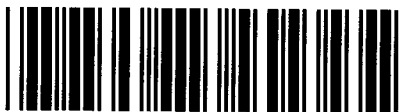




Control Number: 44523



Item Number: 1

Addendum StartPage: 0

*Public Utility Commission of Texas  
Application to Amend Water Certificate of Convenience and  
Necessity (CCN) No. 13030*

## **City of Dripping Springs**

## **Hays County, Texas**

*Prepared for:*

**City of Dripping Springs  
P.O. Box 384  
Dripping Springs, Texas 78620**

*Prepared by:*

**CMA Engineering, Inc.  
235 Ledge Stone Dr.  
Austin, Texas 78737  
(512) 432-1000**

**January 2015**

RECEIVED

2015 JAN 11 AM 11:12

PUBLIC UTILITY COMMISSION  
FILING CLERK



PURSUANT TO PUC CHAPTER 24, SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER  
SERVICE PROVIDERS, SUBCHAPTER G: CERTIFICATES OF CONVENIENCE AND NECESSITY

## Application to Obtain or Amend a Water or Sewer Certificate of Convenience and Necessity (CCN)

Docket Number: **44523**

(this number will be assigned by the Public Utility Commission after your application is filed)

7 copies of the application, including the original, shall be filed with

Public Utility Commission of Texas  
Attention: Filing Clerk  
1701 N. Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326

If submitting digital map data, two copies of the portable electronic storage medium (such as CD or DVD) are required.

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## Application to Obtain or Amend a Water or Sewer Certificate of Convenience and Necessity (CCN)

### Purpose of Application

<input type="checkbox"/> Obtain	<input type="checkbox"/> New Water CCN	<input type="checkbox"/> New Sewer CCN
<input checked="" type="checkbox"/> Amend	<input checked="" type="checkbox"/> Water CCN# (s) <u>13030</u>	
<input type="checkbox"/> Amend	<input type="checkbox"/> Sewer CCN#(s) _____	

### 1. Applicant Information

#### Applicant

Utility name: City of Dripping Springs

Certificate number: 602491284

Street address (City/ST/ZIP/Code): Mercer Street, Dripping Springs, TX 78620

Mailing address(City/ST/ZIP/Code): P.O. BOX 384, Dripping Springs, TX, 78620

Utility Phone Number and Fax: (512) 858-4725

#### Contact information

Please provide information about the person(s) to be contacted regarding this application. Indicate if this person is the owner, operator, engineer, attorney, accountant manager, or other title related to the applicant.

Name: Robert P. Callegari, P.E.

Title: Principal

Mailing address: 235 Ledge Stone Drive

Fax: (512) 432-1015

Email: rcallegari@cma-engineering.com

Phone and Fax: (512) 432-1000

List all counties in which service is proposed:

Hays County

A. Check the appropriate box and provide information regarding the legal status of the applicant:

- ☐ Investor Owned Utility      ☐ Individual      ☐ Partnership
- ☐ Home or Property Owners Association      ☐ For-profit Corporation
- ☐ Non-profit, member-owned, member-controlled cooperative corporation  
(Water Code Chapter 67, Water Supply or Sewer Service Corporation)
- ☒ Municipality      ☐ District      ☐ Other - Please explain:

B. If the applicant is a For-Profit business or corporation, please include the following information:

- i. A copy of the corporation's "Certification of Account Status" from the Texas State Comptroller of Public Accounts.
- ii. The corporation's charter number as recorded with the Office of the Texas Secretary of State: N/A
- iii. A listing of all stockholders and their respective percentages of ownership.
- iv. A copy of the company's organizational chart, if available.
- v. A list of all directors and disclose the title of each individual.
- vi. A list of all affiliated organizations (if any) and explain the affiliate's business relationship with the applicant.

C. If the applicant is a Texas Water Code (TWC) Chapter 67 water supply or sewer service corporation please provide:

- i. A copy of the Articles of Incorporation and By-Laws.
- ii. The corporation's charter number as recorded with the Office of the Texas Secretary of State.
- iii. Identification of all board members including name, address, title, and telephone number.
- iv. A copy of the corporation's *Certificate of Account Status* from the Texas Comptroller of Public Accounts.

## 2. Location Information

- A. Are there people already living in the proposed area?      ☐ Yes      ☒ No
- If YES, are any currently receiving utility service?      ☐ Yes      ☐ No
- If YES, from WHOM? \_\_\_\_\_

B. Demonstrate the Need for Service by providing the following:

Have you received any requests for service in the requested service area?

☒ Yes    ☐ No

**See Attachment 1**

If YES, provide the following:

- i. Describe the service area and circumstances driving the need for service in the requested area. Indicate the name(s) and address(es) of landowner(s), prospective landowner(s), tenant(s), or resident(s) that have requested service; and/or
- ii. Describe the economic need(s) for service in the requested area (i.e. plat approvals, recent annexation(s) or annexation request(s), building permits, septic tank permits, hospitals, etc.); and/or
- iii. Discuss in detail the environmental need(s) for service in the requested area (i.e. failing septic tanks in the requested area, fueling wells, etc.); and/or
- iv. Provide copies of any written application(s) or request(s) for service in the requested area; and/or
- v. Provide copies of any reports and/or market studies demonstrating existing or anticipated growth in the requested area.
- vi. If none of these items exist or are available, please justify the need for service in the proposed area in writing. **Water service will be needed for a proposed development**

Note: Failure to demonstrate a need for additional service in the proposed service area may result in the delay and /or possible denial of the application.

C. Is any portion of the proposed service area inside an incorporated city or district?

☐ Yes    ☒ No

If YES, within the corporate limits of: N/A

Provide a copy of any franchise, permit, or consent granted by the city or district. If not available please explain:

N/A

D. Is any portion of the proposed service area inside another utility's CCN area?

☐ Yes    ☒ No

If YES, has the current CCN holder agreed to decertify the proposed area?

If NO, are you seeking dual or single certification of the area? Explain why decertification of the area is in the public interest:

N/A

### 3. Map Requirements

Attach the following hard copy maps with each copy of the application:

- A. A location map delineating the proposed service area with enough detail to accurately locate the proposed area within the county. **See Attachment 2**
- B. A map showing only the proposed area by: **See Attachment 3**
  - i. metes and bounds survey certified by a licensed state or register professional land surveyor; or
  - ii. projectable digital data with metadata (proposed areas should be in a single record and clearly labeled). Also, a data disk labeled with the applicant's name must be provided; or
  - iii. following verifiable natural and man-made landmarks; or
  - iv. a copy of recorded plat map with metes and bounds.
- C. A written description of the proposed service area. **See Attachment 4**
- D. Provide separate and additional maps of the proposed area(s) to show the following:
  - i. all facilities, illustrating separately facilities for production, transmission, and distribution of the applicant's service(s); and
  - ii. any facilities, customers or area currently being served outside the applicant's certificated area(s).

**N/A, no facilities have been constructed at this time**

**Note:** Failure to provide adequate mapping information may result in the delay or possible denial of your application.

Digital data submitted in a format other than ArcView shape file or Arc/Info E00 file may result in the delay or inability to review applicant's mapping information.

For information on obtaining a CCN base map or questions about sending digital map data, please visit the Water Utilities section of the PUC website for assistance.

### 4. New System Information or Utilities Requesting a CCN for the First Time

- A. Please provide the following information:
  - i. a list of public drinking water supply system(s) or sewer system(s) within a 2 mile radius of the proposed system; **See Attachment 5**
  - ii. copies of written requests seeking to obtain service from each of the public drinking water systems or sewer systems listed in a. 1 above or documentation that it is not economically feasible to obtain service from each entity; **City intends to extend its existing CCN to service the new development.**
  - iii. copies of written responses from each system or evidence that they did not reply; and
  - iv. for sewer utilities, documentation showing that you have obtained or applied for a wastewater discharge permit.
- B. Were your requests for service denied? ☐ Yes ☐ No

- i. If yes, please provide documentation of the denial of service and go to c.
  - ii. If no, please provide a detailed analysis which justifies your reasons for not accepting service. A separate analysis must be prepared and submitted for each utility that granted your request for service.
- C. Please summarize how the proposed utility system will be constructed and describe each projected construction phase, if any:

D. Date of plat approval, if required: 1/9/2007

E. Date Plans & Specifications submitted to the TCEQ for approval:

F. Date construction is scheduled to commence: Not yet determined

## 5. Existing System Information

i. Water system(s): TCEQ Public Water System identification number(s):

[illegible]

ii. Sewer system(s): TCEQ Discharge Permit number(s)



W	Q	1	4	4	8	8	-	0	0	1
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W	Q									
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W	Q									
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- iii. Date of last TCEQ water and/or sewer system inspection(s): **N/A**
- iv. Attach a copy of the most recent TCEQ water and/or sewer inspection report letter(s).
- v. For each system deficiency listed in the TCEQ inspection report letter; attach a brief explanation listing the actions taken or being taken by the utility to correct the listed deficiencies, including the proposed completion dates.

B. Provide the following information about the utility's certified water and/or sewer operators

Name	Classes	License Number
N/A, no water facilities have been		
constructed by the City of		
Dripping Springs at this time		

- Attach additional sheet(s) if necessary -

- C. Using the current number of customers, is any facility component in systems named in #5A above operating at 85% or greater of minimum standard capacity?

☐ Yes **N/A**

☐ No

Attach a copy of the 85% rule compliance document filed with the TCEQ if the system is operating at 85% or greater of the TCEQ's minimum standard capacity requirements.

- D. In the table below, the number of existing and/or proposed metered and non-metered connections (by size). The proposed number should reflect the information presented in the business plan or financial **documentation** and reflect the number of service requests identified in Question 2.b in the application.

**See Attachment 6**

TCEQ Water System			TCEQ Sewer System		
Connection	Existing	Proposed	Connection	Existing	Proposed
5/8" or 3/4" meter	0	18	Residential		
1" meter or larger	0	5	Commercial		
Non-Metered	0	0	Industrial		

TCEQ Water System			TCEQ Sewer System		
Other:	0	0	Other:		
Total Water	0	23	Total Sewer		

E. If this application is for a water CCN only, please explain how sewer service is or will be provided:

The developer proposes to utilize individual OSSFs.

