



Control Number: 50955



Item Number: 1

Addendum StartPage: 0

# CMA Engineering, Inc.

Engineering Firm Registration No. F-3053  
Surveying Firm Registration No. 10193988

150955

Robert P. Callegari, P.E.  
Felix J. Manka, P.E.

June 15, 2020

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

Re: City of Dripping Springs  
TCEQ Application to Amend Water Certificate of Convenience and Necessity No. 13030  
CMA Job Number 1965-001

Dear Review Team:

Enclosed please find the original and seven (7) copies of the Public Utility Commission of Texas Application to Amend a Water Certificate of Convenience and Necessity (CCN), CCN No. 13030, with attachments for the City of Dripping Springs.

If you have any questions concerning this application please contact me at 512-432-1000.

Sincerely,



Robert P. Callegari, P.E.  
Principal

Enclosures: PUC Water CCN Amendment Application with Attachments

Xc: Ginger Faught, City of Deputy City Administrator  
David Tuckfield, Special Projects Counsel for the City  
George Murfee, Murfee Engineering Company, Inc.



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

Pursuant to 16 Texas Administrative Code (TAC) Chapter 24, Substantive Rules Applicable to Water and Sewer Service Providers, Subchapter G: Certificates of Convenience and Necessity

## CCN Application Instructions

- I. **COMPLETE:** In order for the Commission to find the application sufficient for filing, you should adhere to the following:
- Answer every question and submit all required attachments.
  - Use attachments or additional pages if needed to answer any question. If you use attachments or additional pages, reference their inclusion in the form.
  - Provide all mapping information as detailed in Part F: Mapping & Affidavits.
  - Provide any other necessary approvals from the Texas Commission on Environmental Quality (TCEQ), or evidence that a request for approval is being sought at the time of filing with the Commission.
- II. **FILE:** Seven (7) copies of the completed application with numbered attachments. One copy should be filed with no permanent binding, staples, tabs, or separators; and 7 copies of the portable electronic storage medium containing the digital mapping data.
- SEND TO:** Public Utility Commission of Texas, Attention: Filing Clerk, 1701 N. Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 (**NOTE: Electronic documents may be sent in advance of the paper copy; however, they will not be processed and added to the Commission's on-line Interchange until the paper copy is received and file-stamped in Central Records.**)
- III. The application will be assigned a docket number, and an administrative law judge (ALJ) will issue an order requiring Commission Staff to file a recommendation on whether the application is sufficient. The ALJ will issue an order after Staff's recommendation has been filed:
- DEFICIENT (Administratively Incomplete):** Applicant will be ordered to provide information to cure the deficiencies by a certain date (usually 30 days from ALJ's order). **Application is not accepted for filing.**
  - SUFFICIENT (Administratively Complete):** Applicant will be ordered by the ALJ to give appropriate notice of the application using the notice prepared by Commission Staff. **Application is accepted for filing.**
- IV. Once the Applicant issues notice, a copy of the actual notice sent (including any map) and an affidavit attesting to notice should be filed in the docket assigned to the application. Recipients of notice may choose to take one of the following actions:
- HEARING ON THE MERITS:** an affected party may request a hearing on the application. The request must be made within 30 days of notice. If this occurs, the application may be referred to the State Office of Administrative Hearings (SOAH) to complete this request.
  - LANDOWNER OPT-OUT:** A landowner owning a qualifying tract of land (25+ acres) may request to have their land removed from the requested area. The Applicant will be requested to amend its application and file new mapping information to remove the landowner's tract of land, in conformity with this request.
- V. **PROCEDURAL SCHEDULE:** Following the issuance of notice and the filing of proof of notice in step 4, the application will be granted a procedural schedule for final processing. During this time the Applicant must respond to hearing requests, landowner opt-out requests, and requests for information (RFI). The Applicant will be requested to provide written consent to the proposed maps, certificates, and tariff (if applicable) once all other requests have been resolved.
- VI. **FINAL RECOMMENDATION:** After receiving all required documents from the Applicant, Staff will file a recommendation on the CCN request. The ALJ will issue a final order after Staff's recommendation is filed.

### FAQ:

#### **Who can use this form?**

Any retail public utility that provides or intends to provide retail water or wastewater utility service in Texas.

#### **Who is required to use this form?**

A retail public utility that is an investor owned utility (IOU) or a water supply corporation (WSC) must use this form to obtain or amend a CCN prior to providing retail water or sewer utility service in the requested area.

#### **What is the purpose of the application?**

A CCN Applicant is required to demonstrate financial, managerial, and technical (FMT) capability to provide continuous and adequate service to any requested area. The questions in the application are structured to support an Applicant's FMT capabilities, consistent with the regulatory requirements.

**Application Summary**

**Applicant:** City of Dripping Springs

**CCN No. to be amended:** 13030

or  Obtain NEW CCN       Water       Sewer

**County(ies) affected by this application:** Hays County

**Dual CCN requested with:** \_\_\_\_\_

CCN No.: \_\_\_\_\_ (name of retail public utility)  Portion or  All of requested area

**Decertification of CCN for:** \_\_\_\_\_

CCN No.: \_\_\_\_\_ (name of retail public utility)  Portion or  All of requested area

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**Appendix A: Historical Financial Information (Balance Sheet and Income Schedule)**..... 13

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Please mark the items included in this filing

<input type="checkbox"/>	Partnership Agreement	Part A: Question 4
<input type="checkbox"/>	Articles of Incorporation and By-Laws (WSC)	Part A: Question 4
<input type="checkbox"/>	Certificate of Account Status	Part A: Question 4
<input checked="" type="checkbox"/>	Franchise, Permit, or Consent letter	Part B: Question 7
<input checked="" type="checkbox"/>	Existing Infrastructure Map	Part B: Question 8
<input checked="" type="checkbox"/>	Customer Requests For Service in requested area	Part B: Question 9
<input type="checkbox"/>	Population Growth Report or Market Study	Part B: Question 10
<input checked="" type="checkbox"/>	TCEQ Engineering Approvals	Part B: Question 11
<input type="checkbox"/>	Requests & Responses For Service to ½ mile utility providers	Part B: Question 12.B
<input type="checkbox"/>	Economic Feasibility (alternative provider) Statement	Part B: Question 12.C
<input type="checkbox"/>	Alternative Provider Analysis	Part B: Question 12.D
<input type="checkbox"/>	Enforcement Action Correspondence	Part C: Question 16
<input checked="" type="checkbox"/>	TCEQ Compliance Correspondence	Part D: Question 20
<input checked="" type="checkbox"/>	Purchased Water Supply or Treatment Agreement	Part D: Question 23
<input type="checkbox"/>	Rate Study (new market entrant)	Part E: Question 28
<input checked="" type="checkbox"/>	Tariff/Rate Schedule	Part E: Question 29
<input checked="" type="checkbox"/>	Financial Audit	Part E: Question 30
<input type="checkbox"/>	Application Attachment A & B	Part E: Question 30
<input type="checkbox"/>	Capital Improvement Plan	Part E: Question 30
<input type="checkbox"/>	Disclosure of Affiliated Interests	Part E: Question 31
<input checked="" type="checkbox"/>	Detailed (large scale) Map	Part F: Question 32
<input checked="" type="checkbox"/>	General Location (small scale) Map	Part F: Question 32
<input checked="" type="checkbox"/>	Digital Mapping Data	Part F: Question 32
<input checked="" type="checkbox"/>	Signed & Notarized Affidavit	Page 12

**Part A: Applicant Information**

1. A. Name: City of Dripping Springs  
(individual, corporation, or other legal entity)  
 Individual     Corporation     WSC     Other: Municipality
- B. Mailing Address: P.O. Box 384, Dripping Springs, TX 78620  
  
Phone No.: (512) 858-4725    Email: \_\_\_\_\_
- C. **Contact Person.** Please provide information about the person to be contacted regarding this application. Indicate if this person is the owner, operator, engineer, attorney, accountant, or other title.  
Name: Robert P. Callegari, P.E.    Title: Engineer  
Mailing Address: 235 Ledge Stone Drive, Austin, TX 78737  
Phone No.: (512) 432-1000    Email: rcallegari@cma-engineering.com

2. If the Applicant is someone other than a municipality, is the Applicant currently paid in full on the Regulatory Assessment Fees (RAF) remitted to the TCEQ?  
 Yes     No     N/A

3. If the Applicant is an Investor Owned Utility (IOU), is the Applicant current on Annual Report filings with the Commission?  
 Yes     No    If no, please state the last date an Annual Report was filed: \_\_\_\_\_

4. The legal status of the Applicant is:
- Individual or sole proprietorship
  - Partnership or limited partnership (*attach* Partnership agreement)
  - Corporation:                      Charter number (recorded with the Texas Secretary of State): \_\_\_\_\_
  - Non-profit, member-owned, member controlled Cooperative Corporation [Article 1434(a) Water Supply or Sewer Service Corporation, incorporated under TWC Chapter 67]  
Charter number (as recorded with the Texas Secretary of State): \_\_\_\_\_
  - Articles of Incorporation and By-Laws established (*attach*)
  - Municipally-owned utility
  - District (MUD, SUD, WCID, FWSD, PUD, etc.)
  - County
  - Affected County (a county to which Subchapter B, Chapter 232, Local Government Code, applies)
  - Other (please explain): \_\_\_\_\_

5. If the Applicant operates under an assumed name (i.e., any d/b/a), provide the name below:  
Name: N/A

**Part B: Requested Area Information**

6. Provide details on the existing or expected land use in the requested area, including details on requested actions such as dual certification or decertification of service area.

City of Dripping Springs will provide retail water service to the Driftwood Conservation District and Driftwood MMD for residential and commercial development.

7. The requested area (check all applicable):

- Currently receives service from the Applicant  Is being developed with no current customers  
 Overlaps or is within municipal boundaries  Overlaps or is within district boundaries

Municipality: City of Dripping Springs District: Driftwood Conservation District and Driftwood MMD

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

See Attachment #1

8. Describe the circumstances (economic, environmental, etc.) driving the need for service in the requested area:

Water service will be needed for the Driftwood Conservation District and Driftwood MMD developments.

9. Has the Applicant received any requests for service within the requested area?

- Yes\*  No \*Attach copies of all applicable requests for service and show locations on a map

10. Is there existing or anticipated growth in the requested area?

- Yes\*  No \*Attach copies of any reports and market studies supporting growth

11. A. Will construction of any facilities be necessary to provide service to the requested area?

- Yes\*  No \*Attach copies of TCEQ approval letters

B. Date Plans & Specifications or Discharge Permit App. submitted to TCEQ: September 9, 2019

C. Summarize an estimated timeline for construction for any required facilities to serve the requested area:

The Driftwood MMD Development is currently under construction with some sections complete. The Driftwood Conservation District Development water distribution system is in the design phase. Master meter construction is complete.

D. Describe the source and availability of funds for any required facilities to serve the requested area:

Funding for the utility infrastructure design and construction will be provided by the developer and dedicated to the City of Dripping Springs for operation and maintenance.

**Note: Failure to provide applicable TCEQ construction or permit approvals, or evidence showing that the construction or permit approval has been filed with the TCEQ may result in the delay or possible dismissal of the application.**

12. A. If construction of a physically separate water or sewer system is necessary, provide a list of all retail public water and/or sewer utilities within one half mile from the outer boundary of the requested area below:

West Travis County Public Utility Agency

B. Did the Applicant request service from each of the above water or sewer utilities?

See Attachment #1

Yes\*

No

\*Attach copies of written requests and copies of the written response

C. Attach a statement or provide documentation explaining why it is not economically feasible to obtain retail service from the water or sewer retail public utilities listed above.

D. If a neighboring retail public utility agreed to provide service to the requested area, attach documentation addressing the following information:

- (A) A description of the type of service that the neighboring retail public utility is willing to provide and comparison with service the applicant is proposing;
- (B) An analysis of all necessary costs for constructing, operating, and maintaining the new facilities for at least the first five years of operations, including such items as taxes and insurance; and
- (C) An analysis of all necessary costs for acquiring and continuing to receive service from the neighboring retail public utility for at least the first five years of operations.

13. Explain the effect of granting the CCN request on the Applicant, any retail public utility of the same kind serving in the proximate area, and any landowners in the requested area. The statement should address, but is not limited to, regionalization, compliance, and economic effects.

This CCN Amendment allows the proposed development of the Ranch and Creek tracts of the Driftwood Conservation District and Driftwood MMD to obtain retail water service from the City of Dripping Springs. The City will also provide retail waste water service.

**Part C: CCN Obtain or Amend Criteria Considerations**

14. Describe the anticipated impact and changes in the quality of retail utility service for the requested area:

The City of Dripping springs has an agreement with West Travis County Public utility Agency (WTCPUA), formerly the Lower Colorado River Authority, to provide retail water service in the area of the proposed development. See Attachment #1

15. Describe the experience and qualifications of the Applicant in providing continuous and adequate retail service:

The City of Dripping Springs has consistently provided continuous and adequate water and waste water service in the past. This includes water service to existing developments within Water CCN #13030 and waste water service area to the greater City of Dripping Springs area.

16. Has the Applicant been under an enforcement action by the Commission, TCEQ, Texas Department of Health (TDH), the Office of the Attorney General (OAG), or the Environmental Protection Agency (EPA) in the past five (5) years for non-compliance with rules, orders, or state statutes?

Yes\*  No

\*Attach copies of any correspondence with the applicable regulatory agency concerning any enforcement actions, and attach a description of any actions or efforts the Applicant has taken to comply with these requirements.

17. Explain how the environmental integrity of the land will or will not be impacted or disrupted as a result of granting the CCN as requested:

The land will be disturbed initially for the installation of utility, roadway, and storm water infrastructure to the proposed developments.

18. Has the Applicant made efforts to extend retail water or sewer utility service to any economically distressed area located within the requested area?

No, there are no economically distressed areas within the requested amended areas.



19. List all neighboring water or sewer retail public utilities, cities, districts (including ground water conservation districts), counties, or other political subdivisions (including river authorities) providing the same service located within two (2) miles from the outer boundary of the requested area:

See Attachment #3

**Part D: TCEQ Public Water System or Sewer (Wastewater) Information**

20. A. Complete the following for all Public Water Systems (PWS) associated with the Applicant's CCN:

TCEQ PWS ID:	Name of PWS:	Date of TCEQ inspection*:	Subdivisions served:
1050187	City of Dripping Springs		Blue Blazes
1050208	Driftwood Golf and Ranch Club		Driftwood Conservation District

\*Attach evidence of compliance with TCEQ for each PWS

- B. Complete the following for all TCEQ Water Quality (WQ) discharge permits associated with the Applicant's CCN:

TCEQ Discharge Permit No:	Date Permit expires:	Date of TCEQ inspection*:	Subdivisions served:
WQ-			
WQ-			
WQ-			
WQ-			

\*Attach evidence of compliance with TCEQ for each Discharge Permit

- C. The requested CCN service area will be served via: PWS ID: 1050187  
WQ -

21. List the number of existing connections for the PWS & Discharge Permit indicated above (Question 20. C.):

Water				Sewer	
0	Non-metered		2"		Residential
0	5/8" or 3/4"		3"		Commercial
0	1"		4"		Industrial
	1 1/2"	1	Other	6"	Other
Total Water Connections:			1	Total Sewer Connections:	

22. List the number of additional connections projected for the requested CCN area:

Water				Sewer	
0	Non-metered		2"		Residential
299	5/8" or 3/4"		3"		Commercial
	1"		4"		Industrial
	1 1/2"	1	Other		Other
Total Water Connections:			300	Total Sewer Connections:	

23. A. Will the system serving the requested area purchase water or sewer treatment capacity from another source?

Yes\*     No    \*Attach a copy of purchase agreement or contract.

Capacity is purchased from:

Water: West Travis County PUA

Sewer: N/A

B. Are any of the Applicants PWS's required to purchase water to meet the TCEQ's minimum capacity requirements or TCEQ's drinking water standards?

Yes     No

C. What is the amount of supply or treatment purchased, per the agreement or contract? What is the percent of overall demand supplied by purchased water or sewer treatment (if any)?

	Amount in Gallons	Percent of demand
Water:	Unlimited	100%
Sewer:	0	0%

24. Does the PWS or sewer treatment plant have adequate capacity to meet the current and projected demands in the requested area?

Yes     No

25. List the name, class, and TCEQ license number of the operators that will be responsible for the operations of the water or sewer utility service provided to the requested area:

Name (as it appears on license)	Class	License No.	Water/Sewer
Jesse L. Kennis II	A	WO0001956	Water

26. A. Are any improvements required for the existing PWS or sewer treatment plant to meet TCEQ or Commission standards?

Yes     No    Distribution system within subdivisions

B. Provide details on each required major capital improvement necessary to correct deficiencies to meet the TCEQ or Commission standards (attach any engineering reports or TCEQ approval letters):

Description of the Capital Improvement:	Estimated Completion Date:	Estimated Cost:

27. Provide a map (or maps) showing all facilities for production, transmission, and distribution, and the location of existing or proposed customer connections, in the requested area. Facilities should be identified on subdivision plats, engineering planning maps, or other large scale maps. Color coding can be used, and is encouraged, to distinguish types of facilities.

See Attachment #4

**Part E: Financial Information**

28. If the Applicant seeking to obtain a CCN for the first time is an Investor Owned Utility (IOU) and under the original rate jurisdiction of the Commission, a proposed tariff must be attached to the application. The proposed rates must be supported by a rate study, which provides all calculations and assumptions made. Once a CCN is granted, the Applicant must submit a rate filing package with the Commission within 18 months from the date service begins. The purpose of this rate filing package is to revise a utility's tariff to adjust the rates to a historic test year and to true up the new tariff rates to the historic test year. It is the Applicant's responsibility in any future rate proceeding to provide written evidence and support for the original cost and installation date of all facilities used and useful for providing utility service. Any dollar amount collected under the rates charged during the test year in excess of the revenue requirement established by the Commission during the rate change proceeding shall be reflected as customer contributed capital going forward as an offset to rate base for ratemaking purposes.

29. If the Applicant is an existing IOU, please attach a copy of the current tariff and indicate:

A. Effective date for most recent rates: \_\_\_\_\_

B. Was notice of this increase provided to the Commission or a predecessor regulatory authority?

No  Yes

Application or Docket Number: \_\_\_\_\_

C. If notice was not provided to the Commission, please explain why ( ex: rates are under the jurisdiction of a municipality)

N/A

**If the Applicant is a Water Supply or Sewer Service Corporation (WSC/SSC) and seeking to obtain a CCN, attach a copy of the current tariff.**

30. **Financial Information**

Applicants must provide accounting information typically included within a balance sheet, income statement, and statement of cash flows. If the Applicant is an existing retail public utility, this must include historical financial information and projected financial information. However, projected financial information is only required if the Applicant proposes new service connections and new investment in plant, or if requested by Commission Staff. If the Applicant is a new market entrant and does not have its own historical balance sheet, income statement, and statement of cash flows information, then the Applicant should establish a five-year projection.

**Historical Financial Information may be shown by providing any combination of the following that includes necessary information found in a balance sheet, income statement, and statement of cash flows:**

1. Completed Appendix A;
2. Documentation that includes all of the information required in Appendix A in a concise format; or
3. Audited financial statements issued within 18 months of the application filing date. This may be provided electronically by providing a uniform resource locator (URL) or a link to a website portal.

**Projected Financial Information** may be shown by providing any of the following:

1. Completed Appendix B;
2. Documentation that includes all of the information required in Appendix B in a concise format;
3. A detailed budget or capital improvement plan, which indicates sources and uses of funds required, including improvements to the system being transferred; or
4. A recent budget and capital improvements plan that includes information needed for analysis of the operations test for the system being transferred and any operations combined with the system. This may be provided electronically by providing a uniform resource locator (URL) or a link to a website portal.

31. Attach a disclosure of any affiliated interest or affiliate. Include a description of the business relationship between all affiliated interests and the Applicant.

**DO NOT INCLUDE ATTACHMENTS A OR B IF LEFT BLANK**

**Part F: Mapping & Affidavits**

32. Provide the following mapping information with each of the seven (7) copies of the application:

1. A general location (small scale) map identifying the requested area in reference to the nearest county boundary, city, or town. The Applicant should adhere to the following guidance:

**See Attachment #5**

- i. If the application includes an amendment for both water and sewer certificated service areas, separate maps must be provided for each.
  - ii. A hand drawn map, graphic, or diagram of the requested area is not considered an acceptable mapping document.
  - iii. To maintain the integrity of the scale and quality of the map, copies must be exact duplicates of the original map. Therefore, copies of maps cannot be reduced or enlarged from the original map, or in black and white if the original map is in color.
2. A detailed (large scale) map identifying the requested area in reference to verifiable man-made or natural landmarks such as roads, rivers, and railroads. The Applicant should adhere to the following guidance:
    - i. The map should be clearly labeled and the outer boundary of the requested area should be marked in reference to the verifiable man-made or natural landmarks. These verifiable man-made and/or natural landmarks must be labeled and marked on the map as well.
    - ii. If the application includes an amendment for both water and sewer certificated service area, separate maps need to be provided for each.
    - iii. To maintain the integrity of the scale and quality of the map, copies must be exact duplicates of the original map. Therefore, copies of maps cannot be reduced or enlarged from the original map, or in black and white if the original map is in color.
  3. One of the following identifying the requested area:
    - i. A metes and bounds survey sealed or embossed by either a licensed state land surveyor or a registered professional land surveyor. Please refer to the mapping guidance in part 2 (above);

- ii. A recorded plat. If the plat does not provide sufficient detail, Staff may request additional mapping information. Please refer to the mapping guidance in part 2 (above); or
- iii. Digital mapping data in a shapefile (SHP) format georeferenced in either NAD 83 Texas State Plane Coordinate System (US Feet) or in NAD 83 Texas Statewide Mapping System (Meters). The digital mapping data shall include a single, continuous polygon record. The following guidance should be adhered to:
  - a. The digital mapping data must correspond to the same requested area as shown on the general location and detailed maps. The requested area must be clearly labeled as either the water or sewer requested area.
  - b. A shapefile should include six files (.dbf, .shp, .shx, .sbx, .sbn, and the projection (.prj) file).
  - c. The digital mapping data shall be filed on a data disk (CD or USB drives), clearly labeled, and filed with Central Records. Seven (7) copies of the digital mapping data is also required.

