settlement of strikes and lockouts by acceding to the demand of the opposing Party or Parties when such settlement is unfavorable to it in the judgment of either Party hereto. This section shall not be applicable, however, to breaches of this Agreement related to obligations to meet quality standards or quantity amounts for the water to be supplied hereunder.

8. 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 shall ever be held by any agency or court of competent jurisdiction to be unenforceable, invalid or unlawful for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons or circumstances shall not be affected thereby; provided, however, in such event the Parties mutually covenant and agree to attempt to implement the unenforceable, invalid or unlawful provision in a manner which is enforceable, valid or lawful.

9. There are no oral agreements between the Parties hereto with respect to the subject matter hereof. This Agreement shall be subject to change or modification only with the mutual written consent of Manville and Blue Water.

10. Blue Water warrants and represents as follows:

(a) Each of the persons executing this Agreement on behalf of Blue Water is duly authorized to do so. Blue Water has full right and authority to enter into this Agreement and to consummate the transaction described in this Agreement. This Agreement constitutes the valid and legally binding obligations of Blue Water and is enforceable against Blue Water in accordance with its terms; and neither the execution or delivery of this Agreement nor the performance of Blue Water's obligations under this Agreement violates, or will violate, any contract or agreement to which Blue Water is a party or by which Blue Water is otherwise bound;

(b) The water quality data provided on **Exhibit B** hereto is an accurate representation of test results obtained by Blue Water on its initial production well producing water from the Leases dated 10/23/03 and 3/14/05;

(c) Blue Water has obtained permits from the District, attached hereto as **Exhibit C** and incorporated by reference, authorizing the drilling, operation, production and transport of 20,000 acre-feet of groundwater per year from, six (6) wells utilizing the Leases, and the transfer of the groundwater from the District to Travis County;

(d) The Leases are valid and in full force and effect and are binding on the Parties thereto; Blue Water has an ownership interest in the development rights in, and will maintain, the Leases in at least the amount necessary to maintain the Permits and support the applications referred to in subparagraphs "c" and "d" above; and such Leases are, and Blue Water will use its best efforts to ensure that such Leases remain, valid and binding on the Parties thereto, in full force and effect; Blue Water is entitled to all of the production rights as Lessee under the Leases; Blue Water will not hypothecate, encumber or otherwise pledge its ownership rights in the Leases without the prior written consent of Manville, which consent shall not be unreasonably withheld, delayed or conditioned if the purpose of same is to secure financing for Blue Water to meet its financial obligations under this Agreement and the financing agreement adequately protects the ability of Manville to obtain the benefits of this Agreement;

(f) Blue Water has not entered into, and will not enter into, any other agreements that will impair its ability to comply with its obligations under this Agreement,

(g) Blue Water is financially capable of performing its obligations under this Agreement.

(h) If Blue Water discovers that any of its warranties and representations shall be or become untrue, then Blue Water shall (a) notify Manville in writing as soon as possible but no later than ten (10) days after Blue Water becomes aware of such condition, and Blue Water shall specify the nature of the untrue warranty or representation and (b) shall immediately remedy such untrue warranty or representation, and (c) Blue Water shall be responsible for any additional costs incurred by Blue Water and/or Manville to remedy such untrue warranty or representation. If Blue Water fails to remedy such untrue warranty or representation as soon as reasonably possible, Manville may, after providing written notice to Blue Water within thirty (30) days, take actions reasonably required to remedy such untrue warranty or representation, if material, and Blue Water shall reimburse Manville for all costs incurred by Manville in connection with remedying such material, untrue warranty or representation. If Manville is not reasonably satisfied with Blue Water's efforts to remedy the untrue warranty or representation, Manville shall

provide Blue Water with thirty (30) days written notice of its election to terminate this Agreement, without prejudice to Manville.

11. Manville warrants and represents as follows:

- (a) each of the persons executing this Agreement on behalf of Manville is duly authorized to do so;
- (b) Manville has full right and authority to enter into this Agreement and to consummate the transaction described in this Agreement;
- (c) this Agreement constitutes the valid and legally binding obligation of Manville and is enforceable against Manville in accordance with its terms;
- (d) neither the execution or delivery of this Agreement nor the performance of Manville's obligations under this Agreement violates, or will violate, any contract or agreement to which Manville is a party or by which Manville is otherwise bound;
- (e) Manville will not enter into, any other agreements that will impair its ability to comply with its obligations under this Agreement.

12. Manville covenants that all monies required to be paid by Manville under this Agreement shall constitute an operating expense of Manville's waterworks system authorized by the Constitution and laws of the State of Texas. Manville further covenants and agrees to compute, ascertain, fix, levy and collect such rates and charges for the facilities and services provided by it which will be consistent with this Agreement and adequate to permit Manville to make prompt and complete payments pursuant to this Agreement so long as Blue Water is in compliance with the terms of this Agreement.