F. If this application is for a sewer CCN only, please explain how water service is or will be provided:

N/A

G. Effect of Granting a Certificate Amendment.

Explain in detail the effect of granting of a certificate or an amendment, including, but not limited to regionalization, compliance and economic effects on the following:

- the applicant,
- any retail public utility of the same kind already serving the proximate area; and
- any landowner(s) in the requested area.

**This CCN Amendment allows the proposed development described in Attachment 1 to obtain water service from the City of Dripping Springs**

H. Do you currently purchase or plan to purchase water or sewer treatment capacity from another source?

- ☐ No, (skip the rest of this question and go to #6)
- ☒ Yes, Water

Purchased on a ☒ Regular ☐ Seasonal ☐ Emergency basis?

Water Source	% of Total Treatment
West Travis County PUA	100.00%

Water Source	% of Total Treatment
	0.00%
	0.00%

**The City of Dripping Springs has an agreement along with West Travis County Public Utility Agency (WTCPUA), to provide retail water service in the area of the proposed development. See Attachment 1**

iii. ☐ Yes, Sewer treatment capacity

Purchased on a ☐ Regular ☐ Seasonal ☐ Emergency basis?

Sewer Source	% of Total Treatment
	0.00%
	0.00%
	0.00%

iv. Provide a signed and dated copy of the most current water or sewer treatment capacity purchase agreement or contract. **See Attachment 1**

I. Ability to Provide Adequate Service.

Describe the ability of the applicant to provide adequate service, including meeting the standards of the commission, taking both of the following items into consideration: **The applicant is not currently providing water service to the area, and a detailed concept plan is provided in Attachment 6. The water distribution system will be designed in accordance with 30 TAC, Chapter 290 Rules and Regulation. Further, the facilities will be**

i. the current and projected density; and

ii. the land use of the requested area.

**operated by a TCEQ licensed operator.**

J. Effect on the Land. Explain the effect on the land to be included in the certificated area.

Amending the City of Dripping Springs existing Water CCN to include the proposed 35 acre area will allow the tract to be developed.

## 6. Financial Information

- A. For new water and/or sewer systems and for applicants with existing CCNs who are constructing a new stand-alone water and/or sewer system: **See Attachment 7**
- the applicant must provide an analysis of all necessary costs for constructing, operating, and maintaining the system, and the source of that capital (such as a financial statement for the developing entity) for which the CCN is requested for at least the first five years. In addition, if service has been offered by an existing retail water service provider as stated in #4.A., but the applicant has determined that the cost of service as finally offered renders the project not economically feasible, the applicant must provide a comparison analysis of all necessary costs for acquiring and continuing to receive service from the existing system for the same period.
  - Attach projected profit and loss statements, cash flow worksheets, and balance sheets (projected five year financial plan worksheet is attached) for each of the first five years of operation. Income from rates

should correlate to the projected growth in connections, shown on the projected profit and loss statement.

- iii. Attach a proposed rate schedule or tariff. Describe the procedure for determining the rates and fees and indicate the date of last change, if applicable. Attach copies of any cost of service studies or rate analysis worksheets.

B. For existing water and/or sewer systems:

- i. Attach a profit and loss statement and current balance sheet for existing businesses (end of last fiscal year is acceptable). Describe sources and terms for borrowed capital such as loans, bonds, or notes (profit and loss and balance sheet worksheets are attached, if needed).
- ii. Attach a proposed rate schedule or tariff.

❖ **Note: An existing water and/or sewer system may be required to provide the information in 6.A.i. above during the technical review phase if necessary for staff to completely evaluate the application**

C. Identify any funds you are required to accumulate and restrict by lenders or capital providers.

- D. In lieu of the information in #6.A. thru #6.C., you may provide information concerning loan approvals within the last three (3) years from lending institutions or agencies including the most recent financial audit of the applicant.

❖ **Note: Failure to provide adequate financial information may result in the delay or possible denial of your application.**

## 7. Notice Requirements

- A. All proposed notice forms must be completed and submitted with the application. Do not mail or publish the notices until you receive written approval from the commission to do so. **See Attachment 8**
- B. The commission cannot grant a CCN until proper notice of the application has been given. Commission rules do not allow a waiver of notice requirements for CCN applicants.
- C. It is the applicant's responsibility to ensure that proper notice is given to all entities that are required to receive notice.
- D. Recommended notice forms for publication, neighboring cities and systems, landowners with 25 acres or more, and customers are included with this application for use in preparing proposed notices. (Notice forms are available in Spanish upon request.)
- E. After reviewing and, if necessary, modifying the proposed notice, the commission will send the notice to the applicant after the application is accepted for filing along with instructions for publication and/or mailing. Please review the notice carefully before providing the notice.
- F. Notice For Publication:  
The applicant shall publish the notice in a newspaper with general circulation in the county(ies) where a CCN is being requested. The notice must be published once each week for two consecutive weeks beginning with the week after the notice is received from the commission. Proof of publication in the form of a publisher's affidavit shall be submitted to the commission within 30 days of the last publication date. The affidavit shall state with specificity each county in which the newspaper is of general circulation.
- G. Notice To Neighboring Utilities:
  - i. List all neighboring retail public utilities and cities providing the same utility service within the following vicinities of the applicant's proposed certificate area.
  - ii. For applications for the issuance of a NEW CCN, the applicant must mail the notice with a copy of the proposed CCN map to all cities and neighboring retail public utilities providing the same utility service within five (5) miles of the requested service area.

iii. For applications for the AMENDMENT of a CCN, the applicant must mail the notice with a copy of the proposed CCN map to all cities and neighboring retail public utilities providing the same utility service within two (2) miles of the requested service area.

H. Notice to Customers:

Investor Owned Utilities (IOUs) that are currently providing service without a CCN must provide individual mailed notice to all current customers. The notice must contain the current rates, the date those rates were instituted and any other information required in the application.

I. The commission may require the applicant to deliver notice to other affected persons or agencies.

**Do not publish or send copies of the proposed notices to anyone at the time you submit the application to the commission. Wait until you receive written authorization to do so. Authorization occurs after the commission has reviewed the notices for completeness, and your application has been accepted for filing. Once the application is accepted for filing, you will receive written authorization to provide notice. Please check the notices for accuracy before providing them to the public. It is the applicant's burden to ensure that correct and accurate notice is provided.**

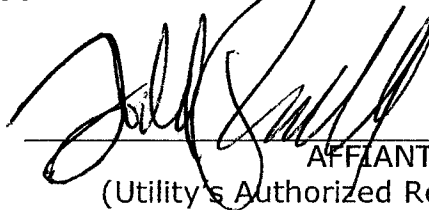
# OATH

STATE OF Texas  
COUNTY OF Hays

I, TODD PURCELL, being duly sworn, file this application as MAYOR (indicate relationship to Applicant, that is, owner, member of partnership, title as officer of corporation, or other authorized representative of Applicant); that, in such capacity, I am qualified and authorized to file and verify such application, am personally familiar with the maps and financial information filed with this application, and have complied with all the requirements contained in this application; and, that all such statements made and matters set forth therein are true and correct. I further state that the application is made in good faith and that this application does not duplicate any filing presently before the Public Utility Commission of Texas.

I further represent that the application form has not been changed, altered or amended from its original form.

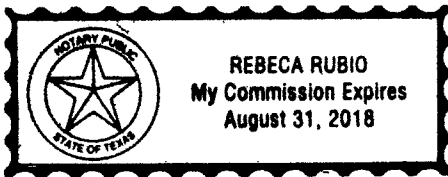
**I further represent that the Applicant will provide continuous and adequate service to all customers and qualified applicants for service within its certificated service area.**

  
AFFIANT  
(Utility's Authorized Representative)

If the Affiant to this form is any person other than the sole owner, partner, officer of the Applicant, or its attorney, a properly verified Power of Attorney must be enclosed.

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public in and for the State of Texas,  
This day 4<sup>th</sup> of MARCH 20 15

SEAL



  
NOTARY PUBLIC IN AND FOR THE  
STATE OF TEXAS

  
PRINT OR TYPE NAME OF NOTARY

MY COMMISSION EXPIRES Aug 31 2018

# **City of Dripping Springs**

## **Water CCN Application**

### **List of Attachments**

Attachment 1 Blue Blazes letter or development agreement for request of service and City of Dripping Springs Wholesale Water Agreement with West Travis County Public Utility Agency (formerly the Lower Colorado River Authority)

Attachment 2 A general location map delineating the proposed service area

Attachment 3 Final Plat and CD With Boundary Map in ACAD Format

Attachment 4 Written Description of The Proposed Service Area

Attachment 5 List of Public Drinking Water Supply System(S) Within a 2 Mile Radius

Attachment 6 Concept Plan and Water System Analysis

Attachment 7 Financial Information

Attachment 8 Notice Forms for Publication, Neighboring Cities and Systems

**Attachment 1 – Blue Blazes Development Agreement/Request for Service and  
City of Dripping Springs Wholesale Water Agreement with West Travis  
County Public Utility Agency (formerly the Lower Colorado River Authority)**





70 2013 13037088

Hays County  
Liz Q. Gonzalez  
County Clerk  
San Marcos, Texas 78666

Instrument Number: 2013-13037088

Recorded On: November 05, 2013

As  
OPR RECORDINGS

Parties: SMITH JAMES A

Billable Pages: 60

To DRIPPING SPRINGS CITY OF

Number of Pages: 61

Comment:

( Parties listed above are for Clerks reference only )

**\*\* Examined and Charged as Follows: \*\***

OPR RECORDINGS	262.00
Total Recording:	262.00

\*\*\*\*\* DO NOT REMOVE. THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY  
because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 2013-13037088  
Receipt Number 352736  
Recorded Date/Time: November 05, 2013 02:13:23P  
Book-Vol/Pg: BK-OPR VL-4791 PG-334  
User / Station C Rodriguez - Cashiering #7

**Record and Return To:**

CITY OF DRIPPING SPRINGS  
PO BOX 384  
DRIPPING SPRINGS TX 78620



State of Texas |  
County of Hays

I hereby certify that this instrument was filed for record in my office on the date and  
time stamped hereon and was recorded on the volume and page of the named records  
of Hays County, Texas

*Liz Q. Gonzalez*

Liz Q. Gonzalez, County Clerk

# **Blue Blazes Ranch**

## **City of Dripping Springs Development Agreement**

PREPARED FOR

JAMES A. SMITH  
4004 EAST US HIGHWAY 290  
DRIPPING SPRINGS, TX 78620

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PROJECT NO 5559-01

**DEVELOPMENT AGREEMENT**

STATE OF TEXAS

§

COUNTY OF HAYS

§

§

This Development Agreement ("Agreement") is between the City of Dripping Springs, Texas ("the City"), and James A. Smith ("Owner"). In this Agreement, the City and Owner are sometimes individually referred to as a "Party" and collectively referred to as the "Parties".