**Part G: Notice Information**

The following information will be used to generate the proposed notice for the application.  
DO NOT provide notice until the application is deemed sufficient for filing and the Applicant is ordered to provide notice.

33. Complete the following using verifiable man-made and/or natural landmarks such as roads, rivers, or railroads to describe the requested area (to be stated in the notice documents). Measurements should be approximated from the outermost boundary of the requested area:

The total acreage of the requested area is approximately: 1,000

Number of customer connections in the requested area: \_\_\_\_\_

The closest city or town: Dripping Springs

Approximate mileage to closest city or town center: 5

Direction to closest city or town: Northwest

The requested area is generally bounded on the North by: Onion Creek & FM1826

on the East by: Rutherford West Housing Development

on the South by: FM150&FM967

on the West by: FM1826 & FM967

34. A copy of the proposed map will be available at City of Dripping Springs City Hall  
511 Mercer Street, Dripping Springs, TX 78620

**Applicant's Oath**

STATE OF Texas

COUNTY OF Hays

I, Bill Foulds being duly sworn, file this application to obtain or amend a water or sewer CCN, as Mayor (owner, member of partnership, title as officer of corporation, or authorized representative)

I attest that, in such capacity, I am qualified and authorized to file and verify such application, am personally familiar with the documents filed with this application, and have complied with all the requirements contained in the application; and, that all such statements made and matters set forth therein with respect to Applicant are true and correct. Statements about other parties are made on information and belief. I further state that the application is made in good faith and that this application does not duplicate any filing presently before the Commission.

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 within its certificated service area should its request to obtain or amend its CCN be granted.

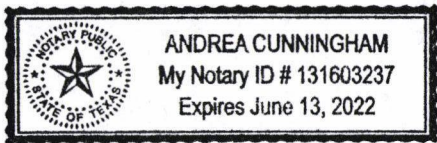
Bill Foulds

**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 BEFORE ME, a Notary Public in and for the State of Texas  
this day the 12 of June, 20 20

SEAL



Andrea Cunningham  
**NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS**

Andrea Cunningham  
**PRINT OR TYPE NAME OF NOTARY**

My commission expires: 6/13/2022

**City of Dripping Springs**  
**Water CCN Application**  
**List of Attachments**

- Attachment #1 – Driftwood 522, LLC, development agreement for request of service, Retail Water and Wastewater Services Agreement Between The City of Dripping Springs and Driftwood Conservation District, City of Dripping Springs Driftwood Conservation District Resolution, Third Amendment to Wholesale Water Agreement Between Lower Colorado River Authority and The City of Dripping Springs (Driftwood Ranch Tract Service Property Amendment) and City of Dripping Springs Rate Ordinance
- Attachment #2 – TCEQ requests for approval
- Attachment #3 – List of public drinking water supply system(s) within a 2-mile radius
- Attachment #4 – Map of existing and proposed facilities
- Attachment #5 – Metes and bounds surveys and maps of the requested area

**Attachment #1 – Driftwood 522, LLC, development agreement for request of service, Retail Water and Wastewater Services Agreement Between The City of Dripping Springs and Driftwood Conservation District, City of Dripping Springs Driftwood Conservation District Resolution, Third Amendment to Wholesale Water Agreement Between Lower Colorado River Authority and The City of Dripping Springs (Driftwood Ranch Tract Service Property Amendment) and City of Dripping Springs Rate Ordinance**



**AGREEMENT FOR THE PROVISION OF NONSTANDARD  
RETAIL WATER SERVICE**

This Agreement for the Provision of Nonstandard Retail Water Service (the "Agreement") is entered into by and between the City of Dripping Springs, Texas (the "City") a Type A General Law City located in Hays County, Texas, and DLC DRIFTWOOD 967, LLC, a Delaware limited liability company ("Developer"). Unless otherwise specified, the term "Parties" shall mean the City and Developer, collectively.

WHEREAS, Driftwood 522, LLC (the "Owner") is the current owner of 522 acres along FM 967 in the Driftwood area (the "Property"); and

WHEREAS, Developer is currently under contract to purchase 472 acres of the Property (the "Developer Acquired Land"), and Developer plans to construct a golf course and residential development on the Developer Acquired Land once it is purchased from Owner; and

WHEREAS, Owner will retain 50 acres of the Property (the "Owner Retained Land"), and Owner plans to construct a commercial development on the Owner Retained Land, with Developer extending certain utilities, including water, to the Owner Retained Land; and

WHEREAS, the development of the Developer Acquired Land and the Owner Retained Land (a total of 522 acres collectively referred to herein as the "Development") will be in accordance with a to-be negotiated Development Agreement with the City; and

WHEREAS, Developer desires to obtain retail water service to the Development; and

WHEREAS, The City made request of the West Travis County Public Utility Agency ("WTCPUA") for certain water service and reservations, and the WTCPUA's Board of Directors approved the City's request at their monthly meeting on February 16, 2017; and

WHEREAS, it is the intent of the Parties that the City will obtain wholesale water service from the WTCPUA and will, in turn, provide retail water service to the Development; and

WHEREAS, the Parties now desire to enter into this Agreement to set forth the terms and conditions upon which the City will provide retail water service to the Development.

NOW, THEREFORE, in consideration of the terms, conditions, and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree to the following:

- 1. Creation of Municipal Utility District ("MUD").** The Parties acknowledge that Developer has proposed the creation of a MUD through special legislative action of the Texas Legislature. Should the MUD be established, Developer may assign and/or convey certain responsibilities and/or obligations for the water service and/or the construction of facilities to provide service to the MUD subject to the approval of the City, which approval shall not be unreasonably withheld. The Parties further agree that certain

improvements and/or facilities may ultimately be owned and/or operated by the City or the MUD, subject to further mutual agreement between the Parties. The term "Developer Facilities" shall mean those facilities to be constructed and are required to connect to and extend water service from the City's connection point with the WTCPUA to the Development through and including wholesale and retail water meters. Developer Facilities herein shall apply to those facilities that are constructed and/or operated by either the Developer or the MUD.

- 2. City to Provide Service.** For and in consideration of Developer's obligations, covenants and conditions set forth in this Agreement, upon securing wholesale water service from the WTCPUA for the Development, the City agrees to provide up to 300 LUEs of retail water service for Retail Customers located within the Development pursuant to the terms of this Agreement, the City's Rules and Policies, the letter dated February 16, 2017 from the WTCPUA to the City (attached as Exhibit A), and the WTCPUA's Rules and Policies. Absent an amendment to this Agreement, the City shall not be obligated to provide retail water service to Retail Customers located within the Development that collectively exceed 300 LUEs. The City's service commitment is for the Development to be constructed on the Property and does not convey to the Property in the event the Development is not constructed. The City will also facilitate the availability of water required by the Developer for the grow-in of the Development's proposed golf course, under terms and conditions to which the Parties will agree and which will be the financial responsibility of the Developer. The 300 LUEs of retail water service provided by the City shall be apportioned between the Developer Acquired Land and the Owner Retained Land pursuant to a separate written agreement to-be negotiated between Developer and Owner.
- 3. Conditions Precedent to Commencement of Service.** The Parties agree that the City is not required to commence retail water service to a retail customer in the Development until (1) all fees and charges imposed by the WTCPUA for commencement of wholesale water service to the City for the Development are paid directly to the WTCPUA by the Developer and/or a Retail Customer, (2) Developer has complied with the City Rules and Policies and the WTCPUA Rules and Policies, (3) Developer has satisfied all its obligations under this Agreement; (4) Developer has paid the City the fees and charges set-forth in this Agreement; (5) Developer has obtained from the Texas Commission on Environmental Quality and all other governmental agencies having jurisdiction of all permits, certificates or approvals required to lawfully provide such service; (6) any retail customer executes a Retail Service Agreement that is consistent with 30 Texas Admin. Code § 290.47(b); and (7) Developer has paid any costs City incurs complying with the requirements of the WTCPUA to obtain wholesale water service, including but not limited to the requirements set-forth in the letter dated February 16, 2017 from the WTCPUA to the City (attached as Exhibit A).
- 4. No Implied Waivers or Credits.** Nothing in this Agreement shall be interpreted to waive service conditions for retail customers in the Development or otherwise grant credit to Developer or the Development or any portion thereof for any fee, charge, or payment, otherwise applicable under this Agreement or the City's Rules and Policies.

5. **Charges Related to Agreement.** Within sixty (60) days of the execution of this Agreement, Developer shall reimburse City for the City's reasonably necessary legal fees incurred to prepare and negotiate this Agreement.
6. **Service Fees and Charges for Commencement of Service.** All fees and charges imposed by WTCPUA that are required for the commencement of water service will be passed through to and paid by Developer directly to the WTCPUA at the same rate that is imposed upon the City. These include, but may not be limited to reservation fees, impact fees, and connection fees.
7. **Rates and Charges for Continued Service.** Upon Commencement of Service, the Retail Customer in the Development shall pay rates, fees and charges for water service in accordance with City Rules, Policies, and Ordinances.
8. **Restrictions on Service.** Unless the prior approval of City is obtained, the Developer shall not:
  - (a) construct or install additional water lines or facilities to service areas outside the Development;
  - (b) add any additional lands to the Development for which water service is to be provided pursuant to this agreement without City approval; or
  - (c) connect or serve any person or entity who, in turn, sells water service directly or indirectly to another person or entity.
9. **Permits.** Developer, at its sole cost and expense, shall be solely responsible for obtaining all permits necessary to construct and operate the Developer Facilities.
10. **Easements and Facility Siting.** The City shall negotiate and secure any off-site real property interests necessary to construct the off-site Developer Facilities at locations approved by the City. The costs and expenses for obtaining such off-site real property interests will be paid by Developer. Developer shall obtain all real property interests necessary for constructing Developer Facilities on the Property at Developer's cost. Developer will construct the Developer Facilities within easements provided and approved by the City where necessary for the City's operation and maintenance of such facilities. Easements shall be in a form and substance acceptable to the City's attorney. The costs of securing such easements will be agreed upon by the Parties and shall be an expense of the Developer.
11. **Facilities and Construction.** The Developer Facilities shall be constructed under the terms of a Construction Agreement with the City, which shall provide for the budgeting, standards, warranties, timeline and related items, as reasonably requested by the City. All expenses and costs associated with Developer Facilities shall be paid by Developer.
12. **Completion and Conveyance.** The Parties shall agree upon a Completion and Conveyance Agreement, which shall provide for the process, documentation, indemnification, legal instruments and related items, as reasonably requested by the City.

**13. Term; Termination.** This Agreement shall become effective upon the latest date of execution by either the Developer or the City (the "Effective Date"). Unless otherwise earlier terminated, this Agreement shall extend from the Effective-Date for as long as the City provides service to retail customers located in the Development. This Agreement shall terminate and the commitment of water service to the Development will be null and void if the Developer does not maintain compliance with the requirements needed to retain a service commitment from the WTCPUA.

**14. Default.**

(a) In the event that Developer defaults on or materially breaches any one or more of the provisions of this Agreement, the City shall give Developer thirty (30) days to cure such default or material breach after the City has made written demand to cure the same (with a courtesy copy of such demand also being provided to Owner). A breach is material if Developer fails to meet or otherwise violates its obligations and responsibilities as set forth in this Agreement. If Developer fails to cure a breach or default involving the payment of money within such thirty (30) days or fails to cure or take reasonable steps to effectuate such a cure within thirty (30) days if the breach or default does not involve the payment of money and is not capable of being cured within thirty (30) days, City may terminate this Agreement upon written notice to Developer (with a courtesy copy of such notice also being provided to Owner). Upon such termination, City will retain all payments made, if any, by Developer to the City made under this Agreement and City shall have no duty to extend water service to Retail Customers within the Proposed Development after the date of termination. If any default is not capable of being cured within thirty (30) days, then City may not terminate this Agreement or exercise any other remedies under this Agreement so long as Developer diligently and continuously pursues curative action to completion.

(b) In the event that City defaults on or materially breaches any one or more of the provisions of this Agreement, Developer shall give City thirty (30) days to cure such default or material breach after Developer has made written demand to cure the same and before Developer files suit to enforce the Agreement. In the event of default by City, Developer may, as its sole and exclusive remedy either: (i) seek specific performance or a writ of mandamus from a court of competent jurisdiction compelling and requiring City and its officers to observe and perform their obligations under this Agreement; or (ii) if specific performance and a writ of mandamus are barred by governmental immunity, then pursue all other legal and equitable remedies.. A breach is material if City violates its obligations and responsibilities as set forth in this Agreement.

**15. Governing Law, Jurisdiction and Venue.** This Agreement must be construed and enforced in accordance with the laws of the State of Texas, as they apply 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 Hays County, and hereby agree that any such court shall be a proper forum for the determination of any dispute arising hereunder.

**16. Notice.** Any notices, approvals, or other communications required to be given by one Party to another under this Agreement (a "Notice") shall be given in writing addressed to the Party to be notified at the address set forth below:

To the City:

City of Dripping Springs, Texas  
Attn: City Secretary  
P. O. Box 384  
Dripping Springs, Texas 78620  
FAX: (512) 858-5646

City of Dripping Springs, Texas  
Attn: City Administrator  
P. O. Box 384  
Dripping Springs, Texas 78620  
FAX: (512) 858-5646

To Developer:

DLC DRIFTWOOD 967, LLC  
Attn: Mark Rivers  
124 S. Lasky Drive, Suite 100  
Beverly Hills, CA 90212  
PH: 310.288.1717 or via email, [mrivers@brixusa.com](mailto:mrivers@brixusa.com)

With a Courtesy Copy to:

Driftwood 522, LLC  
Attn: Hunter Brown  
8711 Johnny Morris Rd.  
Austin, Texas 78724  
FAX: (512) 478-0801

**17. Assignment.** Developer may not assign this Agreement without the written consent of the City, which consent shall not be unreasonably withheld. This Agreement is binding on Developers' successors and assigns. Notwithstanding the foregoing, Developer shall be permitted to assign all or a portion of its rights in and under this Agreement to Owner without the necessity of having to obtain the City's consent to such assignment.

**18. Amendment.** This Agreement may be amended only with the written consent of the Developer and approval of the governing body of the City.

**19. No Waiver.** Any failure by a Party to insist upon strict performance by the other Party of any provision of this Agreement shall not be deemed a waiver thereof, and the Party

shall have the right at any time thereafter to insist upon strict performance of any and all provisions of this Agreement. No provision of this Agreement may be waived except by a writing signed by the Party waiving such provision. Any waiver shall be limited to the specific purposes for which it is given. No waiver by any Party hereto of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

- 20. Severability.** If any term of this Agreement is to any extent invalid, illegal or incapable of being enforced, such term shall be excluded to the extent of such invalidity, illegality, or unenforceability; all other terms hereof shall remain in full force and effect.
- 21. Counterpart Originals.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original.
- 22. Force Majeure.** If any Party is delayed in meeting, or fails to meet, a deadline required by this Agreement (other than a deadline to pay money due and payable hereunder), and such delay or failure is due to causes beyond that Party's reasonable control, including, without limitation, failure of suppliers, contractors, subcontractors and carriers, and third party governmental entities, then the dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused, provided that the Party experiencing the failure or delay gives the other Party reasonably prompt Notice specifically describing the cause relied upon.
- 23. Incorporation of Exhibits by Reference.** All exhibits attached to this Agreement are incorporated into this Agreement by reference for the purposes set forth herein.

**[REMAINDER OF PAGE BLANK, SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, this instrument is executed on the Effective Date.

**CITY OF DRIPPING SPRINGS, TEXAS**

Attest:  
Deborah L. Laesch  
Deputy City Secretary

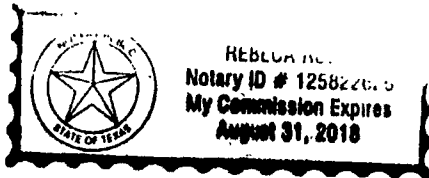
By: [Signature]  
Todd Purcell, Mayor

Date: June 1, 2017

**STATE OF TEXAS  
COUNTY OF HAYS**

This instrument was executed by Todd Purcell before me on this the 1 day of June, 2017.

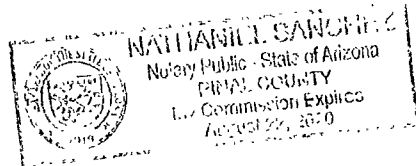
[Signature]  
Notary Public, State of Texas



**DLC DRIFTWOOD 967, LLC,**  
a Delaware limited liability company

[Signature]  
By: Mark J. Rivers  
Title: Manager

Date: JUNE 14, 2017



**STATE OF ~~TEXAS~~ Arizona**  
**COUNTY OF Maricopa**

This instrument was executed by Mark J. Rivers, in the capacity set forth above, and before me on this the 14<sup>th</sup> day of June, 2017.

[Signature]  
Notary Public, State of Texas Arizona

City of Dripping Springs  
Attn: City Administrator  
PO Box 384  
Dripping Springs, Texas 78620

Driftwood DLC Austin I, LLC  
c/o Discovery Land Company  
Attn: Schuyler Joyner  
301 N. Canon Drive, Suite 328  
Beverly Hills, California 90210

Driftwood Conservation District  
c/o Winstead, PC  
Attn: Judy McAngus  
401 Congress Avenue, Suite 2100  
Austin, Texas 78701

Driftwood DLC Austin II, LLC  
c/o Discovery Land Company  
301 N. Canon Drive, Suite 328  
Beverly Hills, California 90210

Driftwood Equities, LTD.  
c/o M. Scott Roberts  
PO Box 311  
Driftwood, Texas 78619

M. Scott Roberts  
PO Box 311  
Driftwood, Texas 78619

Maile Development Company, Inc.  
PO Box 311  
Driftwood, Texas 78619

### **NOTICE OF ASSIGNMENT**

This notice, effective as of June 12, 2019, is to inform you that DRIFTWOOD 522, LLC, a Texas limited liability company, has assigned and transferred to DRIFTWOOD 25-ACA, LP, a Texas limited partnership, all of its rights, title, and interest in that certain Retail Water and Wastewater Services Agreement between the City of Dripping Springs and Driftwood Conservation District, Driftwood DLC Austin I, LLC, Driftwood DLC Austin II, LLC, M. Scott Roberts, Driftwood Equities, Ltd., Maile Development Company, Inc. and Driftwood 522, LLC, dated as of January 8, 2019.

If you have any questions or comments, please contact Cole Arledge or Chris Earthman at Driftwood 25-ACA, LP, 835 W. 6<sup>th</sup> Street, Suite 1560, Austin, Texas 78703.

Received

**JUN 19 2019**

City of Dripping Springs



**RETAIL WATER AND WASTEWATER SERVICES AGREEMENT  
BETWEEN THE CITY OF DRIPPING SPRINGS  
AND  
DRIFTWOOD CONSERVATION DISTRICT, DRIFTWOOD DLC AUSTIN I, LLC,  
DRIFTWOOD DLC AUSTIN II, LLC, M. SCOTT ROBERTS, DRIFTWOOD EQUITIES,  
LTD, MAILE DEVELOPMENT COMPANY, INC. AND DRIFTWOOD 522, LLC**

THIS RETAIL WATER AND WASTEWATER SERVICES AGREEMENT (the "Agreement") is made and entered into by and between the City of Dripping Springs (the "City"), a Type A General Law City in Hays County, Texas and Driftwood DLC Austin I, LLC ("Driftwood I"), Driftwood DLC Austin II, LLC ("Driftwood II"), Delaware Limited Liability Companies, M. Scott Roberts ("Roberts"), an individual, Driftwood Equities, Ltd. ("Equities"), a Texas Limited Partnership, Maile Development Company, Inc., a Texas Corporation and Driftwood 522, LLC a Texas Limited Liability Company ("522") or their respective successors or assigns (collectively referred to as "Owners") and the Driftwood Conservation District, a political subdivision of the State of Texas.