13. Manville agrees to maintain other water supplies as alternative, supplemental and emergency backup sources in the event the District restricts Blue Water's usage under the Permits so long as alternative, backup supplies are technically, legally and economically feasible.

14. Unless otherwise notified in writing by the other, the addresses of Manville and Blue Water are and shall remain as follows:

**Manville:**  
Manville Water Supply Corporation  
P. O. Box 248  
Coupland, Texas 78615  
Attn: General Manager

**Blue Water:**  
Blue Water Systems LP  
Stonebridge Plaza One  
9606 North Mopac, Suite 125

Austin, Texas 78759  
Attn: Ross M. Cummings

15. This Agreement may be assigned by either Party to any other entity with notice to and subject to the prior, written approval of, the other Party. However, the assignor shall remain liable hereunder, unless released in writing by the other Party, which release shall not be unreasonably withheld or delayed.

16. Whenever this Agreement requires a Party to give an approval or consent or to take an action, the Parties agree that such consent, approval or action will not be unreasonably withheld, delayed or conditioned.

17. This Agreement shall be for a term of twenty-five (25) years from the Effective Date (the "Term"); provided, however, beginning one (1) year prior to expiration of the first term of this Agreement, the Parties agree to negotiate in good faith for an extension of this Agreement under substantially the same terms and conditions as provided herein with such changes as may be appropriate under the then-existing circumstances. Notwithstanding any other provision in this Agreement, Manville shall have the right to enforce by specific performance, terminate or renegotiate this Agreement if Blue Water violates or breaches any provision of this Agreement.

18. The recitals are incorporated herein and made a part of this Agreement as if incorporated verbatim.

EXECUTED ON THE 12 DAY OF NOVEMBER 2015, TO BE EFFECTIVE AS  
OF THE EFFECTIVE DATE.

**MANVILLE WATER SUPPLY CORPORATION**

By: [Signature]  
Name: JACK ATTERSTROM  
Title: PRESIDENT  
Date: 11/12/15

**BLUE WATER 130 PROJECT LP**

a Texas limited partnership

By: Blue Water 130 Project GP, LC

Its General Partner

By: [Signature]  
Ross M. Cummings  
President  
Date: 11 / 23 / 2015

**BW130 Letterhead**

July 14, 2016

Manville Water Supply Corporation.  
P.O. Box 248  
Coupland, Texas 77478  
Attention: General Manager

Re: Amended and Restated Water Supply Agreement (the "**Contract**") dated as of November 12, 2015 between Blue Water 130 Project, LP (the "**Partnership**") and Manville Water Supply Corporation (the "**Counterparty**").

Ladies and Gentlemen:

Please be advised that the Partnership has proposed to enter into an Asset Purchase Agreement (the "**Purchase Agreement**") pursuant to which the Partnership, at closing of the Purchase Agreement, will transfer substantially all the Partnership's assets, including the Contract, to EPCOR 130, Inc. (the "**Transaction**"). Pursuant to Section 15 of the Contract, the Partnership is required to obtain Counterparty's consent to an assignment of the Contract by the Partnership.

By executing this letter agreement in the spaces provided below, Counterparty and the Partnership agree, effective as of the date of Counterparty's signature set forth on the signature page hereto, that Counterparty, on behalf of itself and its successors and assigns, hereby (i) acknowledges receipt of notice of the Transaction, (ii) consents to the assignment of the Contract for all purposes under the Contract, (iii) agrees that the consummation of the Transaction will not constitute a violation or default under any term or provision of the Contract, (iv) acknowledges that Counterparty has not given or received any notice of default under the Contract which remains uncured and neither Counterparty nor the Partnership is in default under the Contract, (v) acknowledges and agrees that the Contract will remain in full force and effect following the consummation of the Transaction and assignment of the Contract, (vi) acknowledges that, following the date of the assignment of the Contract, the Partnership shall no longer be liable for obligations contained in the Contract and (vii) waives any requirement in the Contract that this letter agreement be sent using a particular delivery method.

None of the parties hereto waives, alters or amends any of their respective rights under the Contract, or any other terms or conditions of the Contract, except as expressly set forth in this letter agreement. This letter agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of the executed signature pages by facsimile transmission or in "portable document format" shall constitute effective and binding execution and delivery of this letter agreement.

*Signature page follows.*

Please acknowledge that this letter agreement accurately reflects the agreement between Counterparty and the Partnership regarding the matters set forth above by executing this letter agreement in the space provided below. Please do not hesitate to contact the Partnership's Chief Operating Officer, Patrick Reilly, at (512) 342-6819 with any questions regarding this letter agreement.