**RECITALS:**

**WHEREAS,** Owner owns approximately thirty-five (35) acres of land ("the Property") located wholly within the extraterritorial jurisdiction ("the ETJ" or "the City's ETJ") of the City and in Hays County, Texas ("the County"), which is more fully described in *Exhibit A*, attached hereto; and

**WHEREAS,** Owner intends to develop the Property as a master-planned, mixed-use development that will include commercial and residential uses, a public park and open space areas to benefit the residents and property owners of the community, as well as other residents and visitors of the City, the City's ETJ, and the County; and

**WHEREAS,** the development will include facilities that will attract and serve tourists and visitors to the area. In this Agreement, the Property, as it will be developed, is sometimes referred to as the "Project;" and

**WHEREAS,** the City has adopted a Comprehensive Plan to guide the City in planning for future growth and development and the City Council finds that this Development Agreement is consistent with the Comprehensive Plan; and

**WHEREAS,** the City has determined that development agreements with developers of master-planned developments such as the Project will benefit the City by establishing land use controls; providing for the construction of appropriate and necessary utility, roadway and drainage infrastructure; encouraging economic development; protecting the environment; preserving native habitat and endangered species; and promoting the welfare of the citizens of the City and its ETJ; and

**WHEREAS,** this Agreement will benefit the City by facilitating the annexation of the Property, and the development of a master-planned community which will allow for thoughtful and high-quality planning, the development of necessary roadways and utility facilities, and the development of a balanced community that includes commercial, residential, civic and recreational uses. Through this Agreement, the City is furthering its land planning objectives by obtaining compliance with the

City's rules for Zoning, Lighting, Building, Architectural Guidelines, Exterior Design, Signs and Landscaping; and

**WHEREAS,** the City and Owner are striving to achieve balance between the pressures of urbanization and the shared desires to protect the public safety, and conserve the hill country scenery and native habitat; and

**WHEREAS,** this Agreement grants Owner a measure of predictability in terms of applicable municipal regulations and development fees; and

**WHEREAS,** Owner and the City wish to enter into this Agreement to provide an alternative to the City's typical regulatory process for development; encourage innovative and comprehensive master-planning of the Property; provide a level of certainty of regulatory requirements throughout the term of this Agreement; and provide assurances of a high-quality development that will benefit the present and future residents of the City, the City's ETJ and the County; and

**WHEREAS,** this Agreement *runs with the land*, and thus shall be notarized, then filed in and among the land records of Hays County; and is binding upon subsequent purchasers of the Property, or any portions thereof; and

**WHEREAS,** the City is statutorily authorized to enter into such agreements with the owners of property located in the City's ETJ pursuant to Texas Local Government Code Section 212.172; and

**WHEREAS,** Owner and the City have conducted public hearings, posted sufficient public notice, and solicited public input regarding the proposal contained within this Agreement.

**NOW THEREFORE, FOR GOOD & VALUABLE CONSIDERATION,** the receipt and sufficiency of which are hereby acknowledged, including the above recitals and the agreements set forth below, the City and Owner agree as follows:

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## ARTICLE 1. DEFINITIONS

### 1.1 General:

Words and phrases used in this Agreement shall have the meanings set forth in this section. Terms that are not defined below, but are defined in the City's Code of Ordinances, shall be given the meanings set forth in the Code. Words and phrases not defined in the Code of Ordinances shall be given their common, ordinary meaning unless the context clearly requires otherwise. When not inconsistent with the context, words used in the present tense shall include the future tense; words in the plural number shall include the singular number (and *vice versa*); and words in the masculine gender shall include the feminine gender (and *vice versa*). The word "shall" is always mandatory, while the word "may" is merely directory. Headings and captions are for reference purposes only.

### 1.2 Specific:

**Agreement:** This contract between the City of Dripping Springs, Texas and Owner, including all Exhibits, which are incorporated herein for all intents and purposes.

**Applicable Fees:** The fees and charges to be paid by Owner to the City with respect to the development of the Property.

**Applicable Rules:** The City Rules that, as modified by the Project approvals and variances granted concurrent with this Agreement, if any, exist on the Effective Date of this Agreement and will be applicable to the development of the Property for the term of this Agreement. This term does not include regulations mandated by state law, or that are necessary to prevent imminent harm to human safety or property, which may be modified and made applicable to the Project even after the Effective Date.

**Association:** A community group that is organized with respect to the Property in which individual owners of lots share common interests and responsibilities for costs and upkeep of common space or facilities. The group may take the form of a Property Owner Association. The Project may allow for more than one association.

**Building Code:** The most recently adopted versions of the International Building Code, Residential Building Code, Commercial Building Code, National Electrical Code, International Plumbing Code, International Mechanical Code, International Energy Conservation Code, and the International Fire Code, as of the time when a permit application is filed with the City. (Collectively, the most recent versions of the City's Building Code.)

**Building Height:** The vertical distance from the average line of the highest and lowest existing grade points of that portion of the lot covered by the building to the highest point of the building, but shall not include the height of chimneys, spires, towers, and mechanical appurtenances.



**City:** The City of Dripping Springs, an incorporated Type A, general-law municipality located in Hays County, Texas.

**City Administrator:** The chief administrative officer of the City of Dripping Springs, Texas. The term also includes the Deputy City Administrator, and the City Administrator's designee.

**City Council:** The governing body, (also known as the Board of Alderman), of the City of Dripping Springs, Texas.

**City Engineer:** The person or firm designated by the City Council as the engineer for the City of Dripping Springs, Texas.

**City Rules:** The entirety of the City's ordinances, regulations and official policies, except as expressly modified by this Agreement.

**County:** Hays County, Texas.

**Development Area:** The geographic areas depicted on *Exhibit B*.

**Development Area Map:** The plan for the individual development areas of the Project attached as *Exhibit B*, as it may be amended from time to time in accordance with this Agreement.

**Effective Date:** The date upon which this Agreement is executed by all parties.

**Impervious Cover:** Buildings, parking areas, roads, and other impermeable man-made improvements covering the natural land surface that prevents infiltration. For further clarification on what is considered impervious cover, refer to the City's Water Quality Protection Ordinance.

**Impervious Cover Percentage:** The percentage calculated by dividing the total acres of impervious cover on the Property by the total number of acres included in the Property. Whether or not outdoor decks are included in the calculation of impervious cover shall be determined by the City Engineer based on the deck design and materials. In the calculation of impervious cover, the following shall be characterized as *pervious* for all purposes: open space, greenbelt, mitigation land, park, irrigation fields/drainage fields for onsite sewage facilities, flood plain, unlined water quality and/or drainage facility and/or area, unlined detention facility, swale, irrigation area, playground, athletic fields, granite or pea gravel trail.

**LCRA:** the Lower Colorado River Authority, a quasi-governmental entity created and operating under the laws of the State of Texas.

**Lumen:** The unit of measurement used to quantify the amount of light produced by a bulb or emitted from a fixture (as distinct from "watt," a measure of power consumption).

For the purposes of this Agreement, the lumen output values shall be the initial lumen output ratings of a lamp multiplied by the luminaire efficiency or light loss factor (LLF). The lumen rating associated with a given lamp is generally indicated on its packaging or may be obtained from the manufacturer. If the efficiency is not known for a residential luminaire, assume 70% for non-LED lighting. LLF for all luminaires tested with absolute photometry are approximated as 100% of initial lumens. (Abbreviated lm).

**Open Space:** A tract of real property not occupied by any structures or impervious surfaces. A tract of real property designated by a public or private entity as accessible by the public for active or passive recreation shall qualify as Open Space. Property included within the confines of individual residential lots shall *not* qualify as Open Space under this Agreement.

**Owner:** Mr. James A. Smith and any heirs, successors and assigns; and any subsequent owner(s) of the Property.

**P&Z:** The Planning and Zoning Commission, a volunteer citizen advisory board of the City of Dripping Springs that has been granted specific land use and development regulatory authority pursuant to City ordinances and state statutes.

**Project:** The Property, as it will be developed under this Agreement pursuant to the Development Area Map (*Exhibit B*).

**Project Approvals:** The approvals, variances, waivers and exceptions to the Applicable Rules approved by the City with respect to the development of the Property, as set forth on the attached *Exhibit C*.

**Property:** Approximately thirty-five (35) acres of land, in Hays County, Texas, more fully described on the attached *Exhibit A*.

**Recreation:** Leisure time activities. Active Recreation involves active or energetic activities that are often performed with others, involves the use of equipment, and takes place at prescribed places, sites or fields (e.g., playground activities, swimming, tennis, and track). Passive Recreation involves activities that are relatively inactive or less energetic (e.g., board games, picnicking, and walking).

**Stealth Wireless Transmission Facility (stealth WTF):** A WTF that is screened, disguised, concealed or otherwise camouflaged as a natural structure, structure or part of a structure such that the WTF is indistinguishable, not readily visible or identifiable as such from other natural structures, structures or the structure that it is attached to or within and is designed to be aesthetically compatible with existing and proposed uses on a site. A stealth WTF may have a secondary function, including but not limited to the following: church steeple, bell tower, spire, clock tower, cupola, light standard, flagpole with a flag, or tree.