**RECITALS**

1. The City owns, operates, and maintains a water supply system consisting of wholesale water purchased from the West Travis County Public Utility Agency ("WTCPUA") and a water distribution and delivery system consisting of, or may consist of, water storage facilities, water transmission and distribution facilities and related appurtenances to serve the needs of its customers.
2. The City owns, operates and maintains a wastewater collection system and a wastewater treatment plant (TCEQ Permit Number WQ0014488001).
3. Owners own approximately 1,000 acres that are within the extraterritorial jurisdiction of the City, as shown on Exhibit A. The property is divided into two separate tracts will sometimes be referred to as, as a whole, "the Project" or individually as the "Creek Tract" and the "Ranch Tract" as shown on Exhibit A.
4. The Parties acknowledge that Driftwood I, Driftwood II and 522 will also be development entities, (Developers), that intend to develop the property for a mixed use of residential and commercial purposes pursuant to a Development Agreement that has been or will be executed with the City.
5. Owners intend to construct or cause to be constructed and installed a potable water distribution system and related facilities within the Ranch Tract and a wastewater collection system and related facilities within the Project, which facilities will be conveyed ultimately to the City and used by the City to distribute treated water and for wastewater collection for customers within the property pursuant to this Agreement.

6. Owners intend to construct or cause to be constructed and install improvements necessary to connect to the City's existing water and wastewater facilities. The City agrees to use the improvements to provide service to the customers within the Project.
7. The City will provide retail water and wastewater services to the customers within the Ranch Tract, who will be retail customers of the City and who will pay either in city or out of city rates as will be discussed below. The City will provide retail wastewater services to the customers within the Creek Tract. The City may provide retail water services to the customers within the Creek Tract, if the Parties as well as the WTCPUA mutually agree to this arrangement. Otherwise the WTCPUA will provide retail water services to the customers within the Creek Tract.
8. The Parties acknowledge that the development project will have a need and use for treated effluent to be used as irrigation, makeup water and/or construction water. The provisions for the use of reclaimed water will be provided in a separate Reclaimed Water Agreement.
9. Driftwood II plans to construct a golf course in the Project's initial phase, which will require sufficient water to grow and sustain the golf course. Further, as stated in Recital 8 above, Driftwood II and the City agree that Driftwood II will use treated effluent for the golf course. However, in the project's early stages, the City will not have sufficient treated effluent to provide Driftwood II with sufficient amounts to sustain the golf course. Driftwood II and the City agree that Driftwood II may use, on a temporary basis, the water committed in this Agreement to grow and sustain the golf course, as needed.
10. The City and Owners now desire to execute this Agreement to evidence henceforth the agreement of the City to provide water and wastewater service to customers within Owners' property and/or Project under the conditions described in this Agreement. The Parties acknowledge that Owners may assign this Agreement to the Development Entity discussed in Recital 4 above.
11. The City and Owners agree and acknowledge that Owners have caused a conservation and reclamation district to be created over the Ranch Tract and a Municipal Management District over the Creek Tract, each pursuant to Article XVI, Section 59, Texas Constitution. The parties acknowledge and agree that it is both parties' intent to assign this agreement along with all of Owners' obligations to one of the conservation and reclamation districts and the district(s) will assume all obligations of the respective Owner(s).
12. The Parties further acknowledge that Owners may seek to Petition the District to annex the Creek tract and other property. This may be done incrementally. In any event, the Parties acknowledge that no property may be annexed into the District without consent from the City.

## AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Owners agree as follows:

### ARTICLE I DEFINITIONS

**Section 1.01 Definitions of Terms.** As used in this Agreement, except as otherwise provided herein, the following terms have the meanings ascribed in this section.

“Agreement” means this “Retail Water and Wastewater Services Agreement Between City of Dripping Springs and Owners.”

“City” means the City of Dripping Springs, a Type A General Law City in Hays County, Texas.

“City’s Engineer” means one or more licensed professional engineers employed by the City or engaged by the City to provide services to the City as described in this Agreement.

“City’s Service Area” means the City’s water supply service area and wastewater service area, whether or not it is a certificated service area, as such service areas now exist or as the City may change hereafter.

“City’s Water System” means all water treatment, transmission and distribution facilities, lines, mains, reservoirs, pump stations, residential, commercial and industrial connections and any other parts or components that comprise the public water system of the City, together with all extensions, expansions, improvements, enlargements, betterments and replacements thereof, as additionally described in Recital No. 1.

“City’s Wastewater System” means all wastewater treatment, collection facilities and all appurtenances that comprise the wastewater system of the City, together with all extensions, expansions, improvements, enlargements, and replacements thereof, as additionally described in Recital No. 2.

“Director of Public Works” means the duly authorized employee or representative of the City in charge of the street, water and sewer department or any combination thereof.

“Owners” means Driftwood DLC Austin I, LLC, a Texas Limited Liability Company, or its successors or assigns, Driftwood DLC Austin II, LLC, a Texas Limited Liability Company, or its successors or assigns, M. Scott Roberts, an individual, Driftwood Equities, Ltd, a Texas Limited Partnership or its successors or assigns, and Driftwood 522, LLC, a Texas Limited Liability Company or its successors or assigns.

“Customers” mean the residential and commercial customers that will be located within Owners’ property boundaries and that may be retail customers of the City.

“Developer” means the person or entity that will develop Owners’ property and that will benefit from the installation of Water Facilities and Wastewater Facilities.

“District” means the Driftwood Conservation District created pursuant Article XVI, Section 59, Texas Constitution and HB 4301, 85th Texas Legislative Session.

“Effective Date” means December 11, 2018.

“Emergency” means a sudden unexpected happening; an unforeseen occurrence or condition; exigency; pressing necessity; or a relatively permanent condition of insufficiency of service or of facilities. The term includes Force Majeure and acts of third parties, which cause either the City’s Water System or the City’s Wastewater System to be unable to provide the services agreed to be provided herein.

“Force Majeure” means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of any governmental entity or any civil or military authority, acts, orders or delays thereof of any regulatory authorities with jurisdiction over the parties, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, blue northers, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or any other conditions which are not within the control of a party.

“Internal Wastewater Facilities” means all residential and commercial, industrial wastewater connections, collection lines, force mains, lift stations and other facilities within the Project, together with all extensions, expansions, improvements, enlargements, betterments and replacements thereof.

“Internal Water Facilities” means all water transmission and distribution facilities, lines, mains, storage facilities, reservoirs, pump stations, residential, retail meters, commercial and industrial connections and any other parts or components that comprise the public water system within the Driftwood II and 522’s Project, together with all extensions, expansions, improvements, enlargements, betterments and replacements thereof.

“LUE” for wastewater means 175 gallons per day of wastewater capacity for one living unit equivalent, and for water means the amount of gallons per day of water capacity set by the WTCPUA as the capacity for one living unit equivalent.

“The Project” means the Land as it will be developed pursuant to Exhibit A and includes both the “Ranch Tract” and the “Creek Tract”.

**Section 1.02 Captions.** The captions appearing at the first of each numbered section or paragraph in this Agreement are inserted and included solely for convenience and will not be considered or given any effect in construing this Agreement.

**Section 1.03 Recitals.** The recitals and findings set forth above are found to be true and correct for all purposes and incorporated into the body of this Agreement.

**ARTICLE II  
DELIVERY OF WATER AND WASTEWATER SERVICE**

**Section 2.01 Quantity.** Subject to the terms and conditions set forth herein, the City agrees to provide retail water and wastewater service to the Customers that will be located within the Project in aggregate amount not to exceed 610 LUEs for retail water service for the Project and 1,000 LUEs for retail wastewater service for the Project. The Parties agree that the 610 LUEs include 256 retail water LUEs as may be transferred from the WTCPUA's retail service to the City's, subject to the mutual agreement of the WTCPUA and the Parties to that effect that were initially intended to serve Creek Tract. The City agrees to not impose City reservation fees on 610 LUEs for wastewater service, but the City reserves the right to impose City reservation fees in the future on 390 of the 1000 reserved LUEs. If imposed, such City reservation fees must be paid to retain the right to use the 390 LUEs for retail wastewater service.

**Section 2.02 Water and Wastewater Service.** The City will provide water and wastewater service to the Customers as retail customers of the City on the same terms and conditions and at the same rates as the City provides such services to all its other customers, except as such terms, conditions or rates are expressly modified in this Agreement.

**Section 2.03 Primary Water Service; Use of Water.** The City, the District and Owners agree that water provided under this Agreement is intended to provide the primary source of water to the Customers of the Ranch Tract during the tenure hereof and will not be construed to provide solely for supplemental, backup, peak-load or as-available service. The Parties agree the uses include reasonable and prudent irrigation, lawn water, similar domestic and commercial uses, and for public health and sanitation needs, except that Customers within the Project will comply with city conservation ordinances and city rules and guidelines. To the extent that City's authority to enforce such ordinances and rules outside of its corporate limits is limited, upon written request by the City, Owners and the conservation and reclamation district will cooperate with the City and adopt such regulations that are within its power to adopt to complement and supplement the City's enforcement authority.

**Section 2.04 Primary Wastewater Service.** The City, the District and Owners agree that wastewater services provided under this Agreement is intended to provide the primary source of wastewater service to the Customers during the tenure hereof and will not be construed to provide solely for supplemental, backup, peak-load or as-available service. The Parties agree the wastewater from the Project will include wastewater from domestic households, amenity centers, schools, and light commercial, and that Owners' Customers will comply with city pretreatment and wastewater service rules and regulations.

**Section 2.05 Nondiscrimination.** Water and wastewater service provided to Owners' and/or District's Customers by City will be nondiscriminatory and consistent with City's policies, tariffs and regulations as amended from time to time and the law; provided, however all of the Customers located within Owners' and/or District's boundaries may be considered as separate customer class and the policies, tariffs and regulations applicable to this customer class may differ from other customer classes created by the City.

**Section 2.06 Quality of Water Delivered to Customers.** The water delivered by City hereunder will be potable water of a quality, volume and pressure conforming to the requirements of all applicable federal or state laws, rules, regulations or orders, including requirements of the Texas Commission on Environmental Quality, or its successors, for human consumption and other domestic use; provided, however, temporary excursions or exceedances of the standards from time to time shall not give rise to a claim for breach of this Agreement. Each party agrees to provide to the other party, in a timely manner, any information or data regarding this Agreement or the quality of treated water provided through this Agreement as required for reporting to state and federal regulatory agencies.

**Section 2.07 Agreement Contingent.** This Agreement is specifically contingent on Owners proceeding with development.

**Section 2.08 Use of Water.** The Parties acknowledge and agree that this Agreement is for retail wastewater service within the Project and retail water service within the Ranch Tract and may include retail water service to the entire Project as agreed to by the Parties and the WTCPUA. The Parties further acknowledge and agree that no water purchased from this Agreement will be sold, transferred or conveyed to a third party without prior agreement from the City.

### **ARTICLE III CHARGES, BILLING AND FINANCIAL MATTERS**

**Section 3.01 The District and/or Owners or Assigns to Pay all Costs for Wastewater Facilities Serving the Customers within Project.** The District and/or Owners, their assigns and/or Builders shall pay the City's standard charges for impact fees for wastewater service from the City at the time specified by city ordinance to each LUE; provided, however the District and/or Owners or assigns shall receive an offset against the City's impact fees in an amount equal to the amount of such impact fees attributable to the mutually agreed upon capital projects for wastewater facilities described in the City's capital improvement plan and dedicated to the City as provided in this Agreement that benefit the City's system as a whole and if said offset is otherwise allowed by law. Subject to the foregoing, Owners or assigns may, at their sole option, elect to pre-pay the City's wastewater impact fees (or relevant portion thereof considering any offsets as provided above, if otherwise allowed by law) for all retail wastewater connections in a platted subdivision at, or after, the time of approval of the final plat of a subdivision, in which event water capacity shall be committed, and reserved, by the City for such section. The City reserves the right to request oversizing beyond the Project's requirements of wastewater facilities, such as lift stations, force mains, and gravity collection lines. In the case the City requests oversizing of facilities, Owners or assigns shall negotiate in good faith to enter into a construction agreement to accommodate the City's request. The District and/or Owners or assigns will be responsible for the District's and/or Owners' or assigns' portion of the facility and the City will be responsible for the increased costs associated with the City's request to oversize. Costs shall be allocated based on the percentage of LUEs to be served. In the event of a conveyance contemplated by Section 4.07 below, the District and/or Owners or assigns retain the right to capacities constructed by the District and/or Owners or assigns meant to provide service to the Project, but have no claim on additional capacities created by oversizing requests

or to additional capacities that infrastructure constructed by the District and/or Owners may or may not be capable of conveying that exceed the defined Project's LUEs. The District and/or Owners or assigns will not pay drainage impact fees to the City, unless otherwise required by law, because the District and/or Owners or assigns will pay for all drainage facilities necessary for the Project.

**Section 3.02 The District and/or Owners or Assigns to Pay all Costs for Water Facilities Serving the Customers within Project.** The City shall pass through all fees and charges for initial water service (including impact fees and service request fees) with no markup to the District and/or Owners, its assigns and/or Builders and Owners, its assigns and/or Builders shall timely pay such fees or charges directly to the WTCPUA. Monthly charges for water shall be paid in accordance with City ordinance governing water rates and charges. To the extent that the City receives an offset against the WTCPUA's impact fee, Owners or assigns shall receive the same offset. The City reserves the right to request oversizing beyond the Project's requirements of water facilities, such as vaults, and transmission lines. Owners or assigns will be responsible for Owners' or assigns' portion of the facility and the City will be responsible for the increased costs associated with the City's request to oversize. Costs shall be allocated based on the percentage of LUEs to be served. In the event of a conveyance contemplated by Section 4.07 below, the District, Owners or assigns retains the right to capacities constructed by the District and/or Owners or assigns meant to provide service to the Project, but have no claim on additional capacities created by oversizing requests or to additional capacities that infrastructure constructed by the District and/or Owners may or may not be capable of conveying that exceed the defined Project's LUEs. The District, Owners or assigns will not pay drainage impact fees to the City, unless otherwise required by law, because Owners or assigns will pay for all drainage facilities necessary for the Project.

**Section 3.03 Fees and Charges.** The City agrees to apply to Customers the same service policies and conservation requirements as the City does for residents and customers within the corporate limits of the City of Dripping Springs. Except as discussed below and in Section 4.07, the City will apply out of city rates as the City Council adopted and amended from time to time to the Customers that do not live within the City limits. However, in the event that the City annexes any portion of the Project those Customers annexed into the City will pay "in City" rates. This Agreement does not prevent the Customers from appealing, pursuant to Section 13.043, Texas Water Code, any water rate set by the City, if such customers have standing to file such an appeal.

Alternatively, the parties may agree the Customers will pay "in-city" rates and also pay the City an operation and maintenance fee. Such an agreement will be entered prior to water and/or wastewater service being provided.

**Section 3.04 Beneficial Reuse Infrastructure.** The commitments made by the District, Owners and/or Developers in the separate Reclaimed Water Agreement associated with the Project constitutes satisfaction of the requirements specified by Chapter 22, Article 22.06.007(c)(2) of the City's Code of Ordinances and no fee under that section shall be required to be paid by the District, Owners and/or Developers.

**ARTICLE IV  
CONSTRUCTION, OPERATION AND MAINTENANCE**

**Section 4.01 Construction of Distribution System.** The District, Driftwood II and/or 522 or their respective assigns, at their own cost and expense, will construct or cause to be constructed a potable water distribution system and all related facilities within their respective Project (consisting of Internal Water Facilities) as well as outside of their respective Project (if the facilities are necessary to serve the Project) (the “Water Facilities”) to allow the City to provide retail water service to the Customers. The Water Facilities shall meet all applicable City and TCEQ standards and reviews.

**Section 4.02 Construction of Wastewater Improvements.** The District, Owners and/or assigns at their own cost and expense, will construct or cause to be constructed wastewater improvements and all necessary facilities within Owners or assigns’ Project (consisting of Internal Wastewater Facilities). This includes facilities outside Owners’ or assigns’ project, if the facilities are necessary to serve the Project, (“Wastewater Facilities”) to allow the City to provide retail wastewater service to the Customers. The Wastewater Facilities shall meet all applicable City and TCEQ standards and reviews.

**Section 4.03 Construction Plans.** A Texas licensed professional engineer will design the Water and Wastewater Facilities. The design will comply with the applicable specifications of the City and all other applicable governmental agencies. All plans and specifications for the Water and Wastewater Facilities may be reviewed by the City’s Engineer and Director of Public Works and any comments shall be submitted within 20 days of receipt of the plans and specifications.

**Section 4.04 Required Easements.** All of the Water Facilities and Wastewater Facilities will be located either in the public right-of-way or in easements across privately owned land. Owners and/or Developer or assigns will be responsible for obtaining any governmental approvals necessary to construct the Water Facilities and Wastewater Facilities in the public right-of-way. City agrees to facilitate acquisition of and/or acquire (which may include using the City’s condemnation powers) any easements across privately-owned or publicly-owned land that are necessary for the construction or operation of the Water Facilities and Wastewater Facilities, but Owners and/or Developers shall pay all costs associated with such efforts. Owners and/or Developer and/or assigns will be responsible for surveying easement routes. The final location of an easement is subject to review and comment by Owners’ or assigns’ engineer and the City. All easements shall be assigned to the City at the time title to the Water Facilities and Wastewater Facilities are transferred to the City.

**Section 4.05 Construction of Water and Wastewater Facilities.**

- a. To construct the Water and Wastewater Facilities, or any phase thereof, the District, Owners or assigns will advertise for bids for construction of the Water and Wastewater Facilities, in accordance with applicable provisions of the Texas Water Code and Texas Local Government Code, if applicable, and select from among the bidders as required by Chapter 49, Water Code.



- b. The Water and Wastewater Facilities will be constructed in accordance with the plans and specifications approved by the City, the City's policies and applicable state, county or municipal regulations or ordinances. No changes or change orders that substantially alter the approved plans and specifications and any construction contract will be made without the approval of Owners or assigns and City. The District, Owners or assigns will simultaneously file with the City all documents that Owners or assigns is required to file with the TCEQ regional office pursuant to TCEQ Rule 293.62.
- c. The District, Owners or assigns and City will inspect and approve all phases of the construction of the Project's Water and Wastewater Facilities. When construction of the Facilities is substantially complete, then the City will schedule a final inspection. After such final inspection, the Owner shall timely correct any punch list items and the City will re-inspect until all punch-list items are complete. Owners and/or Developer shall pay the City Engineer's fees (plus a 20% administrative fee mark-up) for City Engineer final inspection and any re-inspections after the final inspection. Prior to the final inspection discussed herein, the City may inspect all phases of the construction of the Water and Wastewater Facilities at the City's cost, but if any inspection conducted pursuant to this sentence results in the need for a follow-up inspection, Owners and/or Developer shall pay the City Engineer's fees (plus a 20% administrative fee mark-up) such follow-up inspection. Owners or assigns will give at least 72 hour written notice to the City of the date when construction of any portion of the Water and Wastewater Facilities is scheduled to commence so that the City may assign an inspector.
- d. The District, Owners or assigns may begin construction of the portion of the Water Facilities and Wastewater Facilities located within a portion of the Project after approval of the preliminary plat for that portion of the Project and approval of the plans and specifications and contract documents for that portion of the Project by City's Engineer. Further, as described in Section 4.07 below, the contract between the District, Owners assigns and the contractor, whether one or more, shall allow for claims for defects in labor and materials, require the contractor to provide a two year warranty on the work and material and the performance bond shall include the standard 2 year warranty on the work and material which warranty shall be transferable to City. In addition, the District, Owners or assigns shall require the contractor to provide insurance for the typical coverage for the work being performed, such insurance naming Owners or assigns and City as additional insured for the work performed by the contractor on the Water Facilities and Wastewater Facilities. The District, Owners or assigns shall provide City a copy of the contract with the contractor, the performance and payments bonds, and insurance certificate before allowing the contractor to start work under the contract.

**Section 4.06 Extension of Service and Pump and Haul.**

- a. The District, Owners or their assigns shall pay for the cost and expense of the construction of any necessary facilities to extend water and wastewater service from the City's System to the Project. Construction of off-site capital projects as described below, shall not be eligible for credits toward impact fees, unless the off-site capital project is requested to be oversized beyond the capacity needed to serve the Project at the City's request. Such costs shall include, but are not limited to, all engineering and legal fees,

easement and access acquisition, and the design and construction costs of the facilities, required utility extensions, screening and landscaping, and shall be limited in amount on each individual capital expenditure to the incremental difference between what was necessary to serve the Project and what capacity was built by Owners beyond that at the request of the City Engineer.