Sincerely,

**BLUE WATER 130 PROJECT, LP**

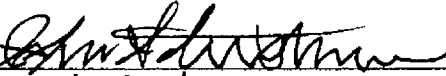
By: 

Name: Patrick Reilly

Title: Chief Operating Officer

Accepted and agreed as of the 14 day of JULY, 2016:

**MANVILLE WATER SUPPLY CORPORATION**

By: 

Name: JACK ATTERSTROM

Title: PRESIDENT

**Letter Agreement  
Signature Page**

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)

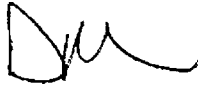
All notices to Manville WSC shall be delivered to Manville WSC, Attention: General Manager (Physical Address: 108 N. Commerce St., Coupland, Texas, or Mailing Address: General Manager, Manville WSC, P.O. Box 248, Coupland, Texas 78615)

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

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

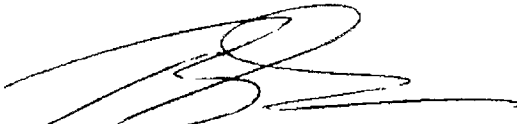
Executed in multiple originals this <sup>on</sup> 3/19/14 day of March, 2014

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

EXHIBIT A

10-01-08/01:14 RCYJ

**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 13<sup>th</sup> 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 purposed 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. 78641

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.

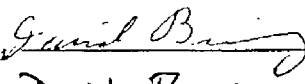
**5.14 Texas Family Code Child Support Certification.** Cross County certifies that none of the officers of the corporation are delinquent in child support obligations and therefore Cross County is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement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

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**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:

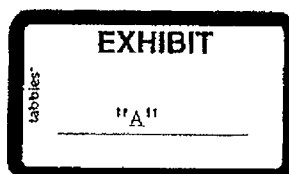
A tract of land being approximately 2.90 acres, more or less, a part of the 72.883 acres out of the Sumner Bacon Survey No. 62, Abstract 63 owned by Grantor in Travis County, Texas, which is more particularly described on Exhibit "A" attached hereto and made a part hereof. Prior to the time the first 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.

147024.doc/jmr



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.

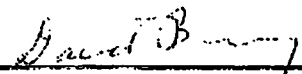
Grantee shall have the right and privilege at any and all times to enter said premises, or any part thereof, for the purpose of constructing and maintaining said waterline facilities, and for making connections therewith; all upon the condition that Grantee will at all times after doing work in connection 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 16th day of October, 2008.

**GRANTOR**

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

ACKNOWLEDGMENT

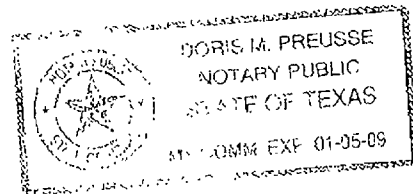
THE STATE OF TEXAS

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§  
§

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.

Doris M. Preusse  
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 1704.94 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"

Page 2

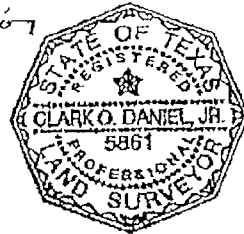
4. South 12°07'07" East, a distance of 202.89 feet to a 1/2" rebar found;
5. South 22°15'41" East, a distance of 176.99 feet to a 1/2" rebar with cap set;
6. South 05°41'16" West, a distance of 230.74 feet to a 1/2" rebar with cap set;
7. South 21°17'16" West, a distance of 465.91 feet to a 1/2" rebar 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 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

BARTHO \$36.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS

Recorders 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.

## PUC Interoffice Memorandum

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**To:** Daniel Moore, Attorney  
Legal Division

**From:** Jolie Mathis, Utility Engineering Specialist  
Infrastructure Division

**Date:** August 10, 2020

**Subject:** **Docket No. 50861**, *Application of Manville Water Supply Corporation to Amend its Certificate of Convenience and Necessity in Lee County*

On May 18, 2020, Manville Water Supply Corporation (Applicant) filed with the Public Utility Commission of Texas (Commission) an application to amend its water Certificate of Convenience and Necessity (CCN) No. 11144 in Lee County, Texas pursuant to Texas Water Code (TWC) §§ 13.242-13.250 and 16 Texas Administrative Code (TAC) §§ 24.225-24.237.

Staff has reviewed the information provided by the Applicant, and recommends the application be deemed administratively incomplete and not accepted for filing due to the deficiency detailed below:

**Application Content:**

1. Purchased Water Supply or Treatment Agreement
- Please submit a response to question 23.A.