**TCEQ:** Texas Commission on Environmental Quality, or its successor agencies.

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**TxDOT:** Texas Department of Transportation, or its successor agencies.

**USFWS:** United States Fish and Wildlife Service.

**West Travis County Public Utility Agency ("WTCPUA"):** The West Travis County Public Utility Agency is a publicly owned water and wastewater utility serving western Travis County and northern Hays County. The WTCPUA was created in December 2011 for the purpose of acquiring, owning and operating the LCRA's West Travis County Water and Wastewater System.

**Wireless Transmission Facility (WTF):** Any staffed or unstaffed facility for transmitting or receiving television, AM/FM radio, digital, microwave cellular, telephone or similar forms of electronic communication and usually consisting of an antenna or group of antennas, transmission cables, associated equipment and enclosures, and may include an antenna-supporting structure. The following developments shall be considered as a wireless transmission facility: developments containing new or existing antenna-supporting structures, public antenna-supporting structures, replacement antenna-supporting structures, co-locations on existing antenna-supporting structures, attached wireless communications facilities, stealth wireless communication facilities, and temporary wireless communications facilities.

## ARTICLE 2. PUBLIC BENEFITS & INFRASTRUCTURE

**2.1 Orderly Growth:** The City desires that development within its ETJ occur in an orderly manner in order to protect the health, safety and welfare of the City's present and future citizens; preserve the environment; enhance property values; and provide for expansion of the City's tax base.

### **2.2 Water & Wastewater Infrastructure:**

**2.2.1 Water:** Potable retail water service will be provided by the City of Dripping Springs which has a supply of treated surface water through the City's wholesale water purchase agreement with the WTCPUA.

**2.2.2 Wastewater:** Wastewater service will be provided by On-Site Sewage Facilities ("OSSF") provided by the Owner, until such a time that a regulated public wastewater collection system with capacity available to serve the Project is extended to the Property. Upon extension of such public wastewater collection system to the Property, Owner shall provide wastewater service for any future development of the Project through the public wastewater collection system, subject to all applicable rules, regulations, and fees for such service. The owners of portions of the Project which are already served by OSSF on the date the public wastewater system is connected to the Property may be required to connect to the public wastewater system upon substantial redevelopment of such properties, or when the original OSSF system completely fails or is being replaced, or may

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voluntarily request conversion from OSSF to the public wastewater system, subject to available capacity and all other applicable rules and regulations.

**2.2.3 Utilities Agreement:** Water and wastewater utilities agreements will be required separately to establish the parties' agreements concerning timing, location, and other specifications of utility service, as applicable.

**2.2.4 Design:** Water and wastewater infrastructure will be designed and constructed in accordance with all applicable standards, rules and regulations, including those of the TCEQ, the WTCPUA, and City of Dripping Springs.

**2.3 Recreation:**

**2.3.1 Open Space:** The Project will include approximately two and three tenths (2.3) acres of community parkland and open space, (including greenbelts, water quality buffer zones, and a water quality and detention pond) that shall be conveyed to the City for ownership, but will be operated and maintained as parkland and open space areas by the Property Owners Association. *Exhibit B*, depicts the community parkland and open space to be provided.

**2.3.2 Parkland Dedication:**

- a. In lieu of providing parkland calculations with each site plan submittal, the Owner will dedicate ten percent (10%) of the Property (three and one half [3.5] acres) as parkland at the time of the first final plat submittal for the Property. Owner's satisfaction of the Parkland Dedication requirements under the City's Code of Ordinances will be contingent on the City's approval of a Master Parkland Plan. The Owner will submit to the City a Master Parkland Plan showing the location of parkland for the Property at the time the first final plat for the Property is submitted. Approval of a Master Parkland Plan by the City Council (following review by the City's: [1] Parks and Recreation Commission, and [2] Planning and Zoning Commission) is an express condition of final plat approval.

As specified in an approved Master Parkland Plan, the three and one half [3.5] acres of parkland may be provided through any one or combination of the following mechanisms:

**1. Dedication of land onsite, including:**

- (A) the approximately two and three tenths (2.3) acres of community parkland and open space described above in Section 2.3.1 designated on the Development Area Map that will be dedicated to the City of Dripping Springs upon approval of the first Final Plat;
- (B) the one quarter (0.25) acres of community parkland in Development

Area 4; and

- (C) several easements for recreational use by the public as pedestrian and non-motorized vehicle trail, to be executed in phases through the easement document (*Exhibit D*) as site development plans for the Property are submitted for approval, with the total linear length of the easement to be dedicated being at least five thousand two hundred (5,200) linear feet of trail system.
- 2. Dedication of private recreational facilities for use by the residents of the Project; and/or
- 3. Payment of fees in lieu of onsite dedication of land.

If Development Area #5 is developed as a residential use, additional parkland or fee-in-lieu will be required at the time of Site Plan or Final Plat submittals.

**2.3.3 Operation & Maintenance:** The operation and maintenance of the dedicated community parkland and open space shall be the responsibility of the Property Owners Association, including maintenance of the water quality and detention ponds, and installation and maintenance of a pedestrian trail on the easement for recreational use (*Exhibit D*). Maintenance will be performed to City standards, and pursuant to a separate maintenance and operations agreement between the City and the Property Owners Association executed at the time that the first site plan for the Project is approved by the City. Until such agreement is finalized, the Owner shall be solely responsible for operation and maintenance of the parkland covered by this Agreement.

**2.3.4 Public Access:** Owner agrees that the approximately two (2) acres of land designated on *Exhibit B*, attached hereto as City Parkland and Open Space, shall be open to the public. This land will include hiking trails, picnic tables, and other park amenities. The Owner and the City may at a later date agree to designate certain portions of the two (2) acres of land designated in *Exhibit B* as closed to the public for environmental or safety purposes.

**2.4 Fees & Revenues:** In consideration of the City's covenants and concessions contained within this Agreement, and in order to assure that the City does not incur uncompensated expenses in connection with this Agreement and the development of the Property under this Agreement, Owner agrees to pay to City certain development fees (as herein defined) as follows:

**2.4.1 Administrative & Professional Fee:** Owner has established a deposit of the Administrative & Professional Fee of Ten Thousand Dollars (\$10,000.00) with the City, which is intended to cover all actual City costs comprised of legal, architectural, land planning and engineering fees, and related administrative

expenses, directly associated with the review of this Agreement. If the initial deposit proves to be insufficient, Owner shall remit additional funds as directed by the City, subject to a maximum Administrative and Professional Fee of Thirty Thousand Dollars (\$30,000.00). Excess funds in escrow will be credited toward other fees owed by Owner to City (if any). Any final balance remaining in escrow shall be refunded to the Owner upon completion of the Project.

**2.4.2 Development Fees:** All development fees shall be in accordance with the current fees schedule as of the date of submission of each permit application.

**2.5 Environmental Protection:** Owner will comply with the following natural resource laws and regulations, to the extent applicable:

**2.5.1 Aquifer Protection:** The Project lies within the Barton Springs Segment of the Contributing Zone to the Edwards Aquifer. As a condition for receiving retail water service as set forth in this Agreement, the Project will comply with water quality measures designed to assure protection of that segment of the Edwards Aquifer consistent with the provisions of the Memorandum of Understanding between the LCRA and the USFWS. Moreover, Owner will comply with all applicable TCEQ regulations, including but not limited to Edwards Aquifer Rules, Texas Administrative Code Title 30 Section 213, as may be amended, to the extent applicable to the Property. Owner shall also take reasonable measures to protect the Trinity Aquifer, to the extent applicable to the Property, including at a minimum adherence to the above-cited Edwards Aquifer Rules.

**2.5.2 Land Application Restrictions:**

- a. All untreated wastewater will be disposed of by individual OSSF until a connection to a public wastewater collection system is available, subject to Section 2.2.2, above.
- b. Spray irrigation is prohibited.

**2.5.3 Stormwater Controls:** Owner will prepare and implement a stormwater pollution prevention plan in compliance with the TCEQ's Texas Pollution Discharge Elimination System stormwater general permit for construction related stormwater discharges. Stormwater controls will also comply with all applicable City requirements.

**2.5.4 Water Quality Protection Ordinance:** Owner agrees to implement and comply with the City's Water Quality Protection Ordinance in place on the Effective Date except as modified by this Agreement in *Exhibit C* and elsewhere.

**2.5.5 Endangered Species:** Owner will seek to ensure that the Project will not adversely affect listed endangered species or their critical habitat in accordance with the Federal Endangered Species Act. Owner must provide City with current letters regarding the Project's compliance with the USFWS and LCRA

Memorandum of Understanding (MOU), as it exists on the Effective Date of this Agreement, or subsequent agreements that supersede the MOU.

- 2.5.6 Buffering:** In order to protect water quality, Owner will provide buffering of sensitive drainage areas within the Project. All buffer zones (including but not limited to those mandated by the USFWS) shall be identified on *Exhibit E*. Buffer zones shall be left undisturbed along tributaries, except as authorized by the jurisdiction having legal authority to make such exceptions. All buffer zone areas shall be vegetated, in order to re-establish native prairie grasses in the buffers to the extent reasonably possible.
- 2.5.7 Wells:** There are no existing wells on-site. Only non-potable water wells, to be used for Project irrigation, will be allowed as permitted by the Hays Trinity Groundwater Conservation District.
- 2.5.8 Water Conservation Plan:** Owner shall comply with the City's Water Conservation Plan, which has been approved by the LCRA and is incorporated herein for all purposes.
- 2.6 Deed Restrictions:** Owner agrees that all restrictive covenants for the Project, including but not limited to any conditions, covenants and restrictions (CCR's) promulgated for the Project, shall be consistent with and refer to this Agreement, shall be in compliance with the Applicable Rules and shall be binding upon all builders and subsequent owners of the Property, however divided. The City shall not be responsible for the enforcement of such CCR's.
- 2.7 Plat:** The final plats for all phases of development of the Property must conform to this Agreement.