- b. The District, Owners or Developer or assigns will design and construct a new approximate 23,000 feet of 8-inch wastewater force main, a lift station, and an odor control station, in accordance with City specifications, connecting the City's Wastewater System. The proposed wastewater force main alignment has not yet been determined, but the final approved location is subject to City Engineer's reasonable approval.
- c. The District, Owners or Developer or assigns will design and construct the facilities required to be installed by the WTCPUA to extend water service from the existing WTCPUA water lines to the Project (which will include a new wholesale water meter and a new 12 inch water line), in accordance with WTCPUA specifications. The proposed water line alignment is shown on Exhibit B.
- d. The District, Owners or assigns will not be responsible for any other offsite water or wastewater system improvements needed in the future to serve up to 606 Water LUEs within Driftwood I and Driftwood II or 522's Project(s) or for 1,000 Wastewater LUEs for the entire Project, except as may be provided in a separate agreement related to reuse of treated effluent.
- e. The Parties acknowledge that the construction of the extension facilities may not be completed timely to provide wastewater service when needed. For that reason, the Parties agree that should the wastewater system improvements not be completed, Owners may serve any active wastewater connections through a pump and haul and/or use of a temporary wastewater treatment plant (installed at Owners and/or Developers sole expense).
  1. If a pump and haul system is installed, the pump and haul system shall be subject to the terms and conditions set-forth at Exhibit C, which is incorporated herein by reference and made a part of this Agreement.
  2. If a temporary wastewater plant is installed, all costs associated with the permitting, design, construction, and removal of the temporary wastewater treatment plant shall be paid by Owners and/or Developers and shall not be reimbursed by the City or given impact fee credit. All parties agree that the temporary wastewater plant shall be removed and replaced by the permanent wastewater service contemplated by this Agreement at the soonest possible time. However, the temporary wastewater plant may be used on a permanent basis for pretreatment prior to discharge into City's System.

This Section 4.06 controls over any inconsistent language elsewhere in this agreement.

**Section 4.07 Conveyance/Ownership of Water and Wastewater Facilities.** Except for pump and haul facilities, and temporary wastewater treatment plant, upon final completion of construction, as evidenced by a certificate of final completion and acceptance by the City of a phase of the Water and Wastewater Facilities, the District, Owners or assigns, will: (1) dedicate and convey that phase of the Water and/or Wastewater Facilities to the City, including any easements associated with that phase; (2) assign all warranties to the City. The conveyance shall include (a) the warranty that the same are free and clear of all liens and encumbrances and (b) access to public rights-of-way and easements are sufficient to permit the City to operate and maintain such Facilities. Following the acceptance and dedication of a phase of the Water and Wastewater Facilities, the City will be responsible for the operation and maintenance of that phase of the Water and Wastewater Facilities unless the Parties have a different agreement. The form of the dedication instruments, easement assignments and maintenance bonds shall be submitted for review and approval by the City, which will not be unreasonably withheld or delayed. In any event, the City agrees that the District, Owners or assigns shall have an undivided interest in the capacity of that portion of the City's Water System and the City's Wastewater System, up to the capacity designed for the provision of retail water and wastewater service to the District, Owners or assigns by the City to the extent of the designed capacity of the conveyed systems and the payment of associated costs of said facilities by the District, Owners or assigns. In no way should this section be interpreted to mean that the District, Owners or assigns shall have an undivided interest in capacities that exceed the amount needed to service the District, Owners or assigns, or in any capacities that the City should require to be included as oversizing. The District, Owners or assigns will also convey standard contractor warranty that the contractor provides to Owners or assigns.

Any attempt by City to operate or maintain the Water Facilities and Wastewater Facilities, or to perform repairs on the Water Facilities and Wastewater Facilities will not void the warranty, provided however that the District, Owners or assigns shall not be responsible for repairing or replacing any part of the Water Facilities and Wastewater Facilities damaged by City but the City bears responsibility for repairs caused by its operations.

The City agrees to apply to Customers the same service and conservation policies as to those residents and customers, as the City does for its In City customers. Provided, however, that this Agreement does not prevent Customers from appealing, pursuant to Section 13.043, Texas Water Code, the rates set by the City Council.

Alternatively, the Parties may agree the Customers will pay "in-city" rates and also pay the City an operation and maintenance fee. Such an agreement will be entered prior to water and/or wastewater service being provided.

**Section 4.08 Reimbursement.** The Parties acknowledge and agree that the Owner or Developer may provide the funding for Water Facilities and Wastewater Facilities and may seek reimbursement for the costs of the Water and Wastewater Facilities from Owners or assigns, including a conservation and reclamation district mentioned in Recital No. 10 pursuant to various provisions of the Texas Water Code and other statutory authorization.

**Section 4.09 Curtailment, Conservation Restrictions and Environmental.**

- a. The City may curtail or ration service to Customers within the Project, as they would to other customers served by the City. Provided, however, except as provided for in Section 5.03, the City shall never enact a moratorium on water or wastewater service to the Project as a result of the limitations of the City of Dripping Springs water production and distribution facilities, or wastewater collection and treatment facilities, unless required by law or a state or federal governmental or regulatory authority having jurisdiction over the City's delivery of water or wastewater service or is adopted in response to an order or finding by a state or federal regulatory agency.
- b. The Parties agree that if it is ever reasonably determined by the City during the term of this Agreement that it is unable to provide adequate water or water services to the City's Service Area or its then existing committed customers because of an Emergency or shortage of water supply, production, treatment, storage or transportation capability in the City's System, or for any other reason, or if the City needs to cause repairs to be made to the City's System to repair, replace or improve the level of water service to its customers, then the City will have the right to curtail or limit service to Customers within the Project for such time as the condition that requires the curtailment or limitation continues. The City agrees to provide notice of the need for curtailment or limitation as soon as reasonably practicable. The parties agree that in times of Emergency, shortage or over uses of water, the priority in the purposes of use and the restrictions thereon will be as established from time to time by the City for its water supply customers. Notwithstanding anything herein to the contrary, if it is ever determined by any governmental or regulatory authority having jurisdiction that provision of water services by the City under this Agreement or that curtailment or limitation of water or water services by City to any of its customers, including Owners, is in violation of applicable law, regulation or order, then the City, after reasonable notice to the Customers within the Project and opportunity for consultation, may take such action as will best effectuate this Agreement and comply with applicable law.
- c. The District, Owners and assigns agree that all properties within the boundaries of the Project that receive utility service from the City shall abide by water conservation guidelines and restrictions the City establishes and comply with ordinances the City adopted relating to regulation, conservation, provision, acquisition or divestiture of water and/or wastewater as if the property were within the corporate boundaries of the City. Any person receiving service, including property owners, lessee or lessor, or who has a connection to the City system grants the City the rights and remedies available to the City including fines, fees, interruption of service, disconnection of service, etc. for failure to abide by City rules and ordinances.

**Section 4.10 Vested Rights; Impact Fees.** The parties agree and acknowledge that this Agreement constitutes a permit for purposes of Chapter 245 Texas Local Gov't. Code. The parties further acknowledge and agree that the Impact Fees to be imposed will remain the same amount as in place for the City on the effective date of this Agreement.

**Section 4.11 Initiation of Retail Service.** The City will initiate retail service, whether for temporary water service for construction purposes or for water service to a home or business, upon submittal of the standard application for service and compliance with the requirements for such service, including but not limited to payment of required WTCPUA fees, inspection fees, service initiation fees, and deposit and performance of required inspections.

**Section 4.12 Temporary Use of Potable Water on Golf Course.** The Parties agree that, subject to approval by the WTCPUA, potable water will be used on the golf course on a temporary basis until the City generates sufficient reclaimed water. The amount of temporary water, as described in Section 9.03 of the Third Amendment to Wholesale Water Supply Agreement between Lower Colorado River Authority and the City of Dripping Springs, will not exceed 1M Gallons Per Day. The fee for this water shall be the same wholesale fees, rates and charges imposed on the City by the WTCPUA (with no mark-up). Temporary use of potable water on golf course will be metered separately from other retail water use and District, Owners or Developer will pay the cost of installing this temporary meter.

## ARTICLE V

### TERM; DEFAULT; REMEDIES; INDEMNIFICATION; INSURANCE

**Section 5.01 Term; Extensions.** This Agreement will be effective from the date adoption by the City Council and the District, Owners or assigns and will continue in effect for a period of forty five years (45) years unless earlier terminated in accordance with the provisions hereof. This Agreement may be extended from time to time by mutual agreement of the parties in writing.

**Section 5.02 Termination.**

- a. Without prejudice to any provisions hereof setting forth terms for automatic expiration or expiration in the event of a default by Owners or assigns, this Agreement may also be terminated by mutual agreement of the parties.
- b. In addition to any other provision for termination set forth herein, the City may terminate this Agreement on thirty (30) days written notice in the event that Owners or assigns are dissolved, expanded without the City's written consent, merged with or annexed by another entity, converted to any other form of entity, or placed into receivership, or in the event any part of the Project is incorporated as a municipality. In the event that proceedings in bankruptcy, whether voluntary or involuntary are filed with reference to Owners or assigns, the City may take any measure it deems necessary to protect the interests of the City including, without limitation, the termination of this Agreement on thirty (30) days written notice to Owners or assigns.

**Section 5.03 Default.**

- a. In the event Owners or assigns default in the payment of any amounts due the City under this Agreement or in the performance of any material obligation to be performed by Owners or assigns under this Agreement, the City will have the right to deny temporarily or limit water services to the Customers located within the Project under this Agreement until such default is cured. Before exercising this right, the City will give Owners or

assigns ninety (90) days' written notice of the default and of the opportunity to cure the same. In the event the default remains uncured, after the City gives Owners or assigns the aforesaid written notice of default, for a period of thirty (30) days in the event of a monetary default or sixty (60) days in the event of a non-monetary default, then the City will have the right to permanently restrict water services to Owners' Customers under this Agreement to a level commensurate with the financial or operational impact on the City resulting from such default and/or stop making new retail connections to the Project's Customers available. Before permanently restricting water services to the Project's Customers, the City will give Owners or assigns ten (10) days' notice of its intent to do so and the opportunity to cure the default, failing which the permanent restrictions will take effect. Finally, in the event the default remains uncured, the City may terminate its obligation to provide water service to all areas within Owners' or assigns' property other than the Project's Customers receiving water service at that time.

- b. In the event the City will default in the performance of any material obligation to be performed by the City under this Agreement, then Owners or assigns, after having given the City ninety (90) days written notice of such default and the opportunity to cure same, will have the right to pursue any remedy available at law or in equity, pending cure of such default by the City. In the event such default remains uncured for a period of (i) one hundred eighty (180) days in the event of a default which causes Owners or assigns to be unable to provide service to new retail connections to Owners' or assigns' System or (ii) three hundred sixty-five (365) days in the event of any other type of material default, then Owners or assigns will have the right to notify the City that Owners or assigns intend to take a more limited amount of water services from the City (which will be at least the amount the City is then able to provide to Owners or assigns) and Owners or assigns may then obtain other water or water services from another provider or may take appropriate action to supply itself with additional water or water services after giving the City thirty (30) days notice of its intent to do so and the opportunity to cure the default.

**Section 5.04 Additional Remedies Upon Default.** It is not intended hereby to specify (and this Agreement will not be considered as specifying) an exclusive remedy for any default, but all such other remedies existing at law or in equity may be availed of by any party hereto and will be cumulative of the remedies provided herein. Recognizing however, that the failure in the performance of the City's obligations hereunder could not be adequately compensated in money damages alone, the City agrees, in the event of any default on its part, that Owners or assigns will have available to it the equitable remedies of mandamus and specific performance in addition to any other legal or equitable remedies (other than termination of this Agreement) which may also be available. Recognizing that failure in the performance of Owners' or assigns' obligations hereunder could not be adequately compensated in money damages alone, Owners or assigns agrees in the event of any default on its part that the City will have available to it the equitable remedies of mandamus and specific performance in addition to any other legal or equitable remedies, which may also be available to the City including, without limitation, the right of the City to obtain a writ of mandamus or an injunction against Owners requiring Owners or assigns to levy and collect rates and charges sufficient to pay the amounts owed to the City by Owners or assigns under this Agreements.

**Section 5.05 Insurance.** To the extent that similar insurance is usually carried or self-insurance is usually maintained by public or private entities operating like properties, each party (the "Insured Party") will carry at all times with responsible insurers insurance on, and/or maintain a self-insurance program with respect to, the Insured Party's properties and its activities conducted pursuant to this Agreement, including activities that may subject the Insured Party to liability for bodily injury or property damage. The policies will be payable to the Insured Party and/or the self-insurance program will cover the Insured Party to the extent of its interest against risks of direct physical loss, damage to, or destruction of such properties or any part thereof, and against accidents, casualties, or negligence, including liability arising out of its activities. The Insured Party will name the other party as an additional insured under the Insured Party's insurance policies and/or self-insurance program with respect to any liability the other party may be exposed to or incur as a result of the Insured Party's actions or failure to act under this Agreement. The Insured Party will also furnish the other party copies of certificates of insurance showing that the other party is covered by the insurance policies of the Insured Party and/or a notification that the other party is covered under the Insured Party's self-insurance program. The certificates of insurance coverage for an Insured Party and/or notification of coverage under the Insured Party's self-insurance program will be updated as necessary to evidence coverage of the other party on a continuing basis.

## ARTICLE VI MISCELLANEOUS PROVISIONS

**Section 6.01 Force Majeure.** If any party is rendered unable, wholly or in part, by Force Majeure to carry out any of its obligations under this Agreement other than an obligation to pay or provide money, then such obligations of that party to the extent affected by such Force Majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, will be suspended during the continuance of any inability so caused to the extent provided but for no longer period. Such cause, as far as possible, will be remedied with all reasonable diligence. It is understood and agreed that the settlement of strikes and lockouts will be entirely within the discretion of either party hereto, and that the above requirements that any Force Majeure will be remedied with all reasonable dispatch will not require the settlement of strikes and lockouts by acceding to the demand of the opposing party or parties when such settlement is unfavorable to it in the judgment of either party hereto.

**Section 6.02 Severability.** The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person or circumstance will ever be held by any agency or court of competent jurisdiction to be unenforceable, invalid or unlawful for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons or circumstances will not be affected thereby, provided, however, in such event the parties mutually covenant and agree to attempt to implement the unenforceable, invalid or unlawful provision in a manner which is enforceable, valid or lawful.

**Section 6.03 Entire Agreement; Modifications.** This Agreement constitutes the sole agreement between the Parties hereto relating to the rights herein granted and the obligations herein assumed and supersedes any and all prior understandings, negotiations, representations or

agreements, whether oral or written. This Agreement will be subject to change or modification only with the mutual written consent of the City and Owners.

**Section 6.04 Addresses and Notices.** Unless otherwise notified in writing by the other, the attention addressees, addresses, telephone numbers, facsimile numbers and e-mail addresses of the City and Owners or assigns are as follows:

**To the City:**  
City of Dripping Springs  
Attn: City Administrator  
PO Box 384  
Dripping Springs, TX 78620

**To the District:**  
Driftwood Conservation District  
c/o Winstead, PC  
Attn: Judy McAngus  
401 Congress Avenue, Suite 2100  
Austin, TX 78701

**To the Owners:**  
Driftwood DLC Austin I, LLC  
c/o Discovery Land Company  
Attn: Schuyler Joyner  
301 N. Canon Drive, Suite 328  
Beverly Hills, CA 90210

Driftwood DLC Austin II, LLC  
c/o Discovery Land Company  
301 N. Canon Drive, Suite 328  
Beverly Hills, CA 90210

Driftwood Equities, LTD  
c/o M. Scott Roberts  
PO Box 311 / 18300 FM 1826  
Driftwood, TX 78619

M. Scott Roberts  
PO Box 311 / 18300 FM 1826  
Driftwood, TX 78619

Maile Development Company, Inc.  
PO Box 311 / 18300 FM 1826  
Driftwood, TX 78619

Driftwood 522, LLC  
c/o George H. Brown, Registered Agent  
8711 Johnny Morris Road  
Austin, TX 78724

**Section 6.05 Assignability; Successors Rights.**

- a. Except as shown in subparagraph (b), this Agreement may not be assigned by either party to any other entity without the express written consent of the other party, which consent will not be unreasonably withheld or delayed. This Agreement and the terms and provisions hereof will be binding upon and inure to the benefit of the respective successors, assigns and legal representatives of the Parties hereto.
  
- b. The Parties acknowledge that Owners may assign this Agreement to a successor in interest or assign, such as a Development Entity and/or a Conservation and Reclamation



District, without City consent provided that the successor or assign comply with all obligations of this Agreement. Owners will notify the City of such assignment.

**Section 6.06 Dispute Resolution.**

- a. **Settlement by Mutual Agreement.** In the event any dispute, controversy or claim between the Parties arises under this Agreement or is connected with or related in any way to this Agreement or any right, duty or obligation arising hereunder or the relationship of the Parties hereunder (a "Dispute or Controversy"), including, but not limited to, a Dispute or Controversy relating to the effectiveness, validity, interpretation, implementation, termination, cancellation or enforcement of this Agreement, the parties will first attempt in good faith to settle and resolve such Dispute or Controversy by mutual agreement in accordance with the following procedures set forth in this Section. Step 1: If a Dispute or Controversy arises, either party will have the right to give notice to the other party that it has elected to implement the procedures set forth in this Section. Within fifteen (15) days after delivery of any such notice by one party to the other regarding a Dispute or Controversy, the designated representatives of the parties will meet at a mutually agreed time and place to attempt, with diligence and good faith, to resolve and settle such Dispute or Controversy. Step 2: Should a mutual resolution and settlement not be obtained as a result of a meeting or meetings during, or should no such meeting take place within, such fifteen (15) day notice period specified in Step 1, then any party may, by notice to the other party, within fifteen (15) days after the Step 1 period ends, regardless of the reason, refer the Dispute or Controversy to the governing bodies of the Parties for resolution. Within fifteen (15) days after delivery of any such notice by one party to the other party or parties referring such Dispute or Controversy to governing bodies of the Parties for resolution, representatives of each of the Parties will meet at a mutually agreed upon time and place to attempt, with diligence and good faith, to resolve and settle such Dispute or Controversy. Step 3: Should a mutual resolution and settlement not be obtained as a result of a meeting or meetings during, or should no such meeting take place within, such fifteen (15) day notice period specified in Step 2, then any party may, by notice to the other party within fifteen (15) days after the Step 2 period ends, regardless of the reason, refer the Dispute or Controversy to mediation in accordance with the provisions of this Section. Upon the receipt of notice of referral to mediation hereunder, the Parties will be compelled to mediate the Dispute or Controversy in accordance with the terms of this Section without regard to the justiciable character or executory nature of such Dispute or Controversy. The fifteen (15) day notice periods specified in this Section 6.06(a) may be extended by mutual agreement of the parties.
- b. **Mediation.** Each party hereby agrees that any Dispute or Controversy, which is not resolved pursuant to the procedures of this Section, may be submitted to mediation on hereunder.

**Section 6.07 Good Faith.** Each party agrees that, notwithstanding any provision herein to the contrary, neither party will unreasonably withhold or unduly delay any consent, approval, decision, determination or other action which is required or permitted under the terms of this Agreement, it being agreed and understood that each party will act in good faith and will at all times deal fairly with the other party.

**Section 6.08 Interpretation.**

- a. This Agreement and all the terms and provisions hereof will be liberally construed to effectuate the purposes set forth herein to sustain the validity of this Agreement.
- b. This Agreement will not be construed as an agreement of fiduciary relationship, of partnership, of joint venture, of an equity position, or of any other form of business arrangement other than as an agreement for provision of water services. Services provided are not exclusive to Owners or assigns and may be provided to others at the sole discretion of City consistent with the terms of this Agreement.
- c. This Agreement has been authored jointly by the Parties hereto, and neither this Agreement as a whole nor any term or provision hereof will be construed as having been authored by or at the sole direction of either party.

**Section 6.09 Professional Fees.** Owner agrees to place funds into the City's escrow account, as necessary from time to time, to pay the City's reasonably necessary engineering and legal fees incurred to prepare, negotiate, implement, interpret, or amend this Agreement. City is entitled to reimbursement of such fees plus a 20% administrative charge.

**Section 6.10 Titles and Headings.** The title of this Agreement, titles and headings of articles and sections hereof have been inserted for convenience of reference only and are not to be considered a part hereof and will not in any way modify or restrict any of the terms or provisions hereof and will never be considered or given any effect in construing this Agreement or any provision hereof or in ascertaining intent, if any question of intent should arise.

**Section 6.11 Counterparts.** This Agreement may be executed in as many counterparts as may be convenient or required. All counterparts will collectively constitute a single instrument, and it will not be necessary in making proof of this Agreement to produce or account for more than a single counterpart.

**Section 6.12 Governing Law; Venue.** The terms and provisions hereof will be governed by and construed in accordance with the laws of the State of Texas and the United States of America from time to time in effect. Hays County, Texas will be the place of venue for suit hereon.

**Section 6.13 Authority of Parties Executing Agreement.** By their execution hereof each of the undersigned parties represents and warrants to the other party to this document that he or she has the authority to execute the document in the capacity shown on this document.

**Section 6.14 No Third Party Beneficiary.** This Agreement is for the benefit of the City and Owners or assigns and shall not be construed to confer any benefit on any other party.

**Section 6.15 Estoppel Certificates.** From time to time upon written request by Owners, the City shall execute a written estoppel certificate stating, if true, that the City has not given or received any written notices alleging any events of default under this Agreement provided,

however, the City may require payment in advance of its estimated charges for preparing the requested estoppel certificate.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of which will be deemed to be an original and of equal force and effect as of the 8th day of January 2019.

[REMAINDER OF PAGE BLANK – SIGNATURE PAGES FOLLOW]

**CITY OF DRIPPING SPRINGS:**

Todd Purcell  
Todd Purcell, Mayor

1/14/19  
Date

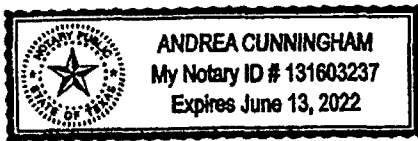
**ATTEST:**

Andrea Cunningham  
Andrea Cunningham, City Secretary



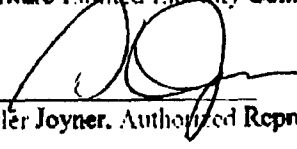
STATE OF TEXAS                   §  
   §  
COUNTY OF HAYS               §

This instrument was executed by **Todd Purcell** before me on this the 14<sup>th</sup> day of January 2019.



Andrea Cunningham  
Notary Public, State of Texas

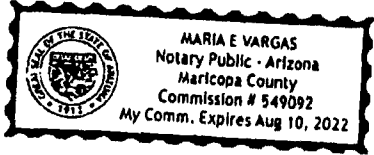
**DRIFTWOOD DLC AUSTIN I, LLC:**  
a Delaware Limited Liability Company

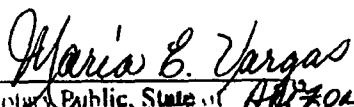
  
\_\_\_\_\_  
Schuyler Joyner, Authorized Representative

STATE OF ARIZONA  
COUNTY OF Maricopa

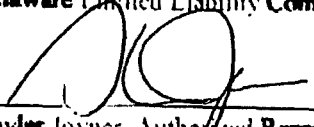
2019 02 14

This instrument was executed by Schuyler Joyner before me on this the 14  
day of ~~January~~ February 2019.



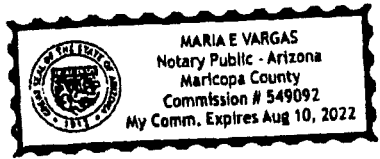
  
\_\_\_\_\_  
Notary Public, State of ARIZONA

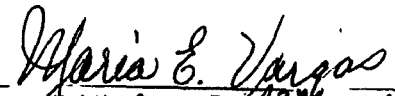
**DRIFTWOOD D.L.C. AUSTIN II, LLC:**  
a Delaware Limited Liability Company

  
\_\_\_\_\_  
Schuyler Joyner, Authorized Representative

STATE OF ARIZONA           §  
  §  
COUNTY OF Maricopa       §

This instrument was executed by Schuyler Joyner before me on this the 14  
day of January 2019.  
February



  
\_\_\_\_\_  
Notary Public, State of ARIZONA

DRIFTWOOD 522, LLC:  
a Texas Limited Liability Company

*J. Dan Brown*  
Signature

J. DAN BROWN MEMBER  
Printed Name and Title

STATE OF Texas §  
COUNTY OF Tarrant §  
§

This instrument was executed by J. Dan Brown before me on this the 26  
day of April ~~January~~ 2019.



*Gayle A. Nixon*  
Notary Public, State of Texas

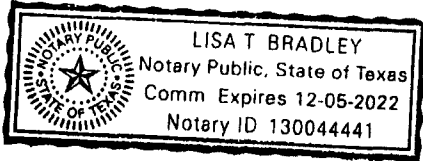
**DRIFTWOOD EQUITIES, LTD:**  
a Texas Limited Partnership

M. Scott Roberts  
Signature

M. Scott Roberts, President  
Printed Name and Title

STATE OF TEXAS           §  
   §  
COUNTY OF HAYS           §

This instrument was executed by M. Scott Roberts before me on this the 31<sup>st</sup> day of January 2019.



Lisa T Bradley  
Notary Public, State of TEXAS



**M. SCOTT ROBERTS:**  
an Individual

*M. Scott Roberts*  
M. Scott Roberts

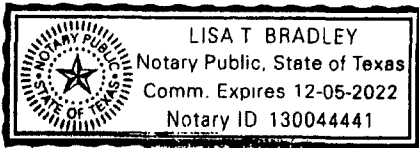
M. SCOTT ROBERTS  
Printed Name and Title

STATE OF TEXAS

§  
§  
§

COUNTY OF HAYS

This instrument was executed by M. SCOTT ROBERTS before me on this the 31<sup>st</sup> day of January 2019.



*Lisa T Bradley*  
Notary Public, State of TEXAS

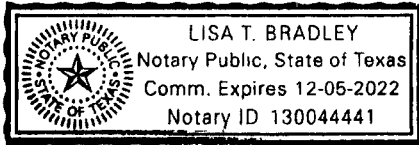
**MAILE DEVELOPMENT COMPANY, INC:**  
a Texas Corporation

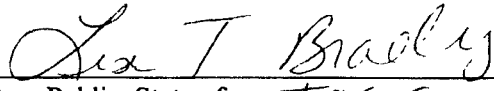
  
Signature

Maile Roberts-Loring President  
Printed Name and Title

STATE OF TEXAS §  
  §  
COUNTY OF HAYS §

This instrument was executed by Maile Roberts-Loring before me on this the 31<sup>st</sup>  
day of January 2019.



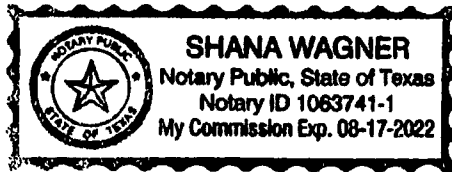
  
Notary Public, State of Texas

DRIFTWOOD CONSERVATION DISTRICT:  
a Texas Conservation & Reclamation District

*Stephen C. Dickman*  
Stephen C. Dickman, President

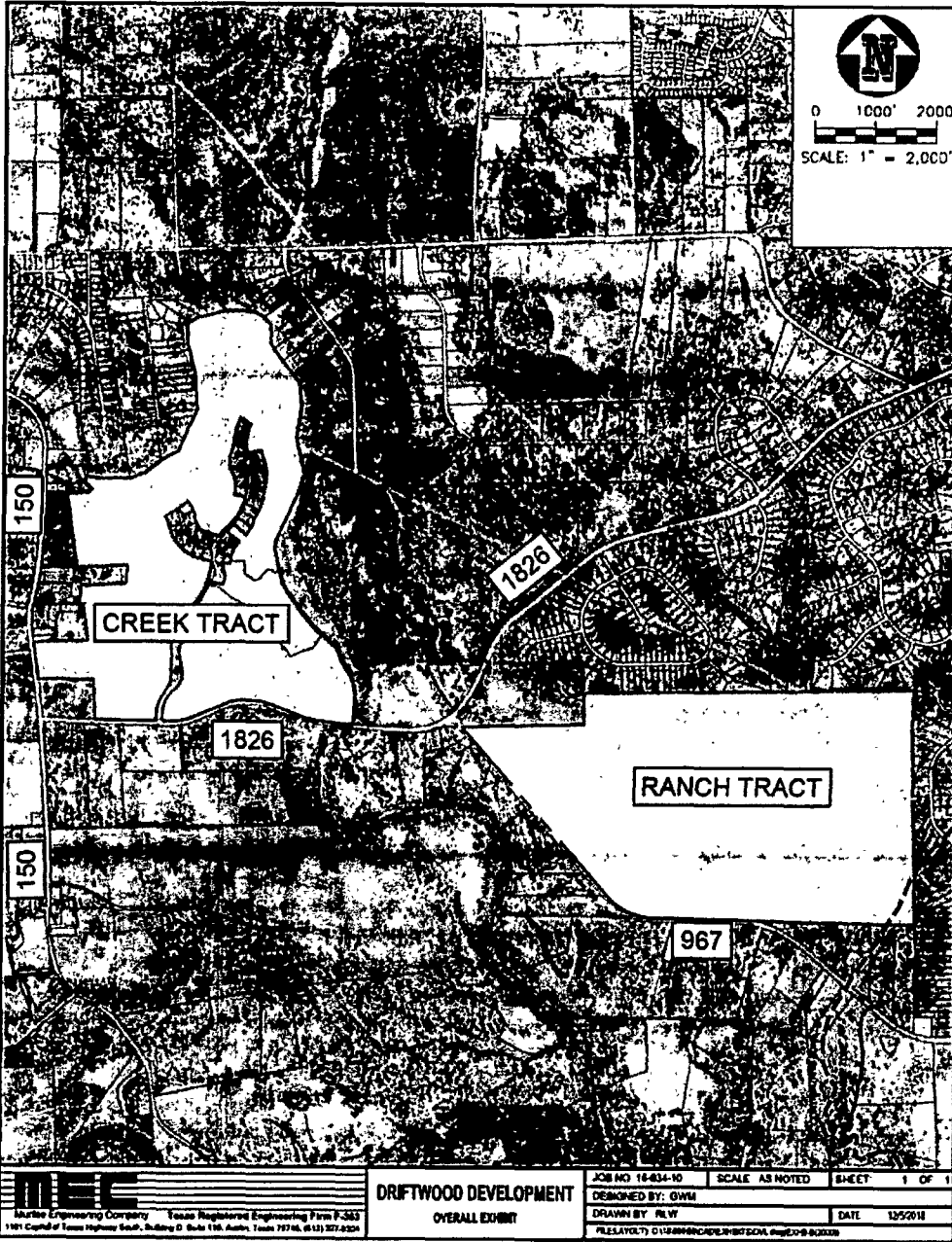
STATE OF Texas §  
  §  
COUNTY OF Travis §

This instrument was executed by Stephen C. Dickman before me on this the 11th  
day of February, 2019.



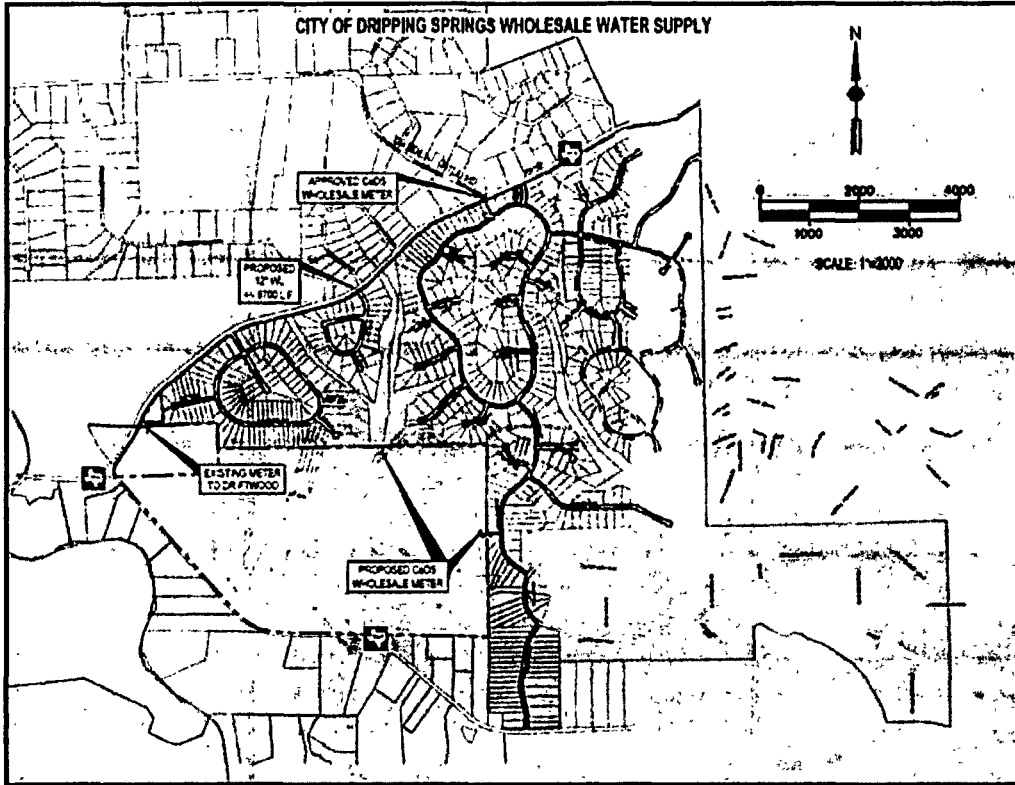
*Shana Wagner*  
Notary Public, State of Texas

# EXHIBIT A MAP



C:\1808\DRIFTWOOD\1808034-10.dwg, Aug 12/2011 12:12:37 AM, DWG PLOT #0

**EXHIBIT B  
PROPOSED OFFSITE WATER LINE ALIGNMENT**



**EXHIBIT C**  
**PUMP AND HAUL TERMS AND CONDITIONS**

- a. The Owners may construct and operate, at its sole cost, Pump & Haul Facilities as a temporary solution to wastewater needs for the Project. Use of the Pump & Haul Facilities must be terminated as quickly as possible as soon as either the Package Plant is available to process wastewater or the City System is available to transport and process wastewater. Use of the Package Plant Facilities must be terminated as quickly as possible as soon as the City System is available to transport and process wastewater from the Development, except for pretreatment uses. The Parties agree that Pump & Haul is not the preferred method of wastewater treatment. The Parties also agree that use of the City System is preferable to the Package Plant as a method of final wastewater treatment. Owners commit to converting from Pump & Haul or the package Plant to the City System as quickly as is commercially feasible. Upon converting from Pump and Haul to the package Plant or the City System, Owner shall remove at its own expense all Pump and Haul Facilities that will not be utilized for the Package Plant or for the City System.
  
- b. The failure to construct Onsite or Offsite Facilities shall not prevent Owners from obtaining building permits and certificates of occupancy within the Project, subject to full compliance with the following terms and conditions:
  1. The facilities necessary to provide pump and haul service to the lot for which a building permit or a certificate of occupancy is to be issued have been completed and passed inspection by the City, and wastewater service by pump and haul under this Agreement is otherwise available to the lot.
  2. Owner is in compliance with the terms and conditions of this Agreement.
  3. Owner demonstrates to the City that Owner has a current contract with a pump and haul provider that meets the requirements of this Agreement.
  4. All other conditions for issuance of a building permit or certificate of occupancy set forth in applicable local (as modified by this Agreement), state, or federal regulations have been met.
  
- c. Service Provided. In consideration for the City authorizing the issuance of building permits and certificates of occupancy as provided herein, Owner, at its sole cost and expense, shall cause wastewater from the Project to be pumped and hauled and disposed of in a manner that is compliant with applicable local, state, and federal regulations, until such time that the Package Plant or the System is capable of receiving the wastewater generated at the Development. Design of and specifications related to the Pump & Haul Facilities must be provided to City Engineer for approval and must be approved by City Engineer prior to installation of such facilities. Owner is solely responsible for all design, construction and operation of the Pump & Haul Facilities. Owner shall maintain all Pump & Haul Facilities in good repair and working condition and assure that all wastewater effluent is managed in compliance with applicable law. Owner will report

any spills or leaks from the Pump & Haul Facilities to the Deputy City Administrator immediately, but no later than 24 hours of discovery. Owner will cooperate with the City to provide any information to and file any reports with the Texas Commission on Environmental Quality or successor agency (the "TCEQ") as required by law. Owner shall further comply with and cause the company supplying pump and haul services to comply with the terms of service set forth in paragraph j below. Upon termination of use of the Pump & Haul Facilities Owner will remove at its sole cost and expense the Pump & Haul Facilities (except for those facilities that will be used for the onsite or offsite permanent Facilities. Wastewater Service through pump and haul facilities on the land shall not exceed 75 LUEs unless otherwise approved by the City.

- d. **Pump and Haul Provider.** Owners shall contract with a company that holds all licenses required by the TCEQ and has the experience, expertise and financial capacity (the "Provider") to pump and haul wastewater from the Project and to maintain all pump and haul facilities. The Provider shall also not owe any delinquent taxes or fees to the City nor shall the Provider be in material default under any agreement by and between the Provider and the City. Owners shall further maintain with the City at all times the Provider's current contact information and designated representatives who are available twenty-four hours a day to respond to complaints or issues related to wastewater disposal. The Provider shall maintain insurance in an amount that is acceptable to the City.
- e. **Fees and Charges.** City shall charge and collect standard wastewater rates and fees (including impact fees) to customers on a particular lot receiving wastewater service through Pump & Haul Facilities (hereafter "Pump and Haul Lot"). The monthly fees and charges charged to the Pump and Haul Lot customer will be equivalent to an estimated average of that charged to other residential City customers that are not utilizing a pump and haul system. Fees and charges to Pump and Haul Lot customers shall not be calculated to pay the costs and expenses of the Pump & Haul Facilities. Until the Pump and Haul Lots are converted to permanent wastewater service, the money collected for the monthly wastewater charge shall be delivered to Owner (less a 6% administrative charge) to assist with the costs of operating the pump and haul system. Owners understand and agree that they will not likely recoup the costs of pump and haul from users of the Pump & Haul Facilities, and that Owners are responsible for any deficiency in its operation. Owners will receive no impact fee credit or reimbursement for Pump & Haul Facilities or for the removal of any Pump and Haul Facilities from the City.
- f. **Records.** Owners shall make commercially reasonable efforts to cause the Provider to maintain complete records of the pump and haul service provided, and Owners shall maintain with the City a copy of any reports required by applicable state and federal regulations, related to providing pump and haul services.
- g. **Transition of Services.** The City and Owners shall reasonably cooperate for a smooth transition of wastewater service from the Owners to the City upon connection to the System.

- h. **Enforcement Actions.** In the event that the EPA or the TCEQ issues any form or order or penalty for violations of applicable law resulting from the pump and haul services provided under this Amendment, Owner shall be responsible for payment of said penalties within the time required under the order or applicable law.
  
- i. **Notice of Agreement and Pump and Haul Services.** A memorandum of this Amendment (“Memorandum”) acceptable to City and Owners shall be recorded by Owners in the Official Public Records of Hays County, Texas that places prospective property owners on notice that wastewater service may be provided by pump and haul service. The Owners shall further give notice to purchasers of lots within the Development that wastewater service will be provided by pump and haul until completion of the Package Plant or System improvements and shall cause homebuilders who purchase lots within the Development to give such notice to subsequent purchasers.
  
- j. The Owner shall comply with the following narrative for the temporary pump and haul system to be implemented, if necessary and requirements for conducting pump and haul operations.
  - 1. The Owner is responsible for monitoring the pump and haul facilities to ensure there are no overflows of wastewater. A TCEQ licensed wastewater disposal company will conduct pump and haul operations. The Owner will provide the City a copy of monthly invoices for pump and haul operations. This should include verification of proper disposal and the total volume of wastewater pumped each month via disposal manifests or similar.
  - 2. It is proposed that the new lift station wet well will be used as the pump sump for the pump and haul activities. If the pump or any other part of the lift station is damaged, Owner shall repair or replace, at the City’s sole discretion, the damaged components.
  - 3. Minimum wet well volume shall be 10,000 gallons.
  - 4. The wet well shall be pumped out based upon the alarm settings in the tanks (cellular auto dialer).
  - 5. The settings for the alarms will be at 25%, 50%, 75% and 90% full.
  - 6. A temporary control panel with auto-dialer shall be set at the site.
  - 7. Immediately upon completion of pump and haul operation by the Owner, the Owner is required to clean the lift station wet well and sanitary sewer mains due to solids build up if mains are backed up.
  - 8. Detailed plans signed and sealed by a Texas Licensed Professional Engineer must be submitted and approved by the City. Plans shall include:
    - a) All weather access road to final collection site



- b) Calculations of projected flow
- c) Plan and profile of wet well and sewer main(s), including maximum design level elevation on profile
- d) Pump and piping installation plan with details.
- e) Constant storage tank level monitoring with auto-dialer capabilities.

1 AN ACT  
2 relating to the creation of the Driftwood Conservation District;  
3 granting a limited power of eminent domain; providing authority to  
4 issue bonds; providing authority to impose assessments, fees, and  
5 taxes.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Subtitle F, Title 6, Special District Local Laws  
8 Code, is amended by adding Chapter 7982 to read as follows:

9 CHAPTER 7982. DRIFTWOOD CONSERVATION DISTRICT

10 SUBCHAPTER A. GENERAL PROVISIONS

11 Sec. 7982.001. DEFINITIONS. In this chapter:

- 12 (1) "Board" means the district's board of directors.  
13 (2) "Commission" means the Texas Commission on  
14 Environmental Quality.  
15 (3) "Director" means a board member.  
16 (4) "District" means the Driftwood Conservation  
17 District.

18 Sec. 7982.002. NATURE OF DISTRICT. The district is a  
19 municipal utility district created under Section 59, Article XVI,  
20 Texas Constitution.

21 Sec. 7982.003. CONFIRMATION AND DIRECTORS' ELECTION  
22 REQUIRED. The temporary directors shall hold an election to  
23 confirm the creation of the district and to elect five permanent  
24 directors as provided by Section 49.102, Water Code.

1       Sec. 7982.004. CONSENT OF MUNICIPALITY REQUIRED. The  
2 temporary directors may not hold an election under Section 7982.003  
3 until each municipality in whose corporate limits or  
4 extraterritorial jurisdiction the district is located has  
5 consented by ordinance or resolution to the creation of the  
6 district and to the inclusion of land in the district.

7       Sec. 7982.005. FINDINGS OF PUBLIC PURPOSE AND BENEFIT. (a)  
8 The district is created to serve a public purpose and benefit.

9       (b) The district is created to accomplish the purposes of:

10       (1) a municipal utility district as provided by  
11 general law and Section 59, Article XVI, Texas Constitution; and

12       (2) Section 52, Article III, Texas Constitution, that  
13 relate to the construction, acquisition, improvement, operation,  
14 or maintenance of macadamized, graveled, or paved roads, or  
15 improvements, including storm drainage, in aid of those roads.