### ARTICLE 3. PROPERTY DEVELOPMENT

#### 3.1 Governing Regulations:

- 3.1.1** For the term of this Agreement, the development and use of the Property will be controlled by the terms of this Agreement, the Project approvals and the applicable rules. If there is any conflict between the applicable rules and the terms of this Agreement, the terms of this Agreement will control.
- 3.1.2** For purposes of any grandfathering analysis, the parties agree that the relevant date, for purposes of compliance with Texas Local Government Code, Chapter 245, as may be amended, is the Effective Date of this Agreement. The applicable rules, codes, and technical criteria manuals, as they exist as of the effective date of this Agreement, shall govern the Project, unless otherwise expressly provided in this Agreement.
- 3.1.3** Any dispute regarding whether an aspect of the Project is grandfathered shall be

subject to the rules and procedures found in the City's Code of Ordinances, Article 22.03 (Grandfathered Development Status).

### 3.2 Project Approvals & Entitlements:

**3.2.1 Project Approvals & Variances:** The Project Approvals and Variances set forth in *Exhibit C* have been approved by all required City boards and commissions and the City Council and are granted by the City with respect to the development of the Property. This Agreement shall serve as guidance for the review and approval of any additional waivers, variances, exceptions or other municipal authorizations not specifically included in this Agreement. Preliminary and Final Plats, as well as individual Site Plans, will require approval through the City Council, but minor amendments to those plans shall only require administrative approval. Determination of whether any proposed change is major or minor is at the sole discretion of the City Administrator, in consultation with the Planning Director.

a. **Development Area Map:** The City confirms that the Development Area Map, attached as *Exhibit B*, complies with the City's Comprehensive Plan, and that the Development Area Map, and all land uses and densities, have been approved by all requisite City departments, boards and commissions and by the City Council. The City approves the land uses, densities, and reservations of land for public purposes, exceptions, utility and roadway alignments and sizing and other matters shown on the Development Area Map. The City's execution of this Agreement shall be deemed to be the approval of the Development Area Map, upon which the Preliminary Plans for development of the Property will be based.

1. Due to the fact that the Project comprises a significant land area and its development will occur in phases over a number of years, modifications to the Development Area Map may become necessary due to changes in market conditions or other factors.

2. In order to provide flexibility with respect to certain details of the development of the Project, and as further detailed in Section 3.6 herein, owners may seek changes in the following:

A. Location or configuration of lot lines or development area boundaries, including changes within the proposed parkland area.

B. Changes in the number of lots or development areas. Changes in the location or number of development areas will only require administrative approval, so long as the changes do not affect the environment, or public health and safety.

b. **Extension of Permits and Approvals:** Any permit or approval under this Agreement or granted by the City pursuant to, or in accordance with, this



Agreement shall be extended for any period during which performance by any Owner is prevented or delayed by action of a court or administrative agency, or an Owner is delayed due to failure to receive a governmental permit despite demonstrable diligent efforts to obtain said permit. In no instance shall any permits or approvals be extended beyond the duration of this Agreement.

**3.2.2 Land Use:** The Property may be developed with the land uses specified below as such land uses are defined in the City Code on the Effective Date. All Conditional Uses shall only be authorized upon approval of a Conditional Use Permit by the City in accordance with the City Code as of the Effective Date. Additionally, no more than fifty (50) percent of the total acreage of the Property may be used for any type of residential development. All Wireless Transmissions Facilities in any Development Area must: (a) comply with the City's Wireless Transmissions Facilities Ordinance, (b) be Stealth Wireless Transmission Facilities unless otherwise approved by the City Council, and (c) receive a conditional use permit.

**a. Development Area 1:** Development Area 1, as shown on *Exhibit B*, may be developed with any permitted uses allowed in the Commercial Services (CS) zoning district, with the following exceptions (uses not permitted) and inclusions (additional permitted uses):

1. Exceptions (uses not permitted): All Transportation & Auto Services uses; and all Light Industrial/Manufacturing uses.
2. Inclusions (additional permitted uses): Civic/Conference Center; Tennis Court; and Community Center (Municipal).

**b. Development Area 2:** Development Area 2, as shown on *Exhibit B*, may be developed with any permitted uses allowed in the General Retail (GR) zoning district, with the following exceptions (uses not permitted) and inclusions (additional permitted uses):

1. Exceptions (uses not permitted): Bed & Breakfast Inn or Facility.
2. Inclusions (additional permitted uses): Caretaker's/Guard Residence; Civic/Conference Center; and Tennis Court.
3. Inclusions Requiring a Conditional Use Permit: Communication Equipment Repair; Exterminator Services; Laundry/Dry Cleaning; Recycling Center; Limosine/Taxi Service; Motion Picture Studio, Commercial; and Offices, Parole/Probation.

**c. Development Area 3:** Development Area 3, as shown on *Exhibit B*, may be developed with any permitted uses allowed in the General Retail (GR) zoning district, with the following exceptions (uses not permitted) and inclusions (additional permitted uses):

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1. Exceptions (uses not permitted): Auto Supply Store; Studio, Tattoo or Body Piercing; Tool & Machinery Rental (Indoor Storage); Sewage Pumping Station; Wastewater Treatment Plant; Water Supply (Elevated Storage Tank); and Water Supply Facility (Private).
  2. Inclusions (additional permitted uses): Caretaker's/Guard Residence; Civic/Conference Center; and Tennis Court.
  3. Inclusions Requiring a Conditional Use Permit: Communication Equipment Repair; Exterminator Services; Funeral Home or Mortuary; Gravestone/Tombstone Sales; Recycling Center; Motion Picture Studio, Commercial; Furniture Manufacturer; Propane Sales (Retail); Warehouse/Office; Welding Shop; Electronic Assembly; Engine Repair or Manufacture; Laboratory Equipment Manufacture; Machine Shop; Maintenance & Repair Service for Buildings; Sign Manufacturing; Stone/Clay/Glass Manufacturing; and Offices, Parole/Probation.
- d. **Development Area 4:** Development Area 4, as shown on *Exhibit B*, may be developed with any permitted uses allowed in the General Retail (GR) zoning district, with the following exceptions (uses not permitted) and inclusions (additional permitted uses):
1. Exceptions (uses not permitted): Garden (Non-Retail).
  2. Inclusions (additional permitted uses): Accessory Dwelling; Caretaker's/Guard Residence; Rooming/Boarding House; Community Center (Municipal); and Government Building.
  3. Inclusions Requiring a Conditional Use Permit: Communication Equipment Repair; Exterminator Services; Offices, Parole/Probation; Security Systems Installation Company; Parking Structure, Commercial; Assisted Living Facility; and Telephone Switching/Exchange Building.
- e. **Development Area 5:** Development Area 5, as shown on *Exhibit B*, may be developed with any permitted uses allowed in the General Retail (GR) zoning district, with the following exceptions (uses not permitted) and inclusions (additional permitted uses):
1. Exceptions (uses not permitted): Check Cashing Service; Credit Agency; Insurance Agency Offices; Security Monitoring Company; All Terrain Vehicle Dealer (Sales Only); Auto Supply Store; Building Material Sales; Convenience Store (With Gas Sales); Convenience Store (Without Gas Sales); Motorcycle Dealer (Sales, Repair); Restaurant (With Drive-Through); Security Systems Installation Company; Studio, Tattoo or Body Piercing; Tool & Machinery Rental (Indoor Storage); Temporary Outdoor

Sales/Promotion; Auto Financing & Leasing; Auto Tire Sales & Repair; Auto Washing Facility, Attended; Auto Washing Facility, Unattended; Automobile Repair, Minor; Oil Change & Inspection; Tire Dealer, Indoor Storage; Feed & Grain Store; Heating & Air Conditioning Sales/Service; and Plumbing Shop.

2. Inclusions (additional permitted uses): Accessory Building/Structure (Residential); Accessory Dwelling; Caretaker's/Guard Residence; Community or Group Home; Communication Equipment Repair; Laundry/Dry Cleaning; Civic/Conference Center; Tennis Court; Community Center (Municipal); and Government Building (Mun, St, Fed).
3. Inclusions Requiring a Conditional Use Permit: Communication Equipment Repair; Laundry/Dry Cleaning; Motion Picture Studio, Commercial; and Heliport.

**3.2.3 Impervious Cover:** Owner agrees to limit the impervious cover to a maximum impervious cover percentage of seventy percent (70%) of the total site. Owner shall have the right to apportion impervious cover limits on a lot by lot or use by use basis. Owner may apportion such impervious cover as it deems desirable so long as the overall impervious cover limitation is not exceeded. Owner may count in density and impervious cover calculations land designated as greenbelt, open space, agricultural uses, floodplains, mitigation land or similar areas.

**3.2.4 Slopes:** To the maximum extent practical, nonresidential construction shall be limited to those areas with pre-development natural grades of less than twenty-five percent (25%). The Property has three bands of slopes that exceed twenty-five percent (25%) that intersperse the entire site (See *Exhibit E*). Roadway, driveway and commercial construction will necessitate some construction in these areas in order to develop the site. Construction may occur on slopes that exceed twenty-five percent (25%) if the following criteria and design standards are met:

- a. Designs shall be based on commonly accepted Geotechnical, Structural, Drainage and Water Quality Engineering practices, including local design criteria.
- b. Designs and aesthetic treatments shall be consistent throughout the Project.
- c. Aesthetic treatments of exposed graded slopes, retaining walls and foundations shall be reviewed and approved by the City Administrator on a case-by-case basis according to the following standards:
  1. Graded slopes shall be landscaped in accordance with the City's Landscape Design Ordinance.

2. Exposed retaining walls and building foundations shall be faced with Native Stone Masonry of an approved type.

**3.2.5 Cut & Fill:** Owner shall be allowed to cut and fill the Property beyond the six (6) foot maximum in the City Code, as necessary for construction of the improvements, including private driveways and parking lots, water quality and detention ponds, and building foundations, provided that no such cut or fill shall exceed ten (10) feet. Areas where cut or fill exceeds ten (10) feet may be approved by the City Administrator, on a case-by-case basis. Exhibits showing specific areas and quantities of cut or fill over ten (10) feet must be reviewed and approved by the City Administrator in consultation with the City Engineer. In reviewing and approving areas where cut or fill proposed exceeds ten (10) feet, the City may consider the following factors: (1) aesthetics; (2) structural integrity; and (3) erosion control measures.

**3.2.6 Streets:** Public streets in this development will be maintained by Hays County or the City of Dripping Springs. All other private roadways and driveways constructed within the Project site shall be owned and maintained by the Property Owner's Association. The private streets shall meet all applicable requirements for access by law enforcement, fire, emergency services and school district access.

**3.2.7 Roadway Design:** The design geometry for the public streets will follow the Hays County Design Requirements Based on Roadway Classification with the following exceptions:

a. **Main Entrance:** The main entrance will be designated as a Major Collector, having an assumed Average Daily Traffic over two thousand five hundred (2,500) for the entire development. However, since this roadway length is less than three hundred fifty (350) linear feet in length with stop signs at both ends, it does not meet the general idea of a Major Collector.

b. **All Public Roadways:** Proposed design criteria for all public roadway within the development is detailed in the following table:

Proposed Roadway Design Classification	Proposed Roadway Design
Design Speed (mph)	25 mph
Min. ROW Width (ft)	60
Building Setback (ft)	25
Width of Travelway (ft)	30
Minimum Centerline Radius (ft)	250
Min. Tangent Length between Reverse or Compound Curves (ft)	100
Max. Grade (%):	10
Min. Street Centerline offset at Adjacent Intersections (ft)	125

**3.2.8 Driveway Locations:** Driveway cuts on the City of Dripping Springs right-of-ways and private driveway joint use easements shall have a minimum separation of one hundred (100) feet, measured centerline to centerline. Driveway cuts shall be located no closer than fifty (50) feet to a roadway intersection.

**3.2.9 Building Height:** The Building Heights shall be restricted as follows:

- a. **Development Area 1:** Forty (40) feet
- b. **Development Area 2:** Forty (40) feet
- c. **Development Area 3:** Seventy (70) feet
- d. **Development Area 4:** Forty (40) feet
- e. **Development Area 5:** Seventy (70) feet

In all Areas, the Building Height shall not exceed one thousand three hundred and thirty two (1,332) feet in elevation above sea level (forty [40] feet above the top of hill).

**3.2.10 Exterior Design and Architectural Standards:** The building design and materials will meet the City of Dripping Springs Exterior Design and Architectural Standards (Code of Ordinances Chapter 24.03.001), as it existed on the Effective Date.

**3.2.11 Access:**

- a. **Driveways:** The City hereby approves the existing driveway cut, as approved by TxDOT. The City agrees to also approve an additional driveway cut to US Highway 290 upon receipt of documentation of approval by TxDOT. The locations of both the existing and additional proposed driveways are shown on *Exhibit B*. No other driveway cut locations on Highway 290 will be permitted unless approved by TxDOT and the City of Dripping Springs.
- b. **Interconnectivity:** Owner agrees to provide no less than two (2) multi-modal connections to provide safe access for motorists, bicyclists, and pedestrians that shall extend up to the boundaries of: (1) Area 4 to the West; and (2) Area 3 to the East to eventually connect to adjacent properties. In the event that Owner is prohibited from meeting this requirement due to the existence of conservation easements on adjacent properties, Owner must: (1) provide proof of the existence of a conservation easement; and (2) install a crash gate and allow for emergency access in lieu of a multi modal connection.

**3.2.12 Signage:** All owners, tenants, subtenants, and purchases of individual lots or units within the Project shall comply with the applicable sign limitations in this Agreement, and shall obtain a permit from the City for any proposed signage. All on-site signs for the Project shall comply with the City of Dripping Springs Sign

Ordinance (Chapter 26), with the following alternative standards (See *Exhibit G*, and *Exhibit K*):

- a. **Main Monument Sign:** A main monument sign will be located at the Project entrance, on Highway 290, with a maximum signage area of one hundred and ninety eight (198) square feet and have a maximum height of sixteen (16) feet. Each business will be allowed a maximum eleven and one quarter (11.25) square feet of sign area, and an additional twenty (20) square feet of sign area will be reserved for the Project name and/or flagship business. Individual business signs will be stacked vertically, and the monument sign will be placed on a base with rock veneer. This sign will be illuminated internally (businesses names) and externally (Project name) in conformance with the Lighting Ordinance.

If a second Project driveway entrance is permitted on Highway 290 and constructed, a secondary monument sign at that entrance shall be permitted with an overall height of six (6) feet with an internally or externally illuminated face of sixty four and one half (64.5) square feet on a one and one half (1.5) foot height stone base.

- b. **East and West Monument Signs:** In addition to the Project's main monument sign(s), the Owner may place two (2), thirty-two (32) square foot Project signs with the Project's name at the east and west Property corners on Highway 290, to be mounted upon the retaining walls with stone appearance to be constructed for the two proposed detention ponds. Since the bottom of said retaining walls are significantly lower than the adjacent elevations of the highway, the maximum height of each such sign will be eight (8) feet, as measured above the average ground level under the sign.
- c. **Development Area Monument Signs:** Additionally, one (1) monument sign shall be permitted at the entrance to each individual Development Area within the Project, (unless such Development Area is located upon a corner lot, in which case the business shall be entitled to one (1) monument sign per public right-of-way frontage or private drive located in an access easement, for a maximum total of two (2) signs). Signs shall be illuminated in conformance with the Lighting Ordinance.

The area of each individual Development Area sign shall not exceed sixty (60) square feet, and shall have a maximum height of six (6) feet.

- d. **Directory Signs:** The directory signs listed in this subsection shall be the only directory signs permitted on the property along U.S. Highway 290.
1. A Main Directory Sign shall be permitted at the termination of the Project entrance roadway, where the intersection forces all traffic to stop. Main Directory Sign may be placed against the rock fascia of steep slope area,

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and shall give directions to single and multi-tenant tracts located within the Project. The Main Directory Sign will have a total maximum area of sixty four (64) square feet, with a maximum height of six (6) feet. Directory Signs shall be illuminated in conformance with the Lighting Ordinance.

2. Building/Tenant Directory signs shall be located at each development tract, and shall list the buildings and/or tenants on a four and one half (4.5) square foot sign slat per building/tenant.

- e. **Wall/Projecting Sign:** In addition to the monument signs described above, one (1) wall or projecting sign is permitted per business in a multi-unit development. The area of each wall or projecting sign, including the area of any awning signs which are required to be counted, shall not exceed ten percent (10%) of the area of the wall on which it is attached or painted and shall not exceed seventy-five (75%) of the storefront width. In no event may a wall or projecting sign exceed sixty-four (64) square feet in area.

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f. Summary table of proposed signs:

Type of Sign	Maximum Area	Maximum Height	Maximum Number	Details
Main Monument Sign	198 sq ft	16 ft	1	Main Sign located at the entrance to the Project (at the existing driveway), and a secondary sign to be located at the potential second Project driveway to the west of the existing Project driveway.
Secondary Monument Sign	64.5 sq ft	6 ft	1	
Project Identification Sign on Property Corners (on Pond)	32 sq ft	6 ft	2	Located on the east and west Property corners, mounted on stone veneer retaining walls for the detention ponds.
Individual Development Area Monument Sign	40 sq ft	6 ft	varies	One placed at the entrance to an individual Development Area, except for Development areas located on a corner lot, in which case two signs are permitted (one per lot frontage)
Main Directory Sign	64 sq ft	6 ft	1	Main Directory located on a stone base at the rock fascia of the steep slope area.
Building/Tenant Directory	4.5 sq ft per building/tenant	6 ft	Varies	One per building with multiple tenants.
Wall or Projecting Sign	64 sq ft	-	varies	One wall or projecting sign is allowed for each business, area of each such sign shall not exceed 10% of wall it's attached to, and width shall not exceed 75% of storefront width, subject to a maximum sign area of 64 sq. ft.

**3.2.13 Lighting:** The Project shall comply with the City's Lighting Ordinance with the following alternative standards:

- a. Pole mounted light fixtures within the Project shall be rated at least full cutoff and be hooded and shielded so that the luminous elements of the fixture are not visible from any other property. Pole mounted light fixtures may not be at a height greater than twenty five (25) feet above finished grade.
- b. The total outdoor light output for parking lots, drives and pedestrian walkway areas within the commercial portions of Project shall not exceed one hundred thousand 100,000 lumens per acre in any contiguous illuminated area. This total outdoor light output excludes street lights along public and private streets.