16       Sec. 7982.006. INITIAL DISTRICT TERRITORY. (a) The  
17 district is initially composed of the territory described by  
18 Section 2 of the Act enacting this chapter.

19       (b) The boundaries and field notes contained in Section 2 of  
20 the Act enacting this chapter form a closure. A mistake made in the  
21 field notes or in copying the field notes in the legislative process  
22 does not affect the district's:

23       (1) organization, existence, or validity;

24       (2) right to issue any type of bond for the purposes  
25 for which the district is created or to pay the principal of and  
26 interest on a bond;

27       (3) right to impose a tax; or

1           (4) legality or operation.

2           Sec. 7982.007. APPLICABILITY OF OTHER LAW. Chapter 257,  
3 Transportation Code, and other general laws applicable to road  
4 districts created under Section 52, Article III, Texas  
5 Constitution, apply to the district.

6                           SUBCHAPTER B. BOARD OF DIRECTORS

7           Sec. 7982.051. GOVERNING BODY; TERMS. (a) The district is  
8 governed by a board of five elected directors.

9           (b) Except as provided by Section 7982.052, directors serve  
10 staggered four-year terms.

11           Sec. 7982.052. TEMPORARY DIRECTORS. (a) On or after the  
12 effective date of the Act enacting this chapter, the owner or owners  
13 of a majority of the assessed value of the real property in the  
14 district may submit a petition to the commission requesting that  
15 the commission appoint as temporary directors the five persons  
16 named in the petition. The commission shall appoint as temporary  
17 directors the five persons named in the petition.

18           (b) Temporary directors serve until the earlier of:

19                           (1) the date permanent directors are elected under  
20 Section 7982.003; or

21                           (2) the fourth anniversary of the effective date of  
22 the Act enacting this chapter.

23           (c) If permanent directors have not been elected under  
24 Section 7982.003 and the terms of the temporary directors have  
25 expired, successor temporary directors shall be appointed or  
26 reappointed as provided by Subsection (d) to serve terms that  
27 expire on the earlier of:

1           (1) the date permanent directors are elected under  
2 Section 7982.003; or

3           (2) the fourth anniversary of the date of the  
4 appointment or reappointment.

5           (d) If Subsection (c) applies, the owner or owners of a  
6 majority of the assessed value of the real property in the district  
7 may submit a petition to the commission requesting that the  
8 commission appoint as successor temporary directors the five  
9 persons named in the petition. The commission shall appoint as  
10 successor temporary directors the five persons named in the  
11 petition.

12                           SUBCHAPTER C. POWERS AND DUTIES

13           Sec. 7982.101. GENERAL POWERS AND DUTIES. The district has  
14 the powers and duties necessary to accomplish the purposes for  
15 which the district is created.

16           Sec. 7982.102. MUNICIPAL UTILITY DISTRICT POWERS AND  
17 DUTIES. The district has the powers and duties provided by the  
18 general law of this state, including Chapters 49 and 54, Water Code,  
19 applicable to municipal utility districts created under Section 59,  
20 Article XVI, Texas Constitution.

21           Sec. 7982.103. AUTHORITY FOR ROAD PROJECTS. Under Section  
22 52, Article III, Texas Constitution, the district may design,  
23 acquire, construct, finance, issue bonds for, improve, operate,  
24 maintain, and convey to this state, a county, or a municipality for  
25 operation and maintenance macadamized, graveled, or paved roads, or  
26 improvements, including storm drainage, in aid of those roads.

27           Sec. 7982.104. ROAD STANDARDS AND REQUIREMENTS. (a) A road

1 project must meet all applicable construction standards, zoning and  
2 subdivision requirements, and regulations of each municipality in  
3 whose corporate limits or extraterritorial jurisdiction the road  
4 project is located.

5 (b) If a road project is not located in the corporate limits  
6 or extraterritorial jurisdiction of a municipality, the road  
7 project must meet all applicable construction standards,  
8 subdivision requirements, and regulations of each county in which  
9 the road project is located.

10 (c) If the state will maintain and operate the road, the  
11 Texas Transportation Commission must approve the plans and  
12 specifications of the road project.

13 Sec. 7982.105. IMPROVEMENT PROJECTS. (a) The district may  
14 provide or finance, or contract with a governmental or private  
15 person to provide or finance, the following types of projects or  
16 activities in support of or incidental to one of the projects:

17 (1) an improvement project that is a public  
18 improvement, facility, or service that may be provided by a  
19 municipal utility district or a municipal management district,  
20 including:

21 (A) water, wastewater, reclamation, drainage,  
22 road, trail, or bridge improvement;

23 (B) utilization and reuse of treated effluent in  
24 landscape and other features, including temporary holding  
25 features;

26 (C) transportation of treated effluent for  
27 reuse; and

1                   (D) injection of treated stormwater runoff or  
2 stormwater collected from roofs into aquifers as storage or to  
3 recharge the aquifer; and

4                   (2) the purchase and maintenance of conservation land  
5 for endangered species, including the cost of:

6                   (A) any permits relating to endangered species or  
7 the maintenance of the land; and

8                   (B) purchasing land or easements for  
9 conservation mitigation.

10                  (b) The district may inject stormwater as authorized by  
11 Subsection (a)(1)(D) without the consent, concurrence, or  
12 authorization of a groundwater conservation district, but only if  
13 the injection is authorized by a commission rule or permit under  
14 Chapter 27, Water Code.

15                  (c) To finance an improvement project under Subsection  
16 (a)(1), the district may, in the manner authorized by:

17                   (1) Chapter 375, Local Government Code, or Chapter 54,  
18 Water Code, use funds derived from:

19                   (A) ad valorem taxes;

20                   (B) sales and use taxes from a strategic  
21 partnership agreement authorized by Section 7982.109;

22                   (C) assessments imposed under Section 7982.201;

23                   (D) revenue from an improvement project;

24                   (E) impact fees; or

25                   (F) any other source; and

26                   (2) Sections 375.201 through 375.205, Local  
27 Government Code, enter into obligations, including:

- 1                   (A) lease purchase agreements;
- 2                   (B) certificates of participation in lease
- 3 purchase agreements;
- 4                   (C) general obligation bonds and notes and
- 5 revenue bonds and notes;
- 6                   (D) combination general obligation and revenue
- 7 bonds and notes; and
- 8                   (E) other interest-bearing obligations.

9           (d) Sections 375.161 through 375.163, Local Government  
10 Code, do not apply to an assessment imposed by the district.

11           Sec. 7982.106. COMPLIANCE WITH MUNICIPAL CONSENT ORDINANCE  
12 OR RESOLUTION. The district shall comply with all applicable  
13 requirements of any ordinance or resolution that is adopted under  
14 Section 54.016 or 54.0165, Water Code, and that consents to the  
15 creation of the district or to the inclusion of land in the  
16 district.

17           Sec. 7982.107. LIMITATION ON GROUNDWATER USE. In providing  
18 water services to users in the district, the district may not,  
19 except in emergency situations:

20                   (1) develop groundwater on land owned by the district  
21 for use as a potable water source; or

22                   (2) purchase or lease the rights to groundwater  
23 underlying land inside the district for use as a potable water  
24 source.

25           Sec. 7982.108. DIVISION OF DISTRICT. (a) The district may  
26 be divided into two or more new districts only if the district:

- 27                   (1) has no outstanding bonded debt; and



1           (2) is not imposing ad valorem taxes.

2           (b) This chapter applies to any new district created by the  
3 division of the district, and a new district has all the powers and  
4 duties of the district.

5           (c) Any new district created by the division of the district  
6 may not, at the time the new district is created, contain any land  
7 outside the area described by Section 2 of the Act enacting this  
8 chapter.

9           (d) The board, on its own motion or on receipt of a petition  
10 signed by the owner or owners of a majority of the assessed value of  
11 the real property in the district, may adopt an order dividing the  
12 district.

13           (e) The board may adopt an order dividing the district  
14 before or after the date the board holds an election under Section  
15 7982.003 to confirm the creation of the district.

16           (f) An order dividing the district shall:

17                   (1) name each new district;

18                   (2) include the metes and bounds description of the  
19 territory of each new district;

20                   (3) appoint temporary directors for each new district;

21 and

22                   (4) provide for the division of assets and liabilities  
23 between or among the new districts.

24           (g) On or before the 30th day after the date of adoption of  
25 an order dividing the district, the district shall file the order  
26 with the commission and record the order in the real property  
27 records of each county in which the district is located.

1       (h) Any new district created by the division of the district  
2 shall hold a confirmation and directors' election as required by  
3 Section 7982.003.

4       (i) Any new district created by the division of the district  
5 must hold an election as required by this chapter to obtain voter  
6 approval before the district may impose a maintenance tax or issue  
7 bonds payable wholly or partly from ad valorem taxes.

8       Sec. 7982.109. STRATEGIC PARTNERSHIP AGREEMENT. The  
9 district may negotiate and enter into a written strategic  
10 partnership agreement with a municipality under Section 43.0751,  
11 Local Government Code.

12               SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

13       Sec. 7982.151. ELECTIONS REGARDING TAXES OR BONDS. (a) The  
14 district may issue, without an election, bonds and other  
15 obligations secured by:

16               (1) revenue other than ad valorem taxes; or

17               (2) contract payments described by Section 7982.153.

18       (b) The district must hold an election in the manner  
19 provided by Chapters 49 and 54, Water Code, to obtain voter approval  
20 before the district may impose an ad valorem tax or issue bonds  
21 payable from ad valorem taxes.

22       (c) The district may not issue bonds payable from ad valorem  
23 taxes to finance a road project unless the issuance is approved by a  
24 vote of a two-thirds majority of the district voters voting at an  
25 election held for that purpose.

26       Sec. 7982.152. OPERATION AND MAINTENANCE TAX. (a) If  
27 authorized at an election held under Section 7982.151, the district

1 may impose an operation and maintenance tax on taxable property in  
2 the district in accordance with Section 49.107, Water Code.

3 (b) The board shall determine the tax rate. The rate may not  
4 exceed the rate approved at the election.

5 Sec. 7982.153. CONTRACT TAXES. (a) In accordance with  
6 Section 49.108, Water Code, the district may impose a tax other than  
7 an operation and maintenance tax and use the revenue derived from  
8 the tax to make payments under a contract after the provisions of  
9 the contract have been approved by a majority of the district voters  
10 voting at an election held for that purpose.

11 (b) A contract approved by the district voters may contain a  
12 provision stating that the contract may be modified or amended by  
13 the board without further voter approval.

14 SUBCHAPTER E. ASSESSMENTS; APPLICABILITY OF IMPACT FEES AND  
15 ASSESSMENTS

16 Sec. 7982.201. PETITION REQUIRED FOR FINANCING  
17 RECREATIONAL FACILITY OR IMPROVEMENT BY ASSESSMENT. (a) The  
18 district may finance a recreational facility or improvement,  
19 including an improvement project under Section 7982.105, with  
20 assessments on residential or commercial property or both  
21 residential and commercial property under this subchapter, but only  
22 if:

23 (1) a written petition requesting that facility or  
24 improvement has been filed with the board; and

25 (2) the district holds a hearing on the proposed  
26 assessments.

27 (b) The petition must be signed by the owners of a majority

1 of the assessed value of real property in the district subject to  
2 assessment according to the most recent certified tax appraisal  
3 roll for the county.

4 Sec. 7982.202. METHOD OF NOTICE FOR HEARING. The district  
5 shall mail notice of the hearing to each property owner in the  
6 district who will be subject to the assessment at the current  
7 address to be assessed as reflected on the tax rolls. The district  
8 may mail the notice by certified or first class United States mail.  
9 The board shall determine the method of notice.

10 Sec. 7982.203. ASSESSMENTS; LIENS FOR ASSESSMENTS. (a) An  
11 assessment or a reassessment imposed under this subchapter by the  
12 district, penalties and interest on an assessment or reassessment,  
13 an expense of collection, and reasonable attorney's fees incurred  
14 by the district:

15 (1) are a first and prior lien against the property  
16 assessed;

17 (2) are superior to any other lien or claim other than  
18 a lien or claim for county, school district, or municipal ad valorem  
19 taxes; and

20 (3) are the personal liability of and a charge against  
21 the owners of the property even if the owners are not named in the  
22 assessment proceedings.

23 (b) The lien is effective from the date of the board's  
24 resolution imposing the assessment until the date the assessment is  
25 paid. The board may enforce the lien in the same manner that the  
26 board may enforce an ad valorem tax lien against real property.

27 (c) The board may make a correction to or deletion from the

1 assessment roll that does not increase the amount of assessment of  
2 any parcel of land without providing notice and holding a hearing in  
3 the manner required for additional assessments.

4 Sec. 7982.204. UTILITY PROPERTY EXEMPT FROM IMPACT FEES AND  
5 ASSESSMENTS. The district may not impose an impact fee or  
6 assessment on the property, including the equipment,  
7 rights-of-way, facilities, or improvements, of:

8 (1) an electric utility or a power generation company  
9 as defined by Section 31.002, Utilities Code;

10 (2) a gas utility as defined by Section 101.003 or  
11 121.001, Utilities Code;

12 (3) a telecommunications provider as defined by  
13 Section 51.002, Utilities Code; or

14 (4) a person who provides to the public cable  
15 television or advanced telecommunications services.

16 SUBCHAPTER F. BONDS AND OTHER OBLIGATIONS

17 Sec. 7982.251. AUTHORITY TO ISSUE BONDS AND OTHER  
18 OBLIGATIONS. The district may issue bonds or other obligations  
19 payable wholly or partly from ad valorem taxes, impact fees,  
20 revenue, contract payments, grants, or other district money, or any  
21 combination of those sources, to pay for any authorized district  
22 purpose.

23 Sec. 7982.252. TAXES FOR BONDS. At the time the district  
24 issues bonds payable wholly or partly from ad valorem taxes, the  
25 board shall provide for the annual imposition of a continuing  
26 direct ad valorem tax, without limit as to rate or amount, while all  
27 or part of the bonds are outstanding as required and in the manner

1 provided by Sections 54.601 and 54.602, Water Code.

2 Sec. 7982.253. BONDS FOR ROAD PROJECTS. At the time of  
3 issuance, the total principal amount of bonds or other obligations  
4 issued or incurred to finance road projects and payable from ad  
5 valorem taxes may not exceed one-fourth of the assessed value of the  
6 real property in the district.

7 SUBCHAPTER G. DEFINED AREAS

8 Sec. 7982.301. AUTHORITY TO ESTABLISH DEFINED AREAS OR  
9 DESIGNATED PROPERTY. The district may define areas or designate  
10 certain property of the district to pay for improvements,  
11 facilities, or services that primarily benefit that area or  
12 property and do not generally and directly benefit the district as a  
13 whole.

14 Sec. 7982.302. PROCEDURE FOR ELECTION. (a) Before the  
15 district may impose an ad valorem tax or issue bonds payable from ad  
16 valorem taxes of the defined area or designated property, the board  
17 shall hold an election in the defined area or in the designated  
18 property only.

19 (b) The board may submit the issues to the voters on the same  
20 ballot to be used in another election.

21 Sec. 7982.303. DECLARING RESULT AND ISSUING ORDER. (a) If  
22 a majority of the voters voting at the election approve the  
23 proposition or propositions, the board shall declare the results  
24 and, by order, shall establish the defined area and describe it by  
25 metes and bounds or designate the specific property.

26 (b) A court may not review the board's order except on the  
27 ground of fraud, palpable error, or arbitrary and confiscatory

1 abuse of discretion.

2       Sec. 7982.304. TAXES FOR SERVICES, IMPROVEMENTS, AND  
3 FACILITIES IN DEFINED AREAS OR DESIGNATED PROPERTY. On voter  
4 approval and adoption of the order described by Section 7982.303,  
5 the district may apply separately, differently, equitably, and  
6 specifically its taxing power and lien authority to the defined  
7 area or designated property to provide money to construct,  
8 administer, maintain, and operate services, improvements, and  
9 facilities that primarily benefit the defined area or designated  
10 property.

11       Sec. 7982.305. ISSUANCE OF BONDS FOR DEFINED AREA OR  
12 DESIGNATED PROPERTY. After the order under Section 7982.303 is  
13 adopted, the district may issue bonds to provide for any land,  
14 improvements, facilities, plants, equipment, and appliances for  
15 the defined area or designated property.

16       SECTION 2. The Driftwood Conservation District initially  
17 includes all the territory contained in the following area:

18 Tract I

19       FIELDNOTE DESCRIPTION of a 394.112 acre tract out of the  
20 Frelove Woody Survey No. 23, Hays County, Texas, being a portion  
21 of that 700.03 acre tract conveyed to John Richard Rutherford by  
22 deed recorded in Volume 1214, Page 548 of the Deed Records of Hays  
23 County, Texas; the said 394.112 acre tract is more particularly  
24 described by metes and bounds as follows:

25       BEGINNING at a calculated point for the most westerly corner  
26 of the said 700.03 acre tract, being on the southerly line of that  
27 100 acre tract conveyed to Masa Scott Roberts by deed recorded in

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1 Volume 301, Page 865 of the said Deed Records, and a point in the  
2 northerly right-of-way line of State Highway FM 967 (80.00'  
3 right-of-way), from which a TxDOT concrete highway monument found  
4 bears N41 10'07"Q, 85.92 feet;

5       THENCE, leaving the northerly right-of-way line of State  
6 Highway FM 967, with the common line between the said 700.03 acre  
7 tract and the said 100 acre tract, for the following two (2)  
8 courses:

9               1. N88 43'28"E at .25 feet pass a 1/2" iron rod found,  
10 for a total distance of 2005.48 feet to a 60d nail found in a fence  
11 corner post for the southeast corner of the said 100 acre tract;

12               2. N00 59'15"W, 515.50 feet to a 5/8" iron rod found  
13 stamped "Kent McMillon, Land Surveyor, RPLS 4341", for a northwest  
14 corner of the said 700.03 acre tract, being on a westerly line of  
15 the remainder of that 535.13 acre tract conveyed to Michael Giles  
16 Rutherford, Jr., John Richard Rutherford and Sally Anne Rutherford  
17 by deed recorded in Volume 1214, Page 531 of the said Deed Records,  
18 from which a 1/2 " iron rod found for the northeast corner of the  
19 said 100 acre tract bears N00 59'15"W, 523.55 feet;

20       THENCE, N89 02'23"E, leaving the easterly line of the said  
21 100 acre tract, across the said 535.13 acre tract, with northerly  
22 line of the said 700.03 acre tract, 5479.22 feet to a 1/2 " iron rod  
23 set with plastic cap for the northeast corner of the herein  
24 described tract, being in the westerly line of the remainder of that  
25 652.60 acre tract also conveyed to Michael Giles Rutherford, Jr.,  
26 John Richard Rutherford and Sally Anne Rutherford by deed recorded  
27 in Volume 1214, Page 531 of the said Deed Records;



1           THENCE, leaving the said remainder of the 535. 13 acre tract  
2 and the 652.60 acre tract, across the said 700.03 acre tract for the  
3 following three (3) courses:

4           1) S00 15'40 E, 514.97 feet to a 1/2" iron rod set with  
5 plastic cap;

6           2) S89 02'23"W, 15.17 feet to a fence comer post found;

7           3) S00°27'04"E, 1260. 14 feet to a metal fence corner  
8 post found for an ell corner in the southerly line of the said  
9 700.03 acre tract, being on the remainder of that certain tract,  
10 described as First Tract, conveyed to Michael Giles Rutherford by  
11 deed recorded in Volume 197, Page 45 of the said Deed Records, from  
12 which a 5/8" iron rod found with aluminum cap stamped "Kent  
13 McMillan, Land Surveyor, RPLS 4341" bears N87 1'36"E, 1675.22 feet;

14           THENCE, S01°00'52"E, across the said Michael Giles Rutherford  
15 First Tract, with an easterly line of the said 700.03 acre tract,  
16 17.61 feet to a 5/8" iron rod found with aluminum cap stamped "Kent  
17 McMillan, Land Surveyor, RPLS 4341" for the most easterly,  
18 southeast comer of the herein described tract, from which a fence  
19 corner post found for the most southerly, southeast corner of the  
20 aforesaid 700.03 acre tract, being an ell comer of the said Michael  
21 Giles Rutherford tract and the northeast corner of that certain  
22 26.25 acre tract conveyed to Denton E. Ragland, Patrice Ragland and  
23 Marilyn Ragland by deed recorded in Volume 282, Page 373 of the said  
24 Deed Records bears S01°00'52"E, 2121.99 feet;

25           THENCE, leaving the remainder of the said Michael Giles  
26 Rutherford tract, across the said 700.03 acre tract, for the  
27 following twenty-three (23) courses:

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- 1                    1) N83°13'49"W, 111.37 feet to a 1/2" iron rod set with  
2 plastic cap;
- 3                    2) N81°56'14"W, 349.24 feet to a 1/2" iron rod set with  
4 plastic cap;
- 5                    3) N71°01'01"W, 274.19 feet to a 1/2" iron rod set with  
6 plastic cap;
- 7                    4) N78°02'17"W, 468.3I feet to a 1/2" iron rod set with  
8 plastic cap;
- 9                    5) N82°55' 15"W, 267.33 feet to a 1/2" iron rod set with  
10 plastic cap;
- 11                   6) S71°57'45"W, 177.28 feet to a 1/2" iron rod set with  
12 plastic cap;
- 13                   7) N78°37'03"W, 375.19 feet to a 1/2" iron rod set with  
14 plastic cap;
- 15                   8) S65°03'19"W, 84.41 feet to a 1/2" iron rod set with  
16 plastic cap;
- 17                   9) S33°11'56"W, 124.67 feet to a 1/2" iron rod set with  
18 plastic cap;
- 19                   10) S01°02'08"W 168.03 feet to a 1/2" iron rod set with  
20 plastic cap;
- 21                   11) S27 03' 16"W, 206.14 feet to a 1/2" iron rod set  
22 with plastic cap;
- 23                   12) S17°49'54"W, 197.44 feet to a 1/2" iron rod set  
24 with plastic cap;
- 25                   13) S30°34'17"W, 272.18 feet to a to a 1/2" iron rod set  
26 with plastic cap;
- 27                   14) S12°51'33"W, 225.06 feet to a 1/2" iron rod set

- 1 with plastic cap;  
2                   15) S08°30'37"E, 228.34 feet to a 1/2" iron rod set  
3 with plastic cap;  
4                   16) S17°32'26"W 215.74 feet to a 1/2" iron rod set with  
5 plastic cap;  
6                   17) S18°36'23"W, 192.00 feet to a 1/2" iron rod set  
7 with plastic cap;  
8                   18) S01°16'37"E, 177.11 feet to a 1/2" iron rod set  
9 with plastic cap:  
10                  19) S63°12'48"W, 153.98 feet to a 1/2" iron rod set with  
11 plastic cap;  
12                  20) S45°13'37"W, 150.25 feet to a 1/2" iron rod set  
13 with plastic cap;  
14                  21) S29°56'27"W, 113.65 to a 1/2" iron rod set with  
15 plastic cap:  
16                  22) S60°22'29"W, 114.26 feet to a 1/2" iron rod set  
17 with plastic cap;  
18                  23) S26 35'43"W, 75.57 feet to a 5/8" iron rod found  
19 with aluminum cap, stamped "Kent McMillan, Land Surveyor, RPLS  
20 4341", on the southerly line of the said 700.03 acre tract, being on  
21 the notherly right-of-way line of the aforesaid Sate Highway FM  
22 967, and being 40.00 feet right of State Highway centerline station  
23 587+49.3;  
24                  THENCE, with the common line between the said 700.03  
25 acre tract and the said right-of-way line of State Highway FM  
26 967, for the following two (2) courses:  
27                  1) N89 12'09"W, at 750.58 feet pass a TxDOT concrete

1 highway monument found, for a total distance of 1247.30 feet to a  
2 calculated point for the point of curvature of a non-tangent curve  
3 to the right, from which a TxDOT concrete highway monument found  
4 bears S01 07'48"W, 0.38 feet, said calculated point being 40.00  
5 feet right of State Highway centerline station 599+95.5;

6           2) With the said curve to the right having a central  
7 angle of 48 00'30", a radius of 1105.92 feet, a chord distance of  
8 899.79 feet (chord bears N65 10'23"W), for an arc distance of 926.66  
9 feet to a calculated point for the point of tangency, from which a  
10 TxDOT concrete highway monument found bears N81 52'12"E, 1.37 feet,  
11 said calculated point being 40.00 feet right of State Highway  
12 centerline station 609+55.5;

13           THENCE, N41 10'07"W, continuing with the common line between  
14 the said 700.03 acre tract and the northerly right-of-way line of  
15 State Highway FM967, at 1393.60 feet pass a TxDOT concrete monument  
16 found 0.28 feet to the left, at 2244.39 feet pass a TxDOT concrete  
17 highway monument found, for a total distance of 3675.62 feet to the  
18 PLACE OF BEGINNING, CONTAINING within these metes and bounds  
19 394.112 acres of land area.

20 TRACT II.

21           FIELDNOTE DESCRIPTION of a 128.166 acre tract out of the  
22 Freelove Woody Survey No.23, Hays County, Texas, being a portion of  
23 that 700.03 acre tract conveyed to John Richard Rutherford by deed  
24 recorded in Volume 1214, page 548 of the Deed Records of Hays  
25 County, Texas; the said 128.166 acre tract is more particularly  
26 described by metes and bounds as follows:

27           BEGINNING at a fence corner post found for the most southerly

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1 southeast corner of the said 700.03 acre tract, being the northeast  
2 corner of that 26.25 acre tract conveyed to Denton Ragland, Jr.,  
3 Patrice Ragland and Marilyn Ragland by deed recorded in Volume 282,  
4 Page 372 of the said Deed Records and an ell corner of that certain  
5 tract, described as first tract, conveyed to Michael Giles  
6 Rutherford recorded in Volume 197, page 45 of the said Deed Records,  
7 from which a fence corner post found in the common line between the  
8 said 26.25 acre tract and that certain Michael Giles Rutherford  
9 tract bears S00 42'40"E, 446.87 feet;

10       THENCE, N88 53'01'W, leaving the said Michael Giles  
11 Rutherford tract, with the southerly line of the said 700.03 acre  
12 tract, at 21.54 feet pass a 5/8" iron rod found, stamped "Kent  
13 McMillan, Land Surveyor, RPLS 4341", 0.56 feet to the left, at  
14 719.81 feet pass the approximate northwest corner of the said 26.25  
15 acre tract, being approximate northeast corner of the remainder of  
16 that 53.50 acre tract conveyed to Minnie Rogers by deed recorded in  
17 Volume 210, Page 210 of the said Deed Records, for a total distance  
18 of 2711.59 feet to a 5/8" iron pipe found on a curve to the left in  
19 the northerly right of way line of State Highway FM 967;

20       THENCE, with the common line between the said 700.03 acre  
21 tract and the northerly right-of-way line of State Highway 967,  
22 with the said curve to the left having a central angle of 09 18'06",  
23 a radius of 1949.86 feet, a chord distance of 316.20 feet(chord  
24 bears N84 31'41"W), for an arch distance of 316.55 feet to a 5/8"  
25 iron rod found with aluminum cap stamped "Kent McMillan, Land  
26 Surveyor, RPLS 4341" for the point of tangency and southwest corner  
27 of the herein described tract, said point being 40.00 feet right of

1 State Highway RM 967 centerline station 587+49.3, from which a 5/8"  
2 iron rod found with aluminum cap stamped "Kent McMillan, Land  
3 Surveyor, RPLS 4341" in the common line between said 700.03 acre  
4 tract and northerly right-of-way line of State Highway FM 967,  
5 being 40.00 feet right of State Highway FM 967 centerline station  
6 599+95.5, bears N89 12'09"W, 1247.30 feet;

7           THENCE, leaving the said northerly right-of-way line of State  
8 Highway FM 967, across the said 700.03 acre tract, for the following  
9 twenty-three (23) courses:

- 10           1. N26 35'43"E, 75.57 feet to a 1/2" iron rod set with  
11 plastic cap:
- 12           2. N60 22'29"E, 114.26 feet to a 1/2" iron rod set with  
13 plastic cap:
- 14           3. N29 56'27"E, 113.65 feet to a 1/2" iron rod set with  
15 plastic cap:
- 16           4. N45 13'37"E, 150.25 feet to a 1/2" iron rod set with  
17 plastic cap:
- 18           5. N63 12'48"E, 153.98 feet to a 1/2" iron rod set with  
19 plastic cap;
- 20           6. N01 16'37"W, 177.11 feet to a 1/2" iron rod set with  
21 plastic cap;
- 22           7. N18 36'23"E, 192.00 feet to a 1/2" iron rod set with  
23 plastic cap;
- 24           8. N17 32'26"E, 215.74 feet to a 1/2" iron rod set with  
25 plastic cap;
- 26           9. N08 30'37"W, 228.34 feet to a 1/2" iron rod set with  
27 plastic cap;

- 1                   10. N12 51'33"E, 225.06 feet to a 1/2" iron rod set  
2 with plastic cap;
- 3                   11. N30 34'17"E, 272.18 feet to a 1/2" iron rod set  
4 with plastic cap;
- 5                   12. N17 49'54"E 197.44 feet to a 1/2" iron rod set with  
6 plastic cap;
- 7                   13. N27 03'16"E, 206.14 feet to a 1/2" iron rod set  
8 with plastic cap;
- 9                   14. N01 02'08"E, 168.03 feet to a 1/2" iron rod set  
10 with plastic cap;
- 11                  15. N33 11'56"E, 124.67 feet to a 1/2" iron rod set  
12 with plastic cap;
- 13                  16. N65 03'19"E, 84.41 feet to a 1/2" iron rod set with  
14 plastic cap;
- 15                  17. S78 37'03"E, 375.19 feet to a 1/2" iron rod set  
16 with plastic cap;
- 17                  18. N71 57'45"E, 177.28 feet to a 1/2" iron rod set  
18 with plastic cap;
- 19                  19. S82 55'15"E, 267.33 feet to a 1/2" iron rod set  
20 with plastic cap;
- 21                  20. S78 02'17"E, 468.31 feet to a 1/2" iron rod set  
22 with plastic cap;
- 23                  21. S71 01'01"E, 274.19 feet to a 1/2" iron rod set  
24 with plastic cap;
- 25                  22. S81 56'14"E, 349.24 feet to a 1/2" iron rod set  
26 with plastic cap;
- 27                  23. S83 13'49"E, 111.37 feet to a 5/8" iron rod found

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1 with aluminum cap stamped "Kent McMillan, Land Surveyor, RPLS 4341"  
2 on an easterly line of the said 700.03 acre tract, being a westerly  
3 line created from the remainder of that certain Michael Giles  
4 Rutherford tract, from which a metal gate post found for an ell  
5 corner of the said 700.03 acre tract bears N01 00'52"W, 17.61 feet;  
6       THENCE, S01 00'52"E, across the said Michael Giles Rutherford  
7 tract, with an easterly line of the said 700.03 acre tract, at a  
8 distance of 1885.44 feet to the left, at 2084.56 feet pass a 5/8"  
9 iron rod found, stamped "Kent McMillan, Land Surveyor, RPLS 4341",  
10 0.07 feet to the left, for a total distance of 2104.37 feet to the  
11 PLACE OF BEGINNING, CONTAINING within these metes and bounds of  
12 128.166 acres of land area.

13 TRACT III

14       FIELDNOTE DESCRIPTION OF A 0.1793 acre tract of the Freelove  
15 Woody Survey No. 23, Abstract No.20, Hays County, Texas, being a  
16 portion of that certain tract, described as First Tract, conveyed  
17 to Michael Giles Rutherford (First Tract) by deed recorded in  
18 Volume 197, Page 45 of the Deed Records of Hays County, Texas; the  
19 said 0.1793 acre tract is more particularly described by metes and  
20 bounds as follows:

21       BEGINNING at a cotton in spindle found on the easterly line of  
22 that 522.25 acre tract conveyed to Michael Giles Rutherford by deed  
23 recorded in Volume 3799, Page 263 of the Official Public Records of  
24 Hays County, Texas, same being the southwest corner of that 177.762  
25 acre tract described as Exhibit A-1, as conveyed to LSM Ranch, Ltd.  
26 By deed recorded in Volume 1628, Page 206 of the said Deed Records  
27 and the proposed southwest corner of Rim Rock, Phase One, Section



1 Five, subdivision;

2           THENCE, N87 51'36"E, leaving the easterly line of the said  
3 522.25 acre tract, across the said First Tract, with the southerly  
4 line of the said 177.762 acre tract and proposed Rim Rock, Phase  
5 One, Section Five subdivision, for a distance of 99.82 feet to a  
6 calculated point for the northeast corner of the herein described  
7 tract, same being the most northerly northwest corner of Lot 34,  
8 Block 'A', Rutherford West, Section 2, a subdivision recorded in  
9 Book 14, pages 49 through 53 of the Plat Records of Hay County,  
10 Texas, from which a 1/2"iron rod found with plastic cap marked  
11 "Capital Surveying Company, Inc", bears N00 32'40"W, 0.13 feet;

12           THENCE, leaving the southerly line of the said 177.762 acre  
13 tract and proposed Rim Rock, Phase One, Section Five, subdivision,  
14 across the said First Tract, with the westerly and northerly lines  
15 of said Lot 34, Block 'A", for the following two (2) courses:

16           1. S00 32'40"E, 81.34 feet to a 1/2"iron rod found with  
17 plastic cap marked "Capital Surveying Company, Inc., found;

18           2. N88 52'48"W, 99.21 feet 1/2"iron rod found with  
19 plastic cap marked "Capital Surveying Company, Inc., found for the  
20 most westerly northwest corner of aforesaid Lot 34, Block 'A', same  
21 being on the easterly line of the aforesaid 522.25 acre tract and  
22 the southwest corner of the herein described tract;

23           THENCE, N01 00'52"W, leaving the northerly line of said Lot  
24 34, Block 'A', and continuing across the said First Tract, easterly  
25 line of the aforesaid 522.25 acre tract, at a distance of 58.07 feet  
26 pass a 5/8" iron rod, with aluminum cap marked "Kent McMillan,  
27 Surveyor, RPLS 4341", found and continuing for a total distance of

1 75.68 feet to the PLACE OF BEGINNING, CONTAINING within these metes  
2 and bounds 0.1793 acres of land area.

3 The Bearing Basis for this description is the Texas State  
4 Plane Coordinate System, South Central Zone, NAD 83 Datum, derived  
5 from GPS Survey occupations.

6 SECTION 3. (a) The legal notice of the intention to  
7 introduce this Act, setting forth the general substance of this  
8 Act, has been published as provided by law, and the notice and a  
9 copy of this Act have been furnished to all persons, agencies,  
10 officials, or entities to which they are required to be furnished  
11 under Section 59, Article XVI, Texas Constitution, and Chapter 313,  
12 Government Code.

13 (b) The governor, one of the required recipients, has  
14 submitted the notice and Act to the Texas Commission on  
15 Environmental Quality.

16 (c) The Texas Commission on Environmental Quality has filed  
17 its recommendations relating to this Act with the governor, the  
18 lieutenant governor, and the speaker of the house of  
19 representatives within the required time.

20 (d) All requirements of the constitution and laws of this  
21 state and the rules and procedures of the legislature with respect  
22 to the notice, introduction, and passage of this Act are fulfilled  
23 and accomplished.

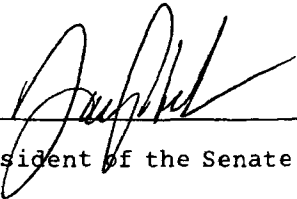
24 SECTION 4. (a) If this Act does not receive a two-thirds  
25 vote of all the members elected to each house, Subchapter C, Chapter  
26 7982, Special District Local Laws Code, as added by Section 1 of  
27 this Act, is amended by adding Section 7982.110 to read as follows:

1           Sec. 7982.110. NO EMINENT DOMAIN POWER. The district may  
2 not exercise the power of eminent domain.

3           (b) This section is not intended to be an expression of a  
4 legislative interpretation of the requirements of Section 17(c),  
5 Article I, Texas Constitution.

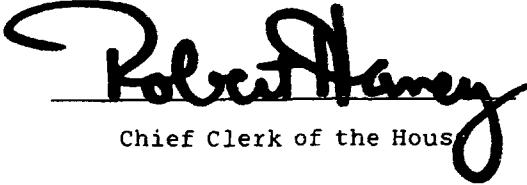
6           SECTION 5. This Act takes effect immediately if it receives  
7 a vote of two-thirds of all the members elected to each house, as  
8 provided by Section 39, Article III, Texas Constitution. If this  
9 Act does not receive the vote necessary for immediate effect, this  
10 Act takes effect September 1, 2017.

H.B. No. 4301

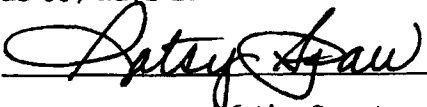
  
\_\_\_\_\_  
President of the Senate



I certify that H.B. No. 4301 was passed by the House on May 19, 2017, by the following vote: Yeas 137, Nays 7, 2 present, not voting.

  
\_\_\_\_\_  
Chief Clerk of the House

I certify that H.B. No. 4301 was passed by the Senate on May 24, 2017, by the following vote: Yeas 30, Nays 1.


  
\_\_\_\_\_  
Secretary of the Senate

APPROVED: \_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
5:30 PM O'CLOCK

JUN 12 2017

  
\_\_\_\_\_  
Secretary of State

**THIRD AMENDMENT TO**  
**WHOLESALE WATER SUPPLY AGREEMENT BETWEEN**  
**LOWER COLORADO RIVER AUTHORITY AND**  
**THE CITY OF DRIPPING SPRINGS**  
**(Driftwood Ranch Tract Service Property Amendment)**

This Third Amendment to the Wholesale Water Supply Agreement Between Lower Colorado River Authority ("LCRA") and The City of Dripping Springs ("Third Amendment") is by and among City of Dripping Springs, a Type A General Law City located in Hays County, Texas ("City"), and the West Travis County Public Utility Agency ("WTCPUA") a political subdivision of the state of Texas formed in accordance with Chapter 572 of the Texas Local Government Code.

**RECITALS:**

- A. The LCRA and the City negotiated and executed the Wholesale Water Supply Agreement Between LCRA the City with an effective date of March 11, 2003, as amended January 21, 2016 ("First Amendment) and May 18, 2017 ("Second Amendment") (the "Agreement").
- B. The WTCPUA assumed the rights and obligations of the LCRA set-forth in the Agreement effective March 19, 2012.
- C. The City recognizes and accepts the WTCPUA as having been assigned the rights and obligations of the LCRA set-forth in the Agreement.
- D. Consistent with its West Travis County Public Utility Agency Regional Water and Wastewater Systems Schedule for Rates, Fees, Charges and Terms and Conditions of Water and Wastewater Services ("WTCPUA Rate Tariff") and all service rules and policies, the WTCPUA issued a Preliminary Finding of Capacity to Serve to the City for the Driftwood Ranch Tract Service Property February 16, 2017, as shown in Exhibit A and defined in Section 1.1 of this Third Amendment, originally for 300 Living Unit Equivalents ("LUEs") of water service. On May 12, 2017, the City requested to increase the amount of LUEs from 300 to 350. The WTCPUA Board of Directors approved the increase of reserved capacity to 350 LUEs on June 15, 2017.
- E. Driftwood Ranch Tract Service Property is in the City's Potential Service Area (as defined in the Agreement).
- F. The City has been issued water Certificate of Convenience ("CCN") No. 13030 to provide retail potable water utility service in certain areas.
- G. The Parties now wish to enter into this Third Amendment to confirm that the City shall be the retail potable water utility service provider to the Driftwood Ranch Tract Service Property and the WTCPUA shall provide Wholesale Water Supply to the City for the Driftwood Ranch Tract Service Property, and to provide other clarifications as set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, including the agreements set forth below, the City and WTCPUA agree as follows:

**ARTICLE 1  
AMENDMENTS**

- 1.1 **Section 1.01.** Section 1.01 of the Agreement is hereby amended to add the following definitions:

“Driftwood Ranch Tract Service Property” means the two tracts of land in Hays County more specifically described in **Exhibit B**, attached hereto.

“Parties” means the City of Dripping Springs and the WTCPUA.

“Max Day Reservation – Driftwood Ranch Tract Service Property” means the maximum amount of water to be delivered to the City for the Driftwood Ranch Tract Service Property on a daily basis based on the flow rates and capacity commitments established in this Third Amendment. The City’s Max Day Reservation for the Driftwood Ranch Tract Service Property is 900 gallons per day per LUE.

- 1.2 **Section 7.07.** Section 7.07 of the Agreement is hereby amended such that the address for notice to LCRA shall be as follows:

WEST TRAVIS COUNTY PUBLIC UTILITY AGENCY  
13215 Bee Cave Parkway  
Building B, Suite 110  
Bee Cave, Texas 78738  
Office: (512) 263-0100  
Fax: (512) 263-2289  
rpugh@wtcpua.org

- 1.3 **Addition of Article IX.** The Agreement is hereby amended to add the following Article IX:

**ARTICLE IX  
SPECIAL PROVISIONS APPLYING TO  
DRIFTWOOD RANCH TRACT SERVICE PROPERTY**

**Section 9.01. Driftwood Ranch Tract Service Property.** This Article IX affects and applies only to the Driftwood Ranch Tract Service Property and it is not intended to nor should be it construed to affect any other portion of the City’s Potential Service Area or the LCRA Service Area.

**Section 9.02. CCN Authorization for Driftwood Ranch Tract Service Property.**

Section 5.03 is modified to add the following:

The City may provide retail potable water utility service to the Driftwood Ranch Tract Service Property pursuant to the Third Amendment even though the Property is outside the current CCN of the City. The City may pursue an amendment to its CCN to serve the Driftwood Ranch Tract Service Property after the information to apply for the amendment is available. The WTCPUA will support the application of the City to amend its CCN to provide retail potable water utility service to the Driftwood Ranch Tract Service Property.

**Section 9.03. Supply of Water to Driftwood Ranch Tract Service Property.** The Parties agree that pursuant to Section 3.01 of the Agreement, except as provided in Section 9.02 of this Article, the WTCPUA shall provide Wholesale Water Supply to the City for the Driftwood Ranch Tract Service Property in the amount not to exceed 350 LUEs as measured at the Delivery Point. The Parties agree that pursuant to Section 3.01 of the Agreement, the City shall provide retail potable water utility service for the Driftwood Ranch Tract Service Property in the amount of 350 LUEs.

For purposes of this Agreement, the average daily water use within the Property, as measured at the Delivery Point, shall not exceed 450 gallons per day per LUE or a total of 157,500 gallons per day (i.e., 57,487,500 gallons per year) for 350 LUEs, computed as a daily average over a calendar year. In the event the total annual quantity of water as measured at the Point of Delivery exceeds 57,487,500 gallons, the WTCPUA may assess and the City agrees to pay a water surcharge for water used that is in excess of 57,487,500 gallons.

In addition, the maximum or peak day water use for the Property, as measured at the Delivery Point, shall not exceed 900 gallons per day per LUE, or 315,000 gallons per day. In the event the City's maximum or peak day water use on any given day exceeds 315,000 gallons over any 24-hour day, the WTCPUA may:

1. Install, at the City's sole cost, a water rate flow of controller to restrict or limit the maximum flow to the Property to a maximum of 219 gpm on an instantaneous basis; and/or
2. Assess a surcharge for any quantity used in excess for 315,000 gallons per day.

Provided, however, the Parties agree and acknowledge that Developer of the Project plans to construct a golf course in the initial phase of development of the Driftwood Ranch Tract. The Parties also acknowledge and agree that Developer intends to use treated effluent to grow and sustain the golf course. The Parties further acknowledge and agree that there will not be sufficient effluent necessary to grow and sustain the golf course. The Parties thus

agree that Developer may utilize water described in Section 9.03, on a temporary, interruptible basis not to exceed three years, to construct, grow and sustain the golf course. The water use will vary from time to time and may not, combined with other water service to the Property, exceed maximum or peak day water use of 1,000,000 gallons over a 24-hour day as measured at the Delivery Point. The WTCPUA will have the right to assess a surcharge for any quantity used in excess for 1,000,000 gallons a day during this three year golf course grow in period. Further, the average daily and annual water use limits of 157,500 gallons per day and 57,487,500 gallons per year, peak day water use of 315,000 gallons per day, and corresponding surcharges as described above in Section 9.03 will not become effective until after the three-year golf course grow in period.

Finally, the City understands and agrees the WTCPUA does not and is not required to provide fire flows to the Property. As such, the City is solely responsible for the installation and maintenance any water improvements necessary to provide fire flows to the Property. Such improvements, if installed, shall be located on the City's side of the Delivery Point.

Section 9.04 The City agrees to ensure that all water infrastructure to provide service pursuant to this Third Amendment will be designed, constructed and inspected according to WTCPUA Standard Specifications and Rules and Policies, including water quality requirements outlined in the "Memorandum of Understanding" between the LCRA and the United States Fish and Wildlife Service (USFWS), dated May 24, 2000 (MOU) and the "Settlement Agreement and Stipulation of Dismissal" from the lawsuit, Hays County Water Planning Partnership, et. al. vs. Lt. General Robert B. Flowers, U.S. Army Corps of Engineers, Thomas E. White, Secretary of the Army, Gale Norton, Secretary of the Department of the Interior, and the Lower Colorado River authority, W.D. Tex. 2002 (No. AOOCA 826SS) (Settlement Agreement). The City also agrees that such facilities will be properly conveyed to the City and contained in public rights of way, easements in final plats, or separate easements granted to the City to facilitate maintenance, repair, and improvement of the facilities. The City shall be responsible for maintenance and repairs of all the facilities constructed in the Driftwood Ranch Tract Service Property.

The City shall be responsible for design and construction of the Delivery Point facilities, including Master Meter and appurtenances. The Master Meter shall meet WTCPUA specifications and be set after WTCPUA approval. The WTCPUA shall own and maintain the facilities, including calibration of the Master Meter. The City agrees that the Delivery Point facilities will be properly conveyed to the WTCPUA and contained in public rights of way, easements in final plats, or separate easements granted to the WTCPUA to facilitate maintenance, repair, and improvement of the facilities. The WTCPUA shall read the Master Meter monthly and bill the City pursuant to the Rates and Charges outlined in Section 9.05 below.



**Section 9.05. Rates and Charges.**

(a) The Base Fee to be paid by the City to the PUA for the Driftwood Ranch Tract Service Property shall be determined by the following formula:

$$\{ \text{Annual Allocated Debt Service Payment} + (25\% \text{ times coverage} * \text{Annual Allocated Debt Service Payment}) - (\text{Effective Impact Fee Credit} * \text{Annual Debt Service Payment}) / 12 \text{ months} \}.$$

(b) The Driftwood Ranch Tract Service Property Volume Charge shall recover the PUA's expenses associated with operating and maintaining the Regional Facilities, including a systems raw water loss fee per thousand gallons to be calculated as follows:

$$[\text{LCRA Raw Water cost per Thousand Gallons} / (1 - 10 \text{ water loss})] / 10$$

Upon the effective date of this Third Amendment, the initial Base Fee for the Driftwood Ranch Tract Service Property will be \$14,729.64 per year, or \$1,227.47 per month. The Base Fee shall be assessed by the PUA on a monthly basis. Upon the effective date of this Third Amendment, the initial monthly Volume Charge will be \$1.83 per thousand gallons used.

The PUA shall utilize the base-extra capacity methodology performed by a qualified professional to determine the appropriate Base Fee and Volume Charge for each wholesale customer, including the Driftwood Ranch Tract Service Property, and may be adjusted from time to time by the PUA's Board of Directors.

The absorption (i.e., build-out) schedule used as part of the Base Fee calculation for the Driftwood Ranch Tract Service Property is ten (10) years. The City shall pay the Driftwood Ranch Tract Service Property Base Fee regardless of whether the Driftwood Ranch Tract Service Property meets the absorption schedule used to develop the annual debt payment schedule.

The Effective Impact Fee Credit shall be determined based upon the following formula:

$$\text{Project Costs Recovered by Impact Fees} / \text{Total Project Costs}$$

Project Costs Recovered by Impact Fees shall be determined by the following formula:

$$\text{Project costs eligible for impact fee recovery as determined by the PUA's most recent impact fee study} * \text{the percent}$$

level of impact fees adopted by the PUA Board of Directors.

The Annual Allocated Debt Service Payment for the Driftwood Ranch Tract Service Property, from time to time due and payable, shall be based on the City's allocated pro-rata share of the PUA's capital costs for the Regional Facilities (including interest expense) as determined based on input from the City prior to the issuance of bonds to fund the Regional Facilities so long as the total capital cost allocated to the City is recovered within the life of the bonds, including interest expense. The City's pro-rata share of the WTCPUA's capital costs for the Driftwood Ranch Tract Service Property is calculated based on its Max Day Reservation, multiplied by the WTCPUA's Cost per Gallon of the Regional Facilities. Exhibit C attached hereto and incorporated herein for all purposes, sets forth the current schedule of the Annual Allocated Debt Service Payment. Exhibit C may be amended from time to time by the WTCPUA to reflect future LCRA installment payments as well as future debt issuances associated with future Regional Facility projects.

The WTCPUA's Cost per Gallon of the Regional Facilities, further classified as "System-Wide" Facilities shall be calculated by dividing the total cost of the System Wide Regional Facilities by 27,000,000 gallons. The WTCPUA's Cost per Gallon of the Regional Facilities, further classified as "Hwy 71" shall be calculated by dividing the total cost of the Hwy 71 Regional Facilities by 14,829,230 gallons. The WTCPUA's Cost per Gallon of the Regional Facilities, further classified as "US 290" shall be calculated by dividing the total cost of the US 290 Regional Facilities by 12,170,770.

The WTCPUA shall not allocate costs for future Regional Facilities to the City beyond 27 million gallons per day (MGD) of water treatment plant capacity if the City establishes to the WTCPUA's satisfaction that it has reached eighty percent (80%) of its projected absorption schedule of the Driftwood ranch Tract Service Property six months prior to the WTCPUA's issuance of bonds for such expansion.

(b) Within ten business days of a written request from the WTCPUA, the City shall provide the WTCPUA with copies of the City's monthly operating reports indicating the City's peak day consumption, including a break-out of the Driftwood Ranch Tract Service Property. At any time, the WTCPUA may also install, at its sole discretion, a max-day meter and/or a flow regulator on the City System, including the Driftwood Ranch Tract Service Property, to assess or control actual maximum daily demands by the City.

If the WTCPUA determines that the City is exceeding the Max Day Reservation for the City or Driftwood Ranch Tract Service Property, the City will be subject to a surcharge as determined by the WTCPUA Rate Tariff and all service rules and policies.

**ARTICLE 2  
RATIFICATION**

- 2.1 By entering into this Third Amendment, the Parties hereby ratify the Agreement, and affirm and agree that it is in full force and effect, as amended.

**ARTICLE 3  
MISCELLANEOUS**

- 3.1 Incorporation; Definitions. The background as set forth in the recitals is true and correct, forms a material part of this Third Amendment and is hereby incorporated into this Agreement. Words with initial capital letters that are used but not defined in this Third Amendment shall have the meanings given to them in the Agreement.
- 3.2 Effective Date of Third Amendment. The Effective Date of this Third Amendment is the latest occurring signature of the City or the WTCPUA.
- 3.3 Counterparts. This Third Amendment may be executed in multiple counterparts, each to be considered an original, to be effective upon execution by all Parties.

**IN WITNESS THEREOF**, the Parties hereto, acting under the requisite authority, have caused this First Amendment to be duly executed to be effective as of the Effective Date as provided above.

**[Signature Page Follows]**

CITY OF DRIPPING SPRINGS, TEXAS

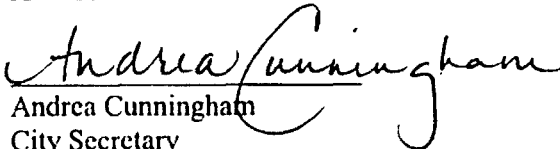
By: 

Name: Todd Purcell

Title: Mayor

Date: \_\_\_\_\_

ATTEST:

  
Andrea Cunningham  
City Secretary



APPROVED AS TO FORM AND  
LEGALITY:

\_\_\_\_\_  
City Attorney

WTCPUA:

WEST TRAVIS COUNTY PUBLIC UTILITY  
AGENCY

By: \_\_\_\_\_

*Scott Roberts*  
Scott Roberts  
President  
Board of Directors

Date: \_\_\_\_\_

01/17/2019

ATTEST:

*Ray Whisenant*  
Ray Whisenant  
Secretary  
Board of Directors

# EXHIBIT A



**WEST TRAVIS COUNTY PUBLIC UTILITY AGENCY**  
12117 Bee Cave Road, Building 3, Suite 120, Bee Cave, Texas 78738  
Office: 512/263-0100 Fax: 512/263-2289  
[www.wtcpua.org](http://www.wtcpua.org)

February 16, 2017

City of Dripping Springs  
c/o David J. Tuckfield, Special Counsel for the City of Dripping Springs  
12400 W. Highway 71, Suite 350-150  
Austin, Texas 78738

Re: **Preliminary Finding of Capacity to Serve**  
**City of Dripping Springs Eastern ETJ Master Meter Project**  
**Hays County, Texas**

City of Dripping Springs:

The West Travis County Public Utility Agency (WTCPUA), as the retail water utility service provider for the referenced application, has completed review of your request for a master meter for wholesale water service to the City of Dripping Springs' eastern Extraterritorial Jurisdiction (ETJ) for delivery of 300 LUEs of water service. This request is subject to the *Wholesale Water Supply Agreement between Lower Colorado River Authority and the City of Dripping Springs* ("Agreement") dated March 11, 2003, as assigned. In accordance with West Travis County Public Utility Agency Water and Sewer Service and Development Policies, the WTCPUA will provide a total Level of Service allocation of three-hundred (300) LUEs and authorizes construction of the master meter, effective upon the Applicant complying with the Service Extension Request (SER) Conditions set forth below::

#### CONDITIONS

1. The City of Dripping Springs ("Applicant") is subject to the terms and conditions of *West Travis County Public Utility Agency Regional Water and Wastewater Systems Schedule for Rates, Fees, Charges and Terms and Conditions of Water and Wastewater Service*, known as the WTCPUA Rate Tariff, as amended from time to time by the Board of Directors of the West Travis County Public Utility Agency:
1. The Applicant enters into an amendment of the existing Wholesale Water Supply Agreement (the "Wholesale Agreement") to designate the Delivery Point for the master meter, an absorption schedule for an immediate allocation of three-hundred (300) LUEs of service, and (1) a minimum monthly rate and bill for the wholesale meter or (2) as a component of the amendment to the Wholesale Agreement, the WTCPUA shall reserve 300 LUEs for water allocated to Applicant and the Applicant shall pay to the WTCPUA annual Water Reservation Fees according to the WTCPUA Tariff, initially in the amount of \$414.96 per Reserved Water LUE, and as may be amended by the WTCPUA from time to time;
2. Pursuant to the Wholesale Agreement, the Applicant amends the City of Dripping Springs Certificate of Convenience and Necessity as authorized by the Texas Public Utilities Commission to include all areas proposed for water service:

3. The Applicant constructs, at Applicant's sole cost and expense, all water service facilities ("Facilities") necessary to facilitate wholesale service to the City of Dripping Springs and the areas proposed for service adjacent to the intersection of RM 1826 and Darden Hill Road in Hays County, Texas, including but not limited to:
  - a) Construct 16"x12" Full Body Tapping Sleeve and 12" Gate Tapping Valve.
  - b) Construct approximately 20 linear feet of 12" DI waterline.
  - c) Construct 8" Master (AMR) Meter Assembly with vault and provide meter as required by the WTCPUA.
  - d) Construct 12" Backflow Preventer with Vault.
4. The Applicant completes the review process of technical plans associated with the proposed Facilities;
5. The WTCPUA inspects and accepts such facilities and Applicant conveys such facilities to the WTCPUA;
6. The Applicant, at its sole cost and expense, acquires and grants to the WTCPUA all exclusive-use easements necessary for the WTCPUA to own and operate the Facilities in a form and manner acceptable to the WTCPUA;
7. The Applicant shall adopt one of the alternative water quality measures required of the new development as specified in that certain "Memorandum of Understanding" between the LCRA and the United States Fish and Wildlife Service (USFWS), dated May 24, 2000 (MOU) and the "Settlement Agreement and Stipulation of Dismissal" from the lawsuit, Hays County Water Planning Partnership, et. al. vs. Lt. General Robert B. Flowers, U.S. Army Corps of Engineers, Thomas F. White, Secretary of the Army, Gale Norton, Secretary of the Department of the Interior, and the Lower Colorado River Authority, W.D. Tex. 2002 (No. AOOCA 826SS) (Settlement Agreement) including:
  - Measures approved by the USFWS through separate Section 7 consultation, or other independent consultation;
  - TCEQ optional enhanced measures, Appendix A and Appendix B to RG-348; or
  - U.S. Fish and wildlife Service Recommendations for Protection of Water Quality of the Edwards Aquifer dated September 1, 2000;
8. The Applicant pays all applicable fees and charges associated with the extension of service; and.
9. The Applicant follows and complies with all applicable WTCPUA rules and regulations pertaining to water service, as amended from time to time by the WTCPUA Board of Directors.

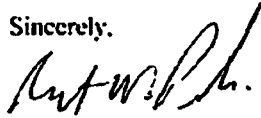


Page 3  
Letter to the City of Dripping Springs  
February 16, 2017

Please be advised that conditions may change over time and the WTCPUA will not reserve or commit water capacity to the Property until all conditions listed above are met or until reservation fees are paid or a minimum monthly rate (bill) is established for the master meter in accordance with current WTCPUA policies. Also, please be advised that the WTCPUA will not provide direct fire flow service to the Property, and, as such, the Applicant may be required to install and maintain fire service facilities needed to meet local fire code regulations and requirements.

If you have any questions concerning this matter, please do not hesitate to contact me.

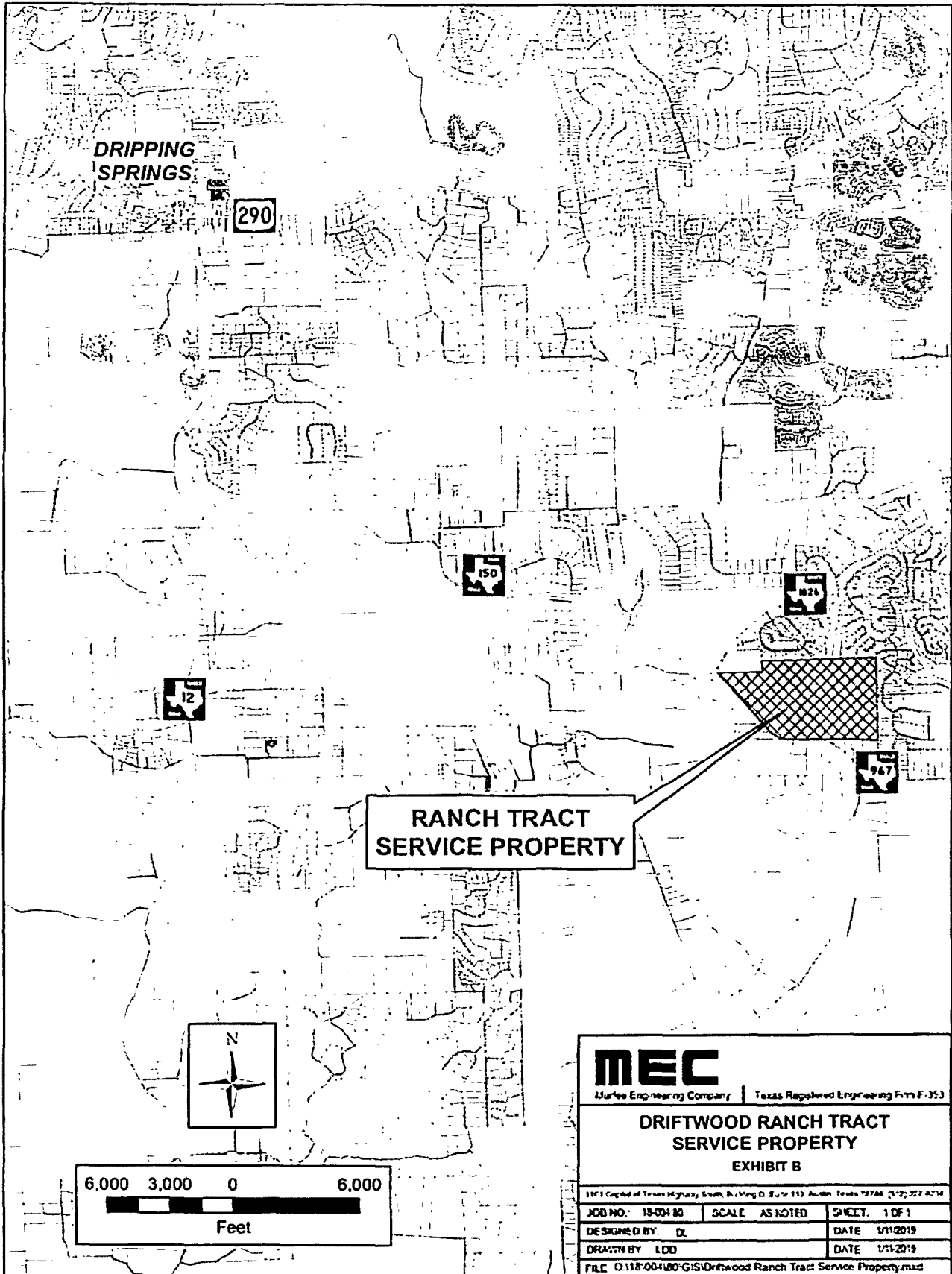
Sincerely,

A handwritten signature in black ink, appearing to read "Robert Pugh". The signature is written in a cursive style with a large, sweeping initial "R".

Robert Pugh  
General Manager

Cc: Curtis D. Wilson, P.E., WTCPUA  
Stefanie Albright, Lloyd Gosselink Rochelle & Townsend, P.C.

# **EXHIBIT B**



**DRIPPING  
SPRINGS**

**290**

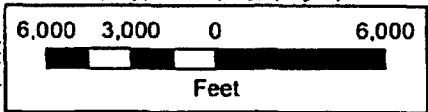
**150**

**824**

**12**

**967**

**RANCH TRACT  
SERVICE PROPERTY**



**MEC**

Marfee Engineering Company | Texas Registered Engineering Firm E-353

**DRIFTWOOD RANCH TRACT  
SERVICE PROPERTY  
EXHIBIT B**

1161 Capital of Texas Highway South, Building D 5170 113 Austin, Texas 78748 (512) 327-0214		
JOB NO: 18-004-B0	SCALE: AS NOTED	SHEET: 1 OF 1
DESIGNED BY: DL		DATE: 1/11/2019
DRAWN BY: LDD		DATE: 1/11/2019
FILE: D:\18\004\B0\GIS\Driftwood Ranch Tract Service Property.mxd		

# EXHIBIT C