### 3.2.14 Landscape Design

- a. **Landscaping:** Owner agrees that the use of native species of plant materials will be utilized throughout the Project. Turf grasses on any lot within the Project shall be limited to Zoysia, Buffalo, Bermuda grasses or other native species turf blends. Other grasses may be approved by the City Administrator for lots utilizing drip irrigation systems. In no instance shall St. Augustine grass be allowed. Any landscaping not specifically addressed in this section shall be in accordance with the City's Landscaping Ordinance.
- b. **Landscape Buffers:** Landscape Buffers shall have a minimum of a ten (10) foot depth planting zone adjacent to the right-of-way line (driveways excluded), a minimum of a twenty (20) foot depth along Highway 290, and a minimum of fifteen (15) foot depth along commercial side lot line between commercial and residential uses. The plantings within the Buffers are not required to be continuous and evenly spaced within, but rather may have areas that are more fully planted and areas that are more sparsely planted, so long as the minimum quantity of plants per length of the required buffer are used. An exception shall exist for buffers between commercial and residential uses, which will be more evenly planted to achieve a more uniform buffer without gaps. Since development within the Project will be phased, Buffers along roadways shall follow a unified design. Masonry walls for retaining walls may occur within the Landscape Buffer along Highway 290.
- c. **Landscape Buffer plants and spacing requirements:**
  1. Proposed shade trees to be planted shall be a minimum of one and one half (1.5) inch caliper trees and shall, in combination with larger existing or planted trees, meet a minimum requirement of an average of four inch (4) caliper trees per fifty (50) feet of buffer length. Caliper size of shade trees shall be measured six (6) inch above the ground for trees up to four (4) inch caliper and twelve (12) inches above the ground for larger than four (4) inch caliper trees.
  2. All proposed ornamental trees shall be a minimum of two (2) inch caliper, measured six (6) inches above ground to include the largest trunk caliper plus one half (0.5) of the caliper of the remaining trunks. Planted at average of one per twenty-five (25) feet of buffer frontage.
  3. Small shrubs, perennials, and ornamental grasses shall be minimum one (1) gallon container size. Ground covers shall be minimum one (1) gallon pot size. Planted at average of one (1) per three (3) feet of buffer frontage.
  4. Large shrubs shall be five (5) gallon container size, planted at an average one (1) per six (6) feet of buffer frontage.

d. **Screening:** All refuse and/or recycling containers shall be screened in accordance with the City Code.

e. **Tree Preservation:**

1. Trees required to be planted for buffers and parking lot landscaping shall count toward satisfying the tree mitigation requirements.
2. Should a lot developer not have room on the lot to accommodate replacement trees (such as on a heavily-wooded lot), the developer may plant replacement trees on other lots within the Project with the approval of the affected lot owner.
3. Removal of Designated Trees located in: (1) public street right-of-way or in areas to be dedicated as such; and (2) areas for water quality and detention ponds shall require replacement trees or cash in lieu.
4. Developer shall make good faith efforts to maximize preservation of healthy specimens of native preferred species of trees, for purposes of providing shade, minimizing heat island effect, and maintaining the visual character of the native Texas Hill Country.
5. Except as may otherwise be allowed by the City, no more than six (6) inches of fill will be placed within the critical root zone of an existing tree that will not be removed.

**3.2.15 Phasing of Development:** The calculation of impervious cover, parkland requirements, lot averaging, and similar requirements shall be determined and calculated on a whole Project basis. Each plat filed with the City shall contain a chart indicating the amount of impervious cover, Living Unit Equivalent (LUE) use, and parkland required for the entire Property, the amount associated with prior platted areas and the amount associated with the area subject to such plat. The chart shall also show the average lot size computation for the Property as a whole and resulting from the plat and prior platted areas. Any portion of the Property may be re-platted to change the use or designation of that previously-platted portion so long as the entire platted portion of the Property meets the requirements of this Agreement, including impervious cover, parkland requirements, lot averaging and similar requirements herein. So long as this Agreement remains in effect, such replatting shall be deemed controlled by this Agreement as if the same were an original platting of such re-platted portions.

**3.3 Further Approvals:** Upon the Effective Date of this Agreement, Owner may develop the Property consistent with the Project Approvals and this Agreement. Any future approvals granted in writing by the City for such development, as well as any written amendments to the Project Approvals, will become a part of the Project Approvals.

**3.4 Standard for Review:** The City's review and approval of any submissions by Owner will not be unreasonably withheld or delayed. The City will review any plans, plat or other filing by Owner in accordance with the applicable City's ordinances, state law and this Agreement. If any submittal is not approved, the City will provide written comments to Owner specifying in detail all of the changes that will be required for the approval of the submittal. To the extent possible, this Agreement and the City's ordinances shall be read together to apply in harmony. If an irreconcilable conflict arises between the application of the City's ordinances and this Agreement, this Agreement shall govern.

**3.5 Approvals & Appeals:** The City acknowledges that timely City reviews are necessary for the effective implementation of Owner's development program. Therefore, the City agrees that it will comply with all statutory and internal City time frames for development reviews. The City further agrees that if, at any time, Owner believe that an impasse has been reached with the City staff on any development issue affecting the Project or if Owner wish to appeal any decision of the City staff regarding the Project, then Owner may immediately appeal in writing to the City Council requesting a resolution of the impasse at the next scheduled City Council meeting, subject to compliance with all timetables required by the open meeting laws. Appeals and approvals of variances may be approved by an affirmative vote of at least three of the five (3/5) members of the City Council.

**3.6 Development Area Map Amendments:**

**3.6.1.** Due to the fact that the Project comprises a significant land area and its development will occur in phases over a number of years, modifications to the Development Area Map may become necessary due to changes in market conditions or other factors.

**3.6.2.** In order to provide flexibility with respect to certain details of the development of the Project, Owner may seek changes in the location and configuration of the lots shown on the Development Area Map, including changes within the proposed residential, commercial, mitigation or open space areas shown on the Development Area Map. Such changes will only require an administrative amendment to the Development Area Map so long as the Impervious Cover requirements herein are met, the total Density of Development permitted herein is not exceeded and the changes do not adversely affect the environment or public health and safety. The determination of whether the changes are major or minor is at the sole discretion of the City Administrator.

**3.6.3.** The City Administrator shall be responsible for consideration and approval of such administrative amendments to the Development Area Map. The City Administrator may defer the approval of any changes to the Development Area Map not deemed minor under Section 3.6.2 above to the City Council at the City Administrator's discretion. City Council review must be preceded by a review and recommendation by the City Planning and Zoning Commission. Similarly, minor variations of a preliminary plat or final plat from the Development Area

Map that are approved by the City Administrator that do not increase the overall density of development of the Property, do not increase the overall impervious cover limit of 70% for the site, and a maximum impervious cover of 85% for an individual lot, do not adversely affect the environment or public health and safety and which otherwise comply with the Applicable Rules, and this Agreement will not require an amendment to the Development Area Map.

- 3.7 Term of Approvals:** The Development Area Map, the Project Approvals, and any preliminary plat or final plat approved pursuant to this Agreement will be effective for the term of this Agreement unless otherwise agreed by the Parties.
- 3.8 Extension of Permits & Approvals:** Any permit or approval under this Agreement or granted by the City pursuant to, or in accordance with, this Agreement shall be extended for any period during which performance by any Owner is prevented or delayed by action of a court or administrative agency, or an Owner is delayed due to failure to receive a governmental permit despite demonstrable diligent efforts to obtain said permit. In no instance shall any permits or approvals be extended beyond the duration of this Agreement.
- 3.9 Initial Brush Removal:** Owner may mechanically remove brush without material soil surface disruption prior to receiving approval of plats in order to determine the location of roads, lots, utilities and drainage areas with regard to preservation of environmental features. Owner agrees to utilize rubber-tired equipment for brush removal. Prior to plat approval, Owner may neither remove any tree (other than cedar trees) with a trunk having a diameter greater than four (4) inches measured four (4) feet above the base (ground elevation) of the tree, nor materially alter the existing drainage patterns prior to receiving City approval for Construction Plans. Owner shall ensure that as much area as possible is left undisturbed for as long as reasonably possible.
- 3.9.1.** The use of track vehicles is acceptable provided that a preconstruction conference is held on-site with the Owner (or Owner's representative as Developer), contractor, and City Administrator. During the conference the Owner will provide the City with the following information:
- a. the area to be cleared,
  - b. a rough tree survey of the trees to be removed (meaning that with absolute due diligence they have attempted to determine that the trees to be removed are either trees to be saved per the Development Agreement, or are otherwise diseased, or trees that are okay to remove),
  - c. the area to be cleared having been marked on a survey with all Water Quality Buffer Zones (WQBZ) and other environmental features marked out for being avoided.

- d. an erosion control plan must be submitted showing what will be in place to manage stormwater runoff, to include silt fencing, rock berms, etc.
- 3.9.2. Work within a WQBZ must be limited to rubber-tired vehicles or hand-clearing only taking care to stay out of the stream itself. A written plan for work to be done within a WQBZ must be submitted to and approved by City staff prior to any work, describing: (a) work methods, (b) proposed equipment, (c) scope of work, and (d) restoration plans for once work is done.
- 3.10 **Building Code:** Owner agrees that all habitable buildings shall be constructed in accordance with the City's Building Code. Fees for all building permits or building inspections by the City or the City's designee under this section shall be paid by builders. Building permit and building inspection fees are not included among the fees specifically listed in this Agreement.
- 3.11 **Fiscal Security for Improvements:** Owner shall be required to provide fiscal security, as required by the Code of Ordinances, prior to any final plat approval provided that the Owner agrees to construct improvements in a manner approved by the City Engineer. The City Engineer may require the Owner to post a bond at the time of final plat approval to assure that improvements are constructed as proposed if the City Engineer determines that there is some question regarding construction of the improvements. The City Engineer may also require construction and maintenance bonds for improvements.

#### ARTICLE 4. ADDITIONAL MATTERS

##### 4.1 Annexation:

- 4.1.1. **Timing for Annexation.** The City and Owner hereby approves this Agreement as a valid and legally sufficient request to extend the city limits (i.e., incorporated municipal boundary) of the City to cover the Property, and no additional petitions or requests from the Owner are necessary, beyond that included as *Exhibit F*. Owner may not withdraw or modify the Petition without the City's written consent. The City agrees to initiate annexation proceedings for the Property in its entirety upon conveyance of land in accordance with Section 4.1.3 below, and conclude the proceedings in accordance with State law.
- 4.1.2. **Land Uses.** Contemporaneously with the annexation of land located within the Project, the City will initiate the zoning process for the Property.
- 4.1.3. **Dedication.** Owner agrees to dedicate, donate, and otherwise transfer to the City ownership in fee simple of a tract comprising no less than two (2) acres, as designated on the Development Area Map (See *Exhibit B*) at the time of City approval of the first final plat submitted for the Property. The tract shall be part of the tracts herein designated as parkland. This tract shall be used by the City solely for public purposes, such as open space or parkland.

## ARTICLE 5. AUTHORITY

### 5.1 Term:

**5.1.1 Initial Term.** The term of this Agreement will commence on the Effective Date and continue for ten (10) years thereafter ("Initial Term"), unless sooner terminated under this Agreement. The parties may mutually agree to renew or extend this Agreement for successive periods not to exceed five (5) years each. Each request for an extension shall be conditioned on the existence of an active building permit. The Agreement shall remain active only if the building permit for a specific Area is active. In the event that a building permit for any Area expires, the Agreement as it relates to the Area for which the building permit has expired shall not be extended for that Area. The total duration of this Agreement and any successive renewals shall not exceed twenty-five (25) years.

**5.1.2 Expiration.** After the Initial Term and any extension, this Agreement will be of no further force and effect, except that termination will not affect any right or obligation arising from Project Approvals previously granted.

**5.1.3 Termination or Amendment.** This Agreement may be terminated or amended as to all of the Property at any time by mutual written consent of the City and Owner or may be terminated or amended only as to a portion of the Property by the mutual written consent of the City and the Owner of only the portion of the Property affected by the amendment or termination.

**5.2 Authority:** This Agreement is entered under the statutory authority of Section 212.172 of the Texas Local Government Code. The Parties intend that this Agreement guarantee the continuation of the extraterritorial status of portions of the Property as provided in this Agreement; authorize certain land uses and development on the Property; provide for the uniform review and approval of plats and development plans for the Property; provide exceptions to certain ordinances; and provide other terms and consideration, including the continuation of land uses and zoning upon annexation of any portion of the Property to the City.

**5.3 Applicable Rules:** Each application for a City Permit, including a Site Plan, that may be filed with the City for the development, construction, or operation of the improvements on the Property shall only be required to comply with, and shall be reviewed, processed, and approved, only in accordance with the terms hereof, subject to the exceptions set forth below. For purposes of this Agreement, "City Permit" means a City license, certificate, approval, registration, consent, permit, or other form of authorization required by the City ordinances, regulations, or rules in order to develop, construct, and operate the improvements on the Property. The provisions of this Section shall not apply to the following types of City ordinances, rules, or regulations:

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- a. Uniform building, fire, electrical, plumbing, or mechanical codes of the type typically found in the City Code.
- b. Ordinances and regulations for utility connections, and ordinances and regulations to prevent the imminent destruction of property or injury to persons.

5.3.1 The City agrees that, upon the Effective Date, Owner has a vested authority to develop the Property in accordance with the Applicable Rules, as modified by this Agreement.

5.3.2 Any future approvals granted by the City for such development, as well as any written amendments to the Project Approvals, will become part of the Project Approvals. The City shall not charge any Impact Fees in connection with the replatting of the Property or in connection with any amendment to the Development Area Map. All other applicable permitting or administrative fees shall be applicable.

5.4 **Right to Continue Development:** In consideration of Owner's agreements, the City agrees that it will not, during the term of this Agreement, impose or attempt to impose:

5.4.1 Any moratorium on building or development within the Property;

5.4.2 Any land use or development regulation that limits the rate or timing of land use approvals, whether affecting preliminary plats, final plats, the Development Area Map, building permits, certificates of occupancy or other necessary approvals, within the Property.

5.4.3 No City-imposed moratorium, growth restriction, or other limitation affecting the rate, timing, or sequencing of development or construction of all or any part of the Project will apply to the Property if such a moratorium, restriction, or other limitation conflicts with this Agreement or would have the effect of increasing Owner's obligations or decreasing Owner's rights and benefits under this Agreement. This Agreement on the part of the City will not apply to temporary moratoriums uniformly imposed throughout the City due to an emergency constituting an imminent threat to the public health or safety, provided that the temporary moratorium continues only during the duration of the emergency.

5.5 **Equivalent Substitute Obligation:** If either Party is unable to meet an obligation under this Agreement due to a court order invalidating all or a portion of this Agreement, preemptive state or federal law, an imminent and *bona fide* threat to public safety that prevents performance or requires different performance, subsequent conditions that would legally excuse performance under this Agreement, or, the Parties agree to cooperate to revise this Agreement to provide for an equivalent substitute right or obligation as similar in terms to the illegal, invalid, or unenforceable provision as is possible and is legal, valid and enforceable, or other additional or modified rights or

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obligations that will most nearly preserve each Party's overall contractual benefit under this Agreement.

- 5.6 Cooperation:** The City and Owner each agrees to cooperate with further documents or instruments as may be necessary to evidence their agreements hereunder.
- 5.7 Litigation:** In the event of any third (3<sup>rd</sup>) party lawsuit or other claim relating to the validity of this Agreement or any actions taken by the Parties hereunder, Owner and the City agree to cooperate in the defense of such suit or claim, and to use their respective best efforts to resolve the suit or claim without diminution of their respective rights and obligations under this Agreement. The City's participation in the defense of such a lawsuit is expressly conditioned on budgetary appropriations for such action by the City Council. The Owner agrees to defend and indemnify the City for any litigation expenses, including court costs and attorney's fees, related to defense of this Agreement. Owner and City agrees that in the event of the filing of any such suit, Owner has a justiciable interest in the suit sufficient to support the filing of a Petition in Intervention. City agrees that in the event of any third party lawsuit or other claim relating to the validity of this Agreement, City will not object to, nor move to strike, a Petition in Intervention filed by Owner. The filing of any third-party lawsuit relating to this Agreement or the development of the Project will not delay, stop or otherwise affect the development of the Project or the City's processing or issuance of any approvals for the Project, unless otherwise required by a court of competent jurisdiction.

## ARTICLE 6. GENERAL PROVISIONS

### 6.1 Assignment & Binding Effect:

- 6.1.1** This Agreement, and the rights and obligations of Owner hereunder, may be assigned by Owner to a subsequent purchaser of all or a portion of the undeveloped property within the Project provided that the assignee assumes all of the obligations hereunder. Any assignment must be in writing, specifically describe the Property in question, set forth the assigned rights and obligations and be executed by the proposed assignee. A copy of the assignment document must be delivered to the City and recorded in the real property records as may be required by applicable law. Upon any such assignment, the assignor will be released of any further obligations under this Agreement as to the Property sold and obligations assigned.
- 6.1.2** If Owner assigns its rights and obligations hereunder as to a portion of the Project, then the rights and obligations of any assignee and Owner will be non-severable, and Owner will be liable for the nonperformance of the assignee and vice-versa. In the case of nonperformance by one developer, the City may pursue all remedies against that nonperforming developer, even if such remedies will impede development activities of any performing developer as a result of that nonperformance.



- 6.1.3** The provisions of this Agreement will be binding upon, and inure to the benefit of the Parties, and their respective successors and assigns. This Agreement will not, however, be binding upon, or create any encumbrance to title as to, any ultimate consumer who purchases a fully developed and improved lot within the Project.
- 6.1.4** Owner agrees that all restrictive covenants for the Project shall reinforce this Agreement. Owner further agrees to memorialize the terms of this Agreement through inclusion in the plat notes. The Agreement *shall be recorded* in the *Hays County* land records to place subsequent purchasers on notice.
- 6.2 Severability:** 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.
- 6.3 Governing Law, Jurisdiction & Venue:** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, as it applies to contracts performed within the State of Texas and without regard to any choice of law rules or principles to the contrary. The parties acknowledge that this Agreement is performable in *Hays County*, Texas and hereby submit to the jurisdiction of the courts of that County, and hereby agree that any such Court shall be a proper forum for the determination of any dispute arising hereunder.
- 6.4 No Third Party Beneficiary:** This Agreement is not intended, nor will it be construed, to create any third-party beneficiary rights in any person or entity who is not a Party, unless expressly otherwise provided.
- 6.5 Default:** If either Party defaults in its obligations under this Agreement, the other Party must, prior to exercising a remedy available to that Party due to the default, give written notice to the defaulting Party, specifying the nature of the alleged default and the manner in which it can be satisfactorily cured, and extend to the defaulting Party at least thirty (30) days from receipt of the notice to cure the default. If the nature of the default is such that it cannot reasonably be cured within the thirty (30) day period, the commencement of the cure within the thirty (30) day period and the diligent prosecution of the cure to completion will be deemed a cure within the cure period. The City may issue Stop Work Orders for violations arising under this Agreement or the regulations applied herein. The parties may mutually agree in writing to extend the above referenced deadlines.
- 6.6 Remedies for Default:** If either Party defaults under this Agreement and fails to cure the default within the applicable cure period, the non-defaulting Party will have all rights and remedies available under this Agreement or applicable law, including the right to institute legal action to cure any default, to enjoin any threatened or attempted violation of this Agreement or to enforce the defaulting Party's obligations under this Agreement by

specific performance or writ of mandamus, or to terminate this Agreement. In the event of a default by the City, Owner will be entitled to seek a writ of mandamus, in addition to seeking any other available remedies. All remedies available to a Party will be cumulative and the pursuit of one remedy will not constitute an election of remedies or a waiver of the right to pursue any other available remedy.

- 6.7 Reservation of Rights:** To the extent not inconsistent with this Agreement, each Party reserves all rights, privileges, and immunities under applicable laws.
- 6.8 Attorneys Fees:** The prevailing Party in any dispute under this Agreement will be entitled to recover from the non-prevailing Party its reasonable attorney's fees, expenses and court costs in connection with any original action, any appeals, and any post-judgment proceedings to collect or enforce a judgment in accordance with Section 271.159 of the Texas Local Government Code, as amended.
- 6.9 Waiver:** Any failure by a Party to insist upon strict performance by the other Party of any provision of this Agreement will not, regardless of the length of time during which that failure continues, be deemed a waiver of that Party's right insist upon strict compliance with all terms of this Agreement. In order to be effective as to a Party, any waiver of default under this Agreement must be in writing, and a written waiver will only be effective as to the specific default and as to the specific period of time set forth in the written waiver. A written waiver will not constitute a waiver of any subsequent default, or of the right to require performance of the same or any other provision of this Agreement in the future.
- 6.10 Entire Agreement:** This Agreement contains the entire agreement of the Parties, and there are no other agreements or promises, oral or written, between the Parties regarding the subject matter of this Agreement. This Agreement may be amended only by written agreement signed by the Parties. An amendment to this Agreement may only be approved by an affirmative vote of at least three of the five (3 of 5) members of the City Council.
- 6.11 Exhibits, Headings, Construction & Counterparts:** All exhibits 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*. Each of the Parties has 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 its exhibits. 